

Korean HIV/AIDS Policy on International Migrants: Comparing with OECD Countries

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I. Introduction

In the era of globalization, mobility and migration are becoming increasingly necessary and natural part of the lives of millions of people; more people are moving across international borders, the reasons for their mobility are becoming increasingly more diverse, and the demographic make-up of these mobile populations is less uniform. It is estimated that there are approximately 175 million people, or 2.9% of the world's

population, currently live temporarily or permanently outside their countries of origin (IOM, 2003). Among them, there are over 80 million migrant workers¹⁾, as well as some 10 to 15 million undocumented migrants (ILO, 2004). In this global trend, Korea is not an exception; currently, about a half million migrants work 'legally' or 'illegally' (Dongailbo, 2005).

As the volume and nature of international migrants have expanded, there is a growing concern for the spread of infectious diseases,

1) People who migrate across country borders, often called international migrant or foreign workers.

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especially to HIV/AIDS, which is transmitted from one person to another. Migration has been known as a catalyst in the spread of HIV. It brings more people into close and frequent contacts and creates a greater mixing of various people at places of destination, which provides a ready environment for viral transmission. Through the movement of infected persons, migration can in turn also play a significant role as a vehicle in transporting infectious diseases to other places. The spread of HIV/AIDS thus is likely to be accelerated in a situation of large-scale migration. However, the link between migration and the spread of HIV/AIDS does not tell that there is a causal relation between them. Immediate cause of AIDS is HIV and the main mode of transmission of HIV is sexual intercourse. Migration per se is not the cause of HIV infection though it facilitates the spread of HIV along so-called corridors of migration.

This unclear relation between migration and the spread of HIV/AIDS, however, influences the public opinion in various ways. Among them, major response is to try to keep HIV-positive people out of a country by laws that restrict their entry or stay with a subtle consideration that migrants bring HIV/AIDS with them. Although the risky sexual behavior is committed by an individual, it is largely conditioned and determined by social, cultural, economic and

political factors of a society just like other human behaviors (Lurie, 2000; UNAIDS, 2001). Placed in changed situations and environments that bring about discrimination, stress, loneliness and little participation in the society but denied to bring their spouses or regular partners and other families, migrant are likely to engage in risky behaviors, which leave them vulnerable to HIV.

It is raised and generally known that the South Korean (hereafter Korean) government has adopted a strict policy and implemented strong rules and regulation against migrants with HIV, keeping them from entering and staying in Korea by any means. In respect that restrictions on entry and residency of migrants with HIV/AIDS violate human rights and even could encourage a spread of the disease (UNAIDS/IOM, 2004), there is an emergent need to urge the Korean government to reconsider the current policies, laws and regulations, and develop and implement more effective responses to HIV/AIDS for migrants and mobile populations.

This study aims to identify gaps in knowledge regarding migration and the spread of HIV/AIDS; improve understanding of migrants with HIV/AIDS and their human rights; and make suggestions for Korean policy makers to reform laws and policies towards granting

migrants with HIV/AIDS more human rights and access to treatment and care.

To pursue the aims more effectively, this study will utilize data and information on other Organization for Economic Co-operation and Development (OECD) countries. Since Korea is a member of OECD and pursues the levels of advanced countries in OECD, referring to the policies, rules and regulations of OECD countries on migrants with HIV/AIDS and comparing

them with a Korean case will facilitate an identification of issues and problems the current Korean policy has and enhance efforts to advocate abolishing unreasonable discrimination against migrants with HIV/AIDS.

Based on an analysis of data and information on selected OECD countries, this study will describe the vulnerability of migrants to HIV/AIDS infection in Korea identify entry and residence regulations and treatment restrictions against migrant people with HIV/AIDS both in Korea and the other OECD countries; and develop recommendations to encourage the Korean government officials and policy makers to abolish discriminating laws and policies against migrant people with HIV/AIDS.

II. Literature Review

HIV/AIDS Infection in Korea

Korea is no longer a country safe from HIV/AIDS infection. The first Korean patient with AIDS was diagnosed in 1985 and since then there has been a rapid increase of HIV infected persons. The total number of HIV infected persons found in Korea as of June 2006 was 4,227 composed of 3,842 (90.9%) males and 385 (9.1%) females. There are 3,454 HIV infected persons still alive as of June 2006. Among them, all the 3,508 people whose infection routes were known were infected by sexual activity, 2,131 people by heterosexual activity, 1,377 people by homosexual activity (KCDC, 2006).

Although the prevalence rate is less than 0.02%, the speed of increase is very notable. For 2005, 680 new HIV infected persons were found and the number represented an 11.5% increase compared with the previous year. While the actual number of HIV positives are uncertain, AIDS specialists estimate that the current number could be three or four times higher than the government statistics (Yang, 2004)².

2) The official report only accounts for the HIV positives who happened to be identified at medical institutions that they had the disease while they were tested or treated for different causes such as accident and other illnesses.

The first foreigner with AIDS was found in 1985 and the numbers of foreign patients with AIDS rose rapidly in recent years just like the Korea case. According to a government report, 459 foreigners were identified HIV positive by the end of 2004 (Table 1). Among the HIV infected persons, 154 people, 33.6% of the total, were found just for 2004 while 59 people in 2003 and

2002 each. Usually, foreigners living with HIV/AIDS are deported in less than a month after they were found. Among 253 HIV infected foreigners found between January 2000 and August 2004, 219 (87%) people were deported, 18 (7%) people were either dead or are given a medical treatment, and the rest 16 (6%) people were disappeared (Dongailbo, 2004a) Contrary to its image

Table 1. HIV/AIDS Infected Foreigners, 1985-2004

Total	1985-1998	1999	2000	2001	2002	2003	2004
459	92	13	25	57	59	59	154

Note: The number indicates all foreigners including professionals and semi-skilled and unskilled workers. Source: KCDC (2005).

as a strait-laced, conservative Confucian society, Korea has one of the Asia's huge sex industries. Prostitution is tolerated and widespread, although Korea has not recognized licensed sex work formally since 1948³⁾. Some specialists estimate the market

of sex business was at least 20 billion USD, or 4.1 percent of GDP in 2002 (KIC, 2002)⁴⁾. The official estimate of females engaged in commercial sex ranges from 330,000 to 730,000 depending on research institutions (National Assembly, 2003). Sexual transmitted disease is prevalent among sex workers. One survey reports that 71% of sex workers have been infected with herpes virus (Dongailbo, 2003).

3) Since September 2004, the Korean government implemented a new anti-prostitution law, "Act on the Punishment of Intermediating in Sex Trade and Associated Acts", prohibiting any kind of involvement in the illegal sex business and has conducted a large-scale crackdown on sex trade businesses. The act was enforced to contain an ever-growing sex industry that's been criticized for human rights abuses. With the new anti-prostitution law, police apprehended 468 violators just in 10 days including brothel owners and customers who engaged in the illegal sex trade (Korea Times, 2004a). But, there have been many controversies. Some critics have said that the

intensity of the enforcement campaign cannot be sustained over a longer term, and that lukewarm enforcement will have the perverse effect of pushing prostitution into residential areas(Korea Times, 2004b).

4) In 2003, Korean companies formally (paid by company credit cards) spent 1.5 billion USD at entertainment spots for the treatment of their clients (Dongailbo, 2004b).

Influx of Migrant Workers

Until the mid 1980s, Korea was a country sending its people abroad to earn foreign exchange. But in less than 5 years, after the late 1980s it suddenly became to import foreign workers. The change was largely a result of an economic growth. A rapid economic development and a steep increase of wage brought about a serious labor shortage from the mid-1980s especially in manufacturing sector,⁵⁾ and consequently led Korean companies to search foreign labor force. Under the condition, a large number of migrant workers started to flow in Korea after 1988 when Korea hosted the 24th Olympic Games in Seoul, which showed the world how well-to-do Korea was becoming (especially to the lesser developed countries), and also led the Korean government to relieve some restrictions on immigration.

First, Korean Chinese who share a similar culture and speak the Korean language came in. Filipinos, Pakistanis, Bangladesh is and Nepalese followed them. The number of migrant workers increased from a few thousands to 70,000 in just 4 years between 1988 and 1992. In 1991 the influx was spurred by the government

policy, which legalized the importation of foreign workers with industrial trainee status,⁶⁾ and conferred the right of importation to the companies that have branches and factories abroad. Also in 1994 another opening was through the Korea Federation of Small and Medium Business (KFSB). Since then, the number of migrant workers quickly increased and reached 250,000 by late 1997. This was just before Korea underwent a financial crisis, reducing the number to 140,000 by mid 1998. But, a rise in number began rapidly again as Korea recovered from the crisis (Table 2).

The increase of migrant workers has been led by low-skilled population. Since 1991, industrial trainees, non-professional workers and undocumented workers who are

5) The rates of labor shortage for manufacturing were 4.35% in 1987, 4.15% in 1989 and 7.02% in 1991 while the rates for whole industry were 3.29% in 1987, 3.21% in 1989 and 5.48% in 1991 (Ministry of Labor, each year).

6) There have been several changes in stay-duration and status for industrial trainees. When the industrial trainee system first started in 1991, Korean government allowed industrial trainees to stay only for 1 year with a status of trainee, in 1993 for 2 years, in 1996 for 3 years as a status of trainee, in 1998 for 3 years (2 years as status of trainee and 1 year as status of worker), and in April of 2002 for 3 years (1 year as status of trainee and 2 years as worker). In July of 2003, Korean government decided to implement employment permit program paralleling with industrial trainee system. Under the new employment permit program, migrants who obtained a work permit can stay in Korea as status of worker enjoying all the rights of labor Korean workers have. But, their stay-duration is limited to a maximum of 3 years, and they have to rotate with more than 1 year of leave away from Korea and are not allowed to settle or to bring in their families.

mostly engaged in low-skilled jobs have comprised more than 92% of the total migrant workers, while the proportion of professional, skilled and semi-skilled migrant workers have never exceeded 8% of the total. There was, however, also a steady

increase in number for the professional, skilled and semi-skilled migrant workers. The numbers of the population increased 7 times from about 3,000 in 1991 to 21,000 in 2003 for the last 12 years.

Table 2. Number of Migrant Workers in Korea, 1991-2004 (%)¹⁾

	Documented Migrant Workers		Undocumented Migrant Workers	Total
	Professionals ²⁾	Industrial Trainees ³⁾		
1991	2,973 (6.5)	599 (1.3)	41,877 (92.1)	45,449
1992	3,395 (4.6)	4945 (6.7)	65,528 (88.7)	73,868
1994	5,265 (6.4)	28,328 (34.6)	48,231 (58.9)	81,824
1997	15,900 (6.8)	69,052 (29.6)	148,048 (63.5)	233,000
1999	17,554 (7.6)	78,945 (34.1)	135,338 (58.4)	231,837
2001	18,511 (4.8)	110,028 (28.7)	255,206 (66.5)	383,745
2003	21,095 (4.7)	291,572 (64.7)	138,056(30.6)	450,723
2004	n.a. ⁴⁾	240,000 (56.6)	184,000 (43.4)	424,000

Notes: 1) The number is as of December 31 for each year except 2004 (October 31). 2) Professionals, skilled workers and semi-skilled workers such as managers, lawyers, professors, English teachers and technicians. 3) The numbers for 2001 and 2003 include the people engaged in industrial trainees employment and non-professional employment. 4) Not available.

Sources: Ministry of Justice (each year).

III. Research Methods

Currently, there are 30 member countries in OECD. Of all the countries, this study has randomly selected 8 countries from 5 different continents: Japan from Asia; Australia from Oceania; Finland, Germany, Ireland and United Kingdom (UK) from

Europe; and Canada and United States of America (USA) in North America.

This study is based on an extensive literature review, questionnaire surveys and in-depth interviews. The general information and data for socio-demographic conditions, migration patterns, rules and regulations on migrant foreigners with HIV/AIDS have been drawn mostly drawn from reports from

governments such as Ministry of Health and Ministry of Justice in Korea, nongovernmental organizations such as Aids Info Docu Switzerland and international organizations such as UNAIDS, IOM and UNDP, and newspaper articles. Questionnaire surveys were conducted to scholars and specialists in migration and HIV/AIDS in each selected country. The questionnaire is composed of items asking legality of HIV/AIDS as epidemic disease, specific entry and residency policies and laws for people with HIV/AIDS, requirement of HIV/AIDS testing results for foreigners before entering and while staying, and services and programs for HIV prevention, care and support by the government. Additional knowledge and information were obtained from the inside and outside of Korea by telephone or e-mail interviews with scholars, government officials and other experts in migration and HIV/AIDS.

IV. Vulnerability of Migrants to HIV/AIDS Infection

Although HIV is transmitted from one person to another and migration is likely to facilitate a spread of HIV/AIDS, migration per se is not a risk factor for HIV/AIDS. It is the situations encountered and the

behaviors possibly engaged in during migration process that increase vulnerability and risk regarding HIV/AIDS (Decosas and Adrien, 1997; UNAIDS, 2001; Wolffers et al., 2002). Migration often provides socio-cultural, economic and political circumstances and events that drive migrant workers to engage in behaviors that increase vulnerability and risk of HIV infection. Factors such as loneliness and stresses resulting from discrimination and differences in language and culture, separation from families and regular partners, marginalization at the workplace, stigmas resulting from demean jobs, freedom from social norms and values, and the anonymity of being a foreigner may encourage people to take risks which leave them vulnerable to HIV. In addition to these general characteristics, there are other social and contextual factors that increase the vulnerability of migrants in Korea to HIV/AIDS infection: high ratio of low-skilled workers, large population of undocumented workers, and high ratio of young ages, unbalanced sex ratio and existence of females engaged in commercial sex industry.

Migrant Status

Despite a wide diversity of situations and circumstances of migration process, there are common socio-cultural, economic and

political factors that increase migrant workers' vulnerability and risk in relation to HIV/AIDS. First of all, changed socio-cultural environments may cause the increase of the vulnerability. For migrants, social institutions, lifestyles, and physical environment of a foreign country are yet unfamiliar, especially in their early stage of migration. They are not fluent in speaking a local language, limiting their daily life and social activities in the host community.

The unfavorable conditions of migrant workers as a minority group also cause individual and social hardships and difficulties. In a society like Korea composed of one homogeneous ethnicity and one language, migrant workers are very likely to experience discrimination and disregard because they are easily discernible as foreigners. The local people often do not understand or tolerate migrants not speaking the local language well but using different languages. Some migrant groups live in segregated residential areas and follow different cultural practices. They are usually engaged in a certain type of jobs, so-called '3D jobs dirty, dangerous and difficult jobs that local people are reluctant to take. Furthermore, because of differences in physical appearance (skin color, features, hair type and so on) or style of dress and behavior pattern migrant workers are classified as an out group and discriminated

and marginalized by the receiving society.

Worrying about the possible social effects of settlement and structural dependence on foreign labor, the Korean government also has a strict policy to treat migrants as temporary workers with very limited rights and no entitlement to settlement and family reunion. According to the laws and regulations of industrial trainee system and employment permit program migrant workers are not allowed to stay over 3 years and even while staying, they cannot invite their wives, husbands and other family members. Separated from families and friends, coupled with experiencing unfamiliar cultures and different languages, migrant workers in Korea are subject to loneliness. Faced with the discrimination, isolation and loneliness, migrant workers might be attracted to engaging in risk behaviors, such as unprotected casual or commercial sex (UNAIDS, 2000, 2001; Wolffers et al., 2002).

Staying away from home often weakens the influence of traditional social norms that guide and control behavior and require people to adapt to the new environment. Especially, when people move especially from a conservative (strict to sexual activity) society to a more liberal (lenient to commercial sex) society, they may take a value of sexual freedom (IOM, 2003). With the changed environment, increased

anonymity in foreign countries may also allure migrants in Korea into engagement in risky or unhealthy sexual behaviors they would not have taken at home.

The statuses of foreigner and worker may lead migrant workers to avoid or to disregard attention from authorities, even if that attention is meant to provide health services, or to help improve their living conditions. For most migrant workers, daily life is dominated by priorities like anybody else. Migrant workers may see far more immediacy in earning decent wages or searching jobs than getting information about the hypothetical risks of HIV/AIDS or STI.

Because of their alien status, migrants, especially those without documents generally have little or no access to health facilities and services in host countries. In accordance with official government policies, limited resources for HIV/AIDS prevention, care and support programs are generally targeted to the local population, with little allocation to the needs of migrant workers. Migrants also frequently find it difficult to effectively address their problems on their own. Their inability to understand the local language, cultural barriers, and instability of mobility heighten their lack of access to HIV information, education, health services, and means of HIV prevention such as condoms and STI treatment services (UNAIDS, 2001). In Korea, migrant workers

are likely to be seen as a temporary human resource because they are imported just for filling up labor shortages. Given the very limited financial, human and institutional resources for HIV/AIDS prevention and care programs, the resources that are available are most often targeted to Korean people with little or no resources allotted to the needs of migrant workers. There is no sex and AIDS prevention education for migrant workers offered by the Korean government. As a result, migrant workers have little or no access to HIV information, health services, and means of AIDS prevention. If there is any resource available, cultural and linguistic barriers limit their accessibility.

Majority of Low-skilled Young Male Workers from Less Developed Countries

There is an unbalanced gender ratio among migrant workers in Korea: more men than women (Table 3). While some Asian labor-importing countries such as Taiwan, Hong Kong and Singapore have experienced feminized migration, Korea has not seen it since its first importation of migrant workers in the early 1990s (Lim and Oishi, 1996; Wong, 1996; Castles, 1998). The proportion of female in migrant workers never exceeded 36 percent for the last 10 years (Lee, 2003b). When Korean government initiated the industrial trainee policy in the early 1990s, the intention was to provide

labor for a manufacturing sector that had a severe labor shortage. The sector was mostly composed of small businesses and low-skilled 3D jobs such as operating metal pressing and shearing machines, moving heavy materials, and dealing toxic chemicals under unhealthy working conditions. Therefore, male workers were preferred to female workers by the company. On the other hand, the government has restricted an employment of migrant workers in other sectors than manufacturing and construction industries. In other Asian labor-importing countries, however, importation of migrant workers were driven by a need for domestic workers, restaurant and hotel staff, and entertainers, and in these personal service providing jobs women are preferred to men (Lim and Oishi, 1996).

Many jobs available and open to migrants are located in so-called 3D industry and require physically hard labor. So, young workers are preferred. Most male migrant workers in Korea are in sexually very active age groups, 20s and 30s, who account for 70% of total migrant workers.

In addition, most companies that hire migrant workers are small and their main purpose of hiring migrant workers is to reduce production costs. Therefore, jobs for migrant workers are characterized with poor working

conditions, long working hours, and low pay and status, which are only attractive to the people of developing or less developed countries. In 2003, more than 70% of foreigners in Korea came from China and the other Asian countries (Table 4).

Host countries are mostly interested in migrant workers as a cheap labor source, and fearing their permanent settlement allow them only short-term contracts for 3D jobs, which are unpopular among the local people. As a result, host governments often implement policies of single-entry visa and single sex labor migration that prevent migrants from travel with their families or partners. Most of male migrant workers in Korea are single. Under the current immigration laws that reflect a strong desire to maintain ethnic homogeneity, migrant workers cannot bring their spouses and other families. Even so, it is very hard for migrant workers to visit their home country with a low pay and few holidays. As a result, there are few opportunities for the male migrant workers to have a sexual relationship with their wives or maintain steady relationships in Korea, which provoke migrants, especially the young to have recourse to casual or commercial sex, and thus take risks of sexually transmitted infection (STI) and HIV/AIDS.

Table 3. Number of Migrant Workers by Status and Gender in 2001 (%)

Industrial Trainees		Undocumented Migrant workers		Total	
Male	Female	Male	Female	Male	Female
20,666 (70.6%)	8,617(29.4%)	163,623 (64.1%)	91,583 (35.9%)	184,289 (64.8%)	100,200 (35.2%)

Source: Korean Women's Development Institute (2002).

Table 4. Foreigners by Country, 2003

Country	GDP per capita (PPP US\$ in 2002) ^{1) 2)}	Number (%)
China [Korean Chinese]	4,580	237,497 (40.1) [132,305 (22.3)]
USA	35,750	50,874 (8.6)
Japan	26,940	42,306 (7.1)
Philippines	4,170	32,444 (5.5)
Indonesia	3,230	31,448 (5.3)
Thailand	7,010	27,543 (4.7)
Vietnam	2,300	24,908 (4.2)
Bangladesh	1,700	18,126 (3.1)
Mongol	1,710	16,824 (2.8)
Uzbekistan	1,670	14,712 (2.5)
Others	-	95,308 (16.1)
Total	-	591,9903 (100)

Note: 1) Purchasing power parity (ppp): A rate of exchange that accounts for price differences across countries, allowing international comparisons of real output and incomes. At the ppp US\$ rate, ppp US\$ has the same purchasing power in the domestic economy as \$1 has in the United States. 2) In 2002, GDP per capita of Korea and the world are 16,950 PPP US\$ and 7,804 PPP US\$, each. 3) The number excludes 38,770 US soldiers stationed in Korea and 25,710 Taiwanese, most of who are permanent residents.

Source: 1) Ministry of Justice (2003). 2) UNDP (2004).

Large Population of Undocumented Workers

There is a larger population of undocumented workers⁷⁾ than documented ones (mostly industrial trainees), as shown in

7) Migrants who smuggled, or entered with visit or tour visas but work for money, or stay over a designated period, or leave designated or contracted workplaces.

table 3.⁸⁾ There are three elements that

8) With an introduction of the employment permit program, the government implemented two polices against 'illegal' migrant workers. One is an amnesty for the people who stayed in Korea for less than 4 years and the other is a large-scale of enforcement of regulation against the people who failed to report their status to the government or stayed for longer than 4 years. As a result, there was a big decrease between 2003 and 2004 in the proportion of

contribute to this. First, the wages of industrial trainees are lower than those of undocumented workers. According to a survey (Lee, 2003a), the wage of industrial trainees is 85% of the wage of undocumented workers. Therefore, many industrial trainees leave their assigned workplace to receive a higher pay. Between 1993 and 1997, one out of three industrial trainees left the designated workplace or did not go back to their home country after a termination of contract (Lee et al., 1998). In legality, industrial trainees are not allowed to leave the designated or contracted workplace before their contracted term is expired. If they do, their stay becomes 'illegal'.

Second, the loose enforcement of regulations by the government also contributed to the increase of undocumented migrant workers. For example, the government issued six decrees to order migrant works to leave between November 1997 and January 2000. But there were hardly any administrative follow-ups on those decrees. The increase of undocumented migrant workers for the last year is also partially caused by the government's inactiveness (Joongangilbo, 2004). The lukewarm response of government was largely

undocumented workers. Nevertheless, the proportion of undocumented workers still account for more than 40 % of total migrant workers and there has been a steady increase of the proportion of undocumented workers since the end of 2003 (Joongangilbo, 2004)

due to strong demand for labor in 3D jobs and opposition from migrant-support NGOs.⁹⁾

Third, some migrant workers, especially from China, spend a lot of money on migration fees.¹⁰⁾ According to a survey (Seok and Lee, 2003), the average amount of money spent on migration fees by Korean Chinese migrant workers was 5,400 USD in 1998. This is seven times more than the amount of the Chinese GDP per Capita, which is 750 USD in the same year. They usually have to save or borrow money from their relatives and sometimes sell their houses to meet the cost. Thus many try to stay in Korea as long as possible so that they can compensate for the fees and save up. The average duration the foreign workers want to stay in Korea was about 40 months in 1998, which exceeds the maximum legal stay-duration, 2~3 years (Lee and Seok, 2001).

Undocumented migrants are more vulnerable to HIV because of their marginal status. They may be forced by their insecure circumstances into unsafe working and living conditions, and be exploited for meager wages.

9) Korean NGOs have been very active since the late 1980s when Korea began to experience a rapid and extensive democratization. The current president and several cabinet members have a background of NGO activities.

10) Many Korean Chinese, who can speak Korean and easily find jobs in Korea, tend to use irregular means to enter Korea such as forging documents and passports, and smuggling. Trafficking and smuggling organizations usually carry out the jobs and ask a lot of money.

There is little sex education provided for migrant workers, especially for undocumented workers. These undocumented migrant workers are also cut off from public medical care or services. They seldom go to hospitals or health centers for fear of being reported to immigration officials, or caught and deported. Although some undocumented migrant workers receive sex education and medical services arranged by migrant-support NGOs and voluntary medical groups, the proportion of undocumented workers who contact these organizations is very small, considering the total number of undocumented migrant workers in Korea. According to a report, about 5% of migrant workers have visited or contacted migrant-support NGOs¹¹⁾ or religious places (Seok et al., 2003). Moreover, the information, knowledge, and services they get from these voluntary organizations are not enough to prevent them from HIV infection.¹²⁾

Existence of Females Engaged in Commercial Sex Industry

Among migrants, women tend to be more vulnerable than men. Employment opportunities are usually more limited for women migrants, who may take jobs with little bargaining power and work under inferior

conditions, subject to marginalization and exploitation. In a gender-segregated economy few jobs are available for migrant women except those susceptible to sexual abuse and exploitation such as domestic and sex workers (Zierler and Krieger, 1997; Bandyopadhyay and Thomas, 2002). If entertainment business and commercial sex are widespread and prevalent in destination countries, some women migrate to take up jobs that put them at risk of HIV, such as sex work. Other women and girls are forced into the sex business by deception, coercion or trafficking. In migration situation, female migrants can be situated in double jeopardy subject to discrimination both as women and migrants.

The unfavorable conditions and situations are applicable to the female migrant workers in Korea. There are fewer jobs available to migrant women than migrant men in 3D manufacturing sector where the Korean government mainly allows an employment of migrant workers. Instead, Korea's sex industry has a huge market and a strong demand for female labor, which lure migrant women. Among the female migrant workers, those who have a higher HIV infection risk are Russian, Filipino, and Korean Chinese because of their higher probability of engagement in sex industry.

Russian females began to enter Korea in 1991; just one year after Korea established a diplomatic relation with Russia. They usually enter on an E-6 type visa, formerly

11) There are over 100 NGOs in Seoul area engaging in supporting migrant workers.

12) Because most voluntary organizations are affiliated with some religious institutions, they, thinking of moral issues, tend to be reluctant to provide sex education and HIV prevention programs to migrant workers.

9-14 visa, that is issued for dancers and singers (restricted to work at entertainment business) or on a C-3 tourist visa.¹³⁾ With a couple of changes which facilitate the importation of female entertainers such as an introduction of E-6 type visa in 1993, a tacit approval of importing sex workers by Korea Special Tourism Association, an organization of sex business owners serving US military men and other foreigners, in 1996 and a loosening of regulation on the issuance of the visa by shifting from a permission to recommendation system in 1999, the influx of Russian female entertainers accelerated during the late 1990s and early 2000s. The number increased from 2 in 1991 to 18 in 1994, 119 in 1997, 1,465 in 2000, and 2,201 in 2002 and dropped 1,691 in 2003 when the Korean government started to curb the inflow of female entertainers faced with a growing concern about sexual abuse and exploitation, human trafficking and violations of human rights committed to them. Russian females now account for 50.1% of 3,378 E-6 female visa holders staying in Korea as of the end of 2003 (Ministry of Justice, 2004). Whether they enter Korea on E-6 visa or C-3 visa, most of Russian females are urged and compelled to engage in sexual relations after arrival by the owners and manager of the business and brokers of the recruitment agency (Ministry of Gender Equality, 2003). It is estimated that 90% of Russian entertainers are engaged in

sex business (Chosunilbo, 2002). Some Russian females who enter Korea with a tourist visa voluntarily enter the sex business to earn more money. Trafficking organizations and the Russian Mafia are known to be involved in bringing them in (Chosunilbo, 2003).

Filipino female entertainers came to Korea before Russians. Their influx started in the 1980s and their numbers continued to grow from 24 in 1988 to 165 in 1994, 471 in 1997 and 1,151 in 2000. Although the proportion of Filipino female has been decreasing since 2000 as more Russian female are entering, Filipino is still the second largest population who enter Korea with E-6 type visa to Russian. Among the total female migrants who entered Korea with the E-6 type visa in 2003, Filipino comprised 30.3%, 1,022 persons. Filipinos usually work at bars, taverns and discos, especially ones near US military bases, and they are preferred because they speak English. Like Russians, most of the Filipino is forced to prostitute themselves and become strippers by the owners of the bars and discos. Crime organizations, both in the Philippines and Korea, are also involved in recruiting and employing them.

Korean Chinese have a long history of immigration to Korea. They can speak Korean, have better understanding of Korean society, and can find jobs more easily in the service sectors. Some of them come to work

13) Since June 2003, the Korean government has stopped the issue of E-6 visa for dancers.

in the sex industry to make more money in a shorter time. Contrary to Russians and Filipinos in the sex industry, Korean Chinese females tend to enter Korea with a tourist or visitor's visa or forged passports and choose to work at bars, karaoke, nightclubs and massage parlors for themselves. Some Korean Chinese women who entered as industrial trainees flow into sex industry. Because of their ability to understand Korean and the same features with Korean people, Korean Chinese female entertainers are spread more widely engaging in more diverse kinds of sex business and it is estimated that their numbers are much bigger than Russian and Filipino counterparts (Herald Business, 2004).

V. Comparison of HIV/AIDS Policies on Foreigners between Korea and Other OECD Countries

Socioeconomic Background and HIV Prevalence of Korea and the Selected OECD Countries

Although Korea belongs to the group of high human development country according to the Human Development Report of UNDP (2004), its socioeconomic status is low comparing to the other selected OECD countries (Table 5). Its' GDP per capita and per capita total expenditure on health and public expenditure on health are less than a half of the averages of the surveyed OECD countries. For HIV prevalence, Korea has one of the lowest rates.

Table 5. Socioeconomic Background and HIV Prevalence of Korea and the Selected OECD Countries

	GDP per capita in 2002 (ppp US\$) ¹⁾	Per capita total expenditure on health in 2001 (US\$)	Public expenditure on health in 2001 (% of GDP)	HIV prevalence in 2003 (% of ages 15-49) ²⁾
Korea	16,950	948	2.7	<0.1[<0.2]
Japan	26,940	2,131	6.2	<0.1[<0.2]
USA	35,750	4,887	6.2	0.6[0.3~1.1]
Canada	29,480	2,792	6.8	0.3[0.2~0.5]
Germany	27,100	2,820	8.1	0.1[0.1~0.2]
UK	26,150	1,989	6.2	0.1[0.1~0.2]
Ireland	36,360	1,935	4.9	0.1[0.1~0.2]
Finland	26,190	1,845	5.3	<0.1[<0.2]
Australia	28,260	2,535	6.2	0.1[0.1~0.2]
Average	28,131	2,431	5.8	-

Note: 1) Purchasing power parity (ppp): A rate of exchange that accounts for price differences across countries, allowing international comparisons of real output and incomes. At the ppp US\$ rate, ppp US\$ has the same purchasing power in the domestic economy as \$1 has in the United States. 2) Range estimates are presented in square brackets.

Source: UNDP (2004).

Legal Classification of HIV/AIDS into a Communicable Disease

In Korea, HIV/AIDS is classified into a legal epidemic disease. The Communicable Disease Prevention Act designates HIV/AIDS as legal contagious disease of Class 3 and applies all its provisions to the disease and the infected.¹⁴⁾ The designation

14) The Communicable Disease Prevention Act divides contagious diseases into 5 class-types composed of Class 1 to 4 and designated communicable disease, based on the difference in prevention, reporting procedures, patient care and the patterns of outbreak. The Class 1 communicable diseases consist of 6 diseases including cholera, pest and typhoid fever against which preventive measures such as immediate isolation of the infected are taken as soon as they break because the speed of transmission or the degree of danger and harm of the diseases to the health of people is so rapid and high. The Class 2 communicable diseases consist of 9 diseases including diphtheria, measles and hepatitis B which are preventable by vaccination. The Class 3 communicable diseases consist of 18 diseases including malaria, tuberculosis and one disease group (STD), which require consistent monitoring and education for prevention because they may spread intermittently. The Class 4 communicable diseases which include yellow fever and ebola fever are the new epidemic symptoms detected in Korea, recurring contagious diseases, or contagious diseases spread abroad and feared to spread to Korea, which are determined by the ordinance of the Ministry of Health and Welfare. The Designated Diseases which include hepatitis A and C are any contagious disease other than those of Class 1 through 4 and need surveillance activities designed for the investigation of whether they are epidemical. Physicians who clinically diagnose a case of notifiable communicable disease in Class 1, 2 and 4 should notify it immediately to the

was first made in 1987 in less than 2 years after the first Korean and foreign patients with AIDS were found and HIV/AIDS was a Class 2 communicable disease then. However, as some of the HIV/AIDS infected people and their advocates raises the issues of stigmatization and infringement of human rights caused by the designation of HIV/AIDS as legal contagious disease and medication for HIV/AIDS develops, Korean government lowered the legal grade of HIV/AIDS from Class 2 to Class 3 communicable disease in 1998.¹⁵⁾ Along the Communicable Disease Prevention Act, the HIV/AIDS Prevention Act, established in 1987, also stipulates various activities and requirements regarding the epidemic disease such as report and testing of the disease, and care and management of the infected.

Generally, OECD countries tend to regard HIV/AIDS as a chronic disease instead of a legal contagious disease. Among the selected 8 OECD countries, 2 countries, Japan and USA designate HIV/AIDS as legal communicable disease while 6 countries, Canada, UK, Ireland, Germany, Finland and Australia do not. Although

nearest public health center. Class 3 and designated disease should be reported within 7 days.

15) There was, however, an opposition to the government's decision among the patients and advocates who worried that the degradation could cause a reduction of public aid and services from the government.

Japan defines HIV/AIDS as legal epidemic disease, it classifies HIV/AIDS into Category 5 infectious diseases, whose patients are not regulated by the immigration laws. In USA, HIV/AIDS has been on the list of dangerous, contagious diseases for excluding persons from the country since 1987 (Table 6).

Entry

1) Entry of Foreigners with HIV/AIDS for a Short-Term Stay¹⁶⁾

Generally, migrant workers with HIV/AIDS cannot enter Korea regardless of his/her sojourn status. Several laws and regulations impose limitations on their entrance. First of all, the Korean immigration law (Immigration Control Act article 11 item 1-1) prohibits the entry of foreigners who are carrying an epidemic disease and HIV/AIDS is classified into a Class 3 epidemic disease by the Korean health law (Communicable Disease Prevention Act article 2 item 3). Based on the Immigration Control Act article 11 item 1-1 and Communicable Disease Prevention Act article 2 item 3, the government may prohibit an entry of foreigners who are

suspected of carrying HIV/AIDS anytime at their discretion. The two articles of the immigration and health laws are basic guidelines on which most of the government's rules, regulations and policies are established and applied broadly to various circumstances and conditions related with immigration and HIV/AIDS.

Among the selected OECD countries, USA is the only country that prohibits foreigners with HIV/AIDS from entering. In exceptional cases, however, US government grants a stay of 30 days for family visits, medical treatment, business travel or participation in a scientific, health-related conference. Throughout the world, there are only 10 countries that ban HIV-positive visitors, even for short term tourist stays: Korea, USA, Armenia, Brunei, China, Fiji, Iraq, Moldavia, the Russian Federation and Saudi Arabia (www.aidsnet.ch, 2005)(Table 6).

2) Presentation of HIV/AIDS Test Results from Foreigners for a Long-Term Stay before Entering

Basically, the Korean government does not require all foreigners to submit their HIV/AIDS test results before entering. But, for the matter of industrial trainees and employment-permitted foreign workers, the Korean government and agencies ask them for pre-departure HIV/AIDS test results and

16) Although the term "short-term" usually refers to a period of one month or less, there are other countries which define the term differently. For example, in Korea it refers to a period of less than 3 months, 91 days.

deny their admissions if they are found HIV/AIDS positive although laws and regulations regarding them such as Immigration Act, Guideline for Operating Foreign Industrial Trainee System, and Act on Employment of Foreign Workers do not specify the requirement of HIV/AIDS test results for them.

Regarding the status of sojourn term, a Korean health law (HIV/AIDS Prevention Act Article 8 item 3) designates a submission of a HIV/AIDS test record for certain foreigners. According to the law, foreigners who wish to work for money in entertainment industry, sports games and other show businesses and to stay in Korea more than 3 month (long-term sojourner) have to submit a certificate of negative reaction against HIV/AIDS before entering. If the foreigners fail to submit it before entering, they have to receive a HIV/AIDS test at one of the institution the government designates within 72 hours after arrival. However, other professionals and skilled workers who are allowed to accompany their spouses such as businessmen, scholars, lawyers and technicians are exempted from the requirement. In the respect that industrial trainees and employment-permitted foreigners are not allowed to accompany their spouses, they have to submit HIV/AIDS test results. For foreigners who stay in Korea for less than 91 days

(short-term sojourner), there is no requirement of document of HIV/AIDS tests.

There have been a few oppositions within the Korean society to the policies requiring HIV/AIDS test results and restricting the entrance of foreigners with HIV/AIDS, especially long-term sojourners. There was, however, a case which publicized a mandatory HIV/AIDS testing for foreigners in 2003 when a Japanese female movie star who came in Korea with C-4 short-term employment visa had to take a HIV/AIDS test to work as a TV show host for more than 3 months, which requires a E-6 entertainment visa and a submission of HIV/AIDS test result by law (Weekly Dong-a, 2003). Although she and her agent complained about the requirement, there were few responses from the public and the government.

Among the selected OECD countries, 2 countries, Canada and Australia require HIV testing results from foreigners. In Canada, all foreigners 15 years of age or over intending to stay in Canada for more than 6 months have to undergo an HIV antibody test. In Australia, foreigners 15 years of age or over wanting to immigrate permanently to Australia need to present an HIV test result (Table 6).

3) Entry of Foreigners with HIV/AIDS for a Long-Term Stay

Based on the immigration law that prohibits any foreigner who carries an epidemic disease from entering regardless of sojourn status, Korea, which classifies HIV/AIDS into a legal communicable disease, does not admit foreigners with HIV/AIDS, to its territory. Other OECD countries including USA, Canada and Australia have the same policy as Korea. There are, however, some exceptional cases in Canada and Australia. In Canada, HIV-positive refugees, HIV-positive sponsored spouses or common law partners of Canadian citizens or permanent residents and HIV-positive children of Canadian citizens or permanent residents are granted a residence permit. In Australia, people with HIV may immigrate to Australia if he/she is a spouse (including a de facto spouse), a fiancé, a long-term sex partner and the dependent child of an Australian citizen or permanent resident, a former Australian citizen, and a refugee (Table 6).

Residence

1) Requirement of HIV/AIDS Test Results from Long-term Stay Foreigners

There is no requirement of mandatory HIV/AIDS testing for most foreigners who

are allowed to stay or work in Korea. For some foreigners, however, an HIV/AIDS testing may be a mandatory requirement. According to health laws (Communicable Disease Prevention Act article 3 and HIV/AIDS Prevention Act Article 8 item 1 and 2) people who are engaged in occupations that are likely to be infected and spread sexually transmitted diseases (STDs) have to take a STD related test. As a result, every female who work in sex business has to receive regular medical check-ups for STD and HIV at local public health centers at least every 3 months. As with Korean workers, female migrant workers in sex industry, especially E-6 visa holders who have a high probability of engagement in sex work are also obliged to take the mandatory tests. The tests are taken free of charge but the results are usually not informed to the sex workers unless there is a problem, infection of STD or HIV. People with STD are treated at public health centers without charge but they are supervised and not allowed to work until the disease is cured completely (Communicable Disease Prevention Act article 30). Worrying about monetary loss coming from the test results such as an infection with STD or HIV some business owners are reluctant to have their workers receive the test (Ministry of Gender Equality, 2003). Some migrant women are also hesitant to take the test for fear of

knowing the 'bad' results. For undocumented sex workers the test is out of reach.

Since the late 1990s as AIDS patients among migrant workers are occasionally found and the number of the cases is growing, some local health offices have given HIV tests irregularly without any specific legal basis to migrant workers whose jobs are not related with sex business. But neither migrant workers nor NGOs welcome this activity as the method of testing does not guarantee migrants' privacy and sometimes the test is done inhumanely. For example, health officials may visit a factory and ask the manager to gather all migrant workers together and then give HIV tests without informing clearly what the test is all about and asking migrant workers' opinions.

No country among the selected OECD countries requires an HIV test for foreigners who were allowed to enter and are either staying or working in the country (Table 6).

2) Possibility of Stay for Foreigners Found HIV/AIDS-Infected after Entering

Basically, foreigners with HIV/AIDS cannot stay in Korea. If they are known to be infected with HIV/AIDS by any reason they are subject to an immediate deportation regardless of their sojourn statuses and purposes. According to an immigration law

(Immigration Control Act article 46 item 1-2), the Korean government may deport a foreigner who is found to be carrying epidemic diseases including HIV/AIDS. The government's measure against foreigners living with HIV/AIDS, which largely resort to deportation, is in striking contrast to its way to treat domestic people with HIV/AIDS. The Korean government does not regulate their everyday activities but takes care of all the medical expenses involved in the treatment for them.¹⁷⁾

There are few official services and policies provided by the Korean government to prevent migrant workers from HIV infection. There is little concern about the sexual life of migrant workers within the government, which tends to regard the limited opportunity of migrant workers' sexual activity as their personal problem. Sex education for migrant workers is rare. There are few services available for migrants living with HIV/AIDS. What they usually do

17) There are, however, some conditions on the activities and medical expenses for the people with HIV/AIDS. The HIV-related laws and regulations require people with HIV/AIDS to receive HIV-prevention training and counseling at local health centers and to report their moving to near local health centers. Medical expenses are not covered instantly by the government. People with HIV/AIDS have to pay for medication at the hospital first and then request a reimbursement from the government. Money is usually paid in 3 months after payment.

is deter HIV infected foreigners from entering Korea and deport HIV infected migrants to their home country as soon as possible.

In non-governmental sector, there are two organizations that take an active part in HIV prevention, care and support for migrants: KUISC (Korea UNAIDS Information Support Center) in Seoul and Tabitha Community in Dongducheon, Gyenggi Province. KUISC was established in 2003 in consort with Korea anti AIDS Federation, Ministry of Health and Welfare, UNDP and UNAIDS and has been running diverse programs for foreigners in Korea such as HIV counseling, peer education, community-based care and support, distribution of HIV prevention materials and fund-raising. Tabitha Community founded in 1989 near a US military base provides a shelter, education and counseling especially for female migrant workers engaged in sex business, and conducts a campaign for their human rights and against human trafficking.

Some migrant-support NGOs implement irregular medical check-ups, including blood tests, with the help of voluntary medical groups, social welfare institutions and local health offices. They usually do not tell the migrant workers that the check-ups include testing for HIV infection because if they do, migrant workers will avoid the check-ups. Some migrants think AIDS is a dreadful

epidemic disease and they do not like to get involved in anything related with it. Others think it's better for them not to know about any result of AIDS testing because if they were found infected they would be expelled from Korea. The common view is that as there is no cure, they would die anyway and few relatives and friends will be willing to keep company with or to take care of them. So, they prefer not to know and to go without testing for HIV/AIDS.

If the test result of a migrant worker is found to be HIV positive, the local health office informs the director or manager of an NGO, as well as the immigration office. Usually the NGO invites the migrant to come in and they explain the predicament and help them to return home (such as by raising money for the airfare). But many HIV positive migrants tend to disappear after being told that they have a positive result.

Most of the selected OECD countries except USA, which regards foreigners with HIV illegal and expels if their status becomes known, do not deport foreigners with HIV/AIDS. Moreover, in Finland, foreigners with a known HIV infection or who is fall sick with AIDS are not subject to specific residence regulation and they get the same treatment as Finnish nationals. In Japan, documented foreigners with HIV/AIDS can be covered medical expenses

by the Japanese Notional Health Insurance System. Although undocumented migrants are not covered by the health insurance system and they have to pay all medical expenses for treatment by themselves, they

are not subject to deportation. There is also a hospital, which specializes in a treatment of foreigners with HIV/AIDS in Japan (Table 6).

Table 6. Comparison of HIV/AIDS Policies on Foreigners between Korea and Other OECD Countries

	Legal communicable disease	Entry			Residence	
		Entry of a short-term stay	HIV Test for a long-term stay	Entry of a long-term stay	Requirement of HIV Test	Possibility of Stay for HIV infected foreigners
Korea	Yes	Not permitted	Required	Not permitted	Required(for some groups)	Deported
Japan	Yes	Permitted	Not required	Permitted	Not required	Not deported
USA	No	Not permitted	Not required	Not permitted	Not required	Deported
Canada	No	Permitted	Required	Not permitted	Not required	Not deported
Germany	No	Permitted	Not required	Permitted	Not required	Not deported
UK	No	Permitted	Not required	Permitted	Not required	Not deported
Ireland	No	Permitted	Not required	Permitted	Not required	Not deported
Finland	No	Permitted	Not required	Permitted	Not required	Not deported
Australia	No	Permitted	Required	Not permitted	Not required	Not deported

VI. Conclusion and Recommendations

Generally, Korea has a discriminating policy regarding HIV/AIDS and foreigners. Classifying HIV/AIDS into a legal communicable disease, it requires a presentation of HIV/AIDS test results from foreigners wanting a long-term stay before entering. In principle, foreigners with

HIV/AIDS cannot either enter or stay in Korea. If they are known infected with HIV/AIDS by any reason, they became to face an immediate deportation regardless of their sojourn statuses and purposes. For some foreigners, HIV/AIDS testing is a mandatory requirement while even legally staying. There are few countries in the OECD members, which have as many requirements and restrictions for foreigners

and migrants with HIV/AIDS as Korea.

There are several reasons that Korea needs to change the current HIV/AIDS policy on foreigners. First of all, although the Korean government insists that HIV-related travel restrictions are necessary to protect its citizens from the epidemic, the travel restrictions have no public health justification (UNAIDS/IOM, 2004). Unlike the other contagious diseases, HIV cannot be transmitted by the mere presence of a person with HIV in a country or by causal contact (through the air, from common vehicles such as food or water). Moreover, such restrictions may not only disregard human rights but also tend to increase the migrants' vulnerability to HIV/AIDS by driving them underground and discouraging them from coming forward for prevention information, testing, counseling and support in both source and destination countries.

Second, in the age of globalization, it is also increasing necessary for Korean people to travel and stay abroad for various reasons such as business, jobs, tour and family union. If Korea restricts the people of other nationalities regarding HIV/AIDS, then the other countries are very likely to impose the same restrictions on entering and staying of Korean people in their countries in the name of the principle of reciprocity. After all, the Korean government's strict HIV/AIDS policy on foreigners could result in

restriction on the mobility and migration of its people.

Korea is also a member of international society and it joins various international organizations. As long as it wants to maintain its status as a member of the international society it needs to meet international guidelines and to observe conventions that international organizations suggest. According to the *UNAIDS/IOM Statement on HIV/AIDS-Related Travel Restrictions* (UNAIDS/IOM, 2004) "HIV/AIDS should not be considered to be a condition that poses a threat to public health in relation to travel because HIV cannot be transmitted by casual contacts (through the air, or from common vehicles such as food and water) and any HIV testing related to entry and stay should be done voluntarily, on the basis of informed consent." *HIV/AIDS and Human Rights International Guidelines* (The World Health Organization, UNAIDS and the Office of the High Commissioner for Human Rights, 2003) recommends that "states should review and reform public health laws to ensure that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV/AIDS and that they are consistent with international human rights obligations" and that "states should take measures necessary to ensure for all persons, on a sustained and equal basis,

the availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support at both the domestic and international levels, with particular attention to vulnerable individuals and populations."

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ABSTRACT

Objectives: This study aims to identify gaps between knowledge regarding migration and the spread of HIV/AIDS, to improve understanding of migrants with HIV/AIDS and their human rights, and to make suggestions for Korean policy makers to reform laws and policies towards granting migrants with HIV/AIDS more human rights and access to treatment and care.

Methods: This study is based on an extensive literature review, questionnaire surveys and in-depth interviews from randomly selected 8 countries from 5 different continents: Japan from Asia; Australia from Oceania; Finland, Germany, Ireland and United Kingdom(UK) from Europe; and Canada and United States of America(USA) in North America.

Results: This study has found that Korea has a discriminating policy regarding HIV/AIDS and foreigners. Classifying HIV/AIDS into a legal communicable disease, it requires a presentation of HIV/AIDS test results from foreigners wanting a long-term stay before entering. In principle, foreigners with HIV/AIDS cannot either enter or stay in Korea. If they are known infected with HIV/AIDS by any reason, they became to face an immediate deportation regardless of their sojourn statuses and purposes.

Conclusion: With the results, this study suggests three reasons why Korean government needs to change the current HIV/AIDS policy on foreigners: 1) HIV-related travel restrictions have no public health justification, 2) its strict HIV/AIDS policy on foreigners could result in restriction on the mobility and migration of its people by the other countries, inversely, and 3) it needs to meet international guidelines and to observe conventions that international organizations suggest to maintain its status as a member of the international society.

Key Words: HIV/AIDS Policy, International Migrants, Migration