Background: HIV and work

1. The vast majority of the more than 33 million people living with HIV worldwide are aged 15 to 49 years old and therefore in their most productive years. Their skills, experience and wage-earning potential are critical to the well-being of their families and communities. Yet there continue to be reports of workers with HIV being forced out of their jobs because of stigma and discrimination. Some employers harbour misconceptions about the routes of HIV transmission and have irrational fears that HIV-positive workers pose a risk of HIV transmission within the workplace. Other employers fear that they will be faced with increased health and insurance costs, reduced productivity, or the expense of accommodating employees living with HIV. These fears persist despite the fact that most people living with HIV, with appropriate access to treatment, care and support, will remain fit for work and able to carry out their work functions as well as anyone else, or with minimal accommodation. As a result of these misconceptions and fears, however, there are still many employers who reportedly insist on HIV testing to screen potential employees during the hiring process, as a pretext for eliminating HIV-positive employees from their workforce. Many employers also insist on such testing for migrants seeking to come to their countries to work –hence HIV-related travel restrictions imposed privately.

2. Unfounded fears of HIV transmission perpetuate stigma and discrimination, and are also counterproductive for the AIDS response as they reduce receptivity to prevention messages and inhibit people from taking advantage of opportunities for HIV testing, counselling and even treatment. For many people, their continued employment is cut short and their livelihoods are lost because of lack of information about, or access to, prevention, treatment, care and support.

3. Loss of paid employment in an HIV-affected household may lead to children being taken out of school and put to work. It can often mean the end of HIV treatment for workers receiving antiretroviral therapy through their workplace or needing income to cover the costs of medical care. Increased precariousness of employment may also result in coping strategies that may include behaviours that risk exposure to HIV.

4. While the impact of the current financial and economic crisis is only now beginning to be understood and assessed, the crisis may have a disproportionate impact on women’s employment and lead to greater gender inequality, which in turn contributes to the spread of HIV. Women represent two-thirds of people under 25 living with HIV and shoulder the greatest part of the burden of care. The integration of HIV in livelihood and entrepreneurship programmes for women is therefore one means of addressing structural drivers of the epidemic while also providing vital information and education.
The promotion of gender equality in the world of work is one of the cross-cutting issues mainstreamed into all aspects of the so-called “Decent Work Agenda”.

5. Of the approximately 200 million people living outside their country of birth in 2005 (2.9% of the world’s population), about half were men and women who had migrated for work. Migrant workers may be subject to particular HIV risks and increased vulnerability due to a range of factors, including separation from families, regular partners, and familiar social situations; language barriers; discrimination and social exclusion; substandard living conditions, exploitative working conditions, and poor incomes; and sexual violence. The resulting isolation and stress may lead to unsafe behaviour, such as engaging in unsafe casual or paid sex, that potentially increase the risk of exposure to HIV. This is exacerbated by inadequate access to HIV prevention, voluntary testing and treatment services and fear of being discriminated against or stigmatized for seeking information.

The International Labour Organization’s (ILO) mandate and activities

6. The ILO’s tripartite structure is unique among the agencies of the UN common system in that it brings together governments, employers and workers of its member States in common action to promote the Decent Work Agenda throughout the world. The ILO’s mandate includes the promotion of social justice and the establishment of international labour standards. These standards typically take the form of Conventions or Recommendations. Of these, eight ILO Conventions are referred to as fundamental human rights conventions and cover freedom of association, collective bargaining, forced labour, child labour, equality and discrimination. In 2000, ILO member States passed a Resolution that led to the creation of a Programme on HIV/AIDS and the World of Work. Under the division of labour agreed upon by all Cosponsors within UNAIDS, the ILO is responsible for policies and programmes to respond to the AIDS epidemic in the workplace, to mitigate its effects in the world of work, and to decrease poverty through access to decent work, thereby addressing an important root cause of the epidemic. The ILO helps make the workplace an effective entry point for achieving universal access by:

- promoting and engaging in action to increase access to decent work, boost employment opportunities, improve conditions of work, and increase the levels of health and safety in the workplace;
- strengthening the capacity of its constituents (employers, workers and ministries of labour) to develop workplace policies and programmes and combat discrimination;
- integrating HIV in structures and programmes of occupational safety and health, vocational training, social security, and other relevant services in the workplace.

7. Through a process of tripartite consultations, the ILO developed the Code of Practice on HIV/AIDS and the world of work, 2001, which recognizes the vital role that the workplace – public and private, formal and informal – can play in limiting the spread of HIV and the impact of the epidemic. The Code of practice establishes guidelines to assist countries in developing sound workplace policies
and interventions at national, community and company levels. The Code has been translated into over 60 languages and has been used as a basis for the development of workplace policies in over 1,000 enterprises and for the development of national policy and legislation in 70 countries. The IPU, UNDP, and UNAIDS Handbook for Parliamentarians, *Taking action on HIV and AIDS*, recommended that members of parliament “review laws to ensure that they address the specific issues of HIV in employment and vocational training, consistent with the principles contained in the *ILO Code of practice on HIV/AIDS and the world of work*; and that they “recommend and oversee the training of relevant officials, including labour court judges and industrial tribunal magistrates who hear cases of employment-related discrimination.”

**Discussions on a new international standard on HIV/AIDS and the world of work**

There has been demand for a new international labour standard on HIV to reinforce the normative authority and impact of the ILO Code of Practice, in the context of broader efforts to eliminate discrimination and promote universal access to prevention, treatment, care and support. At its 298th Session in March 2007, the ILO’s Governing Body asked the Office to placed a standard-setting item on HIV/AIDS on the agenda of the International Labour Conference (ILC) in June 2009. The proposed instrument is being developed pursuant to the double discussion procedure provided for under the ILO Constitution. In accordance with this procedure, the first discussion by the ILC in June 2009 was based on two reports. The first report, distributed to ILO constituents in February 2008, contained a summary of the law and practice on HIV/AIDS in the different ILO member States, and included a questionnaire asking the constituents to provide their views on the proposed standard. The second report, distributed to the constituents in February 2009, summarized the constituents’ comments and included draft conclusions based on those comments for the Conference to consider.

During the Conference discussions, over 300 amendments were proposed to the text. The Conference adopted new draft conclusions at the closure of its discussions. These conclusions now form the basis of the first draft text of the standard which will be published and disseminated to the constituents in August 2009 for comment. On the basis of the further comments, a second draft text of the proposed instrument will be prepared and disseminated for consideration and adoption at the second discussion of the Conference in June 2010. It is anticipated that, once it is adopted in June 2010, this standard will be the first international human rights instrument to focus explicitly on HIV/AIDS in the world of work.

---

3 To date, HIV has been deemed to be covered implicitly by the ILO’s international labour standards such as Convention No. 111 on Discrimination (Employment and Occupation). The former UN Commission on Human Rights (now Human Rights Council) repeatedly affirmed in
ILO Code of practice and provide the basis for effective protections against discrimination and stigma in the workplace in national and enterprise-level policies and programmes. It aims at strengthening the contribution of the world of work to countries’ achievement of universal access to HIV prevention, treatment, care and support. It will hopefully serve as an advocacy tool for other members of the UNAIDS family, to assist countries in the development and implementation of effective national policies and programmes in response to the epidemic.

8. Addressing the International Labour Conference on 4 June 2009, Paul De Lay, UNAIDS Deputy Executive Director, welcomed the proposed instrument, stating that it would strengthen national AIDS programmes and provide an important tool against stigma and discrimination.

Questions for discussion
a) How can the Reference Group, and human rights advocates more broadly, provide input (1) into the draft text of the international instrument on the HIV/AIDS and the world of work that is now being developed; (2) into the process leading to its adoption?

b) How can the Reference Group and the broader international human rights community effectively use this new standard to advance the human rights of persons affected by HIV/AIDS?

c) What opportunities does this process provide for the advancement of other HIV-related human rights issues that the UNAIDS Programme is confronting?

d) What recommendations does the Reference Group want to make to ILO and the rest of the UNAIDS Programme related to the instrument, the further process leading to its adoption, and eventual support to its implementation?

Background documents


(http://www.ilo.org/wcmsp5/groups/public/---dcomm/documents/normativeinstrument/kd00015.pdf)

This issue paper was prepared by the Reference Group Secretariat to facilitate discussion at the Reference Group’s July 2009 meeting.

Please do not reproduce, redistribute or cite.