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Speak Up: Know & Get Your Rights

Executive summary

Human Rights and HIV: A Legal Mapping Study in Lebanon

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The current Lebanese laws are still unable to protect people living with HIV/AIDS, particularly in terms of stigma and discrimination which are the two major barriers hindering the access of PLWH to treatment and care and to their socio-economic rights. There is a close connection between human rights and HIV/AIDS and their impact on individuals and society. The disrespect for human rights leads in fact to an increase in the spread of HIV and its consequences. In this sense, the more these rights are strengthened and the greater the support for PLWH by the community, the better the response to HIV and its effects.

In order to define the shortcomings of the PLWH protection system in Lebanon, this report has conducted a legal survey of various local legislations and texts that directly or indirectly affect the situation and living conditions of PLWH. It was extremely important in this study to examine the results of the survey in the light of the International Law and comparative law to determine the status of Lebanon compared to international human rights and to benefit from the successful experiences in the response to HIV; we therefore chose the British system as a model to approach a number of issues. For more precise and practical recommendations, a number of panel discussions were held with PLWH on the one hand, and with key actors interested in responding to HIV/AIDS, such as the relevant ministries, a number of physicians and NGOs working in the field on the other hand.

Overview of the tools available in International Law to examine the relevance of the statutory laws

Although Lebanon has signed several international treaties and conventions on HIV/AIDS which provide basic tools to strengthen health, social and economic protection of PLWH and provide an additional legal framework particularly for the most marginalized groups, the country still lacks a multidimensional national policy to address stigma and discrimination related to HIV/AIDS. Lebanon should also promote a human rights-based approach, notably the three basic principles of HIV testing: approval of screening, pre- and post-examination counseling and confidentiality of the results.

Statutory laws related to HIV/AIDS and comparison with the British model

The report shows that the Lebanese system does not include a uniform legislation or a specific text governing HIV/AIDS. The Lebanese Constitution enshrines equality and rejects any discrimination among citizens, but there are no sentences or deterrent laws that establish the principle of non-discrimination. In fact, the various laws do not include any provision that penalizes discriminatory acts in labor, health or service provision, unlike the United Kingdom's law which criminalizes discrimination and holds perpetrators accountable through the Equality Act of 2010.



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Absence of protective legislations: discriminatory laws and practices at the health, economic and social levels

The absence of a deterrent law in Lebanon may often lead to denying employment opportunities and refusing to employ people for any reason like PLWH serological status, sexual orientation, gender identity, belonging to groups that are more vulnerable to social prejudices or even sectarian or political affiliation, etc. Moreover, there are many discriminatory laws and procedures, especially in the work field towards some of the existing or resident groups in Lebanon, notably foreign workers and migrant workers, especially domestic workers and artists. There are even laws criminalizing some communities such as LGBTI, drug users and sex workers who are subject to mandatory examinations violating the most basic human rights.

In another context, there are many issues related to healthcare and access to treatment. Many PLWH, especially those belonging to the most marginalized social groups, find it difficult to disclose their medical and serological status fearing denial of access to medical services when physicians, including dentists or medical staff like nurses and workers know that they are living with HIV/AIDS or even fearing downgrading treatment and lack of confidentiality. Although medical codes of ethics enshrine professional confidentiality and make it public order whereby physicians must abide by it (except in some cases), the stigmatization of certain groups, such as lesbians, gays and sex workers by the community and the medical staff, leads these groups to refrain from talking honestly to their physicians about their sexuality, thus depriving them of their right to sexual awareness, quality medical follow-up and access to health services. Apart from the professional and medical codes, the Lebanese law, especially the Penal Code, is devoid of provisions that penalize explicitly the disclosure of private information, hence increasing the marginalization and isolation of PLWH which further perpetuates the violation of their basic rights.

On the socio-economic level, PLWH, more particularly those who are the most marginalized, worry about ageing especially in terms of the care and social protection they will receive when they grow older. In fact, PLWH more than others, may not be able to form a family in the future for socio-cultural reasons among others. Furthermore, Lebanon does not have an old-age system or any provisions that enshrine the right to benefit from a pension scheme and social protection that provide health insurance and lifelong pension for older people, while there is an urgent need for effective and comprehensive socio-economic strategies that protect citizens and individuals. Apart from the end-of-service indemnity from the National Social Security Fund and other relevant institutions for some employees or workers, the current legislation lacks any articles relating to the right to social protection and retirement. Of course, this situation becomes even more difficult for those who belong to the most vulnerable groups such as sex workers or LGBTI, in the light of a weak economic system and a social system that discriminates and isolates them.



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Enacting specific laws involving many risks the most serious of which being criminalization

The enactment of a comprehensive national HIV response law could provide an opportunity to commit to human rights-based principles and approaches; however, international bodies consider that this involves a number of risks that need to be addressed. In fact, adopting or misunderstanding a weak national HIV law may establish a punitive or discriminatory approach that undermines public health. Therefore, a number of issues need to be considered when deciding whether HIV/AIDS should be addressed through a national law. The most prominent of these risks is sometimes the introduction of punitive provisions in the framework of policymaking or legislations that would impose severe penalties for non-disclosure of HIV to sexual partners or even special provisions criminalizing HIV exposure or transmission, and laws criminalizing sex, homosexuality or drug abuse in addition to compulsory screening of certain populations or industries.

Compulsory HIV testing and forced screening violate human rights to privacy, freedom and security. These measures also contribute to stigmatization and obstruction of access to prevention, treatment, care and support services, and further legitimize discriminatory attitudes and behavior. It is recognized that criminalizing HIV transmission contributes to stigmatizing the virus. The Joint United Nations Program on HIV/AIDS (UNAIDS) opposes the criminalization of HIV transmission and has called to end prosecutions that contribute to increasing stigma which generates serious public health consequences. The Global Commission on HIV and the Law recommended countries not to enact laws explicitly criminalizing HIV transmission, exposure or non-disclosure because invoking criminal laws in cases of sexual activity with consent among adults is disproportionate and does not contribute in promoting public health. It is in general more effective to address sexual behavior through voluntary awareness, counseling and promotion of health, rather than legal sanctions.

It stresses that in exceptional cases where a person intentionally causes the transmission of HIV, general laws such as aggravated assault offenses in penal codes should be implemented. The Joint United Nations Program on HIV/AIDS (UNAIDS) and the Global Commission on HIV and the Law have explicitly recommended that states pursue HIV transmission using general criminal law rather than HIV-specific laws. This is the case in Lebanon where there is no specific provision criminalizing the transmission of HIV/AIDS per se; however the Penal Code punishes homicide, causing death and attempted murder as well as harming others intentionally or as a result of negligence. Therefore, anyone who has been exposed to the transmission of the virus, and who can prove it of course, can invoke these texts and provisions.



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The most important recommendations of the report

Finally, the report recommends making concerted efforts from all stakeholders, including the government, parliament, ministries, especially the Ministries of Health, Labor and Education, NGOs and PLWH. The most prominent of these recommendations are:

- Conduct a legislative workshop to review the laws and regulations that are harming the response to HIV.
- Enact protectionist texts for PLWH covering all levels, notably health needs and psychosocial support, legal support, the right to equality and non-discrimination as well as protectionist texts for the most marginalized groups.
- Establish a legal structure or an official mechanism for human rights in relation to HIV. We recommend the establishment of a multidisciplinary body of stakeholders concerned with HIV, including the Ministry of Public Health, the Ministry of Labor, the Ministry of Social Affairs, the Ministry of State for Human Rights, the Ministry of Interior and the Ministry of Education, as well as non-governmental organizations and other support networks such as the media or representatives from the private sector in order to develop comprehensive multidisciplinary strategies and plans to address HIV and monitor their implementation while respecting human rights. It is possible to consider whether this body should address several similar health conditions or diseases resulting in similar violations such as discrimination, stigmatization and others.
- The Ministry of Labor should respect the right of PLWH to cross-border freedom of movement and thus abolish mandatory involuntary examinations in order to obtain work permits, especially for those most marginalized such as migrant workers and domestic workers in accordance with the principles of human rights.
- Formulate guidance on the confidential and voluntary nature of HIV and AIDS testing, respect for private life and privacy of individuals.
- Formulate common approaches to HIV care, prevention and treatment in accordance with global health standards.
- Hospitals should conduct training or awareness-raising workshops for physicians, nurses and health workers on HIV, enhance their skills in dealing with PLWH and train them on psychosocial assessment skills.
- Hospitals and their health staff should improve their implementation of global standards for basic prevention and protection against disease and virus transmission.
- Work to increase public and community awareness to reduce discrimination and stigmatization towards PLWH.

Finally, the urgent recommendation is to empower PLWH themselves by building their capacities and educating them on their rights, in order to create a lobbying force or serious impact groups of PLWH in Lebanon in order to follow-up on all these demands and rights.