



GLOBAL ACTION PROGRAMME ON MIGRANT DOMESTIC WORKERS AND THEIR FAMILIES



International
Labour
Organization

Migrant Domestic Workers, Health and HIV

By Anna Torriente

Summary

Thousands of people are on the move across and within all regions of the world at any given moment. This movement –migration– takes many forms. Migration may be temporary or for an indefinite period of time.

Migration can and does bring great benefits for many migrant workers and their families; however, this is not the case for many others. Migrant domestic workers (**MDWs**), especially those in an irregular situation –without needed documentation for work or residency– are particularly vulnerable to exploitation, and often have very limited access to complaints and redress mechanisms when their rights are violated.¹

Female MDWs (nearly 75 per cent of all DWs), are also particularly vulnerable to health-related risks, including heightened risk of exposure to HIV infection. This brief focuses on the situation of women MDWs and the factors that place them at increased risk of HIV and often make it difficult or impossible for them to access health-related information and services.

The HIV vulnerabilities of migrant workers

While migration alone is not a risk factor for HIV, other factors associated with migration place migrants at higher risk of HIV infection. Rates of HIV infection may be higher among migrants from particular regions. As a result, they may be perceived as “carriers” of infection, leading to heightened stigma and discrimination. Migrants may, however, also acquire HIV at any point in the migration cycle, including in their host country.

Box 1. HIV Risk for MDWs

A range of social, economic and political factors linked to migration increase MDWs’ risk of HIV infection. These include:

- Separation from spouses, families and social networks;
- Unfamiliar social and cultural norms;
- Language barriers;
- Physical and social isolation—domestic workers are frequently obligated to live at their employer’s house;
- Lack of access to health care services, including sexual and reproductive health and HIV services;
- Exploitative living and working conditions;
- Sexual violence, including rape.

Migrants’ increased HIV vulnerabilities are compounded by a frequent lack of or inadequate access to HIV prevention, treatment, care and support services. In addition, where migrants fear negative consequences –including job loss and deportation– for seeking HIV-related information or services, including voluntary and confidential testing and treatment services, their health outcomes will be correspondingly poorer.

Migrant workers may be required to submit to discriminatory testing policies and practices imposed by a number of countries. In particular, female MDWs may be subjected to discriminatory HIV, tuberculosis or pregnancy testing without their informed consent. In such circumstances, a positive test result may lead to job loss or deportation.²

The situation of female migrant workers

Female migrant workers –particularly MDWs– face many of the same human rights violations as male migrants do, but also face additional risks due to gender inequalities.

Female migrants are often unable to access health services, including HIV-related services as well as sexual and reproductive health services, either because national health insurance schemes are not available to them, or because they cannot afford to pay for health care.³

Box 2. UN Instruments for Gender-Based Violence Protection of Migrants

The UN Committee responsible for monitoring the application of the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) has highlighted sex- and gender-related human rights concerns with regard to female migrant workers.⁴ The CEDAW Committee observed that, prior to departure, female migrant workers are sometimes detained by recruiting agents for pre-departure training, during which they may be subjected to physical, sexual or psychological abuse.⁵ While travelling through one or more foreign countries to their country of destination, female migrants are also vulnerable to sexual and physical abuse and exploitation from agents and escorts.⁶ Sexual exploitation significantly increases their HIV vulnerabilities.⁷

In December 2011, the UN General Assembly adopted Resolution No. 66/128 on violence against migrant workers, in which it noted the increasing participation of women in international migration, and expressed “deep concern at continuing reports of grave abuses committed against migrant women and girls, including gender-based violence...”⁸

The UN General Assembly Resolution stressed the need for comprehensive, objective information, including sex- and age-disaggregated data and statistics and gender-sensitive indicators for research and analysis, as well as a broad exchange of experiences and lessons learned in developing concrete policies and strategies to address violence against female migrant workers. The Resolution calls on Member States to take measures to prevent and protect migrant women against violence and discrimination, including:

- adopting relevant international human rights instruments, including relevant ILO Conventions, such as Convention No. 189 and Recommendation No. 201 on Decent Work for Domestic Workers (2011);
- to include monitoring and inspection measures in line with ILO instruments to ensure compliance with international obligations and to provide Female MDWs with access to gender-sensitive, transparent mechanisms for bringing complaints against employers;
- adopting or strengthening existing measures to safeguard the human rights of female migrant workers, regardless of their immigration status;
- encouraging other stakeholders, including agencies involved in recruiting MDWs in acting to prevent gender-based violence; and
- enhancing bilateral, regional, interregional and international cooperation to address violence against female migrant workers.⁹

The General Assembly Resolution also specifically called on governments to recognize the right of female migrant workers, regardless of their immigration status, to have access to emergency health care, to ensure that they are not discriminated against on the basis of pregnancy and child birthing accordance with national legislation, and to address the HIV vulnerabilities experienced by migrant workers and support their access to HIV-related services.¹⁰

The risks faced by some female migrants at different stages of the migration process significantly increase their risk of HIV infection. Sexual harassment, abuse and rape, including by representatives of recruitment agencies and/or of authorities are experiences reported by female migrants.¹¹ In transit they may be forced to engage in unprotected sex during their border crossing.

Once they reach their host country, migrant workers may face huge debts owed to recruiting agents and for transportation costs, combined with high interest rates, which puts them in a particularly vulnerable position. They also often encounter multiple forms of discrimination compounded by “intersecting stigmas”.¹² For example, a young female migrant domestic worker from a minority religion and/or linguistic/ethnic minority may encounter discrimination due to her age, sex, religion and ethnic origin. The greater the discrimination, the worse her living and working conditions may be, placing her at greater risk of HIV infection.¹³

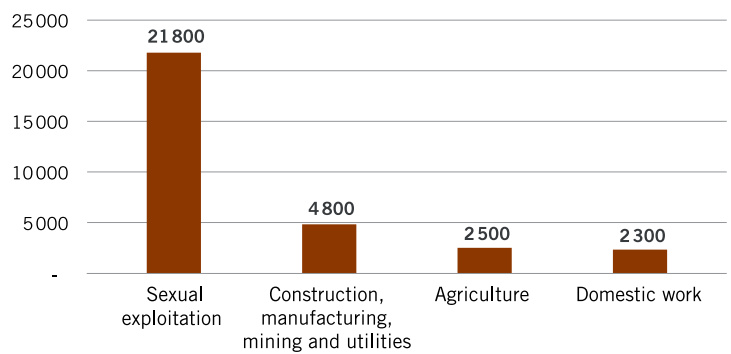
Migrant domestic workers: invisible and unprotected

Among women migrants, domestic workers are among those most at risk of physical and sexual assault due to the work they perform and the regulatory framework that governs employment and migration in this sector.¹⁴ In 2011, the **UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families** issued a General Comment on the situation of migrant domestic workers, highlighting factors that increase the risk of abuse and exploitation for female migrant domestic workers, including:

- dependence on the job and employer due to migration-related debt;
- legal status;
- employer practices restricting the ability of these workers to leave the workplace; and
- the fact that the workplace may be the only shelter available to these workers.¹⁵

Some MDWs may be victims of trafficking, further increasing their vulnerability. In 2008, the UN estimated that about 2.5 million people from 127 countries had been trafficked to 137 countries. More than half of the victims of forced labour – mainly associated with domestic work and sexual exploitation – were women and girls.¹⁶

Figure 1. Annual profits per victim per sector of exploitation(US\$)



http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm

The international human rights framework guiding labour migration governance and its interaction with health and social protection

United Nations instruments

The Universal Declaration of Human Rights, 1948, the United Nations human rights conventions, and ILO's international labour standards establish the framework for protecting the human rights of all persons, including both regular and irregular migrants, and their rights at work. The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) provides protections specifically aimed at migrant workers, regardless of status. Migrant workers' rights are also provided for under the widely ratified International Covenant on Economic, Social and Cultural Rights, 1966.

International labour standards (ILO Conventions, Protocols and Recommendations)

The ILO's eight fundamental human rights Conventions¹⁷ apply to all migrant workers, regardless of whether they are regular or irregular migrants. A number of ILO standards contain specific provisions on migrant workers in the areas of employment, labour inspection, social security and occupational safety and health.

Migrant workers are often perceived to be "carriers" of HIV. As a result, countries may require migrants to undergo HIV testing prior to departure, as a condition of entry or continued residence in the host country. Recognizing that migrant workers face high levels of HIV-related discrimination preventing them from accessing or remaining in employment, ILO Recommendation 200 contains a number of provisions calling for specific protections for migrant workers.

In addition, the Preamble to Recommendation No. 200 stresses that women and girls are more vulnerable to HIV infection and are disproportionately affected by HIV and AIDS due to gender inequalities. Women often shoulder a disproportionate share of caregiving responsibilities within the family, which in turn impacts on their working lives.

- Paragraph 3 (c) of Recommendation No. 200 provides that:

"There should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status, or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection.

- Paragraph 25 of the Recommendation addresses the common discriminatory practice of mandatory HIV testing for employment, providing that:

"HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants".

- Recommendation No. 200 also calls on States to protect the privacy rights of migrant workers (paragraph 27):

"Workers, including migrant workers, jobseekers and job applicants, should not be required by countries of origin, of transit or of destination to disclose HIV-related information about themselves or others".

- In addition, paragraph 28 of the Recommendation affirms the fundamental human right of movement as well as the right to work, providing that:

"Migrant workers, or those seeking to migrate for employment, should not be excluded from migration by countries of origin, of transit or of destination on the basis of their real or perceived HIV status".

Mandatory testing for employment constitutes unlawful discrimination

Mandatory HIV testing and disclosure policies are discriminatory and violate migrant workers' right to maintain the privacy and confidentiality of their personal medical information. In addition, such policies do not effectively serve public health interests, and may have the opposite effect of preventing migrants from seeking and accessing health services, including HIV prevention, voluntary testing and treatment services.

Subjecting female migrant domestic workers to mandatory HIV testing as a condition of employment is not justified for health reasons, and constitutes a form of HIV-related discrimination. As the following case illustrates, female migrant domestic workers employed in private households are particularly vulnerable and may have no choice but to comply with an employer's requirement that they submit to even repeated, unjustified HIV testing.



Box 3. Discriminatory HIV testing and unfair dismissal: The case of the false positive

Ms. Z.M. was hired in September 2000 by Mr. and Mrs. D. as a domestic worker including caring for a child. However, after three weeks, Mrs. D. ordered Z.M. to undertake an HIV test as a condition for continued employment.

Z.M. agreed to undergo testing at the "Flamboyant" clinic (stipulated by her employer) to keep her job. Two days later, the clinic's physician, Dr. Y.A., informed her that she was HIV-positive. Shocked by this result, Z.M. decided of her own initiative to undertake HIV testing at the "S.E.F. Clinic." Having obtained an advance from her employer for this purpose, she took the second test at her own expense, and received a negative result.

When Z.M. informed Mrs. D. of the negative result, Mrs. D. challenged it as unreliable. She then took Z.M. back to the Flamboyant Clinic to take the HIV test again. Z.M. was later informed by Mrs. D. that her test was positive. Subsequently, Mrs. D. fired Z.M. on the grounds of the HIV-positive test result.

After undergoing additional HIV tests the results of which were negative, Z.M. decided to challenge her dismissal as unfair. The Labour Court of Ouagadougou agreed.

The Labour Court noted that mandatory HIV testing for employment purposes was not provided for under national law. It held that Z.M.'s dismissal was unfair and violated the 1977 Legislative Decree establishing the conditions of work for domestic workers. The Court ordered the employer to pay moral damages to Z.M, noting suspected collusion between the employer and Dr. Y.A. and the "Machiavellian and inhuman tactics used by the employer to break the contract of employment."¹⁸

ILO Convention No 189

The ILO Convention on Decent Work for Domestic Workers, 2011 (No. 189) and its Recommendation (No. 201) call on States to adopt and effectively implement protections for domestic workers, regardless of their migration status. Paragraph 3 of Recommendation No. 201 affirms the privacy rights of domestic workers and prohibits discriminatory and invasive mandatory testing practices, calling for States to take measures that:

- (a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers;
- (b) prevent any discrimination related to such testing; and
- (c) **ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.**¹⁹

What is HIV and how is it transmitted?

The *human immunodeficiency virus* (“HIV”) is a virus that damages the human immune system. *Acquired immunodeficiency syndrome* (“AIDS”) results from advanced stages of HIV infection, and is characterized by opportunistic infections or HIV-related cancers, or both.²⁰

HIV is only transmitted through body fluids. A person may be infected through: exposure to semen, vaginal or rectal fluids (through sexual transmission), contact with blood or body fluids (for example, through blood transfusions, tattooing, injecting drugs or skin piercing with a contaminated needle), or from an HIV-infected mother to her child during birth or breastfeeding. Sexual transmission is the most common means of transmission.

HIV is a fragile virus and can only survive in a limited range of conditions. It can only enter the body through naturally moist places and cannot penetrate unbroken skin. Infection can be prevented by taking appropriate measures, for example, by using male or female condoms or protective equipment, and ensuring that skin-piercing equipment is not contaminated.

HIV is not transmitted by insect bites, coughing, sneezing, kissing, sharing washing or toilet facilities, food or drinks. The virus is NOT transmitted by casual physical contact, and the presence of a person living with HIV at work is not a hazard. There are effective treatments today that suppress the amount of HIV virus in the blood, reducing the person’s “viral load”. This reduces the risk of HIV transmission through sexual contact to extremely low levels and is often called “treatment as prevention”.

As of 2015, there were over 35 million people worldwide living with HIV. “Alarmingly, only 19 million were aware that they were infected, increasing the chance they could unknowingly spread to others.”²¹

Domestic care work and the risk of HIV transmission

Stigma and discrimination on the basis of real or perceived HIV status is fuelled by misunderstanding or misinformation about the modes of HIV transmission, which gives rise to fear and intolerance. Discrimination in the health sector undermines the provision of care, as well as programmes for prevention and treatment.²² This phenomenon often runs both ways, with health care workers discriminating against colleagues or patients, or with patients or employers discriminating against health care workers, including MDWs whose duties may involve caring for children or an elderly member of the household. These fears and the discrimination that accompany them are unjustified, especially in the context of domestic work.

For this reason, paragraph 33 of the ILO HIV and AIDS Recommendation, 2010 (No. 200) states that “awareness-raising measures should emphasize that HIV is not transmitted by casual physical contact and that the presence of a person living with HIV should not be considered a workplace hazard”. **Care workers living with HIV do not pose a hazard to those they care for.**

The risk of HIV transmission is negligible where basic occupational safety and health procedures are implemented. Basic safe work practices to minimize the risk of transmission of HIV and other blood-borne infections should be adopted as standard precautions, including personal hygiene, good hand-washing practices (or an alternative such as a 70 per cent alcohol hand gel) and a procedure for managing occupational exposure.²³

Recommendations

- All workers, including MDWs, have the right to a safe and healthy workplace, and occupational safety and health (OSH) measures should be taken in any workplace where there is a possibility of exposure to HIV. MDWs caring for a person living with HIV should receive information and training on modes of transmission and measures to be taken to prevent exposure and infection.
- Mandatory HIV testing and related discriminatory employment practices do not serve public health interests. The results of an HIV test are only valid for the day the test was taken. The individual may become infected the very next day or at any point in the future. In addition, the virus may be present but might not be detected, particularly if the test is carried out during the so-called “window” period in the weeks following exposure to the virus.
- Adopting rights-based approaches that respect the labour rights of migrant domestic workers and facilitate their access to HIV prevention information and education and voluntary, confidential HIV testing and treatment better serve the public health interests and promote better health outcomes for everyone, including individual workers.
- All States should adhere to the UN General Assembly Resolution No. 68/179, adopted during the 2013 High-level Dialogue on International Migration and Development:
 - to promote and protect the human rights and fundamental freedoms of all migrants, regardless of their migration status”;
 - to protect women migrant workers in all sectors, including those involved in domestic work”;
 - to respect and promote international labour standards, and the rights of migrants in their workplaces.”²⁴
- Bilateral agreements and migration policies and programmes should integrate and ensure health service access for migrant workers, including female migrant domestic workers, enabling them to access free or affordable preventive sexual and reproductive health services, including obstetric and gynecological care and voluntary, confidential HIV testing and treatment services.

End Notes

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- 8 UN General Assembly Resolution No. 66/128 on Violence against women migrant workers, 19 December 2011, A/RES/66/128. http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/128
- 9 Ibid paragraphs 2, 5-7 and 9.
- 10 Ibid paragraph 11.
- 11 Ibid.
- 12 UNGA Report of the Special Rapporteur on the human rights of migrants, op. cit. at paragraph 33.
- 13 UNGA Resolution No. 66/128 on violence against women migrant workers, 19 December 2013, A/RES/66/128.
- 14 Behind Closed Doors.
- 15 UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families, General comment No. 1 on migrant domestic workers, 23 February 2011, CMW/C/GC/1. http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm.
- 16 UNAIDS, The GAP Report, pp. 164-165. See also, OHCHR, Behind Closed Doors.
- 17 The eight “ core “ human rights Conventions of the ILO are: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999, (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- 18 BURKINA FASO, Labour Court of Ouagadougou, Judgment No. 165. www.juriburkina.org/doc/html/bf/jug/tto/fr/2001/2001jbttofr72.html.
- 19 ILO Recommendation No. 201. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R201.
- 20 ILO HIV and AIDS Recommendation, 2010 (No. 200), paragraph 1 (a).
- 21 UNAIDS GAP Report, page 20.
- 22 Joint ILO/WHO Guidelines on health services and HIV/AIDS, 2005, p. 11. http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_116240.pdf.
- 23 Ibid p. 22.
- 24 UN General Assembly Declaration of the High-level Dialogue on International Migration and Development, 1 October 2013, A/68/L.5. http://www.un.org/ga/search/view_doc.asp?symbol=A/68/L.5.

Project partners

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Labour Migration Branch (MIGRANT)

Conditions of Work and Equality Department

International Labour Office

Route des Morillons 4

1211 Geneva 22

Switzerland

Tel: +41 22 799 6667

www.ilo.org/migrant

Email: migrant@ilo.org



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