



# Princípios e Fundamentos das Ciências da Saúde 2

VANESSA LIMA GONÇALVES TORRES  
(Organizadora)



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Vanessa Lima Gonçalves Torres  
(Organizadora)

# **Princípios e Fundamentos das Ciências da Saúde 2**

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## APRESENTAÇÃO

A Organização mundial da Saúde define que saúde é um estado do completo bem-estar físico, mental e social, e não apenas a ausência de doenças. Atualmente, diversas Campanhas Nacionais estão direcionadas ao atendimento integral deste conceito. Para isto, muitos profissionais são envolvidos: médicos, farmacêuticos, dentistas, psicólogos, fisioterapeutas, enfermeiros, biólogos, biomédicos, educadores físicos. Com uma dinâmica muito grande, a área da saúde exige destes profissionais uma constante atualização de conhecimentos pois a cada ano surgem novas formas de diagnóstico, tratamentos, medicamentos, identificação de estruturas microscópicas e químicas entre outros elementos.

A obra “Princípios e Fundamentos das Ciências da Saúde” aborda uma série de livros de publicação da Atena Editora, dividido em II volumes, com o objetivo de apresentar os novos conhecimentos, estudos e relatos nas áreas da Ciência e da Saúde, para os estudiosos e estudantes. Entre os capítulos a abrangência da área fica evidente quando sobre o mesmo assunto temos olhares diferentes por profissionais especializados, a interdisciplinariedade, a tecnologia e o desenvolvimento de técnicas. Os trabalhos apresentados conduzem o leitor a diferentes caminhos de conhecimentos, reflexões e atualização. Boa leitura e muitos conhecimentos!

Vanessa Lima Gonçalves Torres

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**ABSTRACT:** This article comes from a bibliographical analysis through books, articles, newspapers, statistics as well as all types of materials found on the Internet. Its objectives are to inform the main characteristics about the correlation between the HIV / AIDS epidemic and its social, legal and political consequences in our contemporary society. It investigates some legislation in certain countries, which often criminalize the virus carrier. It also analyzes the main social impacts created by the virus and verifies the current perception about the epidemic in sex workers. The scientific justification is given by the legal contribution that this theme provides. In addition, this article seeks to intensify our critical sense about this incurable disease.

**KEYWORDS:** Discrimination. Health. Human Rights. Law.

**RESUMO:** Este artigo surge de uma análise bibliográfica através de livros, artigos, jornais, estatísticas e todos os tipos de materiais encontrados na Internet. Seus objetivos são informar as principais características sobre a correlação entre a epidemia de HIV / AIDS e suas consequências sociais, legais e políticas na nossa sociedade contemporânea. Averigua algumas legislações em determinados países, as quais, muitas vezes, criminalizam o portador do vírus. Analisa, de igual modo, os principais impactos sociais criados pelo vírus e, verifica a atual percepção a respeito da epidemia nos profissionais do sexo. A justificativa científica se dá pela contribuição jurídica que o tema proporciona. Ademais, este artigo procura intensificar nosso senso crítico sobre essa doença incurável.

**PALAVRAS-CHAVE:** Discriminação. Saúde. Direitos humanos. Lei.

### 1 | INTRODUCTION

Once diagnosed, the carrier of the virus often lose the family's support implying many times in social issues, as for instance, fired from work, discrimination etc. In other words, beyond supporting the entire social stigma and

consequently it unbalances more and more a life of the infected person (THE AGE OF AIDS, n.p.).

It seems really hard for lots of people to understand that it is just a disease. If, for example, you go to the hospital and are diagnosed with cancer, people do not discriminate you because you have cancer. The same way, if you are diagnosed with asthma that it is also a disease incurable but just has treatment, people also do not condemn you by having asthma. If you have diabetes, people do not discriminate you because you've been eating so much sugar. So, what's so wrong with HIV/AIDS?

The stigma is due to that it is sexually transmitted, being that sex was and continues being a sort of taboo to the eyes of society and also due to the first information and researches that were made and linked the homosexual groups, and as everybody knows homosexuality is also stigmatized. So, those would be the two main points that unchained such discrimination about the disease.

Thus, as explains Montesquieu (2001, p. 322, emphasis added): "Mankind are influenced by various causes: by the climate, by the religion, by the laws, by the maxims of government, by precedents, morals, and customs; whence is formed a general spirit of nations."

Then, the scientific community realized that it was not only about a disease but it also brought and provoked a social disorder creating all kinds of reactions inside the society.

All the problems related to AIDS have shown how much a disease can affect not only the economic and social development of one nation but even also the entire world. It was estimated that at the end of 2010 there were 34 million of people living with HIV and millions more at risk of infection. Furthermore, almost 7.400 new people are infected each day (GLOBAL COMMISSION ON HIV AND THE LAW, 2012). Therefore, it makes us think a little bit more about how this disease has spread over the world in such a way that every community in every country it is possible to find people living with HIV.

Nowadays, it is estimated that about 3.4 millions of children under the age of 15 years old are living with HIV/AIDS. Children are among the most affected by the HIV virus due to failures by the mechanisms of protection of their human rights (FXB CENTER FOR HEALTH AND HUMAN RIGHTS AND OPEN SOCIETY FOUNDATIONS, 2013).

According to UNAIDS (2007, p. 7)

According to the Convention on the Rights of the Child and its optional protocols, children have many of the rights of adults in addition to particular rights for children that are relevant in relation to HIV and AIDS. Children have the right to freedom from trafficking, prostitution, sexual exploitation and sexual abuse; the right to seek, receive and impart information on HIV; and the right to special protection and assistance if deprived of their family environment. They also have the right to education, the right to health and the right to inherit property. The right to special protection and assistance if deprived of their family environment protects children if they are orphaned by AIDS. And the right of children to be actors in their own development and to express their opinions empowers them to be involved in the

design and implementation of HIV-related programmes for children. However, many children and young people have very little access to HIV prevention information, education and services, and little access to paediatric treatment if infected with HIV.

These numbers are creepy, they warn us that something is not right and so we have to do something in a try to stop it. However, of course, the States and the law have the power and responsibility to help to fight against the spread of the virus.

## 2 | THE SOCIAL EFFECTS CREATED BY THE VIRUS

The social wounds caused by the epidemic left trails of disrespect of human rights and demonstrated a huge egoism, preconception and discrimination from our society. The affected people frequently tend to bear the social stigma of the disease. Many of them are based on the religious hypothesis that the epidemic is the result of the promiscuity and therefore, this would be one of the plagues sent by God because of the disrespect of His commandments.

Others, however, affirm that the spread of the epidemic is essentially result form the gay community activities, saying that this is a “gay disease”, demonstrating their preconception about the subject. In one interview published and written by Lawson et al (2006, p. 22), a Jamaican man HIV positive said that:

in a sense the community doesn't care. They don't care. First of all, AIDS is a gay man disease. That's what they say. ...It's not talked about. And, and when you do talk about it, you hear, 'Well, if people were doing what they were supposed to do, they wouldn't get HIV'. You know? And, 'they're nasty, and they must be gay.'

This demonstrates that the conception that prevails is that HIV/AIDS just infects those people who are acting against the cultures and therefore must bear the weight of their failures.

Another problem is discrimination, especially concerning racism, prevailing the idea that it's a disease of black/African descendants, deriving from the fact that the virus came up and developed itself on the African continent.

A Kenyan woman in one interview said that “[...] the nurse at the [HIV] clinic, she made a very sarcastic statement. She said she always tells her daughters that everybody from Africa is HIV positive [...]” (LAWSON et al., 2006, p. 29,). Thus, we may realize the extreme perception that makes some people believe that black/african descendants are so discriminated.

The discrimination against those people who live with HIV/AIDS is a truly violation to the human rights and it's absolutely necessary to find efficient measures to cope with this problem.

The discrimination also brings negative consequences, because it increases the fear from the virus and vulnerability. In this sense, feeling fearful of being stigmatized by the people around, some people tend to trustless and ashamed, so they usually don't seek for help and don't submit themselves to the exam to diagnose the presence

of the virus on their organisms.

It is interesting to note that our society discriminates everything, that is what society does the best and the most. If you are fat or thin you accept the risk to be the reason of a joke in some point of your life; if you are financially poor you may be also social excluded and discriminated; if you have some kind of physical or mental disability there is always somebody that comes and makes offences comments; at the same way if you use to participate of some religion or even if you are an atheist you're probably going to be discriminate; if you are a sex worker; if you are a homosexual; if you are a woman you are considered inferior and suffer from violence and gender inequality; the color of your skin (in case if you are black); if you are indigenous; society discriminate even the way you walk and the way you talk; the way you look, if you are hairy or bald; if you are short or tall; the kind of clothes that you are wearing etc. There is always something that society is looking for to discriminate. It is very difficult to try to comprehend this phenomenon just because the society wants the perfection; however, the society itself is not perfect at all. In other words, nobody is perfect to have the power to make prejudgments, if it wasn't true we would be called gods and not simple human beings.

So, it is much easier to discriminate instead of helping your fellow. It could be legitimate to say that it just happens because of the cultural, historical, traditional, economical, social and religious aspects. However, it is not acceptable and legitimated at all use those arguments to violate people's rights, to kill, to destroy lives. Those aspects do not give anyone the power and the right to judge their fellow.

So now, let's be serious, if we were more intelligent than the animals we wouldn't kill anyone, we wouldn't have made so many wars on the course of the history of the humanity, and we wouldn't discriminate anybody. So how can we be called rational beings? As a matter of fact, it looks very irrational.

As used to say Thomas Hobbes (apud ROSSELO, 2016, p. 1): "[...] man is a wolf to man [...]". Notwithstanding the man has a great potential to do what is considered good and what is considered bad as well.

Immanuel Kant also says that in order to have a sublime organization among the citizens the State should be dwelled by angels instead of men, because men have their selfish inclinations which indeed makes very difficult the coexistence between them (KANT, 1795).

It seems really impossible to change this scenario. It is a process that takes time, time to deconstruct, time to create conciseness, and the only and the best weapon available and really capable to do that it is called education. Equality and non-discrimination are the basis of human rights.

Thus, "[...] the discrimination promotes self-stigmatization and makes harder to people realize themselves as subjects of rights." (COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS, p. 7, 2012, our translation).

According to the *Constitución Política de Los Estados Unidos Mexicanos de 1917*,

with the constitutional reform of 2011, on its first article, paragraph 3° (our translation), it says that:

all authorities in the framework of its powers, has the obligation to promote, respect, protect and guarantee the human rights in accordance with the principles of universality, interdependence, indivisibility and progressiveness. Consequently, the State must prevent, investigate, punish and remedy the violations of the human rights, inside the terms establish by the law.

On the last three decades, the humanity has reunited by the cause of Aids. People from all over the world have overcome the social and economic barriers in a try to combat the Aids. Kenneth Cole highlights that “the statistic of deaths and the positive diagnoses of people with the virus are growing, except the number of people cured which is still zero.” (HOUSE OF NUMBERS FULL DOCUMENTARY, 2012).

## 2.1 The Relation of HIV/AIDS And The Law

According to the Global Commission on HIV and the Law (2012, p. 11):

The law alone cannot stop AIDS. Nor can the law alone be blamed when HIV responses are inadequate. But the legal environment can play a powerful role in the well-being of people living with HIV and those vulnerable to HIV. Good laws, fully resourced and rigorously enforced, can widen access to prevention and health care services, improve the quality of treatment, enhance social support for people affected by the epidemic, protect human rights that are vital to survival and save the public money.

The relation between HIV/AIDS and the law is very large and runs through many spheres. In more than 31 countries, there exists criminalization for the transmission of the virus. Others countries dispose of criminal laws to prosecute and punish individuals for the transmission. Furthermore, many others countries are still debating this issue in a try to develop more criminal types against HIV/AIDS (OGDEN; WARNER; GUPTA, 2009).

By this context,

The criminalization of HIV transmission interferes with access to health services, often by the groups that are most at risk for HIV transmission. It also serves to further deepen stigmatization among groups that are already criminalized, including sex workers, injection drug users and people from sexually diverse populations. It drives these activities underground and makes it more difficult for health workers to reach these populations with testing, treatment and prevention services. Moreover, there is no data to show that broad application of criminal law to HIV transmission achieves criminal justice objectives [...]. (OGDEN; WARNER; GUPTA, 2009, p. 20, 2009).

In this sense, the States should legislate by the human rights' sphere in a try to protect the individual HIV positive, rethinking and developing new laws where would be possible that those people infected by the HIV virus could participate during the process of development of the laws. Thus, they could express democratically their thoughts and opinions. In other words, instead of criminalize the HIV infected individual, the States have to lead the efforts in politics of prevention to the disease, giving information to

the public sphere, guaranteeing all the necessary support and equal rights specially to those people who are more poor in economic and social terms, and finally, increasing the access to tests and treatment.

Yet, the justification for the criminalization of the HIV/AIDS transmission is precisely because of the will to transmit the virus, in other words, the will that comes consciously and maliciously in transmitting the virus to cause damage to someone. However, it's evidentially that cases like this are very rare, so instead of developing laws criminalizing HIV, would be more intelligent to utilize the criminal laws already existent that regulate the willful transmission of diseases.

By this bias, one of the most common reasons that the legislators manifest their opinions in favor of the criminalization is because this behavior is considered morally wrong and hurtful and therefore it must be punished.

Although, the criminalization of HIV transmission is not justify, just in some very specific cases. Anyway, we can't utilize the law by an abusive bias. Thus, "[...] as defends the theory of law, criminal proceedings should be the last resort and the response to HIV / AIDS must be built from the economic and social policies" (ESPAÑA, 2010, p. 2, our translation). Still, by this conception, as Rockefeller (n.d., n.p.) affirms "[...] the law was made for man and not man made for the law [...]".

At the same way there're not clear evidences that the criminalization reduced the virus propagation. However, when the criminal law is made, for many times it's not known the conditions of a virus carrier, and also sometimes the legislators don't fully comprehend how the virus can be transmitted. Other times, the individual accept to take the risk but before it he/she takes measures such as the utilization of the preservatives in a try to reduce the risk.

In some cases, the infected person agrees mutually with the partner and also warns about the possibility of the transmission. In those kinds of hypotheses, instead of creating more criminal laws, the States should develop laws for protection against discrimination, build up politics of prevention etc. (JÜRGENS et al., 2008).

However, first of all, we have to understand that the law always has two different sides. On the first, the law has the role of protecting people and also serves as an immediate way of coping with the new situations that are coming up. Now, on the other side, the law appears as an instrument that can promote discrimination and diminish individual's rights.

In this context, the criminalization of HIV transmission has a positive and negative aspect. This measure comes up to serve as an immediate public health concern. However, the long use of its adoption can affect considerably other rights creating, for example, inequality, discrimination, stigmatization, isolation, fear etc.

So, it is certainly easy to understand that the law has the role to protect the dignity of all those people who are living with HIV, treating them equality in terms of rights and guaranteeing them fully access to treatment.

According to Бородкина «[Borodkina]» ( 2016, p. 153, our translation):

[...] The spread of HIV / AIDS threatens the fundamental value - human life, in addition, the epidemic has a negative impact on the demographic and economic aspects. In connection with the epidemic, many legal and social norms required a revision (for example, in relation SRI groups such as homosexuals, drug users, with regard to sex education, including school). State and the society as a whole are responsible for the spread of HIV infectious, especially for the appearance of children with HIV positive status, and in this regard, of course, it should be a sense of collective guilt, especially on the state responsible for the epidemic.

Brazil was the first country to recognize the treatment and also guarantee the antiretroviral drug for those people who were in need of it. All this because the Federal Constitution of Brazil from 1988 guarantees health care for everybody. And in 1996 was adopted in Brazil a law by the number 9313 which guarantees affordable access to HIV treatment.

However, not all states have the power to guarantee a complete treatment and provide all the medications against the virus. Nevertheless, there is a hope at final of the tunnel, in other words, the human rights law can help states to respond appropriately to the epidemic by formulating laws and policies that can cooperate to the public health objectives. At the other hand, human rights are the basis tools to force the governments to take actions when public health polices violate the rights of every HIV infected person (PETTERSON; LONDO, 2002).

## 2.2 HIV/AIDS and its social Discrimination Against Human Rights

When we investigate this subject we firstly have to make a distinction over this two conceptions. The first refers to HIV which means human immunodeficiency virus which is responsible for the destruction of the immunologic system, in other words, it's the causer agent of the disease. The second refers to the acronym AIDS, originated from the scientific name in the English language that means acquired immunological deficiency syndrome (acquired immunodeficiency syndrome). This was how the disease was classified at the time of its discovery, because the disease is characterized by several symptoms, affecting the immune system of the carrier and it is contracted through blood contagion and not hereditarily.

Therefore it understood that even between those two different conceptions we are not able to separate the devastating effect that happens on the social environment with those individuals that are affected by this infection. And so they still have to cope with the social and human discrimination which in most of the times doesn't help with the moral rehabilitation. Thus, what is much needed now is to improve the education and knowledge about the virus and how it acts on our immunological system.

The word *preconception* is previous from the human formation and so we want to bring to the debate the respect for the life, citizenship and human rights. We also have to put ourselves on the other person's place.

When the virus appeared for the first time on the world, it really provoked great fear on the population and brought discrimination against those people who were infected. The first victims were the homosexual group. Thereafter, the propagation of

the virus extended throughout the world on those groups already discriminated such as prostitutes, drug users, homeless people or anybody who adapted a considered inadequate behavior in front of the social standards of the modern society. After that, what happened was that it made those groups a big target for discriminations and all kinds of violence.

With this strong association of these situations with promiscuity, AIDS since its inception has always been associated with death and fatality. Through these associations, the HIV/AIDS carrier has its citizenship devastated, denied and socially excluded, sometimes even by their own family. In this context of discrimination and prejudice, the human rights emerge bringing minimal and fundamental rights. According to Unaid's Brazil (2016, n. p., our translation)

Stigma and discrimination are among the major obstacles to HIV prevention, treatment and care. Research has shown that stigma and discrimination undermine efforts to address the HIV epidemic by making people fear to seek out information, services and methods that reduce the risk of infection and to adopt safer behaviors for fear of suspicion of their serological status. For example, a person may stop using a condom (or do not ask the partner / use the condom) or fail to do a HIV test at a health post for fear that he or she may have HIV. Research has also shown that fear of stigma and discrimination, which may also be linked to fear of violence, discourages people living with HIV from revealing their serology even to family members and sexual partners, as well as impairing their ability and willingness to access and adhere to treatment. Thus, stigma and discrimination weaken the ability of individuals and communities to protect themselves from HIV and to stay healthy if they are already living with the virus.

This study had the humble pretension to initiate a pinch of provocation and aiming, therefore, to show the relationship of education and human rights with HIV/AIDS, their actions and their contributions in the fight to end any kind of discrimination, showing how it can be improved and/or attenuated for the life of the patients and also trying to heal the wounds created by the social discriminations as a result of all this process of infection and treatment in the fight against HIV/AIDS. In addition, it sets out the consequences that discrimination and prejudice generate for public health and for the human being in the context of HIV / AIDS.

Discrimination has harmful consequences for the AIDS pandemic and is an obstacle to disease prevention and controlling programs. Many people, because of the discrimination and stigmatization of AIDS, are afraid of seeking help and they usually end up moving away from the social programs created for this purpose. They prefer to remain in doubt and ignore the fact that they may have the virus instead of facing the stigmas and prejudices related to the disease. This is a very common attitude because it principally comes from the fear of preconception and non-acceptance generated by the society. The feeling of being targeted, hurt and discriminated just for being sick is a characteristic in which we characterize as an insane and inhumane act, and it just so happens because the education was not efficient back in the tender years and also those attitudes don't help at all in the pursuit of human rights and human dignity.

One more time, according to Unaid's Brazil (2017, n. p., author's griffin, our



translation),

HIV-related **stigma** refers to negative beliefs, attitudes, and feelings about people living with HIV (as well as their families and close associates) and other populations that are most at risk of HIV infection (key populations), As gays and other men who have sex with men, sex workers and transvestites and transsexuals.

HIV-related **discrimination** refers to the unequal and unfair treatment (by action or omission) of an individual based on their actual or perceived HIV status. Discrimination in the context of HIV also includes the unequal treatment of those populations most affected by the epidemic. HIV-related breakdowns are usually based on stigmatizing attitudes and beliefs about behaviors, groups, sex, disease, and death. Discrimination can be institutionalized through laws, policies and practices that focus negatively on people living with HIV and marginalized groups.

Thus, in addition to the problem of discrimination for public health, the human being and his dignity are intensely affected. When contracting the virus, death is associated with the carrier so that its citizenship begins to disappear, becoming fragile, and it begins a spiral of depression and desperation which can be greatly mitigated if we invest and propose affirmative actions and also pro in education and search for human rights and citizenship. Resignation of employment, prohibition of attending certain places, contempt, omission in medical care, abandonment of family and friends are the main consequences that affect the person contracted with the HIV / AIDS virus. The bearer becomes something disposable and dispensable for society. These kinds of attitudes toward the virus bearers hurt their treatment and recovery. A warm and friendly environment is essential for the recovery of the HIV virus. With the presence of human rights, all these atrocities can be combated and avoided.

### 2.3 Sex workers, HIV/AIDS and the law

Sex workers are often stigmatized not only by the society but also by the law. In many countries sex workers receive a bad treatment by the law because their reputation is considered socially wrong. This makes that those people who are engaged in this kind of business don't seek for health services and as a consequence, become a particular vulnerable group. By this bias, a lot of sex workers are unable to access an appropriate health service and don't dispose the necessary HIV/AIDS prevention, treatment and correct attendance.

It's interesting to notice that in some countries some laws were adopted to criminalize the clients of sex workers, rather than sex workers themselves. This idea doesn't bring positive outcomes just because it drives sex workers to hidden locales, and it makes them more vulnerable in terms of violence from abusive clients, less protection and more exposed to HIV/AIDS.

The legitimation of sex work as a profession is a very delicate and debated issue in our society today. Some authors condemned it; others are in favor of it. But, when we put this issue in front of the HIV/AIDS subject, it seems to be more appropriate to legitimate sex work as a profession. This just because formally recognizing sex work

as a profession would allow sex workers to seek for a better health care, not being ashamed anymore, more protected against discrimination and violence, guaranteeing equal rights to this group of people, better working conditions and access to education to their children.

Thus,

human rights are universal, and the needs and aspirations of HIV-positive people are no different from those who are not infected with HIV. However, people living with HIV have important, specific needs that should be protected through laws. In biological terms, people living with HIV are more vulnerable to specific health problems, and there are social and structural factors of unique relevance to them. Furthermore, people living with HIV are subject to stigma and discrimination in the community, workplace, schools, health care systems, prisons and court systems. States must ensure that their legal and regulatory frameworks are in line with international, regional and human rights standards so that people living with HIV can enjoy their rights to non-discrimination, human dignity, privacy, confidentiality and health. The legal precedents for the protection of human rights of people who live with HIV/AIDS vary from state to state. These rights can be protected through national constitutions, human rights laws, health care laws or HIV-specific laws. (OGDEN; WARNER; GUPTA, 2009, p. 21-22).

In this sense, the philosopher Sandel (2016, p. 36) gives his contribution saying that

[...] Libertarians oppose using the coercive force of law to promote notions of virtue or to express the moral convictions of the majority. Prostitution may be morally objectionable to many people, but that does not justify laws that prevent consenting adults from engaging in it. Majorities in some communities may disapprove of homosexuality, but that does not justify laws that deprive gay men and lesbians of the right to choose their sexual partners for themselves.

Therefore, the international community has to focus its effort in helping to build a framework policy that is able to end all sorts of disrespect and discrimination of the people's rights and makes a more equal society.

## CONCLUSIONS

Instead of governments put their money and their effort in creating newer and stronger weapons with the sorry of national protection, it would be really interesting to invest all this money and effort to make new researches in a try to find a cure to this disease. It would completely end the discrimination and people would have a happier and healthier life. Nevertheless, we all know that it does not work like this, especially when those people who have the power of decisions in their hands use it to their own benefit. In this sense, it is hard to build a more equal society.

Therefore, "*Human immunodeficiency virus*: its first name is "human". To defeat it, the world and its laws must embrace and promote what every living person shares: the fragile, immensely potent human rights to equality, dignity and health." (GLOBAL COMMISSION ON HIV AND THE LAW, p. 89, 2012, emphasis added by the author).

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