HIV/AIDS, Human Rights, and structural discrimination: elucidating relationships, enabling resistance

DOI: 10.55905/rcssv13n1-009

Received on: Dec 04th, 2023
Accepted on: Jan 11th, 2024

Vinicius Valentin Raduan Miguel
Doctor in Political Science
Institution: Universidade Federal de Rondônia
Address: UNIR. Av. Pres. Dutra, 2965, Olaria, Porto Velho - RO, CEP: 76801-058
E-mail: viniciusmiguel@unir.br

ABSTRACT
This study focuses on the interrelations between HIV/AIDS, human rights, and structural discrimination. Specifically, it examines the restrictions imposed on individuals living with HIV/AIDS and their denial of access to public service positions in Brazil. Additionally, it analyses these restrictions in terms of their compliance with human rights norms and practices. Objective To explore the relationships between HIV/AIDS, human rights, and structural discrimination by examining the denial of access to public service positions in Brazil due to discrimination against individuals living with HIV/AIDS. Method An empirical research was conducted employing a human rights approach, taking into account cases of restrictions in public service in Brazil. Subsequently, an argument was articulated that enables resistance through a discourse centered on human dignity. Conclusion There is an ongoing and unresolved process of repeated and systematic human rights violations against individuals living with HIV/AIDS. The violations perpetrated by the State at municipal, state, and federal levels infringe upon fundamental human rights to citizenship, equality, privacy and intimacy, the right to work, and the right to non-discrimination.

Keywords: HIV/AIDS, human rights and health, structural discrimination.

1 PRESENTATION

With the emergence of the HIV/AIDS epidemic, a pandemic of discrimination has arisen, manifesting in a systemic, structural model perpetuating institutional violence. Discrimination is significant and identified as the primary obstacle to addressing health situations involving HIV/AIDS (CARR et al., 2010; ELLIOTT et al., 2009). Moreover, discrimination is counterproductive and must be combated as an integral part of a philosophy for the prevention and control of the HIV/AIDS epidemic (MANN, 1996).

The practices of discrimination, exclusion, prejudice, and violence - from the symbolic to the concrete and material - lead individuals living with HIV to feelings of
guilt and shame, negatively impacting their self-image, mental health, and adherence to treatment.

Post-diagnosis fears (and beyond) often include the loss of significant social and affective relationships and the fear of job loss, affecting quality of life and disrupting income sources (Carr et al., 2010; Castro and Farmer, 2005; Parker and Aggelton, 2013).

This culture of discrimination is perverse in structural and systemic terms, promoting actions that reject awareness campaigns, dismiss educational efforts, and render invisible those living with HIV in public policies.

The legal, medical-clinical, and mental health multidisciplinary teams must confront the dimension and importance of stigma, discrimination, and prejudice in responses to HIV/AIDS and viral Hepatitis. Socio-legal, medical-hospital, and public health interventions need to address the issue in its multidimensionality (Stangl et al., 2013).

Here, I do not differentiate between the logic of discrimination, exclusion, prejudice, violence, and stigma, considering them as interconnected and inseparable ideas and practices. To articulate all forms of discrimination is an impossible task. However, they accumulate, as exemplified by, but not limited to:

a) Prejudices regarding notions of unfitness and disability for work among individuals living with HIV/AIDS, impeding their employment access or leading to their dismissal; b) The perception of infection as a punishment for sinful behavior, associating HIV/AIDS (and other sexually transmitted infections) with homoerotic sexual contact, sex work, or the use of injectable drugs, directing hatred, negative judgments, and other forms of depreciation towards those living with HIV; c) The stigma of being a 'walking risk', with the paranoid ideation that an individual with HIV will intentionally and consciously seek to infect others; d) The reinforcement and reiteration of transversalities and intersectionalities of discrimination against vulnerable situations, such as against homeless people, those in conflict with the law and in incarceration, sex workers, etc.

It is unnecessary to recall the extensive literature produced on forms of exclusion and segregation with individuals experiencing psychological suffering and mental illness, as well as the asylum models of compulsory internment thought for those with tuberculosis or leprosy.

All these forms of discrimination, based on regulations of body control and repression, are accentuated and reactalized in the case of HIV/AIDS, especially in its
persistent targeting of LGBTQI+ individuals, and notably, gay men, reinforcing homophobia.

Brazil, in the repertoire of States, as will be further exposed in this work, continues to promote acts of discrimination against individuals with HIV/AIDS in the selection and admission to public service exams, preventing such individuals from becoming public servants, whether civil or military.

This does not eliminate the need for further deepening and reflection on other aspects, such as the right to information, data protection as a safeguard of intimacy, fundamental social rights to health, including access to diagnosis, medications, medical and hospital follow-ups, and other directly or indirectly related aspects. Recall the precepts that these rights are inseparable, indivisible, and interdependent.

2 PATHS AND REPERCUSSIONS OF HIV/AIDS STRUGGLES FOR HUMAN RIGHTS

Discussing HIV/AIDS in epidemiological terms conventionally involved a discourse on risk groups. Initially referencing risk groups meant addressing those in multiple vulnerabilities, directly linked to homoaffectional individuals, sex workers, people with alcohol or drug dependencies, hemophiliacs, and others, particularly in large urban centers (Cordeiro and Pinto, 2008).

These two - risk groups and groups of people in vulnerabilities - already attracted discrimination and prejudice, instead of the necessary protection and promotion of human rights, which should be affirmed, guaranteed, and actualized. The dimension of a human rights theory lies precisely in this field of protecting and promoting the rights of vulnerable people. This relationship is direct and immediate between the ideas.

It is worth noting that some battles in the field and movement of HIV/AIDS have advanced other rights, tracing a network of alliances of political actors and intersectionality of confrontations.

The judicialization of health in Brazil is considered to have been inaugurated (or, at least, intensified) from the distributive dispute over access to medications and treatments for HIV/AIDS. As noted by Vaccaro, Vasconcelos, and Borges, 2017, p. 200, “the judicialization [litigative actions for AIDS treatments] raised awareness of health as a right and gave visibility to demands that could be suffocated in the merely political arena.”
Another chapter less studied in Brazilian scientific literature, whether in the legal, political science, or medical fields, is how the social and economic repercussions of the HIV/AIDS epidemic hastened mobilizations and arenas for breaking drug patents, with impacts in areas of intellectual property.

Another point of irradiation nucleated in the demands of HIV/AIDS and with repercussions for Human Rights, in the Brazilian case, were civil/family and succession issues arising from the deaths of people with HIV/AIDS. For instance, the recognition of stable unions of LGBTQI+ individuals, including in the event of the death of one of the partners, the need for consent definition for or during hospitalizations, and related issues (decisions by the STF in ADI No. 4277 and ADPF No. 132, in 2011).

As indicated by Pereira:

On the other hand, the epidemic contributed to the search for recognition of hereditary rights of same-sex couples, as surviving partners - often also ill or HIV carriers - needed to seek these rights for housing maintenance, subsistence, or to have financial resources to afford their medical treatment. Such pursuit reinforced the movement for the recognition of unions and marriages between same-sex individuals, which, in turn, led to greater visibility, and importantly, in a positive manner, of non-heterosexual sexuality experiences, to the point of even exposing the reality of LGBTI refugees (PEREIRA, 2017, p. 263).

Another field that saw advances in the legal-political sphere were the judicialized demands regarding the civil liability of the State to compensate individuals who were infected in blood transfusions. Thus, the accountability, especially of the public power for errors and failures in service provision, had advances and jurisprudential reconstructions from the demands of people with HIV/AIDS.

Finally, another perspective will still be necessary for the achievements that were promoted from the labor of lawyers to have recognized pension rights against the permanent denials of the Public Power, such as retirement for the surviving partner, with the recognition of post-mortem stable union of the partner due to HIV/AIDS or simultaneous and opportunistic occurrences.

It is also worth recalling, in 2017, the STF's overturning of the ban on LGBTQI+ individuals from donating blood, a restriction that was maintained based on the consideration that individuals from the said group were at risk for HIV/AIDS and hepatitis. The decision occurred in ADI No. 5543 and was reported by Minister Edson Fachin, who, at the time, pointed out that such restrictions, by the Public Power,
maintained discriminatory treatment and were offensive to the principles of dignity, equality, and non-discrimination.

3 STUDY RELEVANCE: THE RELATIONSHIP BETWEEN THE STATE, HUMAN RIGHTS, AND HIV/AIDS

While studies on HIV/AIDS with a focus on discrimination or, more commonly, on the notion of stigma are well-known, the literature lacks exploration of the explicit exclusion of individuals with HIV/AIDS from public positions and their barred access.

Contrarily, there is often a discourse of an apparent linear advancement in the promotion of rights for people with HIV/AIDS by the Brazilian state, which is only partially true.

The rationale for the argument developed here concerns the diffuse and collective rights of all individuals with HIV/AIDS in the Brazilian state, who are prohibited from being admitted as public servants. This constitutes an affront to the principles of equality, the right to work, non-discrimination, and accessibility, all enshrined in the Statute of the Organization of American States (OAS), its Charter of Human Rights, and the Brazilian Federal Constitution.

In Brazil, admission to public service is through a process called public examination, which may involve various stages such as written and oral tests, interviews, and curriculum analysis, leading to the approval of a citizen for public service.

However, in recent years, numerous public examination announcements have included rules designed to prevent individuals with HIV/AIDS, the focus of this argument, and/or viral Hepatitis, which is not the focus of this analysis, from being admitted.

In practice, this operates as a mechanism for the extirpation and segregation of bodies deemed ill, with a presumption of absolute incapacity for work and, further, for the exercise of citizenship. It creates a device of exclusions where people with HIV/AIDS are treated as a subcategory of citizenship, with lesser entitlement to rights, such as occupying public positions.

It is noted that the Brazilian state itself has norms that criminalize discrimination, as stipulated in Law 12.984, dated June 2, 2014 (Defining the crime of discrimination against carriers of the human immunodeficiency virus (HIV) and people with AIDS).
However, the same penal norm is denied efficacy and becomes an unapplied letter to the
discriminations imposed by the Public Power.

This recreates the category of the abnormal, the lepers, or the insane, to be
segregated and removed from public spaces. Some examples of competitions that
imposed restrictions on people include, but are not limited to, the following:

Year State Competition 2022 State of Amazonas Military Police 2022 State of
Goiás Military Police 2022 State of Mato Grosso Civil Police, Military Police, Fire
Brigade 2022 State of Rondônia Fire Brigade

In previous years, numerous editorial devices with prohibitions on individuals
with HIV/AIDS and/or Hepatitis were found, such as:

Year, State (subnational Federation unit), nature of the administrative institution:
2010 State of Alagoas Military Police, 2015 State of Minas Gerais Military Police, 2018
State of Sergipe Fire Brigade and Military Police, 2019 Federal Union, Brazilian Air
Force Officer of the Brazilian Air Force, 2020 Municipality of Cariacica (ES) Municipal
Guard.

Thus, a widespread pattern of structural discrimination is evident, restricting the
rights of individuals in the mentioned conditions. There is a discriminatory, prejudiced,
and unconstitutional character (by the subsequent barring of access to public positions for
individuals with Hepatitis and/or HIV/AIDS).

The mere mandatory requirement of serology and viral typing tests already
implies a violation of the right to intimacy and privacy. A citizen has the right to keep
their condition private. Here, a disrespectful treatment of non-recognition is imposed,
while the mandate of the Democratic State is accessibility, inclusion, and non-
discrimination of groups of people in conditions of multiple vulnerabilities, even if due
to acquired, temporary or not, illnesses.

Is there an overt assumption of treatment that infringes on equality? Are those
with positive tests lesser citizens? Are they less entitled to fundamental rights of access
to public positions? This is an absurd stigmatization, making a connection between the
disease and incapacity for work.

4 INTERNATIONAL HUMAN RIGHTS LAW: VIOLATED PROVISIONS

The interplay between the State, Human Rights, and HIV/AIDS is not commonly
examined. The State is bound by Human Rights, imposing a triple obligation to respect,
protect, and guarantee them. These are determinations and obligations to the Public Power in favor of individuals, communities, and societies.

In this renowned format, International Human Rights Law is nothing more than a set of practices, treaties, and conventions from an international matrix, namely, multilateral or transnational organizations, that bind the State. These are self-imposed limits by States and, at times, as in the case of Brazilian regulations, incorporated through special legislative processes into the internal normative system.

Across scales and multidimensions, International Human Rights Law intertwines with national Constitutional Law, expanding hypotheses and interpretations, always in favor of the subjects of rights. As jurist André de Carvalho Ramos points out, "in the case of international human rights treaties, interpretation must contribute to increasing the protection given to the human being and to the full applicability of the conventional provisions" (RAMOS, 2014, p. 107).

Given this, there is a duty of the Brazilian State and its subnational governments to observe international human rights norms. Unequal, discriminatory, or stigmatizing treatments against individuals with HIV/AIDS are prohibited (MALUWA, AGGLETON, and PARKER, 2002).

With restrictions that prevent access to public positions, the mandate to combat discrimination and intolerance in all its individual, structural, and institutional manifestations, including against stigmatized infectious conditions, genetic characteristics, or disability (Inter-American Convention against all forms of Discrimination and Intolerance), is violated.

Similarly, in this case, practices of exclusion and restriction fit within the prohibitions of the OAS convention: "differentiation, exclusion, or restriction based on disability, history of disability, consequence of previous disability, or perception of present or past disability, which has the effect or purpose of impeding or nullifying the recognition, enjoyment, or exercise by persons with disabilities of their human rights and fundamental freedoms.", as per the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities and, broadly, the provisions of the United Nations Declaration on the Rights of Persons with Disabilities.

The UN Special Session on HIV and AIDS in 2003 already appealed for States to promote legislation, regulations, and other measures to eliminate all forms of
discrimination against HIV/AIDS and ensure the full enjoyment of human rights, particularly access to employment (among others).

Documentation from the High Commissioner for Human Rights and the UN Programme on HIV/AIDS, with guideline 05, brought the recommendation that States should review and reinforce legislation to prevent discrimination, both in the private and public sectors.

Moreover, the very conception of the Federal Constitution, the highest norm of the national State, points to the dictates of citizenship and human dignity, which are totally incompatible with practices of segregation, exclusion, and barring of broad access to public positions. Discriminatory and stigmatizing practices and behaviors need to be abolished from the Brazilian State as they collide with the constitutional text.

5 INEFFECTIVENESS OF CIVIL SOCIETY AND EXTERNAL CONTROL BODIES' ATTEMPTS TO END DISCRIMINATIONS

Specific initiatives motivated by the Public Prosecutor's Office, Public Defender's Offices, and/or human rights NGOs have attempted to reverse the discriminatory requirements of public examinations that lead to the exclusion of individuals with HIV/AIDS and/or Hepatitis.

However, a) not all measures of external and/or social control produce results; b) many only have an effect years later, rendering the measure futile; and/or c) the measures have proven ineffective against structural discrimination, widespread across various subnational units of the State party, as demonstrated.

Numerous public examinations, dispersed and fragmented across the political territory, continue to impose exclusionary rules. One announcement is tainted, and the same federal state later launches a new examination with identical restrictions.

It is worth noting that, between 2018 and 2022, a series of political interventions dismantled and weakened national HIV/AIDS prevention mechanisms. The freezing of public spending and a political discourse against science began to haunt health policy.

There are reports of underreporting in the Notifiable Diseases Information System, dismantling of the Department of Sexually Transmitted Infections – STI HIV/AIDS and Viral Hepatitis of the Ministry of Health, and the extinction of the Secretary of Continuing Education, Literacy, Diversity, and Inclusion – SECADI (Abrasco, 2019).
A reactionary tide, averse to science, with a denialist, anti-vaccine, and discriminatory agenda in its conception and actions on issues of gender, sexuality, and education and prevention policies, also threatens the current practices of governmental bodies and leads to timid movements of the Judiciary to enforce human rights of people living with HIV (Almeida et al., 2022).

In this vein, an obscurantist discourse, with moralistic and anti-scientific judgments, began to ban and impose censorship on celebrated agendas of sexual diversity, harm reduction, gender, and racism, rekindling the stigma of HIV/AIDS (Cazeiro et al., 2022).

Moreover, even with multiple actions by local actors, whether from civil society or external control bodies, these movements and dynamics of resistance to discrimination have proven ineffective and not lasting, with repeated non-compliance by the Public Power.

6 FINAL CONSIDERATIONS

Thus, we are confronted with a repertoire of practices that directly attack the very foundation of human dignity. Fundamental human rights to citizenship, equality, privacy and intimacy, as well as to work and non-discrimination, are repeatedly and systematically violated in various federal units and by the Federal Union itself.

The direct discrimination highlighted here must be unequivocally rejected. These (and other) public examinations cannot be used with requirements that infringe upon the intimacy and privacy of individual citizens. Nor should norms (legal or established by announcements) that foster inequality be accepted.

At the time, professor and now Justice of the Brazilian Supreme Federal Court (STF), Edson Fachin, aptly established the anti-discriminatory nature of the law:

"At no time can the Law close itself off like a fortress to repudiate or discriminate. The medieval legal perspective must give way to a more comprehensive view of reality, examining and debating the various legal aspects that emerge from partnerships of coexistence and affection. This is a starting point for unraveling some 'knots' that ignore the facts and are unaware of the sense of refuge primarily qualified by the socio-affective commitment" (FACHIN, 1996, p. 53).

These are the foundations that lead to the recognition of a plethora of acts that constitute practices of structural discrimination and violation of Human Rights. Ultimately, the Brazilian State must cease, in all federal dimensions, whether by the
Federal Union, the States, or municipalities, discriminatory practices and the barring of individuals with HIV/AIDS from public positions, declaring such practice a violation of the aforementioned Human Rights Conventions.

Additionally, it would be beneficial for the Brazilian State to enact a federal norm expressly prohibiting the Federal Union and its subnational governments from restricting the admission of individuals with HIV/AIDS to public service positions. We must bring to life the precepts of the pacts defending human dignity: ensuring maximum protection and greater effectiveness against any form of discrimination.
REFERENCES


