

Removal of Mandatory HIV Testing for Migrant Workers

STATEMENT BY CARAM Asia

The policy and practice of mandatory HIV testing for migrant workers is discriminatory, dehumanising and violates migrants' rights. Based on a false public health rationale, policies of mandatory testing and related deportation ignore pragmatic HIV prevention interventions and widely available treatments in favour of punitive measures. Moreover, the practice of mandatory HIV testing for migrant workers contravenes international guidelines and national laws on HIV testing by totally disregarding the established best practices of consent, confidentiality, counseling and referral to treatment and support services.

In light of the inherent rights violations that occur under policies of mandatory HIV testing for migrants, CARAM Asia hereby calls on governments of both origin and destination countries to immediately:

- **Remove** policies that require migrant workers to undergo mandatory HIV testing as a condition of entry, stay or employment in destination countries;
- **Stop** deporting migrant workers for HIV and other treatable health conditions; and
- **Implement** "Migrant-Friendly" HIV prevention measures that include proper Voluntary Counselling and Testing (VCT) linked to services and treatment.

MANDATORY TESTING OF MIGRANTS



Many developed countries in Asia and the Middle East that rely on migrant workers to keep their economies functioning have instituted migration policies that use health as a primary criterion for permitting migrants entry and stay for employment. The crux of these policies is that migrant workers coming from less developed countries must undergo mandatory or compulsory health testing as a screening process to identify those with exclusionary health conditions. Under these policies, migrants are being screened for up to twenty-two diseases and conditions including pregnancy and HIV.

Migrants must undergo health screening that includes HIV testing in their country of origin during the work permit and visa application procedure. Those who pass must then undergo testing again upon arrival and semi-annually to renew their work permit in most destination countries. If one of the exclusionary conditions is found during pre-departure, the migrant is disallowed from traveling for work; if a condition is found while the migrant is in the destination country, that person may be summarily deported back to his or her home country. In other words, mandatory HIV testing is not intended to benefit migrants' health – it is used simply as a screening device.



FINDINGS OF CARAM ASIA'S REPORT ON MANDATORY TESTING

In 2007, CARAM Asia - a regional network of twenty-seven members - released the report, *State of Health of Migrants: Mandatory Testing*. The report, based on research conducted in sixteen origin and destination countries¹ spanning across Asia and the Middle East, looks at the policies and practices of mandatory health and HIV testing for migrant workers and, through direct input from key stakeholders and migrant workers themselves, exposes the negative impacts this testing has on migrants. The findings are as follows:

Mandatory Testing is discriminatory and contradicts national laws on HIV testing



The policies and practices of mandatory testing for HIV and other health conditions are discriminatory because unskilled migrant workers who come from developing countries are singled out for this testing, and those found with HIV or other treatable conditions are refused entry and stay by the destination countries that impose such restrictions.

National laws and policies that protect nationals against compulsory or mandatory HIV testing for employment or other reasons exist in both origin and destination countries. Migrant workers, however, are commonly excluded from these protections. Origin countries willingly submit to destination countries' demands for compulsory HIV testing, making their own laws irrelevant; while destination countries' laws, which protect nationals from this practice, do not provide migrants similar guarantees. There are even special policies that explicitly single out migrant workers for mandatory HIV testing in some destination countries.

"... this testing is to see whether the migrant worker is fit or unfit..."

*Hospital Administrator,
Vietnam*

Standards of HIV testing are disregarded



All countries have national laws, policies and guidelines that dictate standard practices for HIV testing. These policies establish that all testing should be done voluntarily and should include the following components: explicit consent, provision of pre-test and post-test counselling, protection of confidentiality, and when available, referral to proper services and treatment. Yet, due to various factors related to conducting large-scale testing of migrants and the association of the tests as a requirement for migration - these standard practices are ignored.

PRE - DEPARTURE

In origin countries, the first violation is a lack of *informed consent*. Prospective migrants feel obliged to sign whatever documents are required to go abroad even if they do not read or understand them; while health officials, with the understanding that the health exam is compulsory, assume that there is implicit consent to HIV testing. In the end, the list of conditions tested is not elaborated, leaving prospective migrants unaware that they are being tested for HIV. Prospective migrants do not receive any *pre- and post-test counselling*. A combination of factors including assumptions about migrants' awareness of HIV, the volume of people testing and a lack of counselling skills by medical staff are cited for this omission.

¹ *Destination countries* included: Bahrain, Dubai, the Hong Kong Special Administrative Region (China), Japan, the Republic of Korea, Malaysia and Thailand; *Origin countries* included: Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka and Vietnam.

“No, we do not provide counseling and do not have any policy in this regard.”

Administrator of a GAMCA office, Pakistan

Prospective migrants rarely see their reports and may only be notified of whether they can work abroad or not, with those deemed “unfit” commonly not even informed of the condition that was found. In some cases, “unfit” migrants with HIV are referred to other testing centres for confirmation and counselling, but most are simply left to their own devices.

Part of the problem is that test results always go directly to the recruitment agency, which is responsible for informing prospective migrants of their eligibility status. Not only does this practice further eliminate any chance for meaningful counselling, it is a routine breach of *confidentiality* as the health conditions found, including HIV, are usually listed. Rejection by a Gulf Country Council Approved Medical Centres Association (GAMCA) clinic is categorical and systematic. Migrants’ results are fed into a database that is shared with all other GAMCA centres, effectively banning a “permanently unfit” person - a category that includes HIV - from ever legally migrating to a Gulf country again.

IN DESTINATION COUNTRIES

Those who are allowed to travel for work are tested again upon arrival and regularly throughout their stay in the destination country. Again, all standard practices for voluntary HIV testing are disregarded, and results go directly to employers.

“Nothing was explained - when we arrived they started taking blood.”

*Female Cambodian migrant
deported from Malaysia*

In destination countries, not only is the volume of migrants testing an issue, but there are also language and cultural barriers which negate any potential for meaningful consent or pre- and post-test counselling, if any attempts are even made.

Mandatory Testing leaves migrants vulnerable to unethical deportation



When a result is found, especially HIV, some destination countries in Asia and the Middle East will treat the migrant like a criminal by immediately confining and deporting that person without explanation. This unethical treatment obviates any chance for counselling and is a terrible emotional shock to the individual. In most cases, migrants are deported without being made aware of what health condition was found that led to their deportation; in other cases, they are notified of their HIV status under the worst conditions.

“No reason was given... I spent five days in jail and then I was taken directly to the airport... no chance to talk to anyone or even take my luggage.”

*Pakistani migrant worker
deported from a Gulf Cooperation
Council (GCC) State for HIV*

Although there are a few destination countries that do not require mandatory testing, there are loopholes used by employers to impose testing. In these cases, although there may be no direct linkage between immigration and testing centres, the legal right to remain in the country is linked to employment status. Thus, an unfit result either leaves migrants at the mercy of their employers or undocumented.



Once returned home, a migrant may receive paltry financial compensation, and on rare occasions, referral to HIV services. Generally though, the individual is simply left to return to his or her family bewildered and devastated.

“I did not know how to face my family. I told them I feel ill and that is why I had to come home...nobody in my family knows about my illness.”

Male migrant worker from Sri Lanka who was deported from Republic of Korea for HIV

“Some people put their land for sale to get money to go to Bahrain...when they go back – no house, nothing.”

Filipina domestic worker in Bahrain

For those with HIV, there are serious implications regarding spousal transmission as the returned migrant may not be aware of his or her status, may not know how to prevent transmission, or may be afraid of revealing their status for fear of the negative social impact.

ACTIONS FOR GOVERNMENTS

Mandatory testing for HIV flies in the face of international conventions and guidelines; has no proven effective role as a means for preventing the spread of HIV; and contributes to the stigmatisation of migrants and people living with HIV. Under conditions of mandatory testing, migrant workers are treated as criminals for something that should be a basic human right – health. Medical testing should not be used as a screening mechanism to determine which migrants are allowed to work; it should be used to improve migrants’ health by acting as a gateway to access health services and treatment. Accordingly, CARAM Asia and member organisations call on governments to take the following actions.

Governments of all origin and destination countries should adopt the following recommendations:

- All Memorandum of Understanding (MOUs) on migration should explicitly include migrants’ right to health with special attention to HIV.
- States should repeal policies that require or permit mandatory HIV testing for migrant workers as a condition of entry or stay for employment by making HIV and other treatable conditions non-exclusionary.
- Destination countries should immediately cease deportation of migrant workers for health conditions or HIV status.
- Migrants should be provided equal access to anti-retroviral treatments (ART) in both origin and destination countries, especially when ART is available to the general public under a subsidised rate.
- States should provide appropriate health care information and services for both documented and undocumented migrants including: treatment of contagious diseases, HIV prevention, and sexual and reproductive health.

As a step towards these goals, governments should institute “Migrant-Friendly” testing by:

- Harmonising all laws and policies on HIV testing to ensure that any testing migrants must undergo adheres to internationally accepted standards that include: informed consent, confidentiality, pre and post-test counselling, and proper referral to treatment, care and support services;
- Providing all health services, especially HIV counselling and prevention information, in a way that migrants understand, taking into consideration their language and literacy level;
- Ensuring that all HIV positive test results are confirmed through independent testing.

