

# POLICY BRIEF

## HIV and International Labour Migration

### Context

International labour migration, or the movement of people across national borders for employment, is a growing phenomenon and an increasingly important aspect of global, regional and national economies. Recent estimates indicate that 86 million people living outside their country of birth were international labour migrants.<sup>1</sup> This policy brief focuses on the HIV-related needs and rights of international labour migrants,<sup>2</sup> whether they are in regular or irregular status,<sup>3</sup> and whether their migration is of long or short duration.

Migrant workers clearly benefit from the increased opportunities to work across national borders. Origin and destination countries also benefit, the former as remittances are a relatively constant and reliable source of income and the latter because of the important contribution labour migrants make to the economy and society in which they live.<sup>4</sup> Yet international labour migrants experience particular HIV risks and needs,<sup>5</sup> which must be addressed in

striving towards universal access to HIV prevention, treatment, care and support services by 2010.<sup>6</sup>

### International Labour Migration and HIV Risk

Numerous sociocultural, economic and political factors in both origin and destination countries influence the risk of HIV infection of international labour migrants. These include separation from spouses, families and familiar social and cultural norms, language barriers, poverty, substandard living conditions, and exploitative working conditions, including sexual violence. The resulting isolation and stress may lead international labour migrants to engage in behaviours, such as unsafe casual or commercial sex, which potentially increase the risk of exposure to HIV. This risk is exacerbated by inadequate access to HIV prevention information, services and tools and fear of being stigmatized for seeking such information or services.<sup>7</sup>

<sup>1</sup> International Labour Conference, 92nd Session, 2004. Report VI. *Towards a fair deal for migrant workers in the global economy* ILO Geneva. In this policy brief international labour migrant refers to the (international) migrant worker and his or her family in line with the *International Convention on the Protection of the Rights of Migrant Workers and their Families* 1990

<sup>2</sup> This policy brief does not focus on internal migrants and trafficked persons, while recognising they have similar risk factors for HIV to international labour migrants.

<sup>3</sup> Migrant workers are considered undocumented or in an irregular situation if they not authorised to enter, stay and to engage in remunerated activity in the State of employment (Article 5, *International Convention of the Protection of the Rights of All Migrant Workers and Members of their Families* 1990)

<sup>4</sup> Beath A (2007) Migration in Goldin I and Reinhert K (eds) *Globalisation for Development: Trade, Finance, Aid, Migration and Policy* World Bank Washington DC, Acosta P, Fajnzylber P and Lopez J H "The Impact of Remittances on Poverty and Human Capital: Evidence from Latin American Household Surveys" in *International migration, economic development, and policy: overview* / edited by Çağlar Özden and Maurice Schiff World Bank, Washington DC

<sup>5</sup> Swartz, L. and Nkai, D.P. (2004) *The impact of HIV/AIDS on the mining sector, with special emphasis on Southern African male migrant workers*, UNDP and CICNRD, Poudel KC et al (2003) Mumbai disease in far western Nepal: HIV infection syphilis among Mobility returnees non migrants *Tropical Medicine Health* 8(10) 933-39 Shah SA, Khan OA, Kristensen S, Vermund SH (1999) "HIV-infected workers deported from the Gulf States: Impact on southern Pakistan" *Journal of STD & AIDS* 10:812-814; Sanchez MA, Lemp GF, Magis-Rodriguez C, Bravo Garcia E, Carter S and Ruiz JD (2004) The Epidemiology of HIV among Mexican Migrants and Recent Immigrants California and Mexico *Journal of Acquired Immune Deficiency Syndrome* 37: S204-S214 ; Euro HIV (2006) *HIV/AIDS Surveillance in Europe: End of Year Report 2005 No 73* ; Mtika MM (2007) Political economy, labour migration, and the AIDS epidemic in rural Malawi *Social Science and Medicine* 64: 2454-2463

<sup>6</sup> 2006 *Political Declaration on HIV/AIDS* General Assembly Resolution 60/262 Article 20

<sup>7</sup> Asia Pacific Migration Research Network and UNDP (2004) *No Safety Signs Here: Research Study on Migration and HIV Vulnerability from Seven South and North East Asian Countries* UNDP, Wolfers I, Fernandez I, Verghis S and Vink M (2002) Sexual behaviour and vulnerability of migrant workers for HIV infection *Culture, Health and Sexuality* 4(4) 459-473, Coordination of Action Research on AIDS and Migration (2007) *State of Health of Migrants 2007: Mandatory Testing CARAM, Kuala Lumpur*, Marin M (2004) "Sexual Scripts and Shifting Spaces: Women Migrants and HIV/AIDS" and Anarfi J (2004) "Women's Migration, Livelihoods and HIV/AIDS in West Africa" in *Women Migrants and HIV/AIDS: An Anthropological Approach* UNESCO Paris; Bhattacharya G (2005) "Social Capital and HIV Risks among Acculturating Asian Indian Men in New York City" *AIDS Education and Prevention* 17(6) 555-567

Female migrant workers may be placed in situations which make them particularly vulnerable to HIV. Many work in relatively unskilled jobs within the manufacturing, domestic service or entertainment sectors, often without legal status and little to no access to health and HIV-related services. In such situations, they are often susceptible to exploitation and/or physical and sexual violence, in some cases by their employer, and have few alternative employment opportunities. Women are also affected as the spouses left behind by male international labour migrants. Faced with the same economic and other challenges besides (such as food insecurity) that contributed to her husband's migration, a woman may be forced to exchange sex for food, shelter, protection or money and thus become vulnerable to HIV. She may also be at risk from her husband if he returns with HIV or other sexually transmissible infections.<sup>8</sup>

## International Labour Migration and People Living with HIV

If the international labour migrant acquires HIV while in transit or in the destination country, or is already living with HIV, s/he then often faces a serious lack of access to HIV treatment, care and support services. Migrant workers rarely have the same entitlements as nationals to the insurance schemes which make health care affordable, particularly if their status is irregular.<sup>9</sup> Culturally and linguistically appropriate HIV prevention, treatment, care and support programmes are also scarce, and

international labour migrants may additionally be living in geographically isolated areas (such as construction, highway building and mining sites) with little access to health services.<sup>10</sup>

Over 60 countries place restrictions on people living with HIV from entering or remaining in a country for any purpose, and international labour migrants may be refused entry or face deportation if they are found to be HIV positive.<sup>11</sup> Where HIV testing occurs in the context of migration, internationally agreed standards for informed consent, confidentiality, counselling and referral to services are not routinely applied.<sup>12</sup> International labour migrants receiving antiretroviral treatment in the destination country may also have their treatment disrupted by deportation, if in the country to which they return they do not have access to HIV and health services.

The main government rationales for the HIV-related travel restrictions are to protect public health and avoid extra demand on health and social services, and other economic costs thought to be generated by HIV positive non-nationals. However, there is no public health justification for travel restrictions. HIV is not transmitted casually but through specific behaviours; HIV-positive and HIV-negative people, whether nationals or non-nationals, can prevent transmission by practising safer behaviours.<sup>13</sup> Thus travel and migration by positive people in itself does not entail a risk to public health.<sup>14</sup>

<sup>8</sup> Baruah N and Cholewski R (2006) *Handbook on establishing effective labour migration policies in countries of origin and destination*, OSECE, IOM and ILO Geneva; CARAM (2004) *The Forgotten Spaces, Mobility and HIV Vulnerability in the Asia Pacific - Abridged version* CARAM, Kuala Lumpur; Brummer, D (2002) *Labour Migration and HIV/AIDS in Southern Africa*, IOM Regional Office for Southern Africa, IOM; Buckley C (2004) "HIV in the Caucasus: The Importance of Family Networks in Understanding Women's Risk Setting" in *Women Migrants and HIV/AIDS: An Anthropological Approach* UNESCO Paris Rohit Malpani (2006) *Legal Aspects of Trafficking for Forced Labour Purposes in Europe*, ILO Geneva; MacDonald E, Cholewinski R, Perruchoud R (eds) (2007) *International Migration Law: Developing Paradigms and Key Challenges* Asser Press

<sup>9</sup> UNAIDS and IOM (2001) *Migrants Right to Health* UNAIDS and IOM Geneva; Steffan E, Kersch V and Sokolowski S (2005) *Immigration and HIV/AIDS Prevention in Germany – An Interdisciplinary Challenge* *Eurosurveillance* 2005 10(1); WHO (2003) *International Migration, Health and Human Rights* Health and Human Rights Publication Series Issue no. 4.

<sup>10</sup> Du Guerny J. et al (2003) *Multisectoral responses to mobile populations' HIV vulnerability: Examples from People's Republic of China, Thailand and Viet Nam*, UNDP; UNDP-SEAHIV, NCCAB and MCTPC (2001) *HIV policy formulation and strategic planning: For the communication, transportation, post, construction and tourism sectors, Lao People's Democratic Republic*; Giang, L.M. (2004) *The irony of agency in space: Displacement and vulnerability in two highways in Viet Nam*, Development, Spatial Mobility and HIV/AIDS, UNDP South East Asia HIV and Development Programme and the Committee for International Cooperation in National Research in Demography (CICRED)

<sup>11</sup> For further information on specific country requirements see "Global Database on HIV-related Travel Restrictions", [www.hivtravel.org](http://www.hivtravel.org)

<sup>12</sup> CARAM (2007) *State of Health of Migrants 2007: Mandatory Testing* CARAM Kuala Lumpur

<sup>13</sup> CDC (1999) *Fact Sheet: HIV and its Transmission* <http://www.cdc.gov/hiv/resources/factsheets/transmission.htm>

<sup>14</sup> UNAIDS and IOM (2004) *UNAIDS/IOM Statement on HIV/AIDS-related travel restrictions* p1 UNAIDS and IOM, Geneva

Given the economic benefits of international labour migration, as well as the extended productivity of people living with HIV from improved therapies, it is increasingly difficult to argue that people living with HIV will incur more costs to the destination country compared to the benefits they contribute over a long-term stay or residency.<sup>15</sup> Refusal of entry or deportation based on HIV status is discriminatory and not warranted.

## Policy Position

The *2001 UN General Assembly Special Session (UNGASS) Declaration of Commitment on HIV/AIDS*, adopted by all UN member states, calls for “national, regional and international strategies that facilitate access to HIV/AIDS prevention programmes for migrant and mobile workers”. The *2006 Political Declaration on HIV/AIDS* reaffirms the full realization of human rights as fundamental to the global HIV response. Addressing HIV among international labour migrants is a necessary contribution towards achieving universally agreed Millennium Development Goal of halting and reversing the spread of HIV by 2015.

International labour migrants have the same human rights as everyone else,<sup>16</sup> and HIV status in itself is not an indication of fitness to work. International labour migrants, whatever their HIV status, can and do make important economic and social contributions to both destination countries and their countries of origin. To maintain productivity and reduce risk of HIV transmission they need access to culturally and linguistically appropriate HIV programmes in origin, transit and destination countries at all stages of the migration

process—prior to departure, on arrival, during stay in the destination country, and upon return and reintegration into the countries of origin.

States retain the sovereign right to determine who enters their country; their decisions should be consistent with international human rights norms. Yet international labour migrants, whether in regular or irregular status, should have the same human right to health as nationals.<sup>17</sup> Respecting and promoting migrants’ health is essential for achieving national and international public health goals such as universal access to HIV prevention, treatment, care and support, besides improving the productivity and economic independence of individuals and families.

Effectively addressing HIV requires both HIV-specific actions and actions aimed at the underlying causes of HIV risk behaviours, including poverty, gender inequality and human rights violations among international labour migrants in both regular and irregular status. UNAIDS, the International Labour Organization, (ILO) and the International Organization for Migration urge governments, employers, workers and community organizations and others working with international labour migrants and people living with HIV in origin, transit *and* destination countries to collaborate to achieve this goal. Specifically, UNAIDS, ILO and IOM jointly recommend the following actions.

## Actions for Governments

- Ensure that national laws recognize the right to health for international labour migrants and do not create barriers for international labour migrants to accessing health and HIV related services.

<sup>15</sup>Ibid p9

<sup>16</sup>These include the right to work (Article 23 of the *Universal Declaration of Human Rights*, and the *ILO Convention 111*) the right to the highest attainable standard of physical and mental health and the right to a healthy and safe working environment (Article 12 of the *International Covenant on Economic, Social and Cultural Rights*) For a complete list of rights see the *International Convention on the Protection of the Rights of Migrant Workers and their Families* (1990)

<sup>17</sup>Article 12 of the *International Covenant on Economic, Social and Cultural Rights* provides for States Parties to recognize the right of each person to enjoy the highest attainable standard of physical and mental health possible *without distinction of nationality*. The Committee on Economic, Social and Cultural Rights reaffirmed that “States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities ...” (General Comment 14 (12), adopted 11/08/2000). The Committee on the Elimination of Racial Discrimination also affirmed that States should “respect the rights of non-citizens to an adequate standard of physical and mental health by, inter alia, refraining from denying or limiting their access to preventative, curative and palliative health services” (General Comment 30 (36) adopted 01/10/2004)

- Ensure inclusion of international labour migrants in national development, health and HIV-related policies, strategies and plans.<sup>18</sup>
- Ensure, through funding public-health services, nongovernmental and private organizations, that international labour migrants and their families have the same access as nationals to HIV prevention, treatment, care and support programmes which are sensitive to gender and culture, and in a language or medium the migrant worker can understand.<sup>19</sup>
- Integrate HIV prevention, treatment, care and support programmes into pre-departure, post-arrival and return and reintegration processes.
- Provide relevant support and services to women, families and communities left behind by male international labour migrants.
- Ensure there is no discrimination on the grounds of HIV status in the context of travel regulations, entry requirements, immigration, employment or reintegration procedures;<sup>20</sup> where testing is done to assess future health care costs, ensure HIV is treated equally to comparable health conditions and not singled out as a basis for discrimination.
- Ensure that laws, policies and programmes respect the rights of both of workers living with HIV, and of international labour migrants and their families. in line with ILO's *Code of Practice on HIV/AIDS and the World of Work (2001)* the *International Convention for the Protection of the Rights of All Migrant Workers and their Families (1990)*, and the *International Guidelines on HIV/AIDS and Human Rights*.<sup>21</sup>
- Ensure effective enforcement of minimum national labour standards for both nationals and non nationals.
- Collaborate to develop and implement regional strategies for addressing HIV and related issues among international labour migrants<sup>22</sup>.

## Actions for Workers' Organizations

- Promote HIV workplace policies consistent with the *ILO Code of Practice on HIV/AIDS and the World of Work (2001)* and the *International Convention on the Protection of the Rights of Migrant Workers and their Families (1990)*.
- Support the formation of worker associations by international labour migrants and their inclusion in existing organizations, and the incorporation of HIV related issues into programmes implemented by these bodies.
- Support efforts to eliminate discrimination both against people living with HIV and international labour migrants.
- Provide information and advice to businesses on national laws and how to conform with them.
- Advocate for ratification of international and ILO conventions on migrant workers, and incorporation of relevant standards into national laws and policies.

## Actions for Businesses

- Develop and implement workplace policies and programmes in line with the *ILO Code of Practice on HIV/AIDS and the World of Work*; the *ILO Multilateral Framework on Labour Migration* and the *International Convention on the Protection of the Rights of Migrant Workers and their Families (1990)*.
- Reduce financial costs for migrant workers in sending remittances to their families and communities.

## Actions for Civil Society

- Support international labour migrants to access HIV related services and broader appeal mechanisms such as migration or labour boards and human rights institutions.

<sup>18</sup>Recommendations adopted at the consultation on EU Partnership to promote Universal Access for Mobile Populations, by seven European Union Member Countries on Population Mobility, HIV and TB, 10-11 September 2007, IOM, Geneva, Switzerland

<sup>19</sup>See UNAIDS and Office of the High Commissioner for Human Rights (2006) *International Guidelines on HIV/AIDS and Human Rights* UNAIDS and OHCHR, Geneva Guideline 6

<sup>20</sup>UNAIDS does not support mandatory testing of people under any circumstances see UNAIDS and WHO (2004) *UNAIDS/WHO Policy Statement on HIV Testing* UNAIDS and WHO, Geneva

<sup>21</sup>Also see ILO (2005) *Multilateral Framework on Labour Migration: Non Binding Principles and Guidelines for a Rights Based Approach to Labour Migration, the Migration for Employment Convention (Revised), 1949 (No. 97) and Migrants Workers (Supplementary Provisions) Convention, 1975 (No. 143)*

<sup>22</sup>This can include, for example, mapping transit countries and routes with a view to intensifying HIV prevention, treatment, care and support services at these sites.

- Establish gender, language and culture sensitive HIV programmes for international labour migrants and their families.
- Seek funding for and conduct and disseminate research on international labour migrants and HIV risk.
- Advocate for international labour migrants to be treated equally to nationals, promote the acceptance of international labour migrants in the community and challenge stigma and discrimination, including that which may be perpetuated by the media.

## Action for International Partners

- Support National AIDS Programmes, civil society and other organizations, in origin, transit and destination countries, to provide health and HIV services to international labour migrants, including those in irregular status, in line with the *International Convention on the Protection of the Rights of Migrant Workers and their Families (1990)*.
- Encourage national governments and other funders to provide equal access to HIV related services for international labour migrants and nationals.
- Promote, conduct and support research on migration and HIV to strengthen evidence, and informed policies and programmes.

## FIRST PERSON VOICES

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*Brian Brink, Senior Vice President, Medical and Edward Bickham, Executive Vice President, External Affairs, AngloAmerican*

AngloAmerican is a global leader in mining and natural resources. From the late 1980s we ran HIV prevention, education and community outreach programmes in Southern Africa, where most of our employees are based. Labour migrants, including those from surrounding countries, constitute a significant proportion of our workforce in South Africa.

In 2002, as prevalence reached 20% in our mines, we began a concerted drive behind voluntary testing and counselling that guaranteed those in need would receive free anti-retroviral treatment from the company. By 2007, more than 70% of employees were accessing voluntary testing and counselling annually. At present, about 3,600 employees are receiving anti retrovirals and 9,000 are on wellness programmes providing nutrition and lifestyle support.

We maintain a strict policy of non-discrimination between migrant and local workers. All employees are encouraged to seek counselling and testing and if HIV positive are eligible for the treatment and support we provide. We are also making good progress in moving away from the hostel system and towards providing family friendly accommodation or housing allowances, so that migrant workers can bring their families with them if they wish.

Workplace programmes reap the clearest benefits if employees believe their HIV status will remain confidential, and that the company is committed to non discrimination on the basis of this status. Bringing in outside parties such as spouses and trade unions to reinforce the key messages, including the importance of knowing your status and of confidentiality, also increases the effectiveness of voluntary testing and counselling campaigns – we even seek to work with traditional healers in some instances.

If Anglo American didn't provide these programmes, we would have faced the premature death of a significant part of our workforce and been party to a humanitarian disaster. Instead, in many sites our HIV programmes are now self-funding via reduced absenteeism and skills loss, and because 95% of employees on antiretroviral therapy are fit to do their normal work. A good HIV response correlates extremely well with a successful business, and represents, quite simply, good management practice.



**Ana Avendaño, Associate General Counsel and Director, Immigrant Worker Program, American Federation of Labour and Congress of Industrial Organizations (AFL-CIO)**

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a voluntary federation of 56 national and international labor unions. Its members represent 10 million working women and men of every race and ethnicity and from every walk of life across the United States.

In 2002 AFL-CIO adopted a policy in support of legalising the status of undocumented workers and their families in the United States. This was in recognition of the fact that we cannot have an indentured workforce. If there is an exploited pool of workers, this leads to substandard wages and conditions for everyone. AFL-CIO has lobbied the US Government extensively on this issue, and worked with likeminded organizations to develop rational and humane proposals for legislative reform.

At the moment we have an entire class of people with no social security, as even migrant workers of regular status have to wait for five years before they can access these benefits. With no safety net and often no health insurance, migrant workers of both regular and irregular status are extremely vulnerable. They have little access to the health services which would provide HIV related information and support, and are often forced to use emergency departments when in need of care.

AFL-CIO never asks a worker to reveal their immigration status when they come to us for advice or support. As unionists we have a duty to focus on the rights of all workers, regardless of their status. We must also continue, with other international partners, to find trade union based strategies for addressing gender and racial discrimination and thus contributing to the response against HIV.

**Marianito D. Roque, Secretary of Labour and Administrator of the Overseas Workers Welfare Administration (OWWA), Philippines**

OWWA is the lead Philippine government institution looking after the welfare of overseas Filipino workers (OFWs). In 1995, OWWA conceived and implemented a Medical Care Program for overseas Filipino workers and their families. In 2002, OWWA responded to the rising incidence of HIV among migrant workers by incorporating a module on HIV in its Pre-Departure Orientation Seminar. Attendance is required for a worker to be given clearance to leave the country to work overseas. A video on health and migration was produced for use in the seminar and distributed in all regions of the country, among manning and recruiting agencies, and in all Philippine embassies with a large concentration of OFWs.

The government imposes a standard employment contract which contains, among others, a provision for ensuring medical benefits for migrant workers. While in the host country, part of OWWA's role is to ensure that foreign employers respect contract provisions. In cases where OFWs are abandoned by their employers, OWWA assists the worker by calling the attention of the employers, bringing the OFW to the hospital, and where necessary, arranging for repatriation.

Repatriated workers are provided with temporary shelter, transportation assistance, referrals to health services, counselling, mediation services for complaints and claims, training, livelihood assistance, and job placement. Returning migrant workers are provided with voluntary HIV testing and counselling. Active members of the overseas Filipino workforce are also entitled to life and accident insurance which covers HIV, and also includes scholarship grants, loans, and in case of death – burial assistance.

The Philippine Government has a strict policy against mandatory testing for HIV, but due to the requirements of destination countries and foreign employers, some applicants are forced to undergo HIV testing as part of the pre-employment screening procedure or before the renewal of their work contracts. Overseas workers are therefore the most heavily tested population in the country.

Working abroad is full of challenges and threats – and one of the threats is HIV. We must help ensure that our OFWs come home with success stories and are HIV free, so they can enjoy the fruits of their labour and for the country to truly benefit. After all, their sacrifices help keep the Philippine economy afloat. We must likewise assist them deal with the consequences if they do become HIV-positive.