International Labour Office

Meeting Report

ILO AIDS

Meeting Report

3

Technical workshop on population mobility, migration and HIV/AIDS

Geneva

18 March 2002

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Geneva, 18 March 2002

ILO Programme on HIV/AIDS and the world of work
Geneva, April 2003

Preface

The ILO's Programme on HIV/AIDS and the world of work (ILO/AIDS) was created following a resolution passed at the International Labour Conference in June 2000, asking the Director-General to increase the capacity and competence of the ILO to address HIV/AIDS. The resolution recognized the impact of HIV/AIDS on the world of work on all levels – on workers, their rights and livelihoods; on employers, enterprises and productivity; and on governments, public services and the national economy. It also recognized that the ILO's core mandate, tripartite structure and Decent Work Agenda give it the right, the responsibility and the means to respond effectively to the epidemic.

An important aspect of the response is to understand the risk factors that affect particular populations and groups of workers. It has become clear that HIV prevalence is often particularly high among groups of mobile workers; it is suggested, but the evidence is less clear, that migrants too face higher than average risk of infection. The ILO Code of Practice not only identifies factors of risk but also addresses the climate of discrimination and violation of human rights which can leave migrant and mobile workers more vulnerable to HIV infection and less able to cope with AIDS. The ILO's Programme on HIV/AIDS and its International Migration Branch (MIGRANT) therefore organized a technical workshop to examine the complex relationship between labour migration, mobility and HIV/AIDS.

This report is a summary of the proceedings and conclusions of the workshop, which encouraged open discussion and provided the opportunity to identify and review priority areas for action. Concrete recommendations were offered to the ILO and its national and international partners for protecting the rights and promoting the well-being of mobile workers and migrants in the face of HIV/AIDS.

Franklyn Lisk
Director
ILO Programme on HIV/AIDS and the world of work

Contents

Appendices

Introduction

The workshop was organized by the ILO Programme on HIV/AIDS and the world of work (ILO/AIDS) and the International Migration Branch (MIGRANT), in collaboration with the International Organization for Migration (IOM) and the International Centre for Migration and Health (ICMH).

Its purpose was to identify major issues relating to migration, labour mobility and HIV/AIDS, and to discuss the most appropriate contribution the ILO can make. The role of the ILO in relation to other agencies was also addressed. The main themes included vulnerability and risk factors, prevention and care, human rights, regional needs, and appropriate programme and policy interventions. Staff from a number of sectors within the ILO and its field offices participated, as well as from key agencies and NGOs. Two background papers were prepared for the meeting and are appended to this document:

- *Population mobility, migration and HIV/AIDS: issues and challenges for the ILO*
- *ILO and other international instruments that can be used to protect migrants' rights in the context of HIV/AIDS.*

Opening session

Mr. Assane Diop, Executive Director, Social Protection Sector, opened the meeting and set the tone of the discussion by stating that migration and mobility play an important role in increased vulnerability to HIV/AIDS, both for those who are mobile and for their partners and communities. Protection of the rights of migrants to health, social protection and freedom from discrimination in the workplace are key elements in two major ILO Conventions (Migration for Employment Convention - No. 97 and Migrant Workers - No. 143). Mr Diop saw the workshop as an important opportunity to develop strategy on how to best implement these Conventions. The goal of the workshop was to provide guidelines for practical action by the ILO in this area, and he expressed his support for the collaboration between ILO/AIDS and MIGRANT, two units within the Social Protection Sector. He also thanked colleagues within the ILO and guests from the different organizations attending for their willingness to share their knowledge and experience.

Mr. Manolo Abella, Chief of MIGRANT, made the point that current migration policies are quite limited when it comes to addressing HIV/AIDS and migrant workers. ILO Conventions can be especially helpful in the area of migration and mobility in employment, especially with regard to protection of family integrity and discrimination. The ILO tripartite constituents should be encouraged to make positive changes in the areas of human rights, policy and prevention that affect migrants and mobile workers. Mr. Abella stressed that it is important, when designing interventions, to identify appropriate target groups as well as to establish realistic and reachable goals. International organizations and NGOs must work together and he hoped that a united effort could be achieved without programme duplication. Mr Abella expressed the hope that the workshop would help identify an appropriate role for the ILO.

Mr. Franklyn Lisk, Director of ILO/AIDS, described the serious impact HIV/AIDS is having on the employment sector and the world of work in general. Approximately 42 million people worldwide are infected with HIV and the ILO has estimated that over 25 million are workers. The impact of HIV/AIDS is especially noticeable in sectors with a highly mobile workforce such as road transport, the maritime industry and the armed

forces. Thus, the programmes in the ILO which have a role in addressing this issue - ILO/AIDS, MIGRANT and ILO's Sectoral Activities Department (SECTOR) - have been working closely together. In developing programmes and projects addressing mobile populations, the *ILO Code of Practice on HIV/AIDS and the world of work* will be helpful as it focuses on a range of relevant issues from discrimination and mandatory testing to social protection and health services. Mr. Lisk foresaw the preparation of a set of guidelines for action in this area that would cover rights, education, prevention, care and support. Of particular interest should be an attempt to change government and company policies which separate migrant workers from their families.

He stressed that the ILO's tripartite structure as well as its mandate to promote social justice make it ideally placed to contribute to global efforts against the epidemic. HIV/AIDS focal points in ILO field offices in all regions will help implement activities addressing mobility, migration and AIDS. On behalf of ILO/AIDS and MIGRANT, he expressed the hope that the workshop would bear fruit in future programmes and projects in this area.

First panel: risk factors and selected interventions

The moderator, Ms. Cleopatra Doumbia-Henry, Deputy Director of SECTOR, opened the session by highlighting the impact of HIV/AIDS in the transport sector. She then introduced the members of the panel.

Manuel Carballo: Risk factors for HIV/AIDS in the context of migration

Mr. Carballo, Director of the International Centre for Migration and Health, presented an overview of factors and trends in migration. Migration offers people a chance of earning a living and, for receiving countries, migrant workers can be a positive economic force. However, migration can have a negative impact because it can cause trauma and family separation – especially for unskilled workers and those in low-paid jobs. He commented that voluntary migration will most likely be the focus of discussion at the workshop. Voluntary migrants have similar experiences to forced migrants (i.e. refugees, internally displaced persons) as they all move away from family and community, and must cope with new circumstances. Migration is age- and sex-selective: many migrants are young and, depending on the region, they are predominantly either groups of only men or only women. Moreover, migrants often travel without families. Additional commonalities of migration are loneliness, stress, coping troubles, and, in many cases, no guarantee of employment in the long-term.

He then outlined the main factors of vulnerability for labour migrants.

- **Gender**. Sexual exploitation of women is frequent. Female migrants can be compared to refugees as they often have few or no civil/political rights. Women are especially vulnerable in cross-border areas where the only source of income may be sex work.
- **Rural to urban migration**. For the last 30 years, rural to urban migration has had the effect of producing high unemployment and pressure on services in urban areas. Migrants often have few choices for housing and tend to live in poor conditions.
- **Coping mechanisms**. As with any social grouping, it is dangerous to generalize about how migrants cope. Some cope better than others. Many look for emotional and social support and this may involve risk-taking behaviour. Alcohol use is considered a risk factor for STI/HIV transmission and studies in several

countries have shown that the rate of alcohol use among migrants is higher than among non-migrants.

- **Poverty**. Poor living conditions can adversely affect the health and well-being of an individual. Being in a state of poverty also limits choice and reduces individual control. HIV prevention programmes must take issues of poverty into account in order to be effective in the long-term.

The discussant, Ms Susan Leather of ILO/AIDS, highlighted poverty as a cause and a consequence of both migration and HIV/AIDS. Another connecting factor is that the epidemic can lead to displacement – of workers who have lost their jobs, of widows who are deprived of the right to land and of orphans who no longer have support. An integrated approach to policy development on HIV/AIDS and migration must address the powerlessness created by poverty. The ILO is well-placed to contribute to such an approach through its social protection and employment promotion activities.

Mary Haour-Knipe: Approaches and interventions for HIV/AIDS prevention and access to care for mobile populations

Ms. Haour-Knipe, Senior Advisor on Migration and HIV/AIDS, International Organization for Migration, began her presentation by calling attention to the myths surrounding migration and HIV:

'Migrants are more affected by HIV'. This depends on the type of migrant or mobile worker and the HIV prevalence of the region. It is important not to see migrants simply as victims, but at the same time certain factors linked to separation from the home community and often family as well add to the vulnerability of migrants in destination countries/communities.

'*Migrants bring HIV and other infections'*. This is a reaction based on fear and lack of accurate information, not evidence. It is part of a mistrust of foreigners, and an assumption that migrants bring disease and other unwelcome 'baggage' while profiting from local services, from jobs to social security benefits. A more constructive and useful approach is to look at risk factors and situations rather than population groups.

'*Migrants are hard to reach with HIV prevention'*. It is true that a different approach is needed to provide education and awareness to migrant workers. Often, there is a very real fear of authorities among migrants, who may find it difficult to distinguish the police from health workers. It is most important to remember that this population can be reached - it simply must be with different means than those used with the general population.

Ms. Haour-Knipe described how it can be helpful to look at the issue of migration and HIV/AIDS from two perspectives: the individual and community. For the individual, behaviour change and risk reduction need to be addressed through, for example, the promotion of condom use and prevention information. The vulnerability of the collective can be reduced by improving policies and living conditions.

She asked a key question: what should the priorities be for project funding? One option is to focus on specific migrant populations. This is necessary if there are limited resources, but targeting specific groups introduces the risk of adding to existing stigmatization. Another option is to target the general population – which includes everyone and is based on a 'right to know' –principle - thereby avoiding the possibility of encouraging stigma. Ms. Haour-Knipe recommended a number of ways to offer HIV prevention and care in the migrant community: conduct baseline assessments, provide information and education, promote condoms, encourage use of peer educators, STI

treatment, VCT, policy interventions and mobilize community resources. In addition, the resilience of migrant communities must be recognized. Common positive characteristics of this population are ambition, good health (enough to be able to travel) and willingness to take risks. She emphasized sustainability as being key to creating effective programmes and projects, and the need for concerned agencies to work within their mandates as well as creating partnerships.

Ms. Haour-Knipe offered a number of suggestions for a way forward.

1. Collect more evidence of the link between migration and HIV and identify gaps in knowledge

2. Consider both short and long-term activities, long-term investments being the best

3. Avoid specific targeting of migrants to avoid contributing to stigmatization

4. Ensure the development of a care and support infrastructure - starting treatment with someone who does not have access to follow-up can lead to the problem of disease resistance

5. Existing programmes and projects must be evaluated in order to benefit from examples of good practice and lessons learned.

The discussant, Ms Thetis Mangahas from the ILO's InFocus Programme on Promoting the Declaration, highlighted the importance of using diverse ways to reach a target population. For example, managers of a domestic helper project in the Philippines discovered that the helpers congregated in parks, housing complexes, and harbours. With this information, the project support was able to reach the women much more effectively. She emphasized the importance of partnership with workers from the target community to break down suspicion and create trust. Ms. Mangahas expressed her agreement with previous comments concerning the resilience of migrants: people have an inherent desire, and may have the resources, to improve their own situation. Lastly, she hoped that projects with migrants would include issues of exclusion and discrimination.

Hubertus Essenberg: HIV/AIDS prevention in the transport sector of southern African countries

Mr. Essenberg of the ILO's Sectoral Activities Department began by discussing the impact of HIV/AIDS on the transport industry. Transport workers tend to spend long periods away from home and families – these workers are often men who can afford to pay for sex. In 2001, the Department of Transport of South Africa developed a programme with the ILO which included a number of important elements: encouragement of voluntary HIV/STI testing, creation of a non-discriminatory work environment, promotion of human rights and the implementation of HIV prevention programmes. All strategies attempt to be culturally appropriate and relevant. He emphasized that behaviour change can be quite difficult to achieve. For example, a study of transport workers in Uganda showed that the workers recognized the risks of contracting HIV but continued to put themselves at risk regardless.

Mr. Essenberg then described the new ILO project for the transport sectors of eight Southern African countries. This will mobilize the social partners, develop national policies for HIV/AIDS prevention and mitigation, and put in place a regional strategy for the transport industry. Some of the countries concerned mention transport workers in their national AIDS plans but little action has been taken due to financial constraints. NGOs are quite active in the region but on a small and local scale.

The discussant, Pia Nyman of ILO/AIDS, noted that a number of programmes exist for the trucking industry but that it seems as if the rail, sea and air industries have been somewhat neglected thus far. She also pointed out that peer education has been effective in a number of contexts, as well as with commercial sex workers. It could also be a good way to reach the families of mobile and migrant workers. Ms. Nyman described the Healthy Highway Project in India which has been distributing condoms, conducting outreach, and providing STI diagnosis and treatment along major trucking routes. One prevention strategy that could be very helpful would be to reduce the number of overnight stays for drivers and other transport workers. The ILO could be most effective in this area in particular – by working with employers and workers to change potentially harmful regulations and administrative procedures.

It is most important, Ms. Nyman noted, that mobile workers and commercial sex workers be included in discussions at the policy level. Their voices must be heard as projects will be less effective and less likely to be well received without them. In terms of technical cooperation, programmes with clear objectives must be created. A long-term perspective is also needed for these HIV/AIDS programmes and projects to be successful.

Discussion

Ms. Doumbia-Henry summarized the discussions of the morning and presented what she called the "P" themes - population mobility, poverty, powerlessness and prevention. She also mentioned that partnerships at international, national and local levels are crucial. Reiterating the point made by Ms. Nyman, she said that the people most affected must be given 'ownership' of the issue as this is necessary for behaviour change. Agreeing with Ms. Haour-Knipe that the global village should include global public health, she added that we must also establish a 'global labour market' perspective.

The first question concerned the definitions of mobile and migrant workers and the confusion that can arise when implementing interventions. Mr. Carballo remarked that no single approach can be followed as there are many different types of migrant workers. However, there are similarities in the situations faced by most of them and these should be recognized. For example, if work takes a person away from their homes and communities for long enough, he or she must develop new coping mechanisms. Thus, both small and large scale interventions are needed and they should be built into programmes for migrants. Ms. Haour-Knipe concurred, adding that while generalizations must be reduced there are significant commonalities as well as differences. In any case, the solutions provided must clearly identify the population to be targeted. Mr. Abella noted that this argument is discussed in the paper prepared for the workshop and that an operational definition is an important first step to take.

Mr. Lisk expressed the view that it was important not to get too bogged down by definitions but to make sure that both concepts and activities conform to the ILO's mandate. He hoped that the day's discussions would focus on future work that could bring together a number of ILO sectors on projects as well as the application of appropriate policy and legal instruments. The ILO should avoid duplication with other organizations. Ms. Haour-Knipe called attention to the fact that migrants often shift categories quickly – their legal status can change from month to month. The ILO is in a good position to encourage governments and employers to widen responsibility for peoples' well-being both before and after they move for work. Another IOM representative added that the activities of migrant workers must be looked at and not the mobility factor alone. She also agreed with Mr. Lisk's comments earlier that their respective organizations can complement each other well as the IOM focuses on health and the ILO on labour.

The next question touched upon the notion of globalization and how this specifically affects migration and HIV/AIDS. Mr. Carballo commented that a startling aspect of globalization is that people move more now than ever before in history. The problem is that although we are currently seeing the effects of HIV on the labour market, many people and governments and especially decision-makers are still not convinced of the magnitude of the problem or feel the responsibility to intervene. He said that social security, in particular, should be viewed as a global responsibility, and suggested that efforts be made to establish a global insurance scheme. He recommended that the ILO can play an important role in terms of advocacy and demonstrating the social, economic and labour costs of HIV/AIDS.

The last question addressed the gender dimension of this issue. A representative from the employment sector noted that women migrants are often the most vulnerable to exploitation and can face a higher risk of HIV infection. Ms. Nyman commented that there is still a lack of data, especially for women in the informal sector in both sending and receiving countries. Ms. Haour-Knipe added that the gender issue can be expanded into one of power in general. Women need power first to influence political change; without this, the power to negotiate condom use is a moot issue. Mr. Carballo concurred, noting that status and power is the central issue as many low skill, low wage jobs are exploitative of women. He offered the example of domestic workers, who are sent to certain Middle Eastern countries, are only allowed to bring few personal items and are given little or no independence. Solutions include not only condom promotion but policy changes that allow migrants to travel with their spouses and partners.

Second panel: regional issues and policy responses

Mr. Jean-Victor Gruat, Social Protection Sector, introduced the panel and described how this session would be a helpful complement to the first as there would be a more regional focus and an opportunity to examine particular issues in more depth.

Piyasiri Wickramasekara: ILO activities on migration and HIV/AIDS in Asia

Mr. Wickramasekara of MIGRANT began by describing current migration flows in Asia – there is growing internal, cross-border and international migration throughout the region. The migration flows primarily consist of temporary contract labour, an increasing number of women, and trafficking of women and children. They are especially concentrated in the Greater Mekong sub-region, India, China and Indonesia.

He noted that ILO activities in the region concerning migration and HIV/AIDS are still in the planning stages. The groups targeted by upcoming projects include sex workers and transport workers The ILO plans to partner with other agencies, unions, employer groups and NGOs. Its programme will consist of a variety of interventions including advocacy, advisory services, capacity building and direct technical cooperation projects. The specific activities are diverse: in India, an interstate migrant research study is planned; education and awareness projects are being developed for Pakistan; and a fact-finding mission will soon take place in China. Now is an ideal time to promote ILO instruments like the *ILO Code of Practice on HIV/AIDS and the world of work* and to review countries' current migration policies. Now is also the time to develop complementary partnerships with other agencies and to strengthen the capacity of ILO constituents.

The discussant, Patrick Taran of MIGRANT, commented on the value and importance of ILO Conventions, particularly in the area of migration and workers' rights. He recommended that every country should make provision to prevent migration from

being driven underground as is so often the result of poor policies. Minimum working standards must be enforced, particularly in the types of conditions that make migrants vulnerable to HIV. Policies on discrimination in the workplace must also include those with HIV and should be incorporated into existing provisions affecting migrant workers.

Natalya Shcharbakova: Population mobility and HIV/AIDS in CIS countries

Ms. Shcharbakova of the ILO's Moscow Office began by acknowledging that lack of data is the main problem when analyzing the current situation of HIV/AIDS in the CIS countries. Before the collapse of the Soviet Union, the official Soviet position was that neither prostitution nor HIV existed. Since 1990, however, the region has been characterized by heavy migration flows as people return to their places of origin, flee conflict, or look for employment. Most of those currently infected with HIV in this region are injecting drug users (IDUs), and the connection to the workplace can be difficult to make at this early stage in the epidemic. Although the link between migration and HIV/AIDS has been documented and analyzed for the last few years, there are no clear figures to illustrate the problem. Thus, research is needed to inform and improve policies addressing social protection. ILO achievements include the translation of the Code of Practice into Russian as well as tripartite task forces which are currently being formed in several of the CIS countries.

The discussant, Mr Christian Kroll, expressed the view that politicians in the CIS still do not see the link between migration and AIDS. If there is any acknowledgement, it is more in terms of the myth that migrants brought HIV infection to the region. Trafficked women and sex workers are now showing higher rates of infection. Current policies of mandatory testing do not appear to be effective – the ILO must encourage CIS governments to review and change testing and deportation policies.

Mary Haour-Knipe: Policy implications of interventions and rights of mobile populations

Ms. Haour-Knipe presented the UNAIDS paper on behalf of Ms. Aurorita Mendoza who was not able to attend the workshop. Examples of effective interventions among migrants were highlighted. Since international border points are notably high risk areas, it is very important that prevention and care services on both sides of the border are linked. Transport hubs must also be identified and addressed in relevant policies. This has already been done in some areas including Cambodia, Vietnam and Laos. The UNAIDS paper indicated that policy directions should aim to protect the human and legal rights of migrants, including the right to health. Discriminatory practices such as testing for purposes of exclusion must be eliminated – at least 60 countries prohibit foreigners who are HIV positive from entering their countries.

There was an emphasis on migration as a continuum rather than a single event. In order to create the best interventions, all 'push' and 'pull' factors must be considered. Government and company policies should take these factors into account as well as the long-term consequences of certain regulations, for example delays at borders. Countries should harmonize migration laws to minimize the HIV risks created by policy differences.

Ms. Leather, the discussant, offered the example of the mining sector in South Africa, where trade unions are negotiating for the provision of family accommodation in order to avoid the separation of family members. She also stressed that the knowledge base must be developed and expanded as it can be used to convince decision-makers as well as employers of the consequences of different policies.

Discussion and wrap-up session

The first question concerned the accuracy of current data and reporting of HIV infection rates. What should be done when the statistics are not available? Mr. Lisk commented on the 'culture of denial' that contributes to under-reporting globally, as well resource constraints. The experience of the most-affected regions suggests that similar increases in prevalence may occur in places with similar conditions. The whole issue of reporting needs to be addressed.

Ms. Haour-Knipe pointed out that hard data on AIDS is often available too late, as HIV can take up to 10 years or more to develop into AIDS. The following indicators can help gauge the potential of HIV/AIDS to spread in a given community: condom use, attitudes regarding sexual behaviour, STI prevalence, and number of sexual partners. Mr. Carballo added that in the case of AIDS, there is little time to spare and a 'leap of faith' is needed because something must be done as soon as possible. Ms. Leather mentioned the need to take advantage of the information that does exist. The International Union of Transport Workers, for example, has done research in Eastern Africa with mobile workers and has set up a project with UNAIDS.

Mr. Kroll suggested that a positive correlation was more clear between mobility and HIV than migration and HIV. Mr. Wickramsakera added that distinctions with regard to migration and mobility can be too limiting. In order to include as many people as possible in an intervention, it is more helpful to broaden the definition of migration.

Mr. Lisk thanked the participants for an interesting and constructive day, and noted some points that he felt were of special interest. The best ways to implement the ILO Code of Practice for migrants and mobile workers must be explored. As with the informal economy, these populations can be reached through creative and imaginative interventions. The ILO cannot do this alone; collaboration with other agencies is essential, as is a cooperative effort within the Office. The concept of a global insurance scheme, which was mentioned during the workshop, could be very helpful and should be investigated. The message that also came through very clearly is that now is the time to act, and he recommended regional meetings as essential follow-up. Action needs to be at two levels: analysis and reform of the policy and legal framework and interventions to improve access to prevention and care.

Moving forward: recommendations for action

The following conclusions represent a broad consensus based on the presentations and the workshop discussions:

Policy-level considerations

- Raise the awareness of the ILO's tripartite constituents and engage their support to protect and promote migrants' rights in the workplace, and their social and economic wellbeing, including access to health and social protection;

- work with governments and other relevant partners to amend polices that encourage stigmatization of migration and HIV;

- utilize and promote ILO instruments such as the Code of Practice and the Conventions which address migrant rights, and develop a set of guidelines for action that would cover rights, education, prevention, care and support.

Programme and project needs

- Evaluate existing programmes and identify gaps and areas where the ILO can offer technical assistance;

- develop projects in the areas of: HIV awareness-raising, prevention, HIV/STI care and support, ensuring active involvement of the target populations;

- mobilize resources so that long-term projects are financially sustainable in order to ensure objectives are met;

- devise appropriate baseline studies and indicators to ensure effective monitoring and evaluation of interventions.

Research implications

- Encourage agencies and research institutions to increase and improve the collection and analysis of data/statistics on migration in general, and migration, mobility and HIV/AIDS specifically;

- Ensure that relevant data and research findings are fed into policy development and planning.

ILO/AIDS and MIGRANT will continue to work together to implement the workshop's recommendations for action. Overall, the ILO will collaborate with other international organizations and agencies in an effort to pursue balanced and complementary policies and programmes.

Appendix I: Programme

ILO Technical Workshop on Population Mobility, Migration and HIV/AIDS
18 March 2002, Room II

9:00	**Opening session**	Chair: Mr. Alejandro Bonilla Garcia**,** Policy, relations and communications coordinator, Social Protection Sector
	Welcome	Mr. Assane Diop, Executive Director, Social Protection Sector
	Introduction	***ILO issues paper on population mobility, migration and HIV/AIDS*** Mr. Manolo Abella, Chief, International Migration Branch (MIGRANT) Mr. Franklyn Lisk, Director, ILO Programme on HIV/AIDS and the world of work (ILO/AIDS)
10.00	**Coffee**	
10:15	**First session**	Moderator: Ms. Cleopatra Doumbia-Henry, Deputy Director, Sectoral Activities Department (SECTOR) ***Risk factors and HIV/AIDS in the context of migration*** Mr. Manuel Carballo, Director, International Centre for Migration and Health (ICMH) Discussant: Ms. Susan Leather, ILO/AIDS ***Approaches and interventions for HIV/AIDS prevention and access to care for mobile populations*** Ms. Mary Haour-Knipe, International Organization for Migration (IOM) Discussant: Ms. Thetis Mangahas, InFocus Programme on Promoting the Declaration ***HIV/AIDS prevention in the transport sector of southern African countries*** Mr. Hubertus Essenberg, SECTOR Discussant: Ms. Pia Nyman, ILO/AIDS
12:30	**Lunch**	
14:00	**Second session**	Moderator: Mr. Jean-Victor Gruat, Programming and administration coordinator, Social Protection Sector ***ILO activities on migration and HIV/AIDS in Asia*** Mr. Piyasiri Wickramasekara, MIGRANT Discussant: Mr. Patrick Taran, MIGRANT ***Population mobility and HIV/AIDS in CIS countries*** Ms. Natalia Shcharbakova, ILO Office, Moscow Discussant: Mr. Christian Kroll, ILO Consultant

		Policy implications of interventions and rights of mobile populations Ms. Aurorita Mendoza, UN Joint Programme on HIV/AIDS (UNAIDS) Discussant: Ms. Mary Haour-Knipe, IOM
16:30	**Wrap-up session**	Mr. Franklyn Lisk, ILO/AIDS - Summary and conclusions - Guidelines for future ILO work on mobility, migration and HIV/AIDS
17:00	**Close**	

Appendix II: Speakers

External Resource Persons

Carballo, Manuel	Director, International Centre for Migration and Health
Haour-Knipe, Mary	Senior Advisor, Migration and HIV/AIDS, International Organization for Migration
Mendoza, Aurorita	Prevention and Vulnerability Adviser, Joint UN Programme on HIV/AIDS

ILO

Abella, Manolo	Chief, International Migration Branch
Bonilla Garcia, Alejandro	Policy, relations and communications coordinator, Social Protection Sector
Diop, Assane	Executive Director, Social Protection Sector
Doumbia-Henry, Cleopatra	Deputy Director, Sectoral Activities Department
Essenberg, Bert	Transport sector specialist, Sectoral Activities Department
Gruat, Jean-Victor	Programming and administration coordinator, Social Protection Sector
Kroll, Christian	ILO consultant
Leather, Susan	ILO Programme on HIV/AIDS and the world of work
Lisk, Franklyn	Director, ILO Programme on HIV/AIDS and the world of work
Mangahas, Thetis	Specialist, forced labour and trafficking, InFocus Programme on Promoting the Declaration
Nyman, Pia	ILO Programme on HIV/AIDS and the world of work
Shcharbakova, Natalia	ILO Moscow Office
Taran, Patrick	Senior specialist, International Migration Branch
Wickramasekara, Piyasiri	Senior specialist, International Migration Branch

Appendix III: Background paper

POPULATION MOBILITY, MIGRATION AND HIV/AIDS: ISSUES AND CHALLENGES FOR THE ILO

1. INTRODUCTION

United Nations estimates indicate that there are between 120 and 130 million people living outside their countries of origin. According to the ILO, 70 to 80 million of these are migrant workers, of whom a growing proportion are women and migrants of irregular status. Globalization has profoundly affected the character of population mobility and international migration as well as posing serious challenges to the protection of mobile and migrant workers. Approximately 42 million people worldwide are estimated to be infected with HIV. The ILO has estimated that over 25 million of these are workers. The AIDS epidemic is having a serious impact on employment, especially in sectors with a highly mobile workforce such as the transport industry, the armed forces, construction workers and seasonal farm workers.

Evidence of the relationship between mobile populations and HIV/AIDS is increasingly being seen as significant. While this continues to be an important and debated issue, there is greater acknowledgement that mobile populations are more vulnerable to infection by HIV when compared with local populations. The objective of this paper is to review major issues relating to migration, labour mobility and HIV/AIDS and identify specific areas where the ILO can contribute to addressing them. The first section attempts to identify target groups that need priority attention. The second section outlines the dimensions of the problem in the overall context of HIV/AIDS and the major issues and challenges in addressing the issue of mobility and AIDS. Following a brief discussion of ILO activities in relation to HIV/AIDS, the paper lays out a proposed agenda for action, and especially the role that the ILO can play in this area.

2. CONCEPTS AND DEFINITIONS[1]

It is important to make a distinction between mobile and migrant populations. The concept of population mobility is much broader than that of migration, and concerns the movement of persons from one place to another. "Migrants" are a subset of "mobile people", namely those mobile persons that satisfy the criteria for being defined as "international migrants" specified by relevant UN recommendations. Mobile persons and migrants can be categorized in different ways depending on the duration of stay, patterns of movement (circular, transit), sector of employment, skill levels and status of stay (regular or irregular/legal or illegal).

The UN recommendations on migration statistics[2] define long-term migrants as those staying at least one year in a country other than their usual residence, and short-term migrants as those staying at least three-months (but less than one year). The scope of the current UN

[1] We are grateful to Mr Eivind Hoffmann, ILO/ STAT, who provided clarification of the statistical implications of these definitions.

[2] Department of Economic and Social Affairs, Statistics Division, Statistical Papers Series M, No. 58, Rev. 1, Recommendations on Statistics of International Migration Revision 1, United Nations, (New York, 1998)

recommendations does not cover all relevant international 'flows' of mobile and migrant workers. Seafarers also are excluded from the ILO and UN definitions.

Since the ILO focus is on the world of work, it is especially concerned with mobile workers and migrant workers – those who move or migrate for exercise of an economic activity. The ILO's Migration for Employment Convention, 1949, (No. 97), defines as "'migrant for employment' a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment." It exempts frontier workers, short-term entry of members of the liberal professions and artists, and seamen, from its application. The 1990 UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families uses a more comprehensive definition: a migrant is " a person who is to be engaged, is engaged or has been engaged in remunerated activity in a State of which he or she is not a national."

If we focus only on migrant workers as defined by the ILO, it carries the risk of leaving out a substantial part of mobile populations: on the one hand, internal migrants, including seasonal agricultural workers, and on the other mobile workers such as trucks drivers, itinerant traders, border workers, and commercial sex workers who are among high-risk groups and important from an HIV/AIDS intervention point of view. Therefore, we have to broaden our definitions to include these groups if we are to deal adequately with the issues of mobile and migrant workers and HIV/AIDS. Most existing studies and programmes on migration and HIV/AIDS have in fact focused on mobile workers.

Given limited resources, it is also important to prioritise target groups for special focus. The concept of risk and vulnerability can be used in identifying the primary target groups.

i. Internal migrants, especially rural-urban: this category is very important for countries as diverse as China, India and Zambia. Internal migrants may number from 80 to 100 million in China whereas the number of international migrants would be quite small. The ILO Programme on HIV/AIDS and the world of work (ILO/AIDS) includes them as a target group, whereas the ILO International Migration Programme (MIGRANT) normally, but not exclusively, focuses on international migrants.
ii. Overseas contract migrant workers/temporary migrant workers (contracts ranging from one to five years or so) – especially numerous in the Gulf States and a number of Asian countries: they represent a large at-risk population since they mostly migrate without their families, and work under strenuous conditions.
iii. Migrant workers in the informal economy and/or of irregular status: they form an important component of total migrant population in many countries, and often have a high degree of vulnerability to HIV infection. They also have less access to support services. Most short term mobile workers mentioned above will fall into this category.

Permanent settlers or permanent migrants may not represent a priority target group for attention because they normally migrate with their families and should have access to the services available to the resident population in the receiving countries. Nevertheless, there is evidence of exclusion of ethnic minorities from certain services.

3. REGIONAL TRENDS AND HIV PREVALENCE

HIV/AIDS is likely to affect mobile populations in certain regions more intensively than others due to patterns of migration, development strategies, legal provisions, cultural norms and levels of poverty. Africa has among the largest number of migrant workers in the world – approximately 20 million or one-fifth of the global total[3]. In Abidjan, Côte d'Ivoire, which is one of the main stops along a major migration route, HIV prevalence rates are thought to be as high as 10-15%[4]. By 2005, South Africa is expected to lose 27 % of all mine workers and 22% of transport workers due to AIDS[5].

Both internal and international migration are widespread throughout the Asian region. China and Indonesia have high concentrations of mostly internal mobile populations. There has been an increase in levels of drug use, sex work, and STIs which suggests that China could be vulnerable to rising HIV rates in the future[6]. Circular labour migration, mostly rural to urban and back again, is the main form of population mobility in Indonesia. Millions in Indonesia leave their families to travel to factories, construction sites and plantations inside the country and beyond. Although there is limited data on HIV/AIDS, it is suggested that the rapid spread of the disease is likely for this reason in particular[7].

Labour mobility and a range of changes associated with modernization have contributed to the spread of HIV/AIDS in India. The transport sector is particularly at risk - some estimates suggest that the number of truck drivers contracting HIV increases at the rate of 1,000 truckers every week[8]. A study in Sri Lanka showed that almost 50% of those infected with HIV are returned migrant workers[9].

The Greater Mekong Sub-region, comprising Cambodia, Lao People's Democratic Republic, Myanmar, Vietnam, Thailand and Yunnan Province of China, includes a vast number of migrants and mobile people. Border crossing points are meeting places for many transport workers, traders, tourists, border police and military personnel. High levels of HIV prevalence are being detected among specific groups where surveillance is in place, for example, among fishermen and uniformed personnel in some countries of the sub-region[10].

The CIS and East European region has seen an increase in population mobility both within and between countries due to economic migration, the opening of borders and war. Many of Europe's migrant sex workers originate from Eastern Europe. HIV infections are increasing more rapidly in Eastern European and Central Asian countries than anywhere else in the world, with a nine-fold increase in infections in Eastern Europe in just three years. Ukraine recently became the first country in Europe with at least one percent of the adult population infected

[3] ILO: *Migrant workers, Report III.* International Labour Conference, 87th session, (Geneva, June 1999).
[4] Lydié, N. and Robinson N.J.: Western and Central Africa*, International Migration.* 36/4, 1998, 469-511(43).
[5] ING Barings: *Economic Impact of AIDS in South Africa: A dark cloud on the horizon,* ING Barings (Johannesburg, 2000).
[6] UNDP South East Asia HIV and Development Project: *Assessing population mobility and HIV vulnerability in Guangxi, People's Republic of China* (Bangkok, 2001).
[7] Hugo, G.: *Population mobility and HIV/AIDs in Indonesia*, ILO, (Jakarta, 2001).
[8] DFID: *Trucker Project*, Project Memorandum, DFID (London, 1996).
[9] From Sri Lankan Bureau of Health research study. Reported in the *Daily News*: http://www.lanka.net/lakehouse/2001/05/05/new14.html
[10] Chantavanich, S.: *Mobility and HIV/AIDS in the Greater Mekong Subregion,* Asian Development Bank (Bangkok, 2000).

with HIV. Although HIV was mainly transmitted through injecting drug use, the region has recently shown signs of riskier sex and an increase in trafficking - both of which increase the chance of HIV transmission. The region generally lacks information and understanding about AIDS and very little research exists concerning migration and HIV/AIDS[11].

The Caribbean region is the second most affected by AIDS after sub-Saharan Africa; AIDS is currently the leading cause of death for those aged 15-44[12]. In addition to being a popular tourist destination, the population within the region is quite mobile mainly due to socio-economic reasons. Most of the migrants in Central America flow northward, toward Mexico and the United States. In Mexico, 25% of cases of HIV infection are among rural workers who had temporarily migrated to the United States[13].

4. KEY ISSUES IN REGARD TO MOBILE AND MIGRANT POPULATIONS

A number of factors may increase the vulnerability of migrant and mobile workers to HIV infection, and these vary in different situations. In general, however, vulnerability to HIV is greatest when people live and work in conditions of poverty, social exclusion, loneliness, and anonymity. The *ILO Code of Practice on HIV/AIDS and the world of work* identifies work situations that cause the worker to be more susceptible to the risk of HIV infection, most of which apply to many mobile workers: travelling regularly; living away from spouses and partners; working in geographically isolated environments with limited social interaction and health facilities; single-sex working and living arrangements among men; and work that is dominated by men, where women are in a small minority[14]. For migrants relocating to a new community, social and sexual norms may be different than in their community of origin. Housing may be crowded and limited leisure opportunities encourage the use of alcohol, drugs and commercial and/or casual sex[15]. This may be especially true for workers who are not allowed to migrate with partners or families. In a study of seasonal migrants from Mali and Niger working in Cote d'Ivoire, 90% were married but less than 10% were accompanied by a partner[16]. Without the basic support systems provided by family and community, increased risk-taking behaviour is likely and those risks may then be passed on to the family and community of origin.

4.1. Women, migration and HIV

Gender plays an important role in vulnerability to HIV infection and female migrant workers are among the most vulnerable to exploitation and abuse. Large numbers of women become domestic workers - for example, more than 60 per cent of migrants from Sri Lanka are women, employed primarily in domestic service[17]. They are frequently undocumented, have few rights and are usually not protected under local laws. They also have little power to refuse sex with their employers. Income-earning prospects are limited for migrant women and the commercial

[11] Shcharbakova, N. *Population mobility and HIV/AIDS in CIS countries,* Paper to be presented at Technical Workshop on Population mobility, migration and HIV/AIDS (Geneva, 2002).
[12] Caribbean Task Force on HIV/AIDS: *The Caribbean Regional Strategic Plan of Action for HIV/AIDS,* World Bank, (2000).
[13] Bronfman, M. Mexico and Central America. *International Migration.* 36/4, 1998, 609-642 (43).
[14] ILO: *Code of Practice on HIV/AIDS and the world of work*, (Geneva, 2001).
[15] Hugo, 2001
[16] Lydié, N. and Robinson N.J., 1998
[17] Martin, S.: *An Era of International Migration, World Migration Report*, International Organization for Migration, (Geneva, 2000).

sex industry offers a major (rare) employment opportunity. Local women who live in high migration areas are also at risk when prostitution is often the only viable means of income support. Itinerant traders are often women who must travel long distances and be separated from their families. They are especially vulnerable to HIV infection since many may have to offer sexual services to supplement earnings in addition to trading activities[18]. In addition, there is extensive trafficking of young women throughout the world. Women and girls are forcefully abducted or tricked into prostitution and can be transported and sold within national or across international borders.

4.2. The informal economy

Migrant and mobile workers are often employed in low-income activities in the informal economy which, for the most part, is not adequately served by public services. Informal workers are likely to be especially vulnerable to HIV/AIDS due to the lack of access to health facilities and lack of financial security: any absence from work can severely affect trade and production. They are also unlikely to be organized and are rarely represented by workers' organizations or employers. Illness often leads to loss of livelihood and/or the collapse of the enterprise altogether[19].

4.3. Human Rights

In some cases it is the very mobility of migrant workers, an unidentifiable or shifting workplace, that limits their access to basic rights and benefits. In others it is their status as ethnic minorities and 'outsiders'. In either case, migrants and mobile workers often occupy a marginal place in society, giving them limited access to services, rights, and information.

Discrimination and HIV
Migrant and mobile workers are often seen as a threat to the cultural integrity of a country or to job security for the national population, a misperception that often gives rise to xenophobia. Thus, migrants with actual or suspected HIV may be subject to a double dose of discrimination, resulting from fear of HIV together with the reinforcement of already existing stigmatization[20]. As noted in the ILO Code of Practice: "A climate of discrimination and lack of respect for human rights leaves workers more vulnerable to infection and less able to cope with AIDS because it makes it difficult for them to seek voluntary testing, counselling, treatment or support; they will also not be in a position to take part in advocacy and prevention campaigns[21]."

Mandatory Testing
Countries that require mandatory testing of immigrants refuse entry to or deport those who are HIV-positive. Medical assistance, counselling and education are rarely provided and confidentiality may not be ensured. In some cases, workers are tested after they have applied for an extension of their work permit. Despite the fact that UNAIDS policy on testing states that it does not support mandatory testing of any group, approximately 60 countries have restrictions to keep out people who are HIV positive. Such policies may be designed to protect the general population but studies show that migrant and mobile workers are more likely to be

[18] Lydié, N. and Robinson N.J., 1998
[19] ILO: *Code of Practice on HIV/AIDS and the world of work*, (Geneva, 2001).
[20] UNAIDS: *Stigma and discrimination fuel AIDS epidemic,* UNAIDS Press Release (Geneva, 2001).
[21] ILO code of practice

infected with HIV while mobile (as is the case with transport workers) or at the destination rather than in the country of origin. Restrictions may, in fact, increase the risks for both migrant and host populations by forcing migrants to avoid services offered by the state including health care and receiving prevention information, testing and support[22].

Irregular migrant workers and rights
The legal status of the migrant worker can substantially affect access to care, social protection and working conditions. Illegal migrants have virtually no rights and can be subject to abuse and exploitation. Few illegal migrants are willing to risk detention or deportation for the sake of medical care and information. However, even legal migrants face increasing discrimination with little assistance from restrictive laws and regulations[23].

4.4. Access to Health Care Services and Social Protection

Migrant workers have less access to health care services than the general population due a variety of barriers. Few migrant workers receive full health benefits or social protection benefits. The only clinics available to certain migrant populations may be of poor quality and have few resources. Industrialized countries may offer health care for legal migrants, but treatment may be expensive for this group[24].

4.5. Awareness, Education and Information

Migrant and mobile populations have difficulty obtaining relevant information pertaining to HIV/AIDS and accessing proper care and medical facilities. National HIV prevention programmes often do not include migrant workers; educational materials are typically not offered in the languages of non-nationals.

4.4. Targeting and coordination of responses

For the purpose of identifying appropriate interventions, the migration process can be separated into four basic stages: origin, transit, destination and return of a person or persons. Different degrees of vulnerability and risks of exposure may be associated with these stages. Few countries track or keep up-to-date or appropriate statistics on mobile and migrant workers, which can make targeting populations problematic. When several countries are involved in these short term movements, coordinated responses through cross-border interventions may be difficult.

5. RESPONSES AND APPROACHES

Countries have been slow to give resources for HIV programmes and mobile populations. Although some countries are developing national AIDS plans for migrant and mobile workers, there isn't a comprehensive response among governments, international agencies and non-governmental organizations (NGOs).

[22] UNAIDS: *Population, Mobility and AIDS*, UNAIDS Technical Update, (Geneva, 2001).
[23] R.Z. de Beijl (2000), *Documenting discrimination against migrant workers in the labour market: A comparative study of four European countries,* Geneva, ILO 2000; see also ILO website for additional information: http://www.ilo.org/public/english/protection/migrant/projects/discrimination/index.htm
[24] UNAIDS: *Migrants' Right to Health*, UNAIDS Best Practice Collection, (Geneva, 2001).

A number of different agencies and organizations are addressing the issue of mobility, migration and HIV/AIDS. We outline below a few selected interventions in this area. (There will be more comprehensive discussion of the activities of these agencies during this workshop.)

- UNAIDS is the central UN coordinating agency on HIV/AIDS of which ILO is a cosponsor. UNAIDS continues to develop projects and strategies with cosponsoring organizations. It has an active programme on population mobility and AIDS in various regions as well.
- IOM is currently addressing issues relating to migration and AIDS in different regions. Current projects include an AIDS prevention programme in the Balkans, VCT programme for mobile populations in Ethiopia as well as knowledge-sharing and advocacy projects.
- UNDP has developed projects particularly in Asia which focus on reducing HIV vulnerability in the area of mobility and promoting good practices to prevent HIV. This work includes capacity building with governments and NGOs, advocacy and information dissemination.

The following are a few examples of projects currently taking place:

- In Asia, CARAM[25] provides information on migration and AIDS as well as advocates on behalf of migrant workers to improve living conditions.
- The International Transport Workers' Federation conducts a programme on AIDS and transport workers in Eastern Africa. This includes research on risk factors and prevalence and prevention campaigns[26].
- The Mothusimpilo – Carletonville Project is a collaborative effort that focuses on training health care workers in the management of STIs, training of peer educators, and qualitative and quantitative research. The project targets mine workers, sex workers, young people and the local community[27].

6. THE ILO CONTRIBUTION

6.1 ILO/AIDS and MIGRANT

ILO/AIDS was created following a resolution passed at the International Labour Conference in June 2000, asking the Director-General to increase the capacity and competence of the ILO to address HIV/AIDS. The resolution recognised the impact of HIV/AIDS on the world of work at all levels – on workers, their rights and livelihoods; on employers, enterprises and productivity; and on governments, public services, and the national economy. The ILO, with its Decent Work Agenda, is ideally placed to help prevent the spread of HIV and mitigate its impact by mobilising its tripartite constituents – governments, employers and workers; its workplace programmes of education and training; its experience in standard-setting and the protection of rights; and its global network of offices and technical cooperation projects.

[25] Coordination of Action Research on AIDS and Mobility (CARAM). For more information: http://caramasia.gn.apc.org/
[26] ILO: *HIV/AIDS in Africa: The impact on the World of Work*, ILO (Geneva, 2000).
[27] CSIR. For more information: http://www.csir.co.za/aidsproject/index.html

The objectives of the ILO/AIDS programme are:

- to raise awareness of the economic and social impact of HIV/AIDS in the world of work
- to help governments, employers and workers prevent the spread and reduce the impact of HIV/AIDS
- to fight discrimination and stigma related to HIV status

Its principal activities are research, policy analysis and advocacy on the socio-economic and labour impact of HIV/AIDS; awareness-raising and mobilisation of governments, employers' and workers' organizations; advisory services, training and capacity-building for the social partners; information-exchange on successful workplace practice. The ILO has developed *a Code of Practice on HIV/AIDS and the world of work,* which was adopted by the ILO Governing Body in June 2001 and launched at the United Nations General Assembly Special Session on HIV/AIDS in New York in the same month. The code contains fundamental principles for policy development and practical guidelines for concrete responses at enterprise, community and national levels. It should be noted that the code "applies to all employers and workers… and to … all aspects of work, formal and informal."

Within the ILO, the International Labour Migration Branch (MIGRANT) has primary responsibility for activities dealing with migrant workers. The main objectives of MIGRANT are to assist countries in policy formulation, to establish or strengthen legislation, administrative measures, structures and practices for effective management of labour migration, to protect the rights of migrant workers and their integration in host countries and forge an international consensus on how to manage migration. MIGRANT has recently carried out substantive work in the area of discrimination against migrant workers.

6.2. Relevant ILO instruments

Existing ILO Conventions on migrant workers[28] have been formulated long before the emergence of HIV/AIDS. Even so, they can serve as a broad framework to protect the rights of migrant and mobile workers in the context of HIV/AIDS. Convention 97 on Migration for Employment stipulates that adequate medical attention should be provided for migrant workers during all stages of the migration process. During the International Labour Conference of 1999, the Report of the Committee of Experts stated "the refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination."[29] Convention No. 143 protects the fundamental rights of migrants, regardless of their legal status. This Convention also recommends that measures should be taken to facilitate the reunification of families of all legally documented migrant workers[30].

In addition, a number of other fundamental ILO Conventions relating to discrimination, equality, forced labour, etc., can also contribute to addressing rights of mobile workers affected by HIV/AIDS.

[28] The major ILO standards of direct relevance to migrant workers are: the Migration for Employment Convention (Revised), 1949 (No. 97); and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).
[29] ILO: *General survey on migrant workers*, Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference (Geneva, 1999).
[30] For more information see attached annex: *ILO instruments that can be used to protect Migrants' rights in the context of HIV/AIDS*

7. AGENDA FOR ACTION

HIV/AIDS issues and concerns are mainstreamed within all ILO programmes and activities. The sectoral specializations of the ILO, and the expertise of the Multidisciplinary Advisory Teams (MDTs), mean that specific issues surrounding AIDS and the world of work can be incorporated into a range of programmes and activities.

Joint activities by ILO/AIDS and MIGRANT can strengthen the ILO response to HIV/AIDS and migration issues and concerns. We propose the following elements of an agenda for ILO action.

1. Policy analysis: evaluate adequacy of existing interventions and identify programmatic gaps; assist countries in improving the policy framework

2. Promotion of ILO instruments: in cooperation with ILO constituents, promote all relevant ILO instruments, especially the *ILO Code of Practice on HIV/AIDS and the world of work*; identify gaps in existing legislation and propose modifications

3. Identification of the technical assistance needs of most-affected countries: identify priority target groups; develop programmes with governments, workers' and employers' organizations

4. Achievement of programme synergy: identify programmes and projects that can best complement the work of other concerned international organizations and agencies

Appendix IV: Background paper

ILO AND OTHER INTERNATIONAL INSTRUMENTS THAT CAN BE USED TO PROTECT MIGRANTS' RIGHTS IN THE CONTEXT OF HIV/AIDS

1. Introduction

Migrant workers are highly vulnerable to HIV infection due to their mobile work situation. The fact that they travel regularly, often live away from spouses and partners and work in geographically isolated areas with limited social interaction and health facilities, are all factors that can cause workers and their partners at home to be more susceptible to HIV infection. Moreover, it is recognised that migrant workers are often subject to xenophobia and a double dose of discrimination, resulting from fear of HIV together with the reinforcement of already existing discrimination. A climate of discrimination and lack of respect for human rights leaves migrant workers even more vulnerable to infection and less able to cope with AIDS because it becomes more difficult for them to seek voluntary HIV testing, counselling, treatment or support. In this context, the protection of migrant workers rights is essential not only to preserve their dignity but also to prevent the spread of the epidemic.

This paper looks at ILO and other international instruments that can be used to protect the rights of migrants, especially in the context of HIV/AIDS in the following areas: equality of opportunity and treatment; protection of health; access to basic social security; and protection of family unity. The objective is not to do an exhaustive analysis of all standards and guidelines in this area, but to give a brief summary of what exists inside and outside the ILO. The emphasis is first put on ILO Conventions and Recommendations concerning migration for employment and on the *ILO Code of Practice on HIV/AIDS and the world of work*. The second part deals with other international instruments. The UN Convention on the Protection of the Rights of All Migrants Workers and Members of their Families is given particular attention since it will soon come into force and contains provisions particularly relevant in the above-mentioned areas. It should be highlighted that this UN Convention and ILO main Conventions on migration (No. 97 and No. 143) constitute a complementary body of law and that 68 States have adopted one or more of these instruments[31]. Finally attention is paid to other international instruments that, while not being migrants or HIV-specific, can provide protection in this context.

2. ILO instruments

2.1 Protection of migrant workers - a concern of the ILO since its foundation

The protection of migrant workers has always had an important place in ILO activities. When the ILO was founded in 1919, the Constitution laid down the obligation for the ILO to improve "protection of the interests of workers when employed in other countries than their own". In 1944, the Declaration of Philadelphia, concerning the aims and purposes of the organization, also singled out the problems of migrant workers for special attention. Finally, it is to be noted

[31] As of March 2002, 30 states have ratified or signed the UN Convention on Migrants Rights and 38 other states have ratified one or both Conventions Nos. 97 and 143.

that the preamble of the ILO Declaration on Fundamental Principles and Rights at work (1998), reaffirms the need to pay special attention to the problem of this category of workers.

2.2 ILO Conventions and Recommendations

The two major ILO Conventions concerning migrant workers are Migration for Employment Convention (revised), 1949 (No. 97) and Migrant workers (Supplementary Provisions) Convention, 1975 (No. 143) and their accompanying Recommendations - Recommendation (revised), 1949 (No. 86) and Migrant workers Recommendation, 1975 (No. 151).

Other Conventions and Recommendations deal specifically with migrants:

Social Policy (Basic Aims Standards) Convention, 1962 (No. 117)
Equality of Treatment (Social Security) Convention, 1962 (No. 118)
Plantation Convention, 1958 (No. 110)
Maintenance of Social Security Rights Convention, 1982 (No.157) and Maintenance of Social Security Rights Recommendation, 1983 (No. 167)

Except for the protection of the basic human rights of all migrants, these instruments do not cover certain categories of workers such as: self employed workers; frontier workers; seamen; artists and members of the liberal professions who have entered the country on a short-term basis. The term "migrant workers" in the above-mentioned Conventions refers to persons who cross international boundaries for the purpose of employment and do not include workers who move within a country. However, several ILO Conventions and Recommendations address the working conditions of specific categories of mobile workers like seafarers, fishermen, transport and agricultural workers, such as:

Seafarers' Welfare Convention, 1987 (No. 163)
Labour Inspection (Seafarers) Convention, 1996 (No. 178)
Health Protection and Medical Care (Seafarers) Convention, 1987, (No. 164)
Social Security (Seafarers) Convention (Revised), 1987 (N0. 165)
Repatriation of Seafarers Convention (Revised), 1987 (No. 166)
Prevention of Accidents (Seafarers) Convention, 1970 (No.134)
Medical Examination (Seafarers) Convention, 1946, (No. 73)
Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153)
Medical Examination (Fishermen) Convention, 1959 (No. 113)
Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)
Accommodation of Crews (Supplementary provisions) Convention, 1970 (No. 133)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)

It has to be noted that while there is no international labour Convention or Recommendation that specifically addresses the issue of HIV/AIDS in the workplace, there are a large number of instruments that cover both protection against discrimination and prevention against infection that can be - and have been used - in this field. These instruments can provide protection for migrant and mobile workers since they cover all workers, irrespective of their citizenship. Here are some of the Conventions and Recommendations relevant to HIV/AIDS[32]:

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)
Termination of Employment Convention, 1982 (No. 158)
Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

[32] For more details, see Hodges-Aeberhard J. Policy and Legal Issues relating to HIV/AIDS and the world of work, ILO, November 1999.

Occupational Safety and Health Convention, 1981(No. 155)
Occupational Health Services Convention, 1985 (No. 161)

2.3 Protection provided by ILO migrant specific instruments

a) Equality of opportunity and treatment

The incidence of HIV/AIDS is disproportionately high among some categories of workers, like migrant workers, who already suffer from discrimination and a lack of human rights protection and/or are marginalized by their legal status.

The main objective of Conventions No. 97 and No. 143 is the elimination of the discrimination in employment and living conditions to which migrant workers are exposed. Convention No. 97 prohibits inequalities of treatment -between legal migrant workers and nationals- which may result from legislation or the practices of the administrative authorities in four areas: living and working conditions, social security, employment taxes and access to justice[33]. This must be followed without discrimination in respect of nationality, race, religion, or sex. Convention No. 143 and Recommendation No. 86 require the establishment of an active policy designed to promote, and to guarantee, equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for legal migrant workers and members of their families[34].

It should be highlighted that all of the above-mentioned provisions apply only to legally accepted migrants. However, Convention No. 143 provides that "each Member for which the Convention is in force undertakes to respect the basic rights of all migrants workers[35]" regardless of their legal status. These 'basic rights' refer to fundamental rights contained in the international instruments adopted by the UN in this domain[36]. Freedom from discrimination on the ground of health status, including HIV/AIDS, is one of these fundamental rights[37]. This means that States should not discriminate against persons living with HIV/AIDS or members of groups perceived to be at risk of infection on the basis of their actual or presumed HIV status[38].

In the 1999 General Survey concerning migrant workers, the ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter: Committee of Experts) stated that the growing phenomenon of testing incoming migrants for HIV infection was a major point of concern[39]. In this regard, it mentioned that:

> Discriminatory practices may take many forms, which are often hidden. For example, workers may be questioned about their HIV status, or be required to submit to AIDS screening, most often without their knowledge. They may also be dismissed solely on the grounds of the HIV status. Each of these constitutes discrimination […] in the

[33] Article 6.
[34] Article 10.
[35] Article 1.
[36] See General Survey on Migration, International Labour Conference, 1999, Report of the Committee of Experts on the Application of Conventions and Recommendations, paragraphs 296-297.
[37] The Commission on Human Rights has confirmed that 'other status' in the non-discrimination provisions of international human rights instruments is to be interpreted to include health status, including HIV/AIDS; see HIV/AIDS and Human Rights International Guidelines, UNHCHR and UNAIDS, paragraph 86.
[38] Ibid.
[39] General Survey on Migration, paragraph 288.

Committee's opinion, efforts to eliminate all discrimination based on state of health and on HIV/AIDS in particular, should be carried out as part of the national policy to promote equality of opportunity and treatment.[40]

The Committee also drew attention to the report of the United Nations Secretary General to the Second International Consultation on HIV/AIDS and Human Rights[41], which states:

The Human Rights Committee has confirmed that the right to equal protection of the law prohibits discrimination in law or in practice in any fields regulated and protected by public authorities. These would include travel regulations, entry requirements, immigration and asylum procedures. Therefore, although there is no right of aliens to enter a foreign country or to be granted asylum in any particular country, discrimination on the grounds of HIV status in the context of travel regulations, entry requirements, immigration and asylum procedures would violate the right to equality of treatment.

Finally, although not migrant specific, the fundamental and highly ratified Convention No. 111 on Discrimination (employment and occupation) protects all persons against discrimination in employment or occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin, with the possibility of extending its protection to discrimination on the basis of other criteria. In addition to the protection provided by the Convention, Recommendation No. 111 contains provisions that also refer to the particular situation of migrant workers. It provides that with respect to immigrant workers of foreign nationality and the members of their families, regard should be given to the provisions of Convention No. 97 relating to equality of treatment and to those of its accompanying Recommendations relating to the lifting of restrictions on access to employment[42].

b) Protection of health

ILO instruments provide for the maintenance of appropriate medical services responsible for ascertaining, where necessary, both at time of departure and on arrival, that legal migrants and members of their family are in reasonable health[43]. This examination should not include HIV screening. The Committee of Experts, recalling the Joint Statement ILO/WHO on AIDS and the workplace[44], noted:

" refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination. [...] HIV infection by itself is not associated with any limitation in fitness to work. If fitness to work is impaired by HIV-related illness, reasonable alternative working arrangements should be made"[45].

Convention No. 97 also stipulates that adequate medical attention and good hygienic conditions be given to migrants and their families at the time of departure, during the journey and on arrival in the territory of destination[46]. In respect of special health risks to which the migrant population may be vulnerable, the Committee of Experts stated that:

[40] General Survey on Migration, paragraphs 264 to 266.
[41] E/CN.4/1997/37.
[42] Article 8.
[43] Convention No. 97 (article 5); Recommendation No. 86 and Convention No.110 concerning plantation (article 11).
[44] Geneva, 27-29 June 1998
[45] General Survey on Migration, paragraphs 264 to 266.
[46] Article 5. Convention No. 110 concerning Plantation addresses specifically the needs of this category of worker and of the members of their family in terms of medical services, good hygienic assistance and welfare of workers during their journey and in the place of employment. This includes the eradication or control of the prevalent endemic diseases (Article 91). See also recommendation 151 (article 20).

"In terms of preventive measures, migrant workers and members of their families, as well as national workers, ought to have access to informational and educational programmes on HIV/AIDS, as well as appropriate advisory and information services.[47]"

Recommendation No. 151 provides also for training and instruction of migrant workers in occupational safety and occupational hygiene[48]. Although the majority of workers are not at risk of being infected by HIV in the course of their work, since HIV is not casually transmitted, these provisions could be particularly useful for the protection of workers in contact with human blood and other body fluids.

Finally, Convention No. 97 prohibits the expulsion of legal migrants or members of their family in the event of incapacity to work due to an illness contracted or injury sustained subsequent to entry[49].

c) Social security

Social security has an important role to play in the context of HIV/AIDS. While HIV/AIDS thrives in conditions of poverty, the illness of a family member leads to the loss of that person's income, increasing medical expenses and the diversion of other family members from work or school to care for the patient. Permanent loss of income is caused by death, and often children are removed from school to reduce expenditures and increase family labour and earnings.

Conventions Nos. 97, 143 and 118 provide for equal treatment, subject to restricted limitations, between legal migrant workers and nationals in respect of benefits covering employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and any other contingency which is covered by a national social security scheme[50]. Special needs of migrant workers and their families should be taken into account and they should be provided with help to make full use of services provided in such fields as education, health services and social security[51].

Recommendation 86 mentions that migrants and members of their families returning to their country of origin should benefit from any measures in force there for the granting of poor relief and unemployment relief and for promoting reemployment of the unemployed[52]. Finally, Convention 157 provides for the establishment of an international system that enables the maintenance of migrant workers' rights in social security.

d) Protection of family units

In 1997, the ILO adopted guidelines at the Tripartite Meeting of Experts on Future ILO Activities which state that family reunification should be facilitated for the following reasons[53]:

[47] General Survey on Migration, paragraph 504.
[48] Article 20.
[49] Convention 97 (article 8)
[50] Convention 97 (Article 6.1), Convention 143 (article 10), Convention 118 (article 1).
[51] Convention 143 (article 12 e) and Recommandation 151 (article 24).
[52] Article 20.
[53] General survey on Migration, paragraph 470.

Prolonged separation and isolation of family members lead to hardships and stress affecting both migrants and the dependants left behind, which may give rise to social, psychological and health problems, and even workers' productivity.

Prolonged separation from family also increases the likelihood of sexual activities with other partners. The extra sexual activity associated with the circumstances in which workers find themselves increases the risk of exposure to HIV, not only for the workers themselves but for the communities in which they work and those from which they come.

Protection of the family unit is promoted through several ILO Conventions. While Recommendation No. 86 applies only to "migrants for employment introduced on a permanent basis" other provisions apply also to temporary and seasonal workers. For example, Convention No. 143 and its Recommendation mentions that countries may take all necessary measures and collaborate to facilitate the reunification of the families of all migrant workers legally residing in their territories[54]. In this view they should take full account of the needs of migrant workers and their families regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services[55].

2.3 ILO Code of Practice on HIV/AIDS and the world of work

The *ILO Code of Practice on HIV/AIDS and the world of work* gives practical guidance to governments, employers' and workers' organizations in order to prevent HIV/AIDS; manage and mitigates its impact; provide care and support for workers infected and affected by HIV/AIDS; and eliminate the stigma and discrimination on the basis of real or perceived HIV status. It applies to the formal and informal sectors and to all workers, including migrants.

The Code is based on the protection of human rights and establishes principles that include non-discrimination in employment on the basis of HIV status, continuation of employment relationship; confidentiality, gender equality, strict limits on testing, and the need for social dialogue, prevention programmes and care and support, as the basis for addressing the epidemic in the workplace.

Special attention is paid to vulnerable groups like migrants. Provisions dealing with vulnerability incite governments and social partners to identify groups of workers who are vulnerable to infection and adopt strategies to overcome the factors that make them more vulnerable[56]. They also suggest establishing appropriate education and information programmes for these workers[57].

3. The UN Convention on Migrants Rights and other international instruments

ILO instruments stand alongside other international instruments that are aimed at protecting, explicitly or not, the rights of migrants or the human rights of all persons in the context of HIV/AIDS. A brief review of some of these instruments is given below but further attention should be given in future to this variety of standards and tools.

[54] Article 13. The members of the family covered by this article are: the spouse and dependent children, father and mother. See also articles 3 and 6 of Convention 117.
[55] Recommendation 151 (article 16).
[56] Articles 5.1 q) and 5 .3 l)
[57] Articles 5.1 q), 7 and 7.2.

3.1 UN Convention on Migrants Rights

More than 10 years after its adoption, the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families is expected to come into force soon. The Convention recognises and builds upon the provisions contained in existing ILO Conventions and in many ways goes beyond them. The Convention ensures the explicit extension of human rights enclosed in the International Bill of Human Rights[58] to all migrants and members of their family[59] and provides for a scope of protection outside as well as within the workplace. Contrary to ILO Conventions, it covers unauthorized migrants, self-employed workers and migrants working in the informal sector[60].

a) Equality of opportunity and treatment

Ratifying States must, in accordance with the international instruments concerning human rights, respect and ensure that all migrants and their families be given the rights provided for in the Convention without distinction of any kind. This includes distinctions based on nationality and also on HIV status, real or perceived[61].

The Convention also provides that their right to privacy shall be protected by law[62]. This provision is particularly relevant in the context of HIV/AIDS because lack of confidentiality regarding a person's HIV-related information often opens the door to discrimination.

b) Protection of health

All migrant workers and members of their family shall have the right to receive any medical care that is urgently required for the preservation of their lives or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals. Such emergency medical care shall not be refused to them by reason of any irregularity with regard to stay or employment[63]. The Convention also provides for equality of treatment with nationals in relation to access to health services for regular migrants and members of their families[64]. Finally, States shall take measures not less favourable than those applied to nationals to ensure their working and living conditions are in keeping with the standards of fitness, safety, health and principles of human dignity[65].

[58] Refers to the Universal Declaration on Human Rights International; the Covenant on Political and Civil Rights and the International Covenant on Economic, Social and cultural Rights.
[59] The term "members of the family" refers to persons married to a migrant workers but also to persons who have with them a relationship that, according to applicable law, produces effect equivalent to the marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned (article 4).
[60] Article 2.
[61] As mentioned earlier, the Commission on Human Rights has confirmed that 'other status' in the non-discrimination provisions of international human rights instruments is to be interpreted to include health status, including HIV/AIDS; see note 6.
[62] Article 14.
[63] Article 28.
[64] Articles 43 and 45.
[65] Article 70.

c) Social security

With respect to social security all migrant workers and their family members shall enjoy the same treatment granted to nationals[66]. Special attention is given to the educational needs of migrant workers' children and they shall have the basic right to access to education, regardless of their irregular situation[67]. Extended protection is provided for authorized migrants and their family members who shall enjoy equality of treatment with the nationals in relation to access to vocational training guidance and placement services; access to housing, including social schemes; access to social and health services; unemployment benefits and access to public work schemes intended to combat unemployment[68].

d) Protection of family units

The Convention recognizes the importance of protecting the family unit in its preamble. It also provides for the extended protection of authorized migrants. Article 44 stipulates:

States parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

Measures should be taken to facilitate the reuniting of migrant workers and their spouses or persons who have a relationship with the migrant worker that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children[69]. Favourable consideration should also be given to reuniting other family members of migrant workers[70]. In the event of the death of a migrant worker, or dissolution of marriage, States where the migrant worker was employed shall favourably consider granting his family members residing in the State an authorization to stay on the basis of family reunion[71].

3.2 Other international instruments

The other human rights instruments[72] that apply to every person including migrant workers, can also be used to protect several rights like the right to non discrimination; health; social protection; work; and education. Such rights are all essential to prevent the spread of the epidemic. Even if they are not migrant or HIV-specific these instruments have the advantage of being highly ratified. Moreover, the Convention for the Elimination of Racism and Racial Discrimination (CERD); the Convention for the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) are particularly good complementary tools since they ensure the explicit extension of human rights to vulnerable groups that are also part of migrant population.

The HIV/AIDS and Human Rights Guidelines offer states concrete measures for action that can be taken to protect human rights and health where HIV/AIDS is concerned. These guidelines mention that States should enact or strengthen anti-discrimination and other

[66] Article 27.
[67] Article 30. However the obligation to act in this area is strongest for the children of regular migrant workers (article 45).
[68] Articles 43 and 54.
[69] Article 44. 1.
[70] Article 44.2.
[71] Article 50.1.
[72] These instruments include the Bill of rights and the below-mentioned Conventions.

protective laws that protect vulnerable groups, and promote and support a supportive and enabling environment for them by addressing underlying prejudices and inequalities through community dialogue, specially designed social and health services and support to community groups[73]. Other codes of conduct and guidelines addressing migration or HIV/AIDS issues can surely be useful in preventing the spread of the epidemic. More research needs to be done, especially to highlight the existence of regional or national tools.

4. Conclusion

ILO and international instruments represent complementary tools that can serve as the basis for the protection of migrant workers in the specific context of HIV/AIDS. Some provisions of ILO Conventions and Recommendations can be used to that effect. However, the Conventions concerning specifically migrant workers are not highly ratified. Although they seem to have fulfilled their role in orienting national laws and regulations in certain areas, countries tend to apply the provisions made by the instruments in broad terms, but less so when it comes to provisions calling for more specific commitments, in particular with regard to the protection of migrant workers[74]. It is important to remember that several categories of migrant workers, like self-employed, unauthorized workers and workers in the informal sectors are excluded from their scope. In this regard, the integration of the UN Convention on Migrants Rights in ILO activities might be a way to promote the protection of rights of the categories of workers excluded from the application of ILO Conventions. The *ILO Code of Practice on HIV/AIDS and the world of work*, in addition to giving clear guidance on the protection of human rights in the context of HIV/AIDS, also constitutes a new tool to mobilize ILO tripartite constituents in making an effective response in this field. Finally, other international instruments can be useful for this purpose and further attention should be given to these in the future.

[73] Guidelines 5 and 8.
[74] This refers to the conclusions reached by the *ILO Working Party regarding the Revision of Standards*, 1996.

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