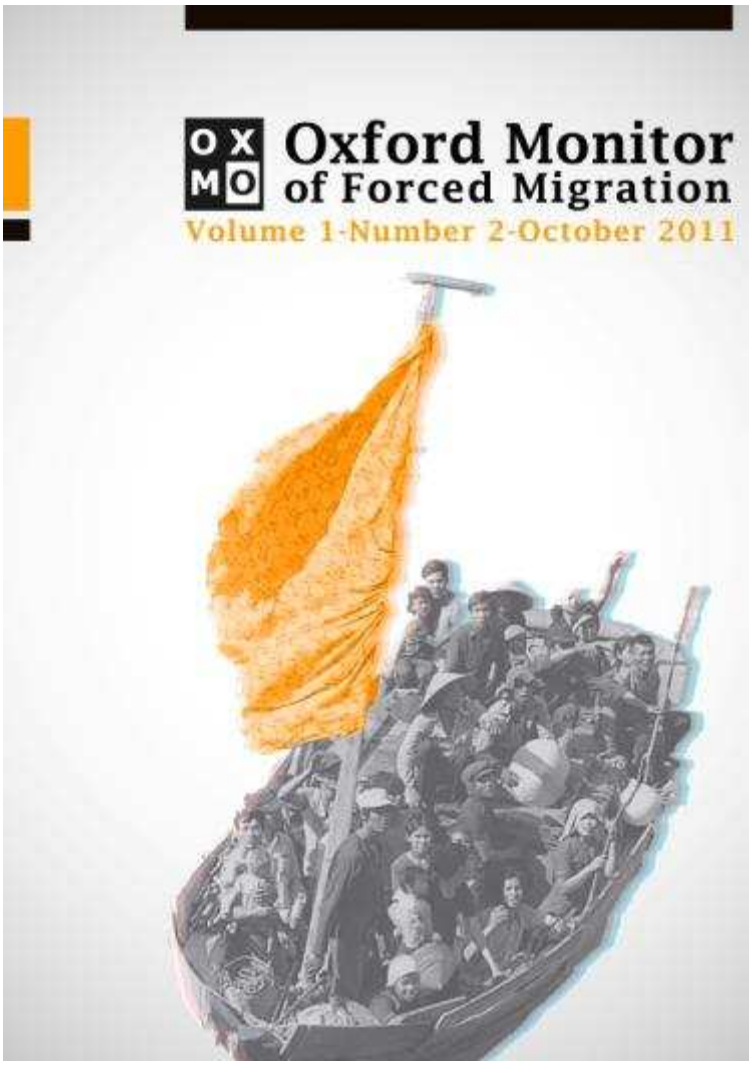

HIV/Aids Health Exclusion of Forced Migrants: A Challenge to Human Rights

Adeago Oluwafemi

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By Adeagbo Oluwafemi

Introduction

Migrants have often been stigmatised as a risk group for the spread of HIV/AIDS as well as carriers of a range of other diseases (Wolffers *et al* 2003). This is in particular the case for refugees due to their perilous journey: Especially women and children are seen to be vulnerable to diseases as they migrate from conflict zones. Thus, in host states, they are often called 'exclude filth', 'Asiatic Menace', diseases carriers' etc. As a result, host communities seek to deny them entry, and where that fails, to exclude them from their social order (Harper and Raman 2008; Groove *et al* 2006; Junghanss 1998). Countries like Canada, South Korea and Saudi Arabia have strict immigration policies against migrants with HIV/AIDS some of whom are often denied entry, stay, or residence. In some countries, immigrants with HIV/AIDS are even detained pending deportation to their home countries where they have poor quality or no health care or access to antiretroviral drugs for their conditions (UNAIDS 2008; Human Rights Watch 2007). According to Human Rights Watch (2009:1), there exists:

In **Saudi Arabia**: mandatory HIV testing, detention for up to a year without access to medication, and deportation of HIV-positive migrants;
In the **United Arab Emirates**: deportation of 1,518 non-citizen residents infected with HIV, hepatitis types B and C, or tuberculosis in 2008;
In **South Africa**: the inability to continue treatment - amounting to a death sentence - for people living with HIV who are sent back to Zimbabwe;
In the **United States**: poor access to treatment in detention and harsh conditions or lack of access to medical treatment for some HIV-positive individuals who are deported; and
In **South Korea**: mandatory HIV testing of migrants and deportation of those found to be HIV positive, despite South Korea's international legal obligations and a recent Seoul High Court ruling that such deportation is not the most effective means of protecting public health.

It is important to note that HIV-related restrictions not only affect refugees or asylum seekers but also other migrants –labour migrants students, short and long-term travellers etc. (Amon and Todrys 2008; Bisaillon 2010). This paper contends that migrants, particularly refugees and asylum seekers, should not be denied entry, stay, or residence due to health-related issues such as HIV because this violates their human rights.

Discussion

Constantly, societies undergo changes - socio-economic, political, and cultural – and some of these changes are structural as well as institutional. In some cases, they are the direct effect of immigrants or a response to them. An example is the health-exclusion of refugees and asylum seekers by some countries that used to be immigrant-friendly. This exclusion which is based on health issues like HIV/AIDS violates the 1951 Convention on the Status of Refugees to which many of these countries are parties.

Of the 186 countries party to the 2001 Declaration of Commitment on HIV/AIDS to eliminate all forms of discrimination against People Living with HIV (PLHIV), 66 now have restrictive policies on PLHIV, particularly forced migrants, in order to restrict or exclude them from their

countries (United Nations Generally Assembly 2001; Deutsche AIDS 2008). In spite of their commitment to non-discrimination against people with HIV/AIDS, these countries often compel non-citizens to have periodic HIV tests and deny entry to or deport those who test positive (Bisaillon 2010; Amon and Todrys 2008) . The World Health Organisation (1987 and 1988) argues that subjecting international travellers to HIV screening is not a panacea to curbing the transmission of HIV and advised that this measure be abolished. Similarly, the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS state that 'any restrictions on these rights [to liberty of movement and choice of residence] based on suspected or real HIV status alone ...cannot be justified by public health concerns' (2006: 3). Also, Amon and Todrys state that 'HIV-related restrictions on entry, stay, residence…can be considered both overly intrusive and ineffective public health policy' (2008: 2). The implication of these statements is that it is not proper for states to use HIV as a yardstick for restriction or exclusion of migrants, particularly forced migrants who are entitled to international protection, because this act violates their human rights.

Writing on the current situation of migrants in Canada, Bisaillon (2010) shows that long and short-term migrants, including refugees and asylum seekers, from 15 years of age and above are subjected to HIV tests and often rejected based on health grounds. She argues that both the Canadian policy for HIV screening of refugees and asylum seekers and their consequent exclusion if found positive violates their human rights. Similarly, it is a violation of human rights to follow the year 2000 recommendations of Health Canada to Citizenship and Immigration Canada (CIC) stating that HIV-positive applicants, including asylum seekers and refugees be excluded (Bisaillon 2010). Weibe's study (2009) also reveals that 2,000 visa applications are refused yearly in Canada on health grounds.

This decision was ostensibly made to prevent the spread of HIV amongst Canadians despite different anti-discrimination treaties. For example, the Universal Declaration of Human Rights, Article 13(1) states that 'everyone has the right to freedom of movement and residence within the borders of each state' as well as the Article 14(1) that states that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'(see also 1951 Convention on the Status of Refugees; European Convention on Human Rights Article 5(1) (e); and African Charter on Human and People's Rights Article 12(3)). The implication is that any state that rejects an asylum application, or returns an asylum seeker to a country where he or she faces discrimination on the basis of HIV status; or rejects people living with HIV; or discriminates on the basis of HIV status based on 'travel regulations, entry requirements, or immigration and asylum procedures' violates the right of that individual. While the challenge forced migrants' health problems could pose to host countries might be real it should not be a basis for denying or discriminating against them.

A recent study shows that some HIV-positive refugees from Sub-Saharan Africa originally admitted to New Zealand now face rejection due to public opinion about their status (Worth 2006). Also, Farmer (1992) describes the US response to Haitian immigrants during the AIDS epidemic as bordering on the paranoid. Haitians were labeled as a risk group and carriers of AIDS. The effect of this on Haitian workers and students was devastating because the stigmatisation pervaded their everyday lives (Farmer 1992).Writing on the inhumane treatment of asylum seekers in Australia, McNeil (2003) argues for concerted political action by various groups such as academics, health professionals and institutions against this type of institutionalized discrimination and gross violation of human rights.

Conclusion

Having been labelled, refugees and asylum seekers find themselves in a quandary – escaping the dangers of a return to a home they had been forced to flee, and facing the threat of an uncertain future in a world in which they are not only increasingly unwelcomed but in which they are tagged 'physical and social ills' by the country that happens to find them at its borders (Harper and Raman 2008). The notable effects of the generalised anti-foreigners (particularly refugees) sentiments as carriers of diseases in some countries of the world can be summarised as follows:

- Continuous stigmatisation and discrimination of migrant-PLHIV often brings about the concept of the 'other'. The 'other' here means non-citizens (e.g. refugees) who are believed to be carriers of diseases due to their vulnerability during migration, and they are often seen as dangers to the citizens, thereby necessitating their removal.
- Such discrimination also violates the Universal Declaration of Human Rights, Article 13(1) which states that 'everyone has the right to freedom of movement and residence within the borders of each state' as well as Article 14(1) that states that 'everyone has the right to seek and to enjoy in other countries asylum from persecution'. This violation is against Human Rights Law that sees everybody as equal whether citizens or non-citizens of a particular state.

In sum, since HIV/AIDS cannot be contracted through casual meetings and has few negative impacts on public health, migrants - particularly refugees and asylum seekers - should be seen as global citizens and not strangers. This means that rather than being turned back, migrants with health issues deserve care. Furthermore, HIV-positive immigrants could contribute to the development of their host countries if given adequate care whereas stigmatising them could harm them mentally and physically. States should respect their treaty and human rights obligations.

Adeagbo Oluwafemi holds B.A. (Hons) in Philosophy and M.A. in Forced Migration Studies from the Africa Centre for Migration and Society (formerly Forced Migration Studies Programme) at the University of the Witwatersrand, Johannesburg, South Africa. His research areas include Nigerian immigrants in South Africa, migration and development studies, intermarriages and integration of refugees and displaced persons in Africa.

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