

Media Statement – HIV Positive migrants

It has come to the attention of the National Human Rights Commission that some migrant workers have been facing the risk of deportation because of their HIV positive status which was only detected following the mandatory medical investigations, in line with their residence permit to be able to work and live in Mauritius.

Section 5(1)(a) of the Immigration Act provides that unless a non-citizen has been authorised in writing by the Prime Minister, any non-citizen shall not be admitted to Mauritius or allowed to remain on the island if that person “*suffers from an infectious, contagious or a communicable disease.*”

The above provision is in contradiction with **section 3(1) of the HIV and AIDS Act 2006**, which provides that:

“(1) Any person who is HIV-positive or has AIDS shall not be considered as having a disability or incapacity by virtue of any enactment and his status or presumed status shall not be used as a ground to discriminate against that person.”

In addition, the NHRC reminds the authorities and the public at large of the State’s obligations under the Declaration of Commitment on HIV/AIDS (resolution S-26/2), adopted without a vote on 27 June 2001 by the United Nations General Assembly.

In a landmark judgment (**Kiyutin v Russia Application no. 2700/10**), the European Court of Human Rights, quoting the States’ obligations under the Declaration of Commitment on HIV/AIDS, held that an applicant who had been deprived of his residence permit on the basis of his HIV positive status, was discriminatory.

“74. Taking into account that the applicant belonged to a particularly vulnerable group, that his exclusion has not been shown to have a reasonable and objective justification, and that the contested legislative provisions did not make room for an individualised evaluation, the Court finds that the Government overstepped the narrow margin of appreciation afforded to them in the instant case. The applicant has therefore been a victim of discrimination on account of his health status, in violation of Article 14 of the Convention taken in conjunction with Article 8.”

The Court also reminded that the mere presence of HIV positive migrants in a country may not be a threat to public health and any generalisation of inappropriate behaviour should be founded on facts based on the applicant’s individualised situation. [para. 68]

The National Human Rights Commission urges the relevant authorities to urgently take corrective measures to harmonize practices in line with the above mentioned so as to end the discriminatory practices and undue harassment and distress affecting migrant workers because of their HIV positive status.

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