



The Federation's Pages

WFPHA: World Federation of Public Health Associations

www.wfp ha.org

Bettina Borisch and Marta Lomazzi, Federation's Pages Editors

Strengthening the public health case against HIV-related travel restrictions

© Macmillan Publishers Ltd., part of Springer Nature 2017

Introduction

At the World Congress of Public Health in April 2017, the General Assembly of the World Federation of Public Health Associations adopted a policy statement—a strong stance against immigration policies requiring migrants to provide proof of HIV-negative status in order to obtain visas, work permits, or legal residency. The policy, “Scientific evidence and treatment needed to combat the spread of HIV—not ineffective travel bans,” was submitted for consideration to the Federation by one of its member Associations, the American Public Health Association (APHA), with the hope of further strengthening advocacy efforts to challenge HIV-related discrimination against immigrants and nationals alike. This policy reinforces the evidence-based public health case against HIV-related travel restrictions by presenting research data showing that these restrictions do not have their intended effect of preventing the spread of HIV and may actually be perpetuating harm by causing the opposite effect by reinforcing ignorance and discriminatory attitudes that cause HIV to spread.

Policy origin

The APHA policy that served as the basis for the WFPHA policy gained approval at the 2017 Congress. WFPHA adopted it at the Association's 2015 Annual Meeting in Chicago [1] after it was introduced as a ‘late-breaker’ policy; that is, defined as “a proposed policy statement that is related directly to emergent events that occur after



the regular policy statement proposal submission deadline has passed” [2]. The emergent event qualifying the policy proposal for late-breaker status was a ruling by the United Nations Committee on the Elimination of Racial Discrimination (CERD) in May 2015 against a policy of mandatory HIV testing by the Republic of Korea (ROK). ROK has required that E-2 visa applicants undergo annual HIV and drug testing since 2007, while there is no such requirement for Korean citizens or even non-citizens of Korean ethnicity [3]. The case was brought by a New Zealand national who lost her teaching position in 2009 when she refused the required HIV test. The CERD determined that the testing policy constituted racial discrimination and found that the policy, from which native Koreans and even foreign nationals of Korean ethnicity are exempt, “does not appear to be justified on public health grounds or any other ground, and is a breach of the right to work without distinction to race, colour, national or ethnic origin” [4].

Despite the CERD ruling, subsequent opinions on the policy by the National Human Rights Commission of Korea [5], and journalistic [3, 6, 7] and scholarly [8] coverage of the origin and implications of the policy, the Joint United Nations Programme on HIV/AIDS (UNAIDS) maintained ROK’s ‘green’ (restriction-free) status on its map of countries with HIV-related travel restrictions. They did so after ROK representatives declared at the 2012 International AIDS Conference that their government had removed all HIV-related travel restrictions—even as the testing policy remained in place [9]. UNAIDS, which focuses on eliminating HIV/AIDS worldwide, established the International Task Team on HIV-related Travel Restrictions to “create new energy and action towards their elimination” [10]. While related advocacy efforts have made significant progress [11], many countries have inconsistent immigration policies based on HIV status [12, 13], and ROK had received undeserved recognition from UNAIDS for lifting travel restrictions by intentionally misrepresenting its policies.

Among its recommendations, the APHA late-breaker policy, “Opposition to Policies Requiring a Negative HIV Test as a Condition of Employment for Foreign Nationals,” called on UNAIDS to revoke its recognition of ROK as having no HIV-related travel restrictions and “to ensure that its protocols for investigating countries’ HIV-related restrictions for foreign nationals are sufficiently thorough, in order to make certain that governments are not able to misrepresent their policies to gain undeserved recognition for supporting human rights with regard to HIV/AIDS.” Because APHA late-breaker policies are considered interim policy and remain valid for 1 year, APHA revised the late-breaker policy accordingly and adopted it as a permanent policy, “Opposition to Immigration Policies Requiring HIV Tests as a Condition of Employment for Foreign Nationals,” at the 2016 Annual Meeting in Denver. Continuing to recognize the importance of the role of UNAIDS in reducing the spread of HIV infection and reinforcing the rights of HIV-infected persons worldwide, the permanent policy echoes the original late-breaker with its recommendation that UNAIDS “take steps to ensure that its protocols for researching and investigating countries’ HIV-related travel restrictions are sufficiently thorough by monitoring and documenting any reported instances of HIV-related discrimination targeting immigrants, particularly when presented with



evidence demonstrating that recognition of a country's removal of travel restrictions is unwarranted" [14].

The federation policy

The World Federation's adoption of a policy against mandatory HIV tests for immigrants is important because it equips public health associations around the world to challenge ineffective and discriminatory policy that targets migrants on the basis of HIV status in their own countries. While the UN CERD decision on the ROK's immigration policy of mandatory HIV testing was the original driving force behind APHA's policy, ROK is by no means the only country with immigration policies restricting entry, stay, or residence on the basis of HIV infection. According to UNAIDS, 35 countries currently enforce some kind of official HIV-related travel restriction [15], varying from complete entry bans to restrictions on stays longer than a specified period of time [11]. Further complicating the issue is the fact that policies are frequently unclear or inconsistent. In 2008, for example, UNAIDS noted 59 countries with HIV-related travel restrictions [10], while Human Rights Watch documented 66 countries with such restrictions [16], and a survey of German embassies conducted by Deutsche AIDS-Hilfe around the same time showed that 97 countries enforced some form of HIV-related travel restriction [12]. Additionally, even the removal of such restrictions is not guaranteed to be permanent: within the last 10 years, officials in both Greece and the United Kingdom have suggested using HIV tests to discriminate against immigrants and asylum seekers seeking residency [17, 18].

Some research suggests that countries risk worsening their own epidemics by enforcing these restrictions. Such policies can cause direct harm to the health of both immigrants and citizens by reinforcing discriminatory attitudes against infected persons and discouraging those at risk from accessing HIV testing and treatment [19]. Regulations requiring HIV tests of immigrants can strengthen the misconception that only migrants are at risk for infection, encouraging nationals to underestimate their HIV risk and avoiding testing due to stigmatization, making them more likely to transmit the virus to others [20]. Several countries with HIV-related travel restrictions, including ROK [21] and Russia [22], have seen rapid increases in HIV infection rates of 10% per year or more. This underscores the urgency of the need for advocacy efforts that could be strengthened by using the Federation's policy.

Conclusion

In a geopolitical landscape characterized by both unprecedented levels of migration and anti-immigrant political sentiment, immigration policies subjecting entrants to forced HIV testing represent an urgent threat to the health and human rights of both foreigners and those residing in their home countries. Such policies provide no public health protection to a country's citizens from HIV and violate migrants'



rights to equal protection under the law, freedom from discrimination, privacy, dignity, and bodily integrity. The goal of the Federation's policy, which is anchored in the Global Charter for the Public's Health [23], is to equip public health associations and advocates with evidence to challenge such policies where they exist in order to advance public health, protect human rights, and work toward a world that guarantees dignity for all people.

Bettina Borisch and Marta Lomazzi, Federation's Pages Editors, *Journal of Public Health Policy* (2018) 39.

Jessica M. Keralis, MPH, Associate Director of Public Health Services, Cadence Group, 1095 Zonolite Rd NE, Suite 105, Atlanta, GA, USA 30306. Email: jmkeralis@gmail.com

Deborah Klein Walker, EdD, President, Global Alliance for Behavioral Health and Social Justice, Crozet, VA, USA

References

1. American Public Health Association. Opposition to policies requiring a negative HIV test as a condition of employment for foreign nationals. Interim (late-breaker) policy adopted by the APHA Governing Council at the meeting of the American Public Health Association, Chicago. 2016. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/26/14/44/opposition-to-policies-requiring-a-negative-hiv-test-as-a-condition-of-employment>. Accessed 3 Nov 2015.
2. American Public Health Association. Late-breakers. American Public Health Association. 2017. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-statement-development-process/late-breakers>. Accessed 1 Jul 2017.
3. Kang SW. Foreign teachers say visa-rule biased. *Korea Times*. 2008. http://www.koreatimes.co.kr/www/news/nation/2008/10/117_32169.html. Accessed 1 Jul 2017.
4. OHCHR. Republic of Korea's foreigners-only HIV tests violated New Zealand teacher's rights. OHCHR press release. 2015. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15981&LangID=E>. Accessed 1 Jul 2017.
5. National Human Rights Commission of Korea (NHRCK). Recommendation for revising the medical examination requirement for foreign E-2 visa holders and preparing domestic procedures for individual communications under U.N. human rights treaties. 2016.
6. Walsh A, Lamers M. Korea's new rules on HIV cause confusion. *Korea Herald*. 2010. <http://www.koreaherald.com/view.php?ud=20100112000064>. Accessed 1 Jul 2017.
7. Power J. (2013) Is HIV testing of foreigners here to stay? *Korea Herald*. 2013. <http://www.koreaherald.com/view.php?ud=20131125000966>. Accessed 1 Jul 2017.
8. Wagner BK, VanVolkenburg M. HIV/AIDS tests as a proxy for racial discrimination? A preliminary investigation of South Korea's policy of mandatory in-country HIV/AIDS tests for its foreign English teachers. *J Korean Law*. 2012;11:179–245.
9. Amon J. Seoul's broken promises on HIV testing. *The Diplomat*. 2013. <http://thediplomat.com/2013/06/seouls-broken-promises-on-hiv-testing/>. Accessed 1 Jul 2017.
10. UNAIDS. The impact of HIV-related restrictions on entry, stay and residence: an annotated bibliography. Geneva: UNAIDS. UNAIDS/09.22E/JC1729E; 2009.
11. Amon J, Todrys KW. Fear of foreigners: HIV-related restrictions on entry, stay, and residence. *J Int AIDS Soc*. 2008;11:8.
12. Horn T. At least 31 countries deporting people living with HIV. *Poz*. 2010. <https://www.poz.com/article/hiv-deportation-migrant-18781-6045>. Accessed 1 Jul 2017.
13. International Labour Organization, Subregional Office for East Asia, and International Organization for Migration. Mandatory HIV testing for employment of migrant workers in eight countries of



- South-East Asia: from discrimination to social dialogue. Bangkok: International Labour Organization; 2009.
14. American Public Health Association. Opposition to immigration policies requiring HIV tests as a condition of employment for foreign nationals. Policy adopted by the APHA Governing Council at the meeting of the American Public Health Association. Denver: American Public Health Association. 2017. <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2017/01/23/opposition-to-immigration-policies-requiring-hiv-tests>. Accessed 1 Jul 2017.
 15. UNAIDS. Lithuania confirms no restrictions on entry, stay and residence for people living with HIV. UNAIDS press release. 2015. http://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2015/september/20150917_Lithuania. Accessed 1 Jul 2017.
 16. Human Rights Watch. Discrimination, denial, and deportation: human rights abuses affecting migrants living with HIV. New York: Human Rights Watch; 2009.
 17. Human Rights Watch. Greece: human rights watch submission to the United Nations Committee against Torture. Human Rights Watch memorandum. 2014. <https://www.hrw.org/news/2014/03/24/greece-human-rights-watch-submission-united-nations-committee-against-torture>. Accessed 1 Jul 2017.
 18. Watt N. Keep HIV-positive migrants out of Britain, says Ukip's Nigel Farage. Guardian. 2014. <http://www.theguardian.com/politics/2014/oct/10/nigel-farage-keep-hiv-positive-migrants-out-britain>. Accessed 1 Jul 2017.
 19. Kirby M. Human rights and the HIV paradox. *Lancet*. 1996;348:1217–8.
 20. Aponte-Rivera VR, Dunlop BW. Public health consequences of state immigration laws. *South Med J*. 2011;104:718–9.
 21. Keralis JM. Mandatory HIV testing of immigrants in South Korea: an update on advocacy efforts and legal challenges. Oral session presented at the meeting of the American Public Health Association. Denver; 2016.
 22. Stratfor. In Russia, HIV is on the Rise. Stratfor. 2016. <https://worldview.stratfor.com/image/russia-hiv-rise>. Accessed 4 Sept 2017.
 23. World Federation of Public Health Associations. A global charter for the public's health. 2016. <https://www.wfpha.org/charter/the-charter>. Accessed 18 Sept 2017.

