

**LEGAL AND REGULATORY ENVIRONMENT ASSESSMENT FOR  
HIV/AIDS IN THE REPUBLIC OF TAJIKISTAN**

**Dushanbe – 2017**

## Abbreviations

ART	Antiretroviral therapy
FLA	Free legal aid
FPLA	Free primary legal aid
FSLA	Free secondary legal aid
HIV	Human Immunodeficiency virus
UN WHO	World Health Organization
SC	Supreme Court
DEB	Disability evaluation board
SCNS	State Committee for National Security
CC	Civil Code
CCP	Code of Civil Procedure
OAG	Office of the Attorney General
CLHIV	Children living with HIV
WLHIV	Women living with HIV
STIs	Sexually Transmitted Infections
COA	Code of Administrative Offenses
Key-pops	Key populations
CWFA	Committee on Women and Family Affairs
HC	Health Code
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Com.	Committee on the Elimination of the Discrimination against Women
CICP	Code on Implementation of Criminal Punishments
PLHIV	People living with HIV
PWID	People who inject drugs
MoI	Ministry of Interior
MoHSPP	Ministry of Health and Social Protection of Population
ARSA	Assembly of representatives of the Supreme Assembly
IOs	International Organizations
MES	Ministry of Education and Science
ILO	International Labor Organization
MLEM	Ministry of Labor, Employment and Migration
MSM	Men having sex with men
CCM/NCC	Country Coordination Mechanism/National Coordination Committee
UN	United Nations
LEA	Legal Environment Assessment
UNDP	United Nations Development Programme
RGOT	Resolution of the Government of Tajikistan
RT	Republic of Tajikistan
CIS	Commonwealth of Independent States
FC	Family Code
AIDS	Acquired Immune Deficiency Syndrome
TB	Tuberculosis
LC	Labor Code
CC	Criminal Code
CPC	Criminal Procedural Code
UPR	Universal Periodic Review
FGD	Focus Group Discussion
UNFPA	United Nations Population Fund
UNAIDS	Joint United Nations Programme on HIV and AIDS

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### **Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030 (7)<sup>1</sup>**

Reaffirm that the promotion and protection of, and respect for, the human rights and fundamental freedoms of all, including the right to development, which are universal, indivisible, interdependent and interrelated, should be mainstreamed into all HIV and AIDS policies and programmes, and also reaffirm the need to take measures to ensure that every person is entitled to participate in, contribute to and enjoy economic, social, cultural and political development and that equal attention and urgent consideration should be given to the promotion, protection and fulfillment of all human rights;

HIV/AIDS remains a global health emergency that requires an exceptional and comprehensive response at the global level. In addition, the HIV spread often is the cause and consequence of poverty and inequality, and the adoption of effective measures to combat HIV /AIDS are crucial for the implementation of the 2030 Sustainable Development Agenda<sup>2</sup>.

The Agenda for Sustainable Development recognizes that the ending poverty in all its forms and manifestations, including extreme poverty, remains as the major global challenge and ending poverty is one of the prerequisites for sustainable development, given that the dignity of the human is fundamental and that the goals and objectives for sustainable development must be achieved in interests of all countries and peoples and all strata of society in a spirit that “nobody is left behind”<sup>3</sup>. HIV/AIDS affects all regions of the world; the Caribbean is the second largest region, after sub-Saharan Africa, for the rate of the infection spread.

As per UNAIDS’ “AIDS GLOBAL UPDATE, 2016”:<sup>4</sup> rates of new adult HIV infections were relatively static in Latin America and the Caribbean, western and central Europe, North America and the Middle East and North Africa, while the annual numbers of new HIV infections in eastern Europe and central Asia increased by 57%<sup>4</sup>.

Since progression of the HIV epidemic in Tajikistan, the National Government has repeatedly attempted to address this problem at legislative level, taking into account the unique ways of its transmission, as well as the novelty of the problem of HIV infection.

### **HIV epidemiology in Tajikistan**

According to official statistics, as of January 1<sup>st</sup>, 2016, the accumulated number (since 1991) of HIV cases registered in the country was 7,709; of which 68.4% are men and 31.6% are women. From 1991 to December 2015, 1592 people living with HIV passed away due to various reasons. As of January 2016 the total number of people living with HIV in the country was 6,117, of which 76.1% are officially registered and regularly visiting outpatient departments.

In recent years Tajikistan is facing a trend in increase in the number of women (both adults and children) living with HIV among new HIV cases. An increase is from 28.9% in 2011 to 40, 2% in 2015.

<sup>1</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8<sup>th</sup>, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

<sup>2</sup> Transforming our world: the 2030 Agenda for Sustainable Development: UN General Assembly. September 2015; Accessed: August 2017

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/285/75/PDF/N1528575.pdf?OpenElement>

<sup>3</sup> Ibid.

<sup>4</sup> Global AIDS Update, 2016 – May 2016, Accessed on August 2017 - [http://www.unaids.org/sites/default/files/media\\_asset/global-AIDS-update-2016\\_en.pdf](http://www.unaids.org/sites/default/files/media_asset/global-AIDS-update-2016_en.pdf)

In recent years, the main routes of HIV transmission in Tajikistan have been the sexual and parenteral routes; the latter is associated with the non-medical use of narcotic drugs by people who inject drugs. Sexual transmission of HIV accounts for up to half of all HIV cases, and in some regions exceeds 60-70%. For instance, in Dushanbe, 43.4% of all PLHIV were infected through sexual transmission; in GBAO - 48.2%; in Direct Rule Districts - 65.8%; in the Soghd Province - 73.3%; in the Khatlon Province - 63%.<sup>5</sup> The transmission of HIV through intravenous drug use is higher in Dushanbe (37.2%) and in GBAO (48.2%); and is less than 20% in Direct Rule Districts (14.3%); Soghd Province (17.7%) and Khatlon Province (13.9%).<sup>6</sup>

The Constitution of the Republic of Tajikistan (RT) adopted in 1994 has several provisions that refer to promotion, protection and observance of the right of People living with HIV (PLHIV). It should be noted that Constitution of the Republic of Tajikistan recognizes that "the international norms and laws prevail over the national legislation". Such recognition is one of the progressive principles of Tajikistani Constitution, since international norms clearly express the postulate of need to respect the rights of People living with HIV and need to avoid any discrimination due to HIV status (Resolution 45/187 and Resolution 46/203, adopted in 1990 by the UN General Assembly).

In 2001, Tajikistan ratified the Declaration of Commitment on HIV / AIDS, which led to the adoption of the Law of the Republic of Tajikistan "On Combat against HIV / AIDS". Further, in September 2008, the Ministry of Health of the Republic of Tajikistan adopted a "Strategic plan for joint activities aimed at prevention and control of TB / HIV co-infection in Tajikistan for 2008-2012." Since 2011, Programs on combatting the HIV / AIDS epidemic are adopted and implemented on a systematic basis with a three-year interval. In 2016 Tajikistan ratified the " Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030".

The Government of Tajikistan, together with partners, is actively applying innovative approaches in the field of HIV / AIDS: Tajikistan was the second country in Eastern Europe and Central Asia, which has carried out National AIDS Spending Assessment. In 2011, the Ministry of Labor and Social Protection of the Population of the Republic of Tajikistan, with the participation of social partners from the Association of Employers of the Republic of Tajikistan and the Federation of Independent Trade Unions of Tajikistan, had developed the «Tripartite Partnership Strategy on HIV and AIDS Prevention in the World of Work in the Republic of Tajikistan»<sup>7</sup>. In 2013, Dushanbe has piloted the UNAIDS Manual called "Gender Assessment of the National HIV Response". Thus, Tajikistan became a first country in the world, where outcomes of such Gender Assessment were used for planning, resource mobilization and programme management.<sup>8</sup> In 2014 and 2015, UNAIDS supported gender assessments of the HIV response in 40 countries, which resulted in the identification of gaps in data, coverage of services and action to respond to the specific needs of women and girls.<sup>9</sup> UN-Women, with UNAIDS, the World Health Organization (WHO) and the Pan American Health Organization, strengthened skills<sup>10</sup> on gender-sensitive monitoring for programme staff working in sexual and reproductive health and HIV from 15 countries, including Tajikistan.

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<sup>5</sup> The National Programme on Combatting HIV Epidemics in the Republic of Tajikistan for 2017-2020: adopted by the Resolution №89 of Government of Tajikistan, as of February 25<sup>th</sup>, 2017

<sup>6</sup> Ibid.

<sup>7</sup> " Tripartite Partnership Strategy on HIV and AIDS Prevention in the World of Work in the Republic of Tajikistan", Ministry of Labor and Social Protection of Population of the Republic of Tajikistan, 2012, Accessed on April 2017 - [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/legaldocument/wcms\\_177728.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_177728.pdf)

<sup>8</sup> Dushanbe discusses gender mainstreaming of national responses to the spread of HIV , Asia-Plus, 2013, Accessed on April 2017 - <http://news.tj/ru/news/v-dushanbe-obsuzhdayut-voprosy-gendernoi-otsenki-natsionalnykh-mer-v-otvet-na-rasprostranenie-v>

<sup>9</sup> Report of the Secretary-General «Women, girls and HIV and AIDS», The sixtieth session of the Commission on the Status of Women, 14–24 March 2016: Accessed on April 2017 – <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=56a5cabf4>

<sup>10</sup> Report of the Secretary-General «Women, girls and HIV and AIDS», The sixtieth session of the Commission on the Status of Women, 14–24 March 2016: Accessed on April 2017 – <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=56a5cabf4>

All these developments in the legal field of combatting HIV/AIDS response clearly express the willingness of the Government of Tajikistan to address this issue, combat HIV/AIDS and protect the rights of PLHIV. However, despite of all the progress, PLHIV continue to face stigma and discrimination. There are still challenges at both practical and legislative level which create barriers for promotion and protection of the rights of PLHIV and contribute to spread of HIV infection in the Republic of Tajikistan.

For instance, in August-September 2015, NGO “SPIN PLUS” had carried out a study called “Index of Stigma against People Living with HIV in the Republic of Tajikistan”. Outcomes of the study had shown that PLHIV are facing following fears:

- Fear to be matter of gossips – 70,5%;
- Fear, that nobody will have a desire to have sex with HIV-infected – 50,3%;
- Fear of insults, haunts, oral threats – 48,3%;
- Fear of physical haunt, death threat – 15,4%;
- Fear of physical violence – 13, 4%

Stigma and discrimination have been expressed via following aspects:

- Denial in sexual contact – 29%;
- Psychological pressure, manipulation from the partner – 23,9%;
- Household members were subject to discrimination - 23,3%;
- Discrimination by other PLHIV - 15,8%;
- Learnt that others are spreading about gossip about them – 10,1%
- Were insulted, haunted and received oral threats – 8,7%
- Were denied to participate at various meeting and events - 4,8%
- Were denied to take part in family affairs– 4,1%
- Were denied to take part in religious events– 1,4%;
- Were subject to physical violence – 1,3%;
- Physical haunt, death threat - 1,3%;

Below are the main reasons for stigma and discrimination by other people:

- Lack of knowledge about HIV transmission – 64, 1%.
- Fears about getting HIV – 60, 6%;
- Views on that having HIV is something disgraceful – 50,6%;
- Disapproval of life style and attitude – 34, 1%;

Following limitations and barriers were identified in regards of access of PLHIV to housing, education and health services due to their HIV-status in the last 12 months in the Republic of Tajikistan:

- ToR was changed, were denied of promotion – 24,7%;
- Were denied of healthcare, including dental aid– 15,5%;
- Were denied in employment, barriers in job seeking and employment opportunities– 14,8%;
- Were denied/refused to receive family planning services – 10,8%;
- Were dismissed/fired, suspended from work without pay/prevented from attending an educational facility – 9.8%
- Were denied/refused to receive sexual and reproductive health services – 7.7%
- Loss of job (waged) or any other source of income – 4.4%
- Had no other chance but to change place of residence, difficulties in renting an apartment – 2%
- Child was excluded/prevented from attending a school/asked to leave school – 1.4%

In this regard, a need has emerged to study the legal environment in the field of HIV prevention, treatment and care among key populations and non-discrimination of key populations.

## Legal environment assessment

The law has a profound impact on people's lives—especially those who are vulnerable and marginalized. The true test of a just society is reflected in its commitment to protect and promote the rights of minorities

Indeed, in recent years the law has been a positive force in advancing effective HIV responses, including in Tajikistan.

In certain cases, the Law has a positive impact on People living with HIV and most-at-risk populations (MARPs). For instance the law of the Republic of Tajikistan “on Combatting HIV/AIDS” contains various norms and procedures related to voluntary and confidential HIV testing, obligation to keep medical/patient confidentiality and liability for violation of such confidentiality, cash-support for parents who has children living with HIV, as well as provision of feeding formula for mothers living with HIV.

However, there are some laws in Tajikistan, which continue to discriminate PLHIV and MARPS (key populations), criminalize these two groups and make them marginalized, leading to the higher risk of HIV infection, creating barriers for treatment and continuing of their lives.

The national socio-economic policies of the country don't much protect interests of PLHIV and MARPs, and such situation leads to even greater vulnerability to HIV. As shown in the report of the Global Commission on HIV and the Law (2012):«HIV and the Law: Risks, Rights & Health»<sup>11</sup>- There are instances where legal and justice systems have played constructive roles in responding to HIV, by respecting, protecting and fulfilling human rights. Compelling evidence shows that it is the way to reduce the toll of HIV. In addition to that, the Global Commission on HIV has found evidence that stigma, discrimination, punitive laws, police violence and lack of access to justice continue to fuel the HIV epidemic.

Human rights are the inalienable rights of every person, regardless of his nationality, domicile, sex, ethnicity, color, religion, language or any other characteristics <sup>12 13</sup>. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and much more <sup>14</sup>. Everyone has the right to these rights without any discrimination. These rights are interrelated, interdependent and indivisible. Universal human rights are often fixed and guaranteed by law in the form of treaties, customary international law, general principles of law and other sources of international law. International human rights law places obligations on States to carry out activities with a view to promoting and protecting human rights and fundamental freedoms.<sup>15</sup>

Human rights are inextricably linked with the spread and impact of HIV on individuals and communities around the world. A lack of respect for human rights fuels the spread and exacerbates the impact of the disease, while at the same time HIV undermines progress in the realization of human

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<sup>11</sup> Global Commission on HIV and the Law, 'HIV and the Law: Risks, Rights & Health', Global Commission on HIV and the Law, New York, 2012, available at: <http://hivlawcommission.org/index.php/report>

<sup>12</sup> Office of UN High Commissioner on Human Rights: Human Rights. Accessed on August 2017- <http://www.ohchr.org/RU/Issues/Pages/WhatareHumanRights.aspx>

<sup>13</sup> United Nations: General Issues - Human Rights. Accessed on August 2017 - <http://www.un.org/en/sections/issues-depth/human-rights/>

<sup>14</sup> Universal Declaration on Human Rights – Adopted through UN General Assembly Resolution 217 A (III) as of December 10<sup>th</sup>, 1948 [http://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml](http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml)

<sup>15</sup> Office of UN High Commissioner on Human Rights: Human Rights. Accessed on August 2017- <http://www.ohchr.org/RU/Issues/Pages/WhatareHumanRights.aspx>



rights. This link is apparent in the disproportionate incidence and spread of the disease among certain groups which, depending on the nature of the epidemic and the prevailing social, legal and economic conditions, include women and children, and particularly those living in poverty. It is also apparent in the fact that the overwhelming burden of the epidemic today is borne by developing countries, where the disease threatens to reverse vital achievements in human development.<sup>16</sup>

Stigma, as a deeply entrenched socio-cultural phenomenon, underlies many violations of human rights and leads to the fact that all groups of the population become disadvantaged<sup>17</sup>. Stigma can broadly be understood as a process of dehumanizing, degrading, discrediting and devaluing people in certain population groups, often based on a feeling of disgust. Put differently, there is a perception that “the person with the stigma is not quite human”.<sup>18</sup> Stigma attaches itself to an attribute, quality or identity that is regarded as inferior or abnormal. Stigma is based on a socially constructed “us” and “them” serving to confirm the normalcy of the majority through the devaluation of the other.<sup>19</sup> Stigmatization prevents legislative and policymaking institutions from adequately addressing health-related matters in communities that are especially vulnerable to the infringement of the enjoyment of the right to health.<sup>20</sup>

The rights of people living with HIV often are violated because of their presumed or known HIV status, causing them to suffer both the burden of the disease and the consequential loss of other rights. Stigmatization and discrimination may obstruct their access to treatment and may affect their employment, housing and other rights. This, in turn, contributes to the vulnerability of others to infection, since HIV-related stigma and discrimination discourages individuals infected with and affected by HIV from contacting health and social services. The result is that those most needing information, education and counseling will not benefit even where such services are available.<sup>21</sup>

These infringements ultimately undermine the inherent dignity of persons upon which the international human rights framework is based. Denying the dignity of individuals through the criminalization of certain conducts substantially diminishes their self-worth and, in doing so, prevents the realization of the right to health.<sup>22</sup> Such phenomenon is called self-stigmatization, and it is no less destructive than stigmatization by other people. People are often afraid to defend their rights, and people living with HIV are no exception.

“If I let things come forward, everyone will know that I have HIV and I, for sure, will not be able to get a job or study, my relatives will turn away from me - my life will become worse”, thinks the person and decides to endure lawlessness. Such view is understandable: not everyone has the inner strength to fight. On the other hand, any person should have the opportunity to defend own rights and demand a humanly attitude.<sup>23</sup>

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<sup>16</sup> Office of UN High Commissioner on Human Rights: HIV/AIDS and Human Rights. Introduction: Accessed on August 2017- <http://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx>

<sup>17</sup> Report of the Special Rapporteur on the human right to safe drinking water and sanitation (Catarina de Albuquerque). “Stigma and the realization of the human rights to water and sanitation”. July 2012. Accessed on August 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/149/00/PDF/G1214900.pdf?OpenElement>

<sup>18</sup> Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity*. New York, Simon & Schuster, 1963, p. 5.

<sup>19</sup> Ibid.

<sup>20</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. April 2010. Accessed on August 2017 - <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/20/PDF/G1013120.pdf?OpenElement>

<sup>21</sup> Office of UN High Commissioner on Human Rights: HIV/AIDS and Human Rights. Introduction: Accessed on August 2017- <http://www.ohchr.org/EN/Issues/HIV/Pages/HIVIndex.aspx>

<sup>22</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. April 2010. Accessed on August 2017 - <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/131/20/PDF/G1013120.pdf?OpenElement>

<sup>23</sup> “Manual on the Protection of the Rights of Women Living with HIV in Kazakhstan” - AIDS Foundation East-West/Kazakhstan, UN Women - Accessed on April 2017. [http://hivtb-almaty.kz/static/uploaded/UN\\_Women\\_RUS.pdf](http://hivtb-almaty.kz/static/uploaded/UN_Women_RUS.pdf)

Legal Environment Assessment (LEA) is an assessment of the country's legal and political framework. In the context of human rights, the LEA can be aimed at identifying and studying all important legal and human rights issues affecting all citizens in the country. In the context of HIV, this is an important step in understanding how the legislative environment can play a role in impacting over HIV prevention, treatment and mitigation. LEA can be critical to strengthen the country's response to the HIV epidemic.

The Legal Environment Assessment should contribute to the improvement of legislation in removing legal barriers for PLHIV and MARPs in regards to access to HIV treatment and prevention; adoption of laws that will stop discrimination against PLHIV and MARPs and mitigate their vulnerable social status. Assessment of the legal environment should also be aimed at taking measures to raise public awareness about HIV infection and the ways of its transmission, on the need for protection measures during sexual intercourse that will reduce the risk of contracting HIV infection. It will also help to increase the capacity of healthcare providers and law enforcement officials to ensure that they respect rights of PLHIV and MARPs, do not discriminate them, know how HIV is actually transmitted and etc. In assessing the legal environment it is very important to assist in increasing the level of knowledge of PLHIV and MARPS about their own rights, so that their self-esteem will also increase.

### **Chapter 1: Legal framework for the regulation of relations in the field of HIV prevention, treatment and care among PLHIV and MARPs (key populations), and their protection from stigma and discrimination**

Main findings:

#### **Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>24</sup>**

63 c. Commit to intensifying national efforts to create enabling legal, social and policy frameworks in each national context in order to eliminate stigma, discrimination and violence related to HIV, including by linking service providers in healthcare, workplace, educational and other settings, and promoting access to HIV prevention, treatment, care and support and non-discriminatory access to education, healthcare, employment and social services, providing legal protections for people living with, at risk of and affected by HIV, including in relation to inheritance rights and respect for privacy and confidentiality, and promoting and protecting all human rights and fundamental freedoms

In regards of the rights of PLHIV the legislation of the Republic of Tajikistan generally complies with international human rights standards in the context

of HIV / AIDS, with the exception of a number of aspects, such as testing, criminalization of MARPs and PLHIV, disability issues, and some issues related to labor law.

In their judicial decisions courts do not directly refer to the norms of international legal instruments.

The main problem is law enforcement issues, including mechanisms and financing for the implementation of existing laws.

The study "Stigma Index" conducted by CSO "SPIN Plus" in August-September 2015 has shown that high level of stigma and discrimination against PLHIV and MARPs both among society and public authorities, especially law enforcement agencies. Also, there is high self-stigmatization among PLHIV, which often prevents them from protecting their rights.

### **Chapter 2: Mandatory and voluntary HIV testing. Right to confidential information**

Main findings and issues:

Focus-group discussions conducted among PLHIV and MARPs confirmed outcomes of "Stigma Index". Healthcare providers often violate pre-test and post-test counseling during HIV testing, as pre-test and post-test counseling were performed only in 42,9% of HIV testing cases.

As of mandatory and voluntary HIV testing, it should be noted that this aspect is regulated by Article 24 of the Health Code of the Republic of Tajikistan and the Procedure for Medical

<sup>24</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8<sup>th</sup>, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

Examination aimed at detecting Human Immunodeficiency Virus, recording, medical examination of PLHIV including preventive follow-up (approved by Resolution № 171 of the Government of Tajikistan as of 01.04.2008). In addition this Procedure describes cases where HIV testing is mandatory. Since 2014, refugees, asylum seekers and foreigners undergo HIV testing on a voluntary basis, which is a step forward for Tajikistan in observance of human rights from HIV/AIDS perspective.

The norms of the Health Code and Resolution of the Government of Tajikistan (№171 as of 01.04.2008) and Resolution of Government of Tajikistan (№ 528 as of 06.08.2014) determine cases when compulsory and confidential testing for HIV shall be conducted. The right to preserve personal information is guaranteed both by the Constitution of the Republic of Tajikistan and by a number of legislative instruments. This right can be violated only on the basis of a motivated decision of the bodies carrying out operational search activity, at the request of the authorized prosecutor and the *sanction of the judicial body* and in the presence of the relevant information specified in Article 8 of the Law of RT "On Operational Search Activity". But at the same time, in the norms of the HC of RT there are contradictions between general norms and special ones that can lead to violation of the rights of PLHIV to maintain confidentiality about their status. Article 163 of the HC of RT provides voluntary treatment for HIV. While Article 119 of Code of Administrative Offenses of the Republic of Tajikistan provides for administrative liability for evading compulsory medical examination and preventive treatment of people with infectious diseases, including HIV.

At the same time Article 120 of Code of Administrative Offenses of the Republic of Tajikistan contradicts with the principle of the right to confidentiality. This article entails an administrative penalty for cover-up by a PLHIV his/her status, a source of infection, as well as persons who had contacts with the person in question that pose a risk of contracting these diseases. This rule contradicts with Article 163 of the Health Code of RT.

Another issue is the relationship between the rights of PLHIV to confidentiality and the rights of persons entering into sexual relations with them to an acceptable level of physical and mental health.

Not every PLHIV complies with the requirements of the law on the prohibition of deliberately endangering the risk of infection or infecting another person (or several individuals) with the human immunodeficiency virus. The statistical data specified in the National Program on Combatting HIV / AIDS for 2017-2020 shows that in the Republic of Tajikistan rate of the sexually-transmitted HIV prevails over other routes of transmission.

In this regard, the policymaker has undertaken steps to introduce a mandatory pre-marital medical examination, as indicated in Article 15 of the Family Code of the Republic of Tajikistan. It is too early to speak about the outcomes of these innovations. But it is necessary to note already the shortcomings of the Resolution of Government of Tajikistan (as of August 23<sup>rd</sup>, 2016, No. 374) - "On approval of the procedures for conducting mandatory medical examination of persons entering into marriage". So, in paragraph 5 of these procedures, it is noted that civil registry offices of the Ministry of Justice of the Republic of Tajikistan accept the application for marriage only if there is a certificate confirming that applicants have undergone the medical examination. Then the question is how doctors should make sure that people who want to undergo a medical examination want to register a marriage. If so, then doctors will conduct a medical examination free of charge, as required by Article 15 of the Family Code of the Republic of Tajikistan. Paragraph 4 of these Regulations establishes: "Surveillance and counseling on healthy lifestyles, family planning and the impact of diseases on the health of offspring (hereinafter referred to as counseling) is carried out by the family doctor and, if necessary, the specialized doctor of the public health facility (hereinafter referred to as the health facility) at the place of permanent or temporary residence on the basis of the application of the person entering into marriage." Newlyweds do not always live in the same area and might undergo medical examination in different facilities. Such situation on the one hand able to preserve the confidentiality of the identified PLHIV, but on the other hand, if PLHIV is not honest, this puts another person at risk in danger of contracting HIV after marriage. Therefore, the mechanism of these Regulations is not thoroughly developed. In addition to mandatory requirements for medical examination at the time of marriage, there is a risk of increasing the number

of unofficial religious marriages, all the more so since this does not entail legal liability. However, religious marriages entail the vulnerability of women and children. According to experts in matters of civil registry, this may be the reason for the decrease in registration of official marriages in the country for 2015 and 2016.

Another problem that has been identified during the FGD is the unqualified provision of HIV / AIDS counseling services by health workers of AIDS centers, the lack of lawyers and psychologists, the disclosure of the patient's status by phone, and their discrimination in health facilities. A high percentage of disclosure of the status of PLHIV and MARPs, as well as their discrimination is observed among law enforcement agencies, especially the police.

Despite the fact that MoHSP has developed and approved Guidance on HIV counseling and testing (Decree No. 354, as of 17.07.2012), there are still issues in this regard.

In accordance with Article 167 of the Health Code of the Republic of Tajikistan (approved by the Resolution №232 of GoT as of May 3, 2010, and amended by Governmental Decree № 262 as of June 3, 2013), Government has approved the procedure for allocation and disbursement of state benefits to children under the age of 16 years living with the human immunodeficiency virus or acquired immunodeficiency syndrome. According to this procedure, the application for the benefit is submitted by the legal representative of the child to the local labor and social protection bodies. The application must be accompanied by a medical certificate and a certificate from the place of residence. On this basis, all workers and commissions on the rights of the child, and the labor and social protection bodies will know the status of this child. This document does not envisage any liability for employees who violate the confidentiality of information and disclose the HIV status, which also entails the risk of disclosing the status of the child living with HIV.

Many PLHIV said during FGD that they are not able find a job: in addition to the high unemployment in the country, they require to undergo many health tests, including HIV testing; however it does not matter whether this profession is included in the list for mandatory examination

for HIV – (even though applicant is seeking a job as a cook, janitor or salesman).

### **Recommendations for guaranteeing the voluntariness and confidentiality during HIV testing**

#### **For ARSA of the RT:**

- Article 119 and Article 120 of the Code of Administrative Offense shall be abolished, as they violate the constitutional rights of PLHIV for non-interference in privacy and maintaining confidentiality;

- Paragraph 9 of Article 49 of the Health Code of the Republic of Tajikistan shall be brought in compliance with Part 2 of Article of the Health Code of RT and specify issues related to the disclosure of medical secrets and health information of citizens to health authorities, when this is required due to need of public health protection and protection of population from the spread of infectious diseases, with the eye on respect of the PLHIV rights;

- In part 1 of Article 172 of the HC of at the end of the phrase "persons carrying human immunodeficiency virus and with acquired immunodeficiency syndrome of" shall be replaced with a phrase "people living with HIV". This is the official terminology approved, accepted and introduced by UNAIDS. In general, review the legal instruments of the RT on the rights of PLHIV for the correct use of terminology.

- taking into account that HIV epidemics in Tajikistan is at concentrated stag, policymakers shall replace the mandatory medical examination for HIV of persons entering into marriage with voluntary and confidential testing for HIV, with pre- and post-test counseling. Article 15 of the Family Code of the Republic of Tajikistan shall be amended accordingly.

- Chapter 24 of Article 162 of the Health Code of RT shall be amended with an additional third paragraph that envisages a norm obliging doctors that perform medical examination for HIV to conduct pre and post- test counseling on the rules and regulations of the Republic of Tajikistan. If people are tested positive, then no discrimination shall be applied against them. For violation of the rules related to pre and post- test counseling, administrative liability shall be envisaged.

- Article 49 of the Health Code of RT shall be amended with an additional paragraph: "on an equal basis, without discrimination, treat all patients regardless of their diagnosis."

In case of revealing neglect of one's duties and discriminating attitude towards the patient, the healthcare provider shall be kept liable in accordance with the legislation of the Republic of Tajikistan,

- Part 1 of Article 53 of the Health Code of the Republic of Tajikistan KZ RT shall be brought in compliance with paragraphs 2 and 7 of the part 1 of Article 163 of the Health Code;

- Introduce changes to the Code of Administrative Offense of RT with the aim of bringing to the administrative liability of medical workers and civil servants for violating confidential information about individuals in connection with HIV.

#### **For the Government of Tajikistan:**

- To introduce into Resolution of the GoT (No. 171) and Resolution No.528 of the GoT (as of 06.08.2014) following changes: to provide an interpretation of the term "epidemiological indications for which a mandatory HIV test and notification of partners" is required;

- To introduce into Resolution of the GoT (No. 232, as of May 3<sup>rd</sup>, 2010) and Resolution No.262 of the GoT (as of 03.06.2013) following changes: employees of local executive authorities have to maintain confidentiality when allocating benefits for children living with HIV.

#### **For MoHSPP:**

- Introduce into curricula of health schools and universities, as well as secondary vocational schools and post-graduation facilities, courses (on a systematic basis) on HIV prevention and treatment, including non-discrimination aspects of PLHIV and MARPs;

- ensure that staffing tables of the regional AIDS Centers have psychologists and lawyers. Address issues related to funding of such additional staff.

- To bring to justice all healthcare providers, law enforcement officers and civil servants for disclosing the diagnosis of HIV to third parties, as well as personal information about the lifestyle of MARPs.

#### **For MLME of RT:**

- Supervise the World of Work with a view to suppressing the negative practice of requiring

mandatory HIV testing for employment for all types of employment;

- To follow guidance in the field of compulsory HIV testing when hiring employers, with an eye to international standards.

### **Chapter 3: Access to treatment, care and other health services**

#### **Main findings:**

In regards to issues related to access to treatment, care and other health services, it should be noted about existence of certain problems - the lack of adequate funding from the national budget, a high level of corruption, not only across the health system, but also all over public institutions, the lack of a mandatory health insurance system and non-transparency of legal regulation. All these are barriers for many groups of people in accessing treatment, care and other health services.

Access to treatment, care and other health services is one of the fundamental rights of PLHIV and MARPs, which is directly related to their right to life.

Chapter 24 of the HC of RT provides for the rights of PLHIV in access to free medical and socio-psychological care. But in practice, except to ART and benefits for children living with HIV, PLHIV receive nothing. Also, there is a contradiction between paragraph 5 of part 1 of Article 163 of the HC of RT and part 1 of Article 166 of the HC of RT. In part 1 of Article 166 of the HC of RT it is indicated that all types of medical care are provided to people living with human immunodeficiency virus / acquired immunodeficiency syndrome on general grounds and as per clinical indications. And in the Article 163 of the HC of RT, it is indicated that all health services for PLHIV are free of charge.

Funding for the treatment (ARV therapy) of PLHIV is performed systematically on the basis of the adoption of three-year National HIV / AIDS Control Programmes. To date, the provision of antiretroviral drugs in the country is fully implemented through funding by international organizations, mainly the Global Fund to Fight AIDS, Tuberculosis and Malaria. Interruptions with the supply of antiretroviral drugs are generally not noted, as indicated in the National Programme to Combat the HIV Epidemic in the Republic of

Tajikistan for 2017-2020, approved by the Resolution of the Government of Tajikistan (No.89, as of February 25<sup>th</sup>, 2017). Another concern is about discontinuing of funding by donors and Tajikistan's willingness to independently without violating the rights of PLHIV to provide access treatment and prevention, including ARV drug supply.

At the legal and regulatory levels, there are gaps and imperfections within the legislative framework. Provision of free medical services is established by the order of rendering health services to citizens of the Republic of Tajikistan by the public health facilities, approved by the Resolution of the Government of Tajikistan ( No. 600 dated 02.12.2008). This legal instrument is implemented more in terms of paid services, and also has a large number of references to various internal instruments of the Ministry of Health. Thus, item 7 of this Resolution lists the types of health services provided free of charge:

- First and emergency aid;
- Primary healthcare;
- Specialized medical aid in out-patient setting;
- Supply of medicines, vaccines and laboratory-diagnostic measures in outpatient settings;
- Medical aid in in-patient settings;
- Dental care

Further paras 8 and 9 describe what is being provided in the framework of free emergency and first aid, as well as primary health care. Part 10 of the Resolution of GoT (No. 600 as of 02.12.2008) specifies that specialized medical care in outpatient settings is carried out in the form, volumes and order established by the Ministry of Health of the Republic of Tajikistan. What subordinate legislation of the Ministry of Health of the RT has approved this procedure has not been established and it's not available in public access. With regard to planned inpatient care, which is carried out on the basis of the List of Population Groups of the Republic of Tajikistan, which, in accordance with their social status and medical indications, are entitled to receive free medical services, upon presenting documents confirming their rights to social benefits, by joint Decree (No. 938-135 as of November 5, 2014) of the MoHSPP and the Minister of Finance of the Republic of Tajikistan, Rules for co-payment of health services to citizens of the Republic of Tajikistan were approved, where such rules are applicable for the public health

institutions. Two appendices No. 1 and No. 2 have been developed for this Decree. Appendix No. 1 sets out a list of categories of citizens who, according to their social status, are entitled to free medical services. Appendix No. 2 sets out a list of categories of citizens who are entitled to receive free medical services in accordance with medical indications, but only for the underlying disease. The HIV / AIDS disease is included in this list. But the fact is that PLHIV are more likely to suffer from opportunistic infections such as hepatitis B and C or others, which are not included in this list. Accordingly, this Appendix No. 2 to the joint Decree of the MoHSPP and MoF (No. 938-135 as of November 5, 2014) contradicts to paragraph 5 of the part 1 Article 163 of the Health Code of. The FGD has shown that PLHIV does not receive any free medical aid and medicines other than ARVT and HIV counseling. Regarding the quality of ARV drugs the respondents did not file any complain. For other drugs, they could not say anything, because they did not receive any.

### **Recommendations for improving access to treatment, care and other health services due to HIV / AIDS**

#### **For the Assembly of Representatives of the Supreme Assembly of Tajikistan:**

- Eliminate contradictions between paragraph 5 of part 1 of Article 163 of the Health Code of RT and part 1 of Article 166 of the Health Code of RT T in favor of paragraph 5 of Part 1 of Article 163

#### **For MoHSPP:**

- Establish a transparent procedure for providing free medical and socio-psychological care for PLHIV.
- To bring the Provisions of the Annex 2 to Order No. 938-135 as of November 5, 2014. In relation to PLHIV in accordance with paragraph 5 of part 1 of Article 163 of the Health Code of RT:
  - together with local authorities and the Ministry of Finance of the Republic of Tajikistan, plan annual allocation of budgetary funds for free qualified and specialized medical care (all types), including supply of medications;
  - together with international donor organizations and civil society, to conduct a study on the legal status of persons suffering from TB and HIV, including analysis of the institutional and legal framework for regulating the prevention and treatment of this disease, taking into account the



observance of international human rights standards.

#### **Chapter 4: Access of PLHIV and MARPs to social protection**

##### **Main findings:**

The UN Committee on Economic, Social and Cultural Rights recommended that Tajikistan adopts a single anti-discrimination law. The Constitution of the Republic of Tajikistan (Article 17) establishes the principle of equality of all before the law and that the State guarantees the rights and freedoms of everyone irrespective of their nationality, race, sex, language, religion, political opinions, education, social and property status. This principle is also indicated in many legal instruments of the country.

However the concept of discrimination is given only in the Law of the Republic of Tajikistan "On State Guarantees of Equality of Men and Women and Equal Opportunities for Their Implementation". There is no concept of indirect discrimination in the legislation at all. There are also no mechanisms for detecting indirect discrimination and response.

In practice, both direct and indirect discrimination is often observed in the sphere of social protection. As a whole, legislation and policies in various fields do not always take into account the interests of PLHIV, and still do not sufficiently protect PLHIV from discrimination and various kinds of stressful situations. In general, Tajikistan does not have a single policy on social protection of the population.

The Concept of social protection of the population was adopted, and that Concept does not cover PLHIV and MARPs. No measures have been taken to implement this Concept. This concept does not take into account the human-right based approach. The principle of non-discrimination in the right to social security is not included in this policy. It should be noted that Tajikistan is one of the first countries to adopt the National Development Strategy of the Republic of Tajikistan (up to 2030, by the Resolution No. 392 as of 01.10.2016). NDS-2030 also takes into account the international obligations of the Republic of Tajikistan as per XXI Century Agenda and the Sustainable Development Goals (SDGs) approved at the 70th session of the UN General Assembly in September 2015. In addition to the

main objectives, NDS also identifies three key tasks corresponding to the new stage of development:

Firstly, achieve a level of socio-economic development comparable to the middle-income countries, with an average level of income. Secondly, ensure the sustainability of development through diversification and increasing the competitiveness of the national economy. Thirdly, expand and strengthen the middle class. The third area envisages reduction of inequality in society. It is also important that one of the priorities in the NDS-2030 is the development of human potential. Section 4.2 "Health and longevity" of the NDS-2030, unfortunately, doesn't particularly emphasize reducing the level of HIV and improving the access of people living with HIV to prevention, treatment, and social protection. However, NDS-2030 envisage following outcomes:

- Improved access to quality health services, including the poor and rural people;
- Morbidity and mortality due to infectious diseases and invasive diseases, including vaccine-controlled and the most widespread zoonoses diseases (especially among the poor and rural people);
- The mechanism of medicinal supply, quality and effectiveness of medicines and pharmaceutical activities has been improved. These outcomes extend to all residents of the Republic of Tajikistan and give hope that they will also have effect over PLHIV.

FGDs have shown that many PLHIV and MARPs do not apply for benefits, and if they want to apply, then face various barriers - financial, bureaucratic, etc. With regard to benefits for children living with HIV, they do not face any issues with awarding and receiving such benefits. However, existence of such right is not always reported through all AIDS centers in Tajikistan.

The process of submitting documents to the local authorities for receiving this type of benefit does not provide any obligations to employees who receive information about the status of the child. In other words there is nothing about maintaining confidentiality, which violates the rights of parents and the children living HIV.

There is no mechanism for realization of rights of parents who have children living with HIV, as it is envisaged by the Article 168 of the HC of RT:

## Chapter 5: Right to labor and education in the Republic of Tajikistan from HIV/AIDS perspective

### Main findings:

Article 7 of the LC of the RT envisages a ban on discrimination to hire and in the world of work. In the World of Work, Tajikistan adopted the ILO Occupational Safety and Health Convention, 1981 (№ 155) and the ILO Convention (№ 111) as of 1958 on Discrimination in Work and Occupation, which could also affect labor protection for both PLHIV and those who work with PLHIV, and prevention of non-discrimination of PLHIV in the field of labor relations.

When we conducted FGD, we revealed a negative practice and a real violation of GoT Resolution №171 and a misinterpretation of clause 4 of Article 26 of LC of the RT. Currently, many employers require an HIV test - this is when hiring a janitor, shopkeeper, waiters, etc.

There is no direct criminal or administrative liability for demanding additional documents not required by the legislation of the Republic of Tajikistan, as well as for refusing to hire for discriminating reasons. There are contradictions between the norms of the LC and Part 2 of Article 168 of the Health Code of RT. The general norms of the LC of the RT do not allow to sufficiently protecting PLHIV and MARPs from discrimination in labor relations. The controversial issue is caused by the termination of the employment contract on the initiative of the employer with a person who is on substitution therapy (taking methadone), because of the appearance at work in a state of intoxication caused by the use of alcohol, narcotic drugs, psychotropic or other intoxicating substances (Article 42 of the Labor Code of RT).

Mandatory general basic education in state educational institutions of the Republic of Tajikistan is free of charge (Part 2, Article 6 of the Law of the Republic of Tajikistan "On Education"). The Law of the Republic of Tajikistan "On Education" guarantees the right to education to everyone regardless of nationality, race, sex, language, religion, political opinions, social or property status. Children and adults living with

- Joint stay in hospitals with children (under the age of 14) with exemption for this period from work and payment of temporary disability allowance;
- The retention of one of the parents' seniority in the event of his/her dismissal from work in connection with the care of a child under 16 years of age. Seniority is retained for calculating a temporary disability allowance, provided that he/she enters the workforce before the child reaches the age of 16;
- Free travel of one of the parents or other legal representative of the child living human immunodeficiency virus (under 18) - as a person accompanying child living with HIV to the place of treatment and back.

A Mechanism that would realize the right of PLHIV, if they get contracted HIV during to medical procedures performed in an official manner, such as obtaining pensions and housing in the absence of it or, if necessary, improving housing conditions, has not been developed.

### Recommendations for improving access of PLHIV and MARPs to social protection

#### For the Assembly of Representative of Supreme Assembly of Tajikistan:

- Adopt a general anti-discrimination law, which will provide for the concepts of direct and indirect discrimination, adopt mechanisms to protect against all types of discrimination, take into account the interests of PLHIV and MARPs, including on grounds of gender identity and sexual orientation.

#### For the Government of Tajikistan:

- Consider the inclusion of AIDS in the list of diseases that grant rights for disability to all categories of citizens, both adults and children.
- Develop and adopt a mechanism that would realize the rights of PLHIV, who were infected as a result of medical procedures performed in an official manner, including right for pension and the right to receive unscheduled housing, in the absence of it or, if necessary, improvement of living conditions;
- Develop and adopt a mechanism for realizing the rights of parents who have children living HIV, as established by Article 168 of the HC of RT.



HIV are excluded from social policies in the field of education, which operates in the country until 2020. FGDs have shown that discrimination against PLHIV is observed in both higher and secondary education facilities. In practice, a form of education such as family or distance education that would allow children who are not able to attend school to receive education has not been introduced. Some schools require HIV test results without any justified grounds. Another problem faced by parents of children living with HIV is the intake of HIV medicines (ART) by children in schools. HIV medicines should be taken several times a day. Parents have no other choice but to deceive own children so that they are not discriminated against.

Since the research was not full-scale and limited in resources, the issue of medical workers in schools and kindergartens was not addressed, including information about the maintenance of patient cards for children and disclosure of the status of children to health staff in schools. This issue remains urgent and relevant and in need of additional study.

### **Recommendations for realization of rights to labor and education in the Republic of Tajikistan in HIV/AIDS context**

#### **For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

1. Consider ratifying ILO Recommendation 200: HIV and the World of Work.
2. Introduce in the Labor Code of the Republic of Tajikistan additional norms for the protection of the rights of PLHIV, the system of preventive measures against HIV / AIDS.
3. The LC of RT (particularly part 2 of Article 222) shall be brought in compliance with part 2 of Article 168 of the Health Code of RT (gender mainstreaming).
4. Introduce changes in to part 2 of Article 168 of the Health Code of RT (gender mainstreaming), so that leave to care for a child with HIV, could be available to mothers and fathers, as well as other legal representatives of the child.

- To add into Code of Administrative Offenses an additional offense for which employers should be administratively liable for refusing to hire for discriminatory reasons and for the additional requirement of documents for employment not envisaged by the legislation of the Republic of Tajikistan. In case of repeated violation, there should be a criminal liability. The same offense should be provided for educational institutions if they require HIV certificates and dismiss or discriminate students due to HIV.

#### **For the Government of Tajikistan:**

- To submit to the Assembly of Representatives of Supreme Assembly of Tajikistan a proposal for ratification of the ILO Recommendation 200: HIV and the World of Work

#### **For the Ministry of Education and Science:**

- Within the framework of national educational policies, develop and implement standards for such forms of education as family and distance education for primary and secondary schools that also take into account the interests of PLHIV.
- To monitor the educational institutions in order to exclude discriminatory practices, in particular the requirements of HIV certificates.
- Together with the Government and IOs (UNDP, UNICEF, others), conduct a study on the issue of observing the rights of children with HIV in preschool and school facilities, as well as in semi-closed educational institutions (boarding schools).

### **Chapter 6: Specific issues of the legal condition of women and children living with HIV – Issues of non-discrimination**

#### **Main findings:**

Over the years of independence, Tajikistan has done a lot to increase the role of women in the society and achieve greater gender equality. The Government of Tajikistan adopted a National Strategy for Enhancing the Role of Women in Society for 2011-2020 (Resolution № 269 as of May 10, 2010). It should be noted that in the National Programme on Combatting HIV/AIDS for 2011-2015, special attention within national HIV response is paid to gender mainstreaming.

Despite of that women remain vulnerable, especially women living with HIV. They are more

likely than men living with HIV to be stigmatized and discriminated against and be victims of domestic violence. Social policy on gender issues does not cover the changing stereotypes/behavior of the population on HIV / AIDS matters. Laws in this matter are not implemented properly. It is very difficult to combat domestic violence in the absence of mechanisms for implementing the law. Police perceive domestic violence as a special case where one should not interfere. The Law of RT "On the Prevention of Domestic Violence" does not take into account some issues of PLHIV and other vulnerable groups. The problem of financing gender-based programs from the national budget is also relevant. FGD confirmed that women are getting HIV (in most cases) from their partners, but none of them demanded compensation for material and moral harm, moreover, they were accused of leg-lifting and etc. Often young girls are forced to marry very early, and they do not have an opportunity to get a profession, nobody in family hears their voice, they get infected with HIV, and when a crisis situation occurs, for example, the death of her husband, partner or another, she is expelled from a family with her kids without means of subsistence. In such situations, one of the possible means of income for feeding children is to be engaged in paid sexual services. Migration is another of the challenges that women face and make them more vulnerable. The existing discrimination of pregnant women in maternity hospitals limits their access to a normal and healthy delivery, increases the risk of transmission of HIV from mother to child.

The Office of the Human Rights Commissioner (Ombudsman) currently does not have a special department for the protection of women's rights, which adversely affects the work of the Ombudsman on women's rights and specific categories like WLHIV and SWs. Also, the Office of Ombudsman does not take into account gender aspects, and there is no gender strategy.

Social policy in matters of reproductive and sexual health is not available for study and analysis. The National Programme on Combatting HIV / AIDS in 2017-2020 does not take into account the issues of sexual and reproductive health; women and adolescents exposed to trafficking in persons and victims of sexual violence also are not included into this Programme. Based on the results of the previous analysis of the Strategic Plan for

Reproductive Health for 2007-2014 (from the legal point of view taking into account human rights) conducted by human rights organizations, it was revealed that this policy had no impact on men during its implementation. Thus, for example, contraceptive means were distributed in reproductive health centers, where mainly women addressed themselves. No conversations were carried out with men. But it is known that the decision to use contraceptives, such as condoms, in families is decided by men, not women. Sexual education of teenagers is missing. Basically, this policy was of a health nature and was more concerned with reducing the level of maternal and child mortality and breastfeeding (natural feeding). Such categories as SWs and WLHIV are excluded from it. There are fears that this trend will continue in the following programmes on reproductive and sexual health.

Children living with HIV are also vulnerable and it's very difficult to protect their rights. The Children's Ombudsman Office was established in Tajikistan in 2015. The law of the RT "On the Protection of the Rights of the Child", was adopted in 2015; some subject matter experts say that the Law of RT "On the Protection of the Rights of the Child" does not take into account the interests of children living with HIV and, in general, this law is declaratory and without mechanisms. When FGDs were conducted, it was revealed that the right of parents or legal representatives of children born to HIV-infected mothers to receive breast-milk substitutes from the time of its birth until the time of final HIV-positive diagnosis is not realized. In the legal aspect, there is no mechanism for realizing this right. This causes a risk of infection of children born to HIV-positive mother.

Adolescents / girls were included in the number of questions raised in the course of the FGDs; however, neither experts nor FGD participants did provide information on this topic. Parents pointed out the difficulties in communicating with adolescents, how to adapt children to this problem with age, there are no experts who would work on this matter. Parents face this problem, but do not have any support and aid. The adolescents living with HIV did not attend the Focus Group Discussions.

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difficulties in communicating with adolescents, how to adapt children to this problem with age, there are no specialists who would work on this matter. Parents face this problem, but do not have any support and aid. The adolescents living with HIV did not attend to the Focus Group Discussions.

National Programme on Combatting HIV / AIDS Control for 2017-2020 inadequately pays attention to children living with HIV. Low attention is paid to sexual and reproductive health and education of adolescents, including problem of understanding peculiarities of children living HIV when they grow up, as well as psychological support to ensure no denial of HIV status. Other social programs both on education and youth policy also do not take into account the interests of children living with HIV, which negatively affects their situation.

### **Recommendations for improving legal status/conditions of women and children living with HIV**

#### **For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

- Amend the Law of RT "On Prevention of Domestic Violence" taking into account the interests of PLHIV, children living with HIV and children in general, and other vulnerable groups of population, establish mechanisms for the protection of victims of domestic violence;
- Amend the Law of the Republic of Tajikistan "On the Protection of the Rights of the Child", taking into account the interests of children living with HIV;
- Introduce changes into the Criminal Code of the Republic of Tajikistan with the aim of criminalizing domestic violence;
- Crimes that qualify as domestic violence must be subject to public prosecution.

#### **For the Government of Tajikistan:**

- Ensure full compliance of existing laws aimed at protecting women and girls from violence and ensure the prosecution of perpetrators of violence against women and girls in accordance with the legislation of the Republic of Tajikistan
- Take into account the interests of women living with HIV in gender policies;
- Allocate annual funding for all national programs on gender issues;

- Develop a mechanism for exercising the right of parents or legal representatives of children born to HIV-positive mothers to receive breast-milk substitutes from the moment of the birth of the child until the time of final diagnosis.

- Ensure adequate funding for the Law of RT "On preventing domestic violence".

- Develop all social policies, including on such matters like reproductive health and reproductive rights, taking into account the interests of people, including women, children and adolescents living with HIV and representatives of key populations.

- Ensure that reproductive health policy focuses specifically on the anti-discrimination measures for PLHIV and pregnant women, including sexual education for adolescents and young people, men, as well as women should be addressed through an action plans in the field of contraception, family planning and observance of rights of partners / spouses;

#### **For MoHSPP:**

- Organize courses for HIV prevention, transmission and non-discrimination of PLHIV and MARPs for gynecologists and other maternity hospital staff, including the principles of informed consent and confidentiality.

#### **For Children's Ombudsman:**

- During monitoring of closed and semi-closed children's facilities, pay particular attention, on the issues of children with HIV;
- More actively promote the protection of the rights of children living with HIV and parents of such children.

#### **For Ombudsman:**

- Be involved more actively on issues related to protection of women's rights, including rights of WLHIV and SWs.
- Enhance staffing table of the Ombudsman's office and establish a separate department for protection of right of women
- Develop and adopt a gender strategy, taking into account the rights of WLHIV and SWs.

## Chapter 7: Specific issues of the legal status of PLHIV in matters of criminal law, sex workers, people who inject drugs, men having sex with men, people under arrest or in custody. Issues of non-discrimination

### Main findings

The criminal legislation of the Republic of Tajikistan provides for criminal liability, both for deliberate infecting with HIV and for the deliberate placing any person to the risk of HIV infection. This rule does not comply with the recommendations specified in the international guidelines on HIV / AIDS and human rights. We come to the conclusion that these articles of the Criminal Code have no special effect and only discriminate and disclose the status of people living with HIV. Moreover, the disposition of Article 125 of the Criminal Code does not take into account the informed consent of the other partner. Also, legislation does not take into account such issues as the use of condoms as a means of safety during sexual intercourse or an undetectable viral load in which HIV is not transmitted according to the latest scientific research<sup>25</sup>. The legislation does not define the routes of HIV transmission.

As the discussions with 200 participants, including experts from NGOs and people living with HIV, have shown, none of those who infected their partners with HIV was convicted of this offense.

Drug addiction is a disease, according to chapter 26 of the Health Code of RT "Provision of medical and social assistance to patients with narcological diseases/drug addiction". According to Article 193 of the Health Code of RT "Drug addiction treatment is carried out on the basis of the principles of charity and humanism and is proceeded from the right of everyone to decide about own health, as well as the primary duty of the doctor is to assist the patient by following medical duties and professional ethics. Narcological aid is provided to patients on the basis of their application or with their consent... ". Forced treatment is prohibited. Persons suffering from narcological diseases also have the right to receive information about the nature of their diseases, the purpose and duration of the recommended type of narcological care, the prescribed procedures and methods of

treatment, the expected results, possible side effects, as well as alternative methods of treatment and other rights provided for by Article 195 of the Health Code of RT.

Consequently, the measures of criminal law on PWID only aggravate their situation and do not help them in recovery. But the Criminal Code and the Code of Execution of Criminal Penalties do not take into account the norms of the Health Code of the Republic of Tajikistan in connection with the issues of narcological aid (Chapter 26) and allows sentencing PWID with compulsory treatment. In practice, the measures of compulsory treatment do not have any positive effect.

Joint United Nations Programme on HIV/AIDS recommends decriminalizing the storage and possession of the narcotic drugs for personal use. But from the survey we concluded that PWID who consume narcotic drugs and buy them for themselves in a small amount from 0.5 to 10 grams, already fall under criminal liability.

The issue of illegal detention of PWID, including illegal methods of interrogation, discrimination of PWID by law enforcement bodies, forced testing during detention is still persisting. Another issues in regards to PWID, are those who suffer from TB and viral hepatitis. These people firstly are not able to find a job due to the fact that they are discriminated against and nobody wishes to hire them t. In order to receive a disability category and some benefits, they simply need to pass all the tests and be checked-up in the hospital. All these services are paid. And for some PWID, the issue of getting a disability and even some kind of a benefit for treatment is very critical. Another discriminatory practice is that PWID are registered in the register of drug addicts. There is no possibility, even in case of recovery, to be excluded from that register.

In Tajikistan, prostitution is subject to administrative liability. In 2015, amendments into Article 130 of the Code of Administrative Offenses of RT have exacerbated the situation of sex workers, who are mostly women. Often women have no means of subsistence at all. A survey of SWs during FGD has shown that women are often beaten, both by clients and law enforcement officers. In addition to that, they are engaged into

<sup>25</sup> <https://spid.center/ru/articles/827>

forced sex and sexual abuse and exploitation. There is extortion by police officers. Police officers refer SWs for compulsory HIV and STIs testing. SWs are harassed at the streets. Young girls are involved in sex work through their pimps. Sex workers are not perceived as members of society. Any application submitted by SWs for protection against torture and ill-treatment is denied. Periodically, law enforcement agencies arrange raids on their detention, providing, as they use to say "in order to recover the moral image of urban area". Discrimination also occurs in the public health system. They are often denied gynecological services in public health facilities and they have no financial means to apply for private practitioners. There is a high percentage of SWs who are self-stigmatizing. Many articles in the media testify this saying. In 2013, with regard to the status of female sex-workers in Tajikistan the CEDAW Committee made some recommendations: recommendations 20 (b) which is to revise Tajikistan's legal framework for prostitution, so prostitution is not a subject of criminal liability. In addition Tajikistan was recommended to intensify efforts aimed at counteracting/reducing the demand for prostitution and consider imposing sanctions on buyers of sexual services.

The legal status of persons under arrest or in custody is regulated mainly by the Code of Implementation of Criminal Penalties. The analysis of some norms of CACP has shown that they do not comply with international standards in the field of human rights and HIV / AIDS and discriminative against HIV-positive prisoners. For instance in paragraph 4 of Article 24 it is stated that for persons that have HIV and those suffering from AIDS, as well as those who have not fully completed the STIs treatment and sentenced by decision of the judicial body in accordance with the part 1 of Article 24, the institution that is in charge of implementing the penalty, upon the decision of the medical commission, might apply compulsory treatment. Compulsory treatment of HIV is not allowed by international standards.

Issues related to the provision of medical care, treatment and testing for HIV among prisoners are regulated by the norms of the Health Code of Republic of Tajikistan.

FGDs on the situation of people under arrest or in custody revealed the following:

- Prisoners in prisons are tested for free, but not voluntarily. There is almost no counseling;
- In pre-detention facilities ARV drugs are taken by guards, as legislation doesn't allow that. In prisons, some released prisoners noted that they received medication (ARV drugs) from their parents, and some prisoners received ARV drugs from doctors at health unit in penitentiary facility;
- Prisoners are subject to very strong discrimination and many prisoners say about various violations of their rights by police officers;
- Confidentiality of HIV status is not always maintained

Although the Constitution of the Republic of Tajikistan and various laws of the Republic of Tajikistan do not violate the rights of MSM, it is necessary to state that discrimination against MSM is not recognized, both in society as a whole and in national policies in particular. So, this category of MARPs was not taken into account while developing the National Program on Combatting HIV / AIDS in Tajikistan for 2017-2020, approved by the Resolution of Government of Tajikistan (No. 89, as of February 25, 2017), as well as in other national programs and strategies. Accordingly, it can be concluded that MSM will be deprived of the opportunity to benefit from the social, legal and other benefits, envisaged by various strategies and programmes. Hence this category is not taken into account, resources for changing the behavior of the police, other public servants, and the general population towards them will not be allocated either. And accordingly, the rights of men having sex with men will be violated, and the risk of HIV transmission in their community will increase. It should also be noted that during analysis of many social policies of Tajikistan, it was revealed that Government does not recognize such social phenomena like prostitution and same-sex relationships. Government prefer to close its eye to the problem associated with these phenomena. If there is a need to respond, since the recommendations of international human rights bodies are made, Government prefers to apply only punitive methods, mainly through police officers.

FGDs among this category of key population groups in Dushanbe and Kulyab have shown that the rights of MSM are often violated by law enforcement agencies and MSM are also

discriminated in health facilities. This group is very "hidden" due to the fear of disclosure of their status as MSM. During interview with a NGO manager that supports MSM, it was said that "they are ready to do anything only to keep their sexual orientation hidden from parents, close relatives and friends."

**Recommendations to improve the legal status of PLHIV in matters of criminal law, sex workers, people who inject drugs, men having sex with men, as well as people under arrest or in custody.**

**In matters of criminal law:**

**For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

- Make changes in Article 110 of the Criminal Code of the Republic of Tajikistan "Intentional infliction of grievous bodily harm" - after the phrase "entailing mental illness, drug addiction or substance abuse" indicate "HIV infection", so that people are only prosecuted for intentional HIV transmission (while relying on general criminal legislation).

- Abolish Article 125 "Infecting others with HIV" from the Criminal Code of the Republic of Tajikistan, since the prosecution of people for non-disclosure of HIV status and HIV transmission, when there is no evidence of intentional transmission is excessive and leads to opposite results from public health perspective.

**In matters relating to the situation of people who inject drugs in the context of HIV / AIDS:**

**For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

- Consider decriminalizing of possession of narcotic drugs for personal use, recognizing the combined effect of such sanctions as harmful to society. In the Criminal Code of the Republic of Tajikistan, to determine an adequate amount of narcotic drugs that will be qualified as storage for personal use.

- To introduce changes in the Criminal Code with the possibility of appointing alternative treatment for PWID instead of compulsory treatment. Include in the Criminal Code or CPC the concept of

alternative treatment and the procedure for its prescription.

**For the MoI of RT:**

- To ensure an effective and targeted combat against HIV in accordance with human rights obligations, to increase awareness among the staff of Ministry of Interior on countering stigma and discrimination, to intensify activities of the Ministry of Interior through involvement in substitution therapy and needle exchange programmes, as well as protection of human rights;
- Abolish the practice of raids and inspections by the Ministry of Internal Affairs in close proximity to HIV prevention cabinets for PWID;
- In the case of the recovery of PWID, provide for the possibility of excluding such drug addicts from the register and envisage limited access of law enforcement officers to information available at drug addicts' register.

**For the Office of Attorney General of RT:**

- Strengthen supervision by prosecutors against law enforcement officers who apply torture and other ill-treatment against PWID;
- For the prosecuting authorities to develop and implement standards for cases involving PLHIV and MARPs, taking into account international standards in the protection of their rights.

**- In matters relating to the situation of sex workers in the context of HIV / AIDS:**

**For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

- Abolish Article 130 "Prostitution" from the Code of Administrative Offenses of RT aimed at decriminalizing any kind of voluntary sexual behavior of adults in a private setting;

**For the Government of Tajikistan:**

- Establish a monitoring mechanism for monitoring violence against sex workers committed by police officers, other public and non-governmental agencies
- Envisage mechanisms for changing risky behavior of SWs, including the possibility of obtaining concessional loans, creating additional jobs;



- Include SWs into reproductive health programmes;

**For the MoI of RT:**

- To abolish the mandatory testing of SWs for HIV and develop preventive programs for SWs in accordance with the latest WHO recommendations <sup>26</sup>.

- To work with the personnel of the Ministry of Internal Affairs on the execution of the order of the Minister of Internal Affairs No. 35 b / z, as of October 28, 2015.

EXPLAIN OR INDICATE THE ESSENCE OF THE ORDER.

**In matters relating to the situation of persons under arrest or in custody in the context of HIV / AIDS:**

**For the Assembly of Representatives of Supreme Assembly of Tajikistan:**

- To study CICIP for observance of international standards of human rights and HIV, and to make subsequent changes. In particular exclude from clause 4 of Article 24 following phrases "persons infected with human immunodeficiency virus and those suffering from acquired human immunodeficiency syndrome", from part 1 of Article 100 exclude paragraph "z". Paragraph 2 of Article 105 shall be supplemented with a sentence: "Patients with TB and HIV / AIDS must receive treatment and medicines free of charge".

**For MoJ and MoHSPP of RT:**

- Ensure that penitentiary facilities have available ARV drugs for PLHIV in accordance with international quality standards for healthcare in penitentiary facilities;
- On a systematically basis conduct training courses for the penitentiary staff on observing the rights of PLHIV and MARPs, on HIV issues and the ways of its transmission;
- Provide in detention facilities necessary measures for HIV prevention, including condom, voluntary drug dependence treatment according to the evidence-based methods.

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**Recommendations in regards to legal situation of men having sex with men in the HIV/AIDS context**

**For the Government of Tajikistan:**

- Include MSM-related topic in the national social policies of the Republic of Tajikistan, including the "National Programme on Combatting HIV/AIDS for 2017-2020"
- Conduct joint monitoring (with the civil society) of violation of MSM rights and undertake measures for prevention of violence against MSM.
- conduct programmes on reducing stigma and discrimination against LGBT communities across the society.

**For the Ministry of Interior of Tajikistan:**

- conduct series of trainings for law enforcement officers and healthcare providers on topics related to MSM, including observance of MSM rights for zero discrimination

**Chapter 8: Access to justice for PLHIV and MARPs**

**Main findings:**

Currently, the system of state free legal aid is undergoing a reform. The adoption of the Law "On Free Legal Aid" was postponed until the completion of the implementation of the Free Legal Aid Concept, approved through the Resolution of Government of Tajikistan (№425, as of 02.07.2015). The implementation of this Concept is entrusted to the Ministry of Justice of the Republic of Tajikistan.

FLA in Tajikistan is divided into primary and secondary free legal aid. Primary legal aid is provided to everyone regardless of status and income. It includes mainly oral counseling on all legal issues, as well as referral to lawyers for secondary legal aid. Secondary legal aid should be provided by lawyers. In addition to the Ministry of Justice of the Republic of Tajikistan, the primary legal aid is provided by the Ombudsman's Office of the Republic of Tajikistan, as well as crisis centers of the Committee for Women and Family Affairs. Despite this, there is a shortage of legal qualified aid in Tajikistan, especially for vulnerable groups of the population.

<sup>26</sup> Implementing comprehensive HIV/STI programmes with sex workers: practical approaches from collaborative interventions, WHO, UNFPA, UNAIDS, NSWP, 2015, Accessed on April 2017 - [http://www.who.int/hiv/pub/sti/sex\\_worker\\_implementation/ru/](http://www.who.int/hiv/pub/sti/sex_worker_implementation/ru/)

Vulnerable groups of the population, including PLHIV and MARPs are not able to assert own rights in public institutions, both in social and health authorities, as well as in courts and law enforcement agencies. Even if they know about own rights, they are lost, keep mouth shut and afraid to assert own rights. For this they need a representative. But the rights of PLHIV and MARPs - as a vulnerable category of persons to whom a lawyer can be provided at the expense of the state - are not included in the Free Legal Aid Concept or in the Law of the Republic of Tajikistan "On the Legal Profession".

Regarding the legal profession (lawyer) community, it should also be noted that the process of its formation is taking place in connection with the adoption, in 2015, of the new Law of the Republic of Tajikistan "On Legal Profession". Although, as per this Law this lawyer community is deemed to be independent, but in practice it is dependent on both the Ministry of Justice and the Tax Committee of the Republic of Tajikistan in connection with the high tax burden and in connection with providing access to the legal profession. According to Article 39 of the Law of the Republic of Tajikistan "On Legal Profession", the Board of the Bar Association promotes re-training and capacity development of lawyers, and also approves a uniform methodology for capacity development of lawyers and training of interns-lawyers. In this regard, in 2015 a body was established within the Bar Association, which is engaged in the professional development of lawyers. However, there are difficulties in implementing the tasks assigned to that body. They do not have their own premises, lack financing to hire specialists, rent premises and etc.

Survey among lawyers has shown that they don't know much about PLHIV rights and practically know nothing about HIV, not HIV-sensitive and not sensitive about rights of Sex-Workers, and try to avoid anything related to these aspects.

Judges also do not know about HIV and the ways of HIV transmission. The experience of adjudication of cases of PLHIV is minimal. The same situation is observed within the prosecution authorities. This is also due to the fact that PLHIV do not appeal to lawyers, courts and law enforcement bodies for several reasons:

- Strong stigma;
- Fear of status disclosure;

- Lack of financial means.

### **Recommendations on access to justice for PLHIV and MARPs:**

#### **For Assembly of Representatives of the Supreme Assembly of the Republic of Tajikistan:**

- During adoption the Law of RT "On Free Legal Aid", PLHIV shall be included in the category of people entitled to free secondary legal aid, both for criminal and civil offenses.

#### **For the Supreme Court of the Republic of Tajikistan:**

- Develop a training manual for judges on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues;
- Organize (on a systematic basis) refresher courses for judges on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues.

#### **For Attorney General's Office:**

- Develop a training manual for prosecutors on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues;
- Organize (on a systematic basis) refresher courses for prosecutors on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues.

#### **For the Bar Union:**

- Develop a training manual for lawyers on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues;
- Jointly with the International Community, organize (on a systematic basis) refresher courses for lawyers on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues.

#### **For the Ministry of Justice and the Office of Commissioner on Human Rights of the Republic of Tajikistan:**

- Conduct on a systematic basis refresher courses for staff that provides legal aid to people on the PLHIV rights in the context of international human rights standards and HIV, as well as gender issues

#### **For NGOs working with PLHIV and MARPs:**

- Reinforce actions of PLHIV and MARPs so that they appeal to the law enforcement agencies and courts in regards to violation of their rights
- Increase legal awareness of PLHIV and MARPs about their rights.

#### **For international community in the Republic of Tajikistan:**



- Provide technical and financial assistance to the Bar Union in conducting training activities on the PLHIV rights in accordance with international human rights standards and HIV.

- Conduct a study tour for professional legal community (judges, prosecutors, police officers,

lawyers and civil society advocates) to the countries, where protection mechanisms of the rights of PLHIV are in place in accordance with international human rights from HIV perspective.

**Chapter 1: Legal framework for the regulation of relations in the field of HIV prevention, treatment and care among PLHIV and MARPs (key populations), and their protection from stigma and discrimination**

**Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030 (7) <sup>27</sup>**

16. Recognize that addressing the holistic needs and rights of people living with, at risk of and affected by HIV throughout their life course will require close collaboration with efforts to end poverty and hunger everywhere, improve food and nutrition security and access to free, non-discriminatory primary and secondary education, promote healthy lives and well-being, provide access to HIV-sensitive social protection for all, including for children, reduce inequalities within and among countries, achieve gender equality and the empowerment of all women and girls, provide for decent work and economic empowerment and promote healthy cities, stable housing and just and inclusive societies for all

**1.1. International human rights instruments in the HIV/AIDS context**

On December 10<sup>th</sup>, 1948, with the adoption of the Universal Declaration of Human Rights by the UN General Assembly, the international human rights movement has been reinforced. International law in the field of human rights assigns certain obligations to the UN member-states. Becoming a party to international treaties, the member-state undertakes obligations to respect protect and fulfill human rights. Respect for human rights implies non-interference by the state in the exercise of human rights and abstaining from their restriction. The obligation to protect human rights requires the member-state not to allow any violations of rights. The fulfillment of human rights obliges the member-state to guarantee the unimpeded implementation of basic human rights. By ratifying the [International Human Rights Treaties](#) the member-state undertakes obligations to adopt domestic laws and instruments in compliance with norms of these treaties<sup>28</sup>. Tajikistan signed and ratified the following international human rights instruments:

International instruments and treaties	Date of accession/ratification
The First Optional Protocol to the International Covenant on Civil and Political Rights	January 4 <sup>th</sup> , 1999
First Optional Protocol to the International Covenant on Civil and Political Rights	January 4 <sup>th</sup> , 1999
International Covenant on Economic, Social and Cultural Rights	January 4 <sup>th</sup> , 1999
Convention on the Elimination of All Forms of Discrimination against Women	October 26 <sup>th</sup> , 1993
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	July 22 <sup>nd</sup> , 2014
Convention on the Rights of the Child	October 26 <sup>th</sup> , 1993

<sup>27</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

<sup>28</sup> International human rights law, international obligations in the field of human rights: accessed on April 2017 - <http://www.ohchr.org/RU/ProfessionalInterest/Pages/InternationalLaw.aspx>

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	August 5 <sup>th</sup> , 2002
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	August 5 <sup>th</sup> , 2002
International Convention on the Elimination of All Forms of Racial Discrimination	January 11 <sup>th</sup> , 1995
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	January 11 <sup>th</sup> , 1995
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	January 8 <sup>th</sup> , 2002

All the above-mentioned international treaties constitute the so-called hard international human rights law. The Government of Tajikistan, with a certain periodicity, established in each of the above documents, reports on implementation of the international instruments and treaties. In the context of HIV / AIDS, these international instruments also have their decisive importance. In 2001, Tajikistan joined the Declaration of Commitment on HIV / AIDS adopted at the 26<sup>th</sup> Special Session of the UN General Assembly. In 2016 Tajikistan ratified the Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to ending the AIDS Epidemic by 2030. This Declaration defines the main directions for implementing measures aimed at combatting HIV / AIDS: political leadership, multisectorial approach with involvement of NGOs, coordination, prevention, access to treatment, care and support, promotion of human rights, reducing vulnerability, and mitigating the social consequences of the HIV epidemic.

Also, within the framework of implementing some of the above-mentioned international treaties, Tajikistan in the context of HIV / AIDS has been given the following observations and recommendations:

<b>Observations made by the Committee on the Rights of the Child, as of February 5th, 2010</b>
<p>The Committee recommends the full implementation of article 4 of the Convention by:</p> <p>b) Elaborating strategic budgetary programmes to reduce the disparities and to target the rights of disadvantaged groups, including children with disabilities, children living in poverty, children living in remote areas, children infected with HIV/AIDS, orphans, girls and others.</p> <p>57. The Committee urges the State party, taking into account the Committee's general comment No. 3 (2003) on HIV/AIDS and the rights of the child (and the International Guidelines on HIV/AIDS and Human Rights (E/CN.4/1997/37), to take measures to reduce HIV/AIDS infection in its territory, particularly with regard to adolescents through, inter alia:</p> <ul style="list-style-type: none"> <li>(a) Strengthening, continuing and developing new policies and programmes to provide care and support for children infected or affected by HIV/AIDS, including programmes and policies to strengthen the capacity of families and the community to care for such children;</li> <li>(b) Pursuing awareness-raising efforts in order to prevent the incidence and spread of HIV/AIDS, by disseminating information and materials to the public on prevention and protection methods, including safe sex practices;</li> <li>(c) Carrying out activities aimed at reducing stigma and discrimination related to HIV/AIDS and at raising awareness on human rights within the context of HIV/AIDS;</li> <li>(d) Seeking technical assistance from, among others, the Joint United Nations Programme on HIV/AIDS (UNAIDS), WHO and UNICEF</li> </ul>
<b>Concluding observations made by the UN Human Rights Committee, as of August 22<sup>nd</sup>, 2013</b>
<p>9. The State party should ensure that all deaths in custody are fully and promptly investigated, that the perpetrators are brought to justice and that compensation is provided to the victims' families. The State party should also take effective measures to address deaths in custody due to tuberculosis and take appropriate measures to eradicate this phenomenon. The State party should gradually improve prison conditions and publish statistics on the number of prisoners held.</p>
<b>Concluding observations made by the UN Committee on the Elimination of Discrimination Against Women, as of October 29<sup>th</sup>, 2013</b>
<p>28. The Committee calls upon the State party:</p> <p>c) To develop strategies to combat HIV/AIDS with a gender perspective, to strengthen the provision of free antiretroviral treatment to all women and men living with HIV/AIDS, including pregnant women so as to</p>

prevent mother-to-child transmission, and to ensure that women and girls living with HIV/AIDS are not subjected to stigmatization and discrimination

32. The Committee recommends that the State party:

a) Take all measures, including temporary special measures, necessary to improve the situation of disadvantaged groups of women, protect them from exploitation and improve their access to health-care services, social benefits, education and employment opportunities and participation in political and public life.

**Concluding observations made by the UN Committee on Economic, Social and Cultural Rights, as of March 25<sup>th</sup>, 2015**

13. The Committee reiterates its previous concluding observations (E/C.12/TJK/CO/1, paras. 14–16) and urges the State party to expedite the adoption of a comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination and includes all the grounds for discrimination set out in article 2, paragraph 2, of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

32. The Committee recommends that the State party step up its efforts to combat HIV/AIDS and tuberculosis, including through more targeted programmes, such as the existing needle exchange programme, the allocation of sufficient resources to implement them, and the strengthening of sexual and reproductive health education..

33. The Committee urges the State party to take effective measures to combat the inflow and transit of narcotic drugs and to strengthen its policies with a view to preventing drug abuse, reducing the harm associated with drug abuse and providing adequate treatment and rehabilitation for drug users who require them.

In 2006, Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS published an “International Guidelines on HIV/AIDS and Human Rights 2006 Consolidated Version”. The main purpose of this document is to ensure respect and promotion of human rights in the context of HIV. Although these guidelines are also of a recommendatory nature for Tajikistan, given that Tajikistan has ratified all major international human rights instruments, these principles are relevant for Tajikistan.

## 1.2. Legal framework of Tajikistan in the context of rights of people living with HIV

The legal system in Tajikistan is based on the Romano-Germanic tradition. Since the XIX century the law is the main source (form) of law in countries dominated by Romano-Germanic tradition. The law forms the skeleton of the rule of law, embraces all its aspects and lifecycle of this skeleton is heavily influenced by other factors. The law is not considered narrowly and textually, and often depends on the expansion methods of its interpretation, in which the creative role of doctrine and judicial practice is manifested. Lawyers and the law itself theoretically recognize that the legislative order may have gaps, but such gaps are almost insignificant<sup>29</sup>.

In Tajikistan, the system of legal instruments is reflected in Article 7 of the Law of Republic of Tajikistan "On Legal Regulatory Instruments". The system of legal-regulatory instruments of the Republic of Tajikistan includes:

- The Constitution of the Republic of Tajikistan;
- Laws of the Republic of Tajikistan adopted through a national referendum;
- International legal instruments, recognized by Tajikistan;
- Constitutional laws;
- Codes, laws;
- Joint enactments/resolutions by the Upper and Lower Chamber of the Supreme Assembly of the Republic of Tajikistan;
- Enactments/resolutions adopted by the Upper Chamber of the Supreme Assembly of the Republic of Tajikistan;
- Enactments/resolutions adopted by the Lower Chamber of the Supreme Assembly of the Republic of Tajikistan;

<sup>29</sup> General Theory of Law and State: A Textbook / Edited by V.V. Lazarev — 3<sup>rd</sup> edition, published, amended and revised by— M.: Lawyer, 2001. C. 231

- Decrees issued by the President of Tajikistan;
- Enactments/resolutions issued by the Government of the Republic of Tajikistan;
- Instructions issued by Ministries and other state bodies (public authorities), as well as Enactments/resolutions carried out by state committees;
- Enactments/resolutions carried out by members of people's Assembly in GBAO, other provinces and Dushanbe city;
- Enactments/resolutions carried out by the governors of GBAO, other provinces and Dushanbe city;
- Enactments/resolutions carried out by members of people's Assembly in districts and cities;
- Enactments/resolutions carried out by chairmen of the local executive authorities;
- Enactments/resolutions of self-governing bodies of settlements and villages.

The Constitution of Tajikistan has the highest legal force; its norms have a direct effect. Laws and other legal instruments that contradict the Constitution have no legal force. The state and all its bodies, officials, citizens and their associations are obliged to observe and execute the Constitution and laws of the Republic of Tajikistan. International legal acts recognized by Tajikistan are an integral part of the legal system of the Republic of Tajikistan. If the laws of the country do not comply with recognized international legal acts, the norms of international legal acts shall prevail.

However in the judicial system of Tajikistan norms of international legal acts are not applied directly. So the Committee on Social, Economic and Cultural Rights in concluding observations for Tajikistan (dated 25.03.2015) have said that: «The Committee is concerned that the Covenant's impact on the case law of domestic courts may be negatively affected by the insufficient training of judges and legal professionals on the international human rights treaties, in particular the Covenant» and recommended: «The Committee recommends that the State party take all appropriate measures to ensure the direct applicability of the Covenant provisions to its domestic legal order through adequate training programmes for judges, lawyers and public officials»

Laws and international legal acts recognized by Tajikistan come into force after their official publication.<sup>30</sup> The Constitution enshrines all the basic human and civil rights and freedoms that have equal effect for all persons residing in Tajikistan, with some exceptions for foreign citizens and stateless persons (Article 16 of the Constitution of the Republic of Tajikistan). People living with HIV and MARPs on the basis of the principle of non-discrimination have all the rights and freedoms enshrined in Chapter 2 of the Constitution of the Republic of Tajikistan - the right to life, to judicial protection, to education, to physical and mental health, to social protection, to information and the secret of personal life and others. Individual rights will be considered in separate chapters with an emphasis on HIV / AIDS.

It should also be noted that the laws in the law order of the Republic of Tajikistan are divided into common and special laws. In the legal situation of PLHIV and MARPs, the law of the Republic of Tajikistan "On Combatting HIV / AIDS" has a special meaning in relation to the Law of Republic of Tajikistan "On protection of the public health". If there is equal force between any two legal instruments, and such laws are deemed to be equal, there are contradictions in the status and treatment of PLHIV, as it has greater legal force in relation to a normative legal instrument of the same level that law / instrument whose subject of regulation is done via this normative legal act (i.e. it is special in relation to another normative legal act that is common)<sup>31</sup>.

Specific issues of the legal status of persons who inject drugs are regulated by the Law of the Republic of Tajikistan "On Narcological Aid", for patients with Tuberculosis - the Law of RT "On TB Protection". In the event of issues, rules and procedures related to serving a sentence in penitentiary institutions is regulated by the Code of Execution of Criminal Penalties of the Republic of Tajikistan. It should be noted that in May 2017, the Lower Chamber of the Supreme Assembly adopted a new Health Code. Once Health Code came into force, 16 various laws have lost validity:

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<sup>30</sup> Article 10 of the Constitution of the Republic of Tajikistan

<sup>31</sup> Article 70 of the Law of Republic of Tajikistan «On legal and regulatory instruments»

- The Law of the Republic of Tajikistan of June 27, 1991 "On compulsory treatment of patients with chronic alcoholism or drug addiction" (Gazette of the Supreme Council of the Republic of Tajikistan, 1991, No. 15, Article 272);
- The Law of the Republic of Tajikistan of 15 May 1997 on the protection of public health (Gazette of the Supreme Assembly of the Republic of Tajikistan, 1997, No. 9, Article 115, 2003, No. 4, Article 149, 2004, No. 2, Article 45, 2005, No. 12, Article 651, 2009, No. 5, Article 399, 2013, No. 7, Article 537, No. 12, Article 901, 2016, No. 3, item 146);
- The Law of the Republic of Tajikistan of 2 December 2002 "On Private Medical Activity" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2002, No. 11, Article 663, 2005, No. 12, Article 634, 2009, No. 3, article 97)
- The Law of the Republic of Tajikistan of December 2, 2002 "On Reproductive Health and Reproductive Rights" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2002, No. 11, Article 699, 2015, No. 3, Article 223);
- The Law of the Republic of Tajikistan of December 2, 2002 "On Psychiatric Care" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2002, No. 11, Article 753, 2004, No. 2, Article 54);
- The Law of the Republic of Tajikistan of 8 December 2003 "On Ensuring Sanitary and Epidemiological Safety of the Population" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2003, No. 12, Article 677, 2008, No. 10, Article 822, No. 12, h-2, item 1015, 2011, №12, item 857, 2013, №7, item 538);
- The Law of the Republic of Tajikistan of 8 December 2003 "On Narcological Aid" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2003, No. 12, Article 695);
- The Law of the Republic of Tajikistan of 9 December 2004 "On Traditional Medicine" (Gazette of the Supreme Assembly of the Republic of Tajikistan 2004, No. 12, Part 1, Article 700, 2007, No. 5, Article 374, 2008, No. 12, part 2, article 1009);
- The Law of the Republic of Tajikistan of December 28, 2005 "On Combating the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome" (Gazette of the Supreme Assembly, Republic of Tajikistan, 2005, No. 12, Article 662; 2008, No. 12, Part 2, art. 1010, 2014, No. 3, Article 153);
- The Law of the Republic of Tajikistan of 22 December 2006 "On the Protection of the Natural Feeding of Children", (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2006, No. 12, Article 545);
- Law of the Republic of Tajikistan of December 22, 2006 "On protection of the population against tuberculosis" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2006, No. 12, article 547);
- Law of the Republic of Tajikistan of June 30, 2007 "On transplantation of human organs and (or) tissues" (Gazette of the Supreme Assembly of the Republic of Tajikistan 2007, No. 7, Article 693);
- The Law of the Republic of Tajikistan of 26 March 2009 "On the donation of blood and its components" (Gazette of the Supreme Assembly Oli of the Republic of Tajikistan, 2009, No. 3, Article 96);
- The Law of the Republic of Tajikistan of May 19, 2009 "On the medical and social protection of citizens with diabetes" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2009, No. 5, Article 334);
- Law of the Republic of Tajikistan dated December 29, 2010 "On Family Medicine" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2010, No. 12, part 1, article 835);
- The Law of the Republic of Tajikistan of December 29, 2010 "On immunization of infectious diseases" (Gazette of the Supreme Assembly of the Republic of Tajikistan, 2010, No. 12, part 1, article 839).

LEA was conducted on the basis of norms provided at Health Code, as well as aforementioned laws. The analysis revealed that the norms of the analyzed laws, for example, the Law of RT "On protection of public health", "On combatting HIV / AIDS" and others entered the Health Code of RT without any changes.

In addition, in the legal practice, PLHIV and MARPs along with other citizens face various kinds of family-legal and civil-law problems. In this case, for example, marriage, alimony, the establishment of rights and duties of spouses are regulated by the Family Code of RT, and as regards to civil transactions, legal capacity and physical capacity of individuals and legal entities in civil law, compensation for moral harm, loss, etc. is regulated by the norms of the Civil Code of the Republic of Tajikistan. Labor relations of citizens, including right to labor of PLHIV and MARPs are regulated by the LC of RT.

The issues of criminal and administrative liability and the sentencing are regulated by the Criminal Code of the Republic of Tajikistan and the Code of Administrative Offenses of the Republic of Tajikistan respectively. So part 1 of Article 125 of the Criminal Code of the Republic of Tajikistan envisage criminal liability for deliberately placing another person in danger of contracting HIV. Issues of illegal trafficking in narcotic drugs are regulated by Articles 200- 206 of the Criminal Code of the Republic of Tajikistan. As per commercial sex work an administrative liability is envisaged under Article 130 of the Code of Administrative Offenses of the Republic of Tajikistan.

It is important to note that subordinate regulatory instruments play an important role in the legal system of the RT. They concretize and supplement existing laws. In the system of legal-regulatory framework Republic of Tajikistan (Article 7 of the Law "On Regulatory Legal Instruments") all instruments are represented by the degree of their legal force, from the top to the lowest level. As a rule, the lower legal instruments should not contradict and subsequently correspond to the higher one. Special subordinate by-laws in the sphere of rights of PLHIV and MARPs are as follows:

- The procedure for medical examination for the purpose of detecting the Human Immunodeficiency Virus infection, recording, medical examination of HIV-infected persons and preventive monitoring of such people (as amended by Decree №528 of the Government of the Republic of Tajikistan as of August 6, 2014);- The procedure for assigning and paying government allowance to children under the age of 16 living with the human immunodeficiency virus or people with acquired immunodeficiency syndrome (as amended by Decree №262 as of June 3rd, 2013 and Decree №459 as of October 4th, 2013);
- Provisions on the National Coordination Committee on the Prevention of AIDS / STIs (Sexually Transmitted Infections) of the Republic of Tajikistan, approved by Decree №163 of GoT, as of 9.04.1997)

The issues of obtaining disability are regulated by the following by-laws:

- Resolution №812 - "On the state institution - Center for Medical and Social Expertise of People with Disabilities" as of December 31st, 2014;
- Regulations on medical and social expertise (annex to the Joint Decree №73 of the Minister of Labor and Social Protection of the Population as of May 2nd, 2012 and Decree №189 of the Minister of Health of the Republic of Tajikistan as of May 2nd, 2012);
- Resolution №120 of the Government of the Republic of Tajikistan "On the approval of the list of occupational diseases resulting in disability" as of March 19th, 1994;
- Resolution №543 of the Government of the Republic of Tajikistan "On approval of the list of medical indications that entitle children with disabilities up to 18 years of age to receive a social pension" dated October 2, 2012
- Resolution №600 of the Government of the Republic of Tajikistan, as of December 2nd, 2008 "On the Procedure for Providing Healthcare Services to Citizens of the Republic of Tajikistan by Public Health Institutions"
- Rules and procedures for the mandatory medical examination of persons entering into marriage, approved by Government Decree №374 as of August 23rd, 2016.

This is a non-exhaustive list of by-laws concerning the status of PLHIV and MARPs. Additional importance shall be given to the subordinate legislation of the Ministry of Health and Social Protection of the Republic of Tajikistan, which is able to more specifically regulate specific issues, such as PLHIV, and issues such as disability, tuberculosis and other opportunistic diseases.

**Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030**<sup>32</sup>

60 (b) Commit to using multiple strategies and modalities, including, when possible, **voluntary, confidential, fully informed and safe community-based testing**, according to national context, to reaching the millions of people who do not know their status, including those living with HIV, and to providing pre-test information, counseling, post-test referrals and follow-up to facilitate linkages to care, support and treatment services, including viral load monitoring, and to addressing socioeconomic barriers to testing and treatment, including legal, regulatory barriers to community testing, and commit to expanding and promoting **voluntary and confidential HIV testing and counseling**, including provider-initiated HIV testing and counseling, and to intensifying national testing promotion campaigns for HIV and other sexually transmitted infections;

**This provision of the Declaration is of direct relevance to the Article 17 of the International Covenant on Civil and Political Rights**<sup>33</sup>:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks<sup>34</sup>.

From the General Comment No. 16 (right to privacy) of the UN Human Rights Treaties as of 1988<sup>35</sup>, it follows that since all people live in a society, the protection of one's personal life can't be absolute. At the same time, competent state bodies should be able to request only information concerning the private life of an individual, which is necessary in the public interest, as it is envisaged at the International Covenant on Civil and Political Rights. Proceeding from the foregoing, the right to privacy must always be balanced and do not harm society, and such balance must be regulated by the state through the adoption of appropriate national laws, including in creating an enabling legal environment for the national response to HIV.

International Guidelines on HIV/AIDS and Human Rights (2006 consolidated version) Guideline 3 emphasizes that: States should review and reform public health laws to ensure that they adequately address public health issues raised by HIV, that their provisions applicable to casually transmitted diseases are not inappropriately applied to HIV and that they are consistent with international human rights obligations. The clarifications to this principle state that, in addition to surveillance and other epidemiological aspects not-related to testing, public health legislation should ensure that HIV testing is conducted only if the person provides informed consent to this. Exception from the principle of voluntary testing should be allowed only if there is a special permission of the court issued after due assessment of important considerations related to privacy and freedom.

<sup>32</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

<sup>33</sup> International Covenant on Civil and Political Rights, [http://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml)

<sup>34</sup> For a more correct understanding of this article, General Comment № 16 (right to privacy) was taken into account (adopted by the UN Human Rights Committee in 1988), paragraph 4 of which states that "The expression "arbitrary interference" is also relevant to the protection of the right provided for in article 17". In the Committee's view the expression "arbitrary interference" can also extend to interference provided for under the law. The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances..

<sup>35</sup> Compilation of general comments and general recommendations adopted by human rights treaty bodies, Volume 1, 2008, Accessed on April 2017 - [http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9\\_ru.pdf](http://www2.ohchr.org/english/bodies/icm-mc/docs/8th/HRI.GEN.1.Rev9_ru.pdf)



The study "Index of Stigma against People Living with HIV in Tajikistan" has shown that among the 150 interviewed PLHIV; only in 42.9% of people received pre and post- test counseling. 0, 7% respondents mentioned that they received only pre-test counseling, 43.5% respondents mentioned about post-test counseling and 12.9% respondents mentioned about no counseling at all.

In 20.1% of cases, healthcare providers disclosed the HIV status; in 39.6% of cases respondents were not sure that their status was kept private by healthcare providers.

National legislation on the right to privacy of HIV patients and MARPs is currently regulated by the Constitution of the Republic of Tajikistan, as well Article.49 and Article163 of the Health Code, and the Law of the Republic of Tajikistan "On Information" and others. Thus, Article 23 of the Constitution of the Republic of Tajikistan proclaims: "The collection, storage, use and dissemination of information about a person's personal life without his/her consent is prohibited". Article 49 of the Health Code of the Republic of Tajikistan proclaims that health and pharmaceutical workers are obliged to keep medical secrets (information about the state of health, about visiting the healthcare facility) and other personal information. Article 163 of the same Code establishes the right of PLHIV to keep information about their health in secret unless conditions and peculiarities of their life and work do not pose a threat to infecting others with the human immunodeficiency virus.

Article 20 of the Law of RT "On Information" determines what is information shall be deemed as a personal information, and establishes a ban on its dissemination without the consent of the person himself/herself, except in cases stipulated by the legislation of the Republic of Tajikistan. So the law refers to personal information about the person following aspects: personal data, nationality, education, marital status, financial status, and religious affiliation, state of health, as well as place of living and place of birth.

The Law of RT "On Information" does not establish in what cases information about the person can be disclosed by law and by whom. But it is indicated in Article 27 – “Refusal to access such information, withholding it, illegal collection, use, storage, or distribution can be appealed in court”. Also in part 2 of Article 8 of the Law of RT "On Operative-Investigative Activity" it is said that carrying out operational activities that restrict the constitutional rights of a person and citizen to the secrecy of correspondence, telephone conversations, postal items, telegraphic and other messages transmitted through electric and postal communication networks, and also the right to the inviolability of the home is allowed on the basis of a reasoned decision of the bodies conducting operational search activity, at the request of the authorized prosecutor and *the sanction of the authorized judge* and the presence of information:

- 1) On the signs of a criminal act being prepared, being committed or already committed, according to which the preliminary investigation is mandatory;
- 2) On persons preparing, committing or already committed criminal acts, according to which the preliminary investigation is mandatory;
- 3) About events or actions (inaction) that create a threat to public, state, military, economic, information or environmental security of the Republic of Tajikistan.

The law also regulates the right of citizens to access information about them, and Article 27 defines the following:

Article 27 of the Law of RT “About information”:

Citizens have the right:

- during the collection of information, to know who collects the information, what type and for what purpose, as well as how, by whom and for what purpose this information is going to be used;
- To have access to information about them, to get acquainted with it, to demand its completeness and conformity to reality.



The access of unauthorized persons to information about another person collected in accordance with the current regulatory and legal acts, state bodies, organizations, officials is prohibited unless there is consent of the person about whom the information is collected, and if he/she is not alive, then his/her successor.

The law defines certain prohibitions and restrictions in the field of abuse of the right to information and regulates the following:

Article 37. Prohibition of abuse of the right to information.

Information can't be used for ... encroachment on the personality/identity, rights, freedoms, honor and dignity of a person. Information that constitutes ... a confidential secret is not subject to disclosure.

Deepening into the issues of specialization, we will point out that currently the norms of the Health Code are applied in matters of public health and medical secrecy, as well as the legal status of people living with HIV. It is all about Chapter 7 – “The rights and duties of citizens, patients and health workers”, Chapter 13–“Reproductive health and reproductive rights of the population”, Chapter 23 – “Protection of the population against tuberculosis”, Chapter 24 “Combatting the human immunodeficiency virus and acquired immunodeficiency syndrome”, Chapter 26 – “Rendering medical and social assistance to the people suffering from any type of addiction”

In part 7 of Article 161 of the Health Code of RT is proclaimed that citizens of the Republic of Tajikistan, foreign citizens, refugees, IDPs and stateless persons are guaranteed the right to preventive check-up in compliance with the principles of confidentiality, anonymity and voluntary testing in the manner determined by the Ministry of Health and Social Protection of the Population of the Republic of Tajikistan and on a voluntary, confidential and anonymous medical examination for the purpose of HIV detection and medical examination in facilities regardless of the form of ownership.

Part 2 of Article 161 of the HC of RT indicates about the principles of voluntariness and confidentiality of medical examination for HIV. Also in this article, it is established that the person who has the human immunodeficiency virus shall be provided with full information about state guarantees, rights, freedoms and responsibilities related to life with the human immunodeficiency virus, as well as about available services of social and psychological support and self-help groups (post-test counseling).

A compulsory medical examination for HIV is established under Parts 8-10 of Article 161 of the Health Code of the Republic of Tajikistan. Blood donors, biological fluids, organs and tissues are subject to compulsory medical examination. Article 162 of the Health Code of RT establishes that information about HIV or AIDS shall be treated as a medical secret. Article 163 of the HC of RT have established that PLHIV have the right to demand confidentiality of information about their state of health, if the conditions and peculiarities of their life and work do not pose a threat to infecting others with the human immunodeficiency virus, as well as compensation *for material and moral damage associated* with disclosure information on the fact of infection of these individuals with the human immunodeficiency virus.

Article 164 of the Health Code have established that a person who knew of his/her HIV infection and who knowingly endangers other or have infected any other person (or several persons) with the human immunodeficiency virus is criminally liable as established by the legislation of the Republic of Tajikistan. The liable person also compensates the damage caused in connection with the provision of medical and social assistance to an infected person in the manner established by the legislation of the Republic of Tajikistan.

In the current norms of the Health Code there are contradictions regarding the voluntary nature of medical examination and treatment of patients with HIV and AIDS. With regard to HIV treatment, Article 163 of the HC of RT have established the right of PLHIV to *participate actively in determining the goals of treatment, including the time and method of treatment, as well as its cessation, that is, these persons decide for themselves the need for treatment, which contradicts with Article 53 of the same legal instrument.* Article

53 of the HC of RT states that – “Citizens sick with TB, leprosy, HIV and AIDS, STIs and other dangerous diseases are obliged to undergo medical examination and treatment at the request of medical facilities:.

Article 49 of the HC of RT has established that medical and pharmaceutical workers are obliged: to keep medical secrets, information about the state of health, diseases, family life or other personal information. The question of the preservation of medical secrecy from the patient himself/herself in each case is decided by the doctor in the interests of the patient, and the doctor independently addresses the problem of reporting patient’s information to health authorities when this is required from public health view and need or protection from infectious diseases, including the decision of the investigating and judicial authorities aimed at protecting the rights of citizens. But in what cases the interests of public health shall be protected is not clearly established by any legal-regulatory instruments of the Republic of Tajikistan.

A more detailed list of persons and indications in which medical examination for HIV is compulsory is established via the Procedure for Medical Examination for the purpose of detecting HIV infection recording, medical examination of HIV-infected persons and prophylactic monitoring of them, approved by the Resolution of Government of Tajikistan (No. 171 as of 01.04. 2008). This procedure was updated in the version of the Resolution No. 528 of the Government of the Republic of Tajikistan as of August 6, 2014. In clauses 28-29 of this Procedure it is indicated that information about the HIV fact, the results of medical examination for HIV detection and other information obtained during the medical examination, constitute a medical secret... The transfer of information that constitutes a medical secret to other citizens and officials is allowed only with the written consent of the citizen or his/her legal representative. Persons who disclose information constituting a medical secret that have become known to them during training, performing professional, official and other duties are brought to justice in accordance with the legislation of the Republic of Tajikistan. Article 145 of the Criminal Code have established criminal liability for the disclosure of medical secrets by medical, pharmaceutical or other employees. Other citizens who divulged such information are subject to criminal liability under Article 144 of the Criminal Code of the Republic of Tajikistan "Illegal collection and dissemination of information about private life."

Based on the analysis of this legal instrument, certain individuals due to epidemiological indications are also subject to compulsory medical examination for HIV: a sexual partner of PLHIV, people who share same needles, parents of an HIV-infected child. But the issue how this mechanism is applied is another problem. In order to lead a sexual partner to a mandatory HIV test, disclosure of the status of the person living with HIV is necessary, thereby violating his/her right. But on the other hand there is a risk of infection of another person with HIV. So that doctors often face an unresolved problem - as the HIV-infected people do not always decide to reveal their status to the sexual partner, referring to the fact that they use contraceptive means of protection (condoms). We conducted several focus-group discussions among PLHIV and MARPs. Some cases have confirmed findings our analysis.

*A man who knows himself to be HIV positive lives in Vakhdat district. He tells that he is aware about his status for several years. He is registered at the outpatient department with a local AIDS center, and takes antiretroviral therapy. Married, has common children. He didn't disclose his HIV status to wife and relatives. During sexual contacts he uses condoms. His wife often wonders why he does so, and it is uncomfortable for her. He is afraid to tell her anything, for several reasons, including, fear that he might lose his family, and also the anger of his father-in-law. According to the man, father-in-law can even kill him because of misunderstanding and rejection of such people in our society. He doesn't know what's to be done.*

Due to the fact that the right to protect the personal information of HIV-infected persons is closely intertwined with the right to the highest attainable level of physical and mental health of another person, his/her partner, it is possible that for this matter the policymaker should provide for an exception.

Proceeding from the above-mentioned conflicts of norms of the national legislation of the Republic of Tajikistan, there is a clash of two categories of human rights, such as the right to non-interference in personal

and family life and the right to the highest level of physical and mental health in the legislation of the Republic of Tajikistan (in the HC of RT) and harmful punitive practices.

As we see, the sexual transmission of HIV prevails and accordingly creates a threat for the spread of the infection among general population. Perhaps, in connection with this, new changes were introduced in Articles 14 and 15 of the Family Code of RT, which also violate the right of PLHIV to voluntary and confidential HIV testing. In Article 14 one of the prerequisites for marriage is also about compulsory medical examination by the persons entering into marriage. Without it, the civil registry offices do not have the right to register a marriage.

*Article 15 of the Family Code of Tajikistan establishes that citizens of the Republic of Tajikistan, foreign citizens and stateless persons before entering into marriage, shall undergo (free of charge) obligatory medical examination in public health institutions at the place of permanent or temporary residence in accordance with the legislation of the Republic of Tajikistan and are acquainted with the results of the compulsory medical examining of each other. Counseling on healthy lifestyles, family planning and on the impact of diseases on the health of offspring is carried out by the public health institutions at the place of residence in accordance with the legislation of the Republic of Tajikistan (LRT as 15.03.2016, No. 1290). This norm is also provided in Article 51 of the Health Code. In more detail this procedure for the medical examination of spouses is established in the Rules for Conducting Mandatory Medical Examination of Persons Getting Married, approved by the Resolution No. 374 of the Government of Tajikistan as of August 23, 2016.*

The introduction of compulsory testing before marriage has a number of negative effects, especially in respect of basic human rights to privacy and the right to founding a family (Article 16 of the Universal Declaration of Human Rights). Moreover, the violation of the rights of people affected by the HIV epidemic to privacy and confidentiality is contrary to the international commitments made by the Member States of the United Nations in the field of HIV / AIDS programs included in the Declaration of Commitment on HIV / AIDS during the Special Session of the UN General Assembly 2001, and the Political Declaration on HIV / AIDS during the UN General Assembly in 2011. One of the negative consequences of compulsory medical examination of persons entering into marriage is the refusal to register a marriage and the increase in the number of unregistered marriages.<sup>36</sup> If we consider legislation of other countries, they are also ambiguous in this matter. It should be noted that in some countries the practice of compulsory testing of newlyweds before marriage is applied. Currently, there is no evidence proving the effectiveness of mandatory testing, including testing before marriage, to contain the spread of the HIV epidemic<sup>37</sup>.

Civil Code of France in Article 63<sup>38</sup> previously obliged future spouses to provide a civil registry official with medical certificates that certify that these persons underwent a medical examination before marriage, including HIV, but this is no more mandatory from January 1, 2008, mainly based on financial arguments: Each year, this medical examination covered 270,000 couples, and the cost of those HIV tests for social insurance system was 14 million euros<sup>39</sup>.

Since 2011, the annual number of new HIV cases in France has stabilized at 6,000 people with a prevalence of 0.4% among the general population<sup>40</sup>, and this stabilization is not related to the presence or absence of compulsory testing of newlyweds.

According to international standards, confidentiality is a prerequisite for HIV testing. During compulsory testing before the wedding, confidentiality becomes virtually impossible, since testing follows the

<sup>36</sup> Albikov I.R. - Legal aspects of medical examination of persons entering into marriage // Family and housing law. 2013. № 5. pp.2-4.

<sup>37</sup> UNAIDS report on applying the practice of compulsory HIV testing of newlyweds

<sup>38</sup> Art. 63 § 2 du Code Civil, modifié par Loi n°2007-1787 du 20 décembre 2007 - art. 8

<sup>39</sup> 2017 data

<sup>40</sup> Infection par le VIH et les IST bactériennes. Données épidémiologiques. Sante Publique France, 29/11/16. Accessed on August 2017

[https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjJ4dnxzsVVAhWEnRoKHZfUBQIQFggvMAE&url=http%3A%2F%2Finvs.santepubliquefrance.fr%2Fcontent%2Fdownload%2F132087%2F472231%2Fversion%2F3%2Ffile%2FPoint\\_VIH\\_SIDA\\_IST\\_291116.pdf&usq=AFQjCNEI\\_o7\\_rGmO8h3RPzDhzTtqR\\_wt6g](https://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKEwjJ4dnxzsVVAhWEnRoKHZfUBQIQFggvMAE&url=http%3A%2F%2Finvs.santepubliquefrance.fr%2Fcontent%2Fdownload%2F132087%2F472231%2Fversion%2F3%2Ffile%2FPoint_VIH_SIDA_IST_291116.pdf&usq=AFQjCNEI_o7_rGmO8h3RPzDhzTtqR_wt6g)

disclosure of the status, and the requirement for an AIDS-certificate. Mandatory testing often does not envisage pre- and post-test counseling. In most cases, this information becomes available to a wide range of people, leading to marginalization of people and significant psychosocial consequences. In a number of countries, as a result of compulsory testing before the wedding, there have been cases of suicidal attempts among people who have been diagnosed with HIV because of a violation of confidentiality. The characteristics of HIV infection do not allow detecting HIV in its initial period (window period). HIV testing has limitations. In significant cases, knowing your HIV status and the status of future spouse is not conducive to behavioral change. This mandatory testing will also have a negative impact on HIV prevention programs. Violation of confidentiality during mandatory testing will generally stigmatize HIV testing, and significantly reduce the acceptability of testing for people of the younger generation. Reducing the acceptability of HIV testing among the population will directly affect the spread of the epidemic<sup>41</sup>.

In addition, in recent years, Tajikistan has been introducing testing and counseling for HIV in health care facilities, initiated by health professionals, as recommended by WHO<sup>42</sup> and UNAIDS<sup>43</sup>. UNAIDS / WHO does not support compulsory testing of individuals in terms of public health. Voluntary testing is more likely to lead to behavioral changes in order to avoid the HIV transmission to others. In this case, health workers can be additionally trained in counseling couples (wishing to marry) on HIV infection with the offer of HIV testing.

As an alternative to mandatory testing of spouses, according to the WHO and UNAIDS recommendations, it is necessary to consider the comprehensive introduction of universal approaches to testing, such as:

- When a healthcare provider offers an HIV testing for almost any visit to a medical facility and asks the patient's permission to test, or
- When a healthcare provider notifies the patient that this test will be conducted as one of the usual tests, but the person has the right to agree or refuse it.

"International Guidelines on HIV / AIDS and Human Rights", developed in 2006 by the Joint United Nations Program on HIV / AIDS and the Office of the United Nations High Commissioner for Human Rights, on the basis of Article 16 of the Universal Declaration of Human Rights proclaims the right to marry and found a family: "men and women of full age, without any limitation due to race, nationality or religion,...to marry and to found a family", to be "entitled to equal rights as to marriage, during marriage and at its dissolution" and to protection by society and the State of the family as "the natural and fundamental group unit of society" Therefore, it is clear that the right of people living with HIV is infringed by mandatory pre-marital testing and/or the requirement of "AIDS-free certificates" as a precondition for the grant of marriage licenses under State laws. Moreover, usually these practices mostly do not comply with the principles of informed consent, confidentiality and access to HIV counseling - they violate basic human rights to the inviolability of private life<sup>44</sup>.

The existence and degree of development of the regulatory framework are necessary, but not sufficient, for an effective policy in the field of public health and to prevent the spread of the HIV / AIDS epidemics. Equally important is a real law enforcement practice that does not always follow the letter of the law, and therefore deviates from those international obligations that are accepted and ratified by the state as a whole.

In connection with these explanations, it is necessary to study in more detail the Procedure for Medical Examination for the purpose of detecting HIV infection, recording, medical examination of HIV-infected persons and preventive monitoring of them, approved by the Resolution No. 171 of the Government of

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<sup>41</sup> UNAIDS report on applying the practice of compulsory HIV testing of newlyweds

<sup>42</sup> Guidelines for HIV testing and counseling initiated by the provider at health facilities, WHO / UNAIDS 2007, Accessed on April 2017: [http://whqlibdoc.who.int/publications/2007/9789241595568\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/9789241595568_eng.pdf)

<sup>43</sup> Guidelines for HIV testing and counseling initiated by the provider at health facilities, WHO / UNAIDS 2007, Accessed on April 2017: [http://whqlibdoc.who.int/publications/2007/9789241595568\\_eng.pdf](http://whqlibdoc.who.int/publications/2007/9789241595568_eng.pdf)

<sup>44</sup> UNAIDS report on applying the practice of compulsory HIV testing of newlyweds

Tajikistan (as of 01.04. 2008). Clauses 8 and 9 of this instrument, proclaim that mandatory, confidential medical examination for the detection of HIV-infection is applied for: persons having symptoms of HIV or AIDS or AIDS-associated diseases (Appendix 5 to the Procedure) and individuals on the basis of epidemiological indications and upon admission to work, as well as during medical examinations (Appendix 3 to the Procedure). In Appendix 3 the list of specialties subject to mandatory medical examination is listed, and the list of persons subject to compulsory medical examination for epidemiological indications is not found in any of the Annexes and comes at the end of the document in a separate format. It is recommended for the logical construction of a legal instrument that the list of persons subject to the Mandatory medical examination for epidemiological indications is attributed to Appendix 3, as specified in clause 9 of the Procedure.

In addition, in this section we only cite the case study documented during the FGD in which the employees of the AIDS Center had violated the rights of PLHIV for confidentiality of information.

*A woman of 25-30 years told her story about how she got contracted with HIV via her husband, a labor migrant. She did not immediately learn about her disease, but only after her husband passed away and when she was asked to undergo HIV testing. At that moment she already had two little daughters. When she was pregnant and gave birth to girls, she did not undergo any HIV testing. After she took the test, she received a phone call from the local AIDS Center, the sister of her deceased husband picked up the phone. She still lives in the house of her in-laws, as she has nowhere to go after death of her husband. On the phone, an employee of the AIDS Center told the deceased husband's relative that woman has HIV and requested that she shall come to AIDS center for counseling.*

This case demonstrates a gross violation of the right of PLHIV and professional medical ethics. First, clause 24 of the above-mentioned Procedure of Medical Examination for the purpose of detecting HIV infection, recording, medical examination of HIV-infected persons and prophylactic monitoring of them, approved by the Resolution No. 171 of Government of Tajikistan as of 01.04. 2008, proclaims that: "The results of a medical examination for the detection of the human immunodeficiency virus are reported to the individual personally or to his/her legal representatives, during post-test psychosocial counseling. It is forbidden to share test results and results of medical examination by phone". However, such cases are not unique.

I would also like to cite a case from the practice of legal reception centers, which suggest that changes in the FC of the RT, on compulsory HIV testing for persons entering into marriage are necessary.

*In 2013, the father of a young woman approached the free legal aid reception center, operated by the NGO "League of Women Lawyers". His daughter was married in the Yavan District for a young guy who had just returned from labor migration. Couple lived for a year, but the bride did not become pregnant. Then her in-laws insisted on medical examination. As a result, she was diagnosed with HIV. She was kicked away from her in-laws house. The parents of the young woman were more educated and applied to the prosecutor's office through the FLA lawyer. The prosecutor's office initiated an investigation. It turned out that the young man knew about his HIV status and did not inform his family and his wife about that. The marriage was declared invalid by the court. But they couldn't initiate criminal proceedings under Article №125 of the Criminal Code of the Republic of Tajikistan, as the side of the husband's relatives discovered incriminating evidence on the wife's relatives: they forged a birth certificate for their daughter and falsified her age.*

This case shows how vulnerable girls in case of marriage. Her rights were violated initially by her parents, and later by her husband. And the violation of rights by parents resulted in a restriction in the protection of rights.

According to the results of the FGD, to the question "Have they ever encountered forced HIV testing", two respondents answered that they took the HIV test when they were transported to the prison (transition from the pre-detention facility to the detention facility). One of the respondents was tested for HIV in the

penitentiary institution of the Russian Federation, and the second - in the Republic of Tajikistan. They were not told whether it was voluntary or mandatory. Both said that it is a routine procedure and all prisoners take such tests: counseling was provided.

The rest of the respondents, both among PLHIV, and among PWID, SWs and MSM, stated that they had all undergone HIV testing voluntarily. But in a more detailed conversation with SWs in Dushanbe, women shared their cases of compulsory HIV testing, as well as testing for syphilis and other diseases. Testing was performed during temporary detention at police station. NGO and community leaders responded that they did not face with any compulsory HIV testing. On the disclosure of the status of PLHIV by doctors, the answers were not unambiguous. So in the Vakhdat district the majority stated that they were infected by a sexual partner, and the health workers did not force them to disclose their status. In Kurgan-Tube, FGD participants stated that they themselves should inform their wife / husband, if necessary, relatives, and “doctors do not have the right to force us to disclose our status”. In Dushanbe, there were cases of disclosure of status and unethical communication to patients about their status for the first time. So, many of the respondents were called via phone by the health worker and there were informed about HIV status by phone, and that they will not live long."

In 3 cases in Dushanbe, the disclosure of status by medical personnel or the risk of disclosure of status was recorded. In the first case, a nurse from polyclinic No. 10 called home to a woman who underwent HIV testing and told the wife of her husband's brother who died of AIDS, that she had HIV, and that an HIV-positive woman shall be coming to the clinic by adding, "It's better that she fears me". In the second case, the health worker asked the HIV-positive woman to reveal her status to the sexual partner and threatened that if the woman did not do this, the health worker would "talk to her husband" himself. On the persuasion of the patient that her husband must be properly prepared for disclosure of the status, the medical officer was adamant. In the third case, the health worker threatened to come to the woman's home and reveal the status to the whole family, if she in turn does not tell her husband about the presence of HIV infection. In Kulyab, the respondents noted that they were told the following: "You are infected with HIV. Take medicine or you will die soon."

As evident from the survey, medical personnel do not always inform the patients in an ethical manner, not in all cases a proper post-test counseling is carried out. The disclosure of the status to sexual partners of PLHIV for some doctors is a dilemma, others do not take into account the views of PLHIV and do not give them a chance to prepare their partners, at the same time they themselves violate ethics and report about PLHIV status not only to partners but also to other family members.

#### **Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>45</sup>**

60 a. Commit to the 90-90-90 treatment targets and to ensuring that 30 million people living with HIV access treatment by 2020, with special emphasis on providing 1.6 million children (0–14 years of age) with antiretroviral therapy by 2018, and that children, adolescents and adults living with HIV know their status and are immediately offered and sustained on affordable and accessible quality treatment to ensure viral load suppression, and underscore in this regard the urgency of closing the testing gap;

60 e. Work towards achieving universal health coverage that comprises equitable and universal access to quality health-care services, including sexual and reproductive health, and social protection, and includes financial risk protection and access to safe, effective, quality and affordable essential medicines and vaccines for all, including the development of new service delivery models to improve efficiency, lower costs and ensure the delivery of more integrated services for HIV, tuberculosis, viral hepatitis, sexually transmitted infections, non-communicable diseases, including cervical cancer and drug dependence.

**International Guidelines 6 on HIV/AIDS and Human Rights 6: (access to prevention, treatment, care and support)**, revised at the Third International Consultation on HIV/AIDS and Human Rights Geneva, 25-26 July 2002, states that:

23. States should enact legislation to provide for the regulation of HIV-related goods, services and information, so as to ensure widespread availability of quality prevention measures and services, adequate HIV prevention and care information, and safe and effective medication at an affordable price.

24. States should also 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, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for preventive, curative and palliative care of HIV and related opportunistic infections and conditions.

25. States should take such measures at both the domestic and international levels, with particular attention to vulnerable individuals and populations.

In part 2 of Article 160 of the HC of RT is indicated that: “The State guarantees provision of free, high-quality and evidence-based qualified medical, social and psychological care for people living with HIV and AIDS, and the provision of means for the prevention, diagnosis and treatment of HIV infection, as well as control over the safety of medical drugs, biological fluids and tissues used in diagnostic, therapeutic and scientific purposes. Prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome in the Republic of Tajikistan is one of the priority activities for public authorities”.

It should be noted that in order to coordinate actions aimed at determining the priorities for combating the HIV/AIDS epidemic, as well as developing programs and action plans, preparing financial plans, monitor and evaluate the effectiveness of activities at all levels, the Government of Tajikistan created the National Coordination Committee (NCC). Member of NCC are policymaking and executive authorities, civil society organizations, communities of affected people – people living with HIV/AIDS. In its composition NCC has some other institutions, organizations and enterprises actively involved in activities to combat HIV/AIDS at an appropriate level (Article 172 of the Health Code). NCC provision approved by the Resolution of GoT (No. 163 as of 09.04.1997) established the main tasks and functions of the Committee. The NCC is headed by the Deputy Prime Minister of the Republic of Tajikistan. This also indicates a commitment of the authorities towards the prevention and treatment of HIV / AIDS. It should be noted that Tajikistan currently does not full-

<sup>45</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)



scope funding for the state program to combat HIV / AIDS due to inadequate state resources. Therefore, one of the tasks of the NCC is to mobilize (through fundraising) the necessary resources for the effective implementation of the State Program to Combat AIDS.

Earlier in Article 5 of the Law of the Republic of Tajikistan "On Combatting HIV / AIDS" it was indicated that funding of measures to counteract the HIV/AIDS epidemics is carried through:

- State budget;
- Trust funds, including the National Fund for Combatting the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome, whose activities are regulated in accordance with the Regulations approved by the Government of the Republic of Tajikistan; (LRT as of 14.03.14, No. 1078);
- Funds allocated for voluntary and compulsory health insurance;
- Voluntary contributions and donations from individuals and legal entities;
- Other sources of financing not prohibited by the legislation of the Republic of Tajikistan.

As we have already mentioned, with the adoption of the HC of RT, the Law of RT "On Combatting HIV / AIDS" has lost its legal force. The HC of RT does not say anything about financing activities to combat HIV / AIDS. Nothing is mentioned in the HC of RT and the National Fund for Combatting HIV. Part 2 of Article 160 of the HC of RT is devoted to guarantees that the state undertakes to provide, in particular:

- free of charge high-quality and evidence-based qualified medical and social-psychological assistance;
- accessibility and safety of medical examinations for the detection of human immunodeficiency virus;
- means of prevention, diagnosis and treatment of human immunodeficiency virus infection, as well as control over the safety of medical preparations, biological fluids and tissues used for diagnostic, therapeutic and scientific purposes;
- development of scientific research on the problems connected with human immunodeficiency virus and acquired immunodeficiency syndrome;

Accordingly, the state represented by the Government of the Republic of Tajikistan, as the body responsible for the health of its citizens, is obliged to provide this funding and fulfill these guarantees. In Tajikistan, the Decree of rendering health and sanitary services to citizens of the Republic of Tajikistan was adopted by the public health institutions, approved by the Resolution of GoT (No. 600 dated 02.12.2008). According to this Decree, there are the following types of free health care:

- Emergency and first-aid;
- Primary health care;
- Specialized medical care in outpatient settings;
- Provision of medicines, vaccines and laboratory-diagnostic measures in outpatient settings;
- Medical assistance in in-patient facilities;
- Dental care;
- Sanitary and hygienic measures.

Emergency and first aid is provided free of charge in the following format:

Provision of emergency and first aid, including medical support, is carried out for all categories of the population in conditions threatening the life of the citizen or those around him, caused by sudden illnesses, accidents, injuries and poisonings, complications of pregnancy and childbirth.

Primary health care is provided free of charge in the following format:

Primary health care is the main type of health care and is provided in the following formats and extents.  
A) Prevention:

Counseling and advocating for health promotion and healthy lifestyles;



Vaccination of children in the immunization program, according to the national immunization schedule;  
Anonymous counseling on the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), sexually transmitted infections;  
Monitoring of the health of children up to 5 years old;  
Periodic preventive examinations of schoolchildren;  
Dispensary observation of patients on the register, with the exception of additional laboratory and instrumental research methods;  
Carrying out targeted measures for the prevention of diseases

#### B) Diagnostics:

Examination of the patient;  
Basic laboratory and diagnostic studies (general blood test according to indications, blood test for malaria, donor blood test for blood-borne infections, general urine test according to indications, microscopy of urethral and vaginal smear of pregnant women, sputum analysis, determination of sugar in blood and urine according to indications, electrocardiography by indications).

#### C) Treatment:

Provision of emergency medical care;  
Immobilization;  
The appointment of medication and other types of treatment;  
Medical injections (intravenous, intramuscular, subcutaneous);  
Medical manipulations (services), the list of which is established by the Ministry of Health of the Republic of Tajikistan

However this legal instrument is implemented more in terms of paid services, and also there is large number of reference to decrees of the Ministry of Health.

Part 10 of the Resolution of GoT (No. 600 as of 02.12.2008) specifies that specialized medical care in outpatient settings is carried out in the form, volumes and order established by the Ministry of Health of the Republic of Tajikistan. What subordinate legislation of the Ministry of Health of the RT has approved this procedure has not been established and it's not available in public access. With regard to planned inpatient care, which is carried out on the basis of the List of Population Groups of the Republic of Tajikistan, which, in accordance with their social status and medical indications, are entitled to receive free medical services, upon presenting documents confirming their rights to social benefits, by joint Decree (No. 938-135 as of November 5, 2014) of the MoHSPP and the Minister of Finance of the Republic of Tajikistan, Rules for co-payment of health services to citizens of the Republic of Tajikistan were approved, where such rules are applicable for the public health institutions. Two appendices No. 1 and No. 2 have been developed for this Decree. Appendix No. 1 sets out a list of categories of citizens who, according to their social status, are entitled to free medical services. Appendix No. 2 sets out a list of categories of citizens who are entitled to receive free medical services in accordance with medical indications, but only for the underlying disease. The HIV / AIDS disease is included in this list. But the fact is that PLHIV are more likely to suffer from opportunistic infections such as hepatitis B and C or others, which are not included in this list. Accordingly, this Appendix No. 2 to the joint Decree of the MoHSPP and MoF (No. 938-135 as of November 5, 2014) contradicts to paragraph 5 of the part 1 Article 163 of the Health Code of. The FGD has shown that PLHIV does not receive any free medical aid and medicines other than ARVT and HIV counseling. Other types of medical care for PLHIV remain non-available: however, Article 163 of the HC of RT indicates that PLHIV are entitled to receive free of charge all types of qualified and specialized medical care, including medicines in public health facilities. Then in Part 1 of Article 166 of the same law, there is a contradiction with article 163. It states that all types of medical care are provided to persons with human immunodeficiency virus / acquired immunodeficiency syndrome in accordance with the usual procedure.

The problem of health funding was noted by the UN special rapporteur on the right to health. The UN Special Rapporteur on the Right to Health - Anand Grover - on the outcome of his visit to the country (May 24 – 31, 2012) called on the Government of Tajikistan to increase national spending on public health to ensure universal access to health care for all. He noted the main problems in Tajikistan's healthcare: low funding, pocket and informal payments, low salaries, high turnover of highly qualified specialists, and lack of mechanisms for legal protection of rights, including compensation for misdiagnosis and medical errors. "Tajik authorities are making efforts to increase health funding: from 2007 to 2012, allocations from budget for health sector increased by more than 400% - from 178 M TJS (37.3 M USD) to 716 M TJS (152.3 M USD). Despite this, current funding is too low, for example, in 2010 it was below the average among all former Soviet Republics (5.9% of the GFP)" - the Special Rapporteur said, stressing that at that time the average indicator of 10%<sup>46</sup> for developing countries in Europe and Central Asia was considered.

In Tajikistan, in accordance with current legislation, the state guarantees free provision of antiretroviral therapy to people living with human immunodeficiency virus. To date, the provision of antiretroviral drugs in the country is fully implemented through funding from international organizations, mainly from the Global Fund to Combat AIDS, TB and Malaria. Interruptions with provision of antiretroviral drugs are generally not observed<sup>47</sup>. The National Programme on Combatting HIV Epidemics in the Republic of Tajikistan for 2017-2020: adopted by the Resolution №89 of Government of Tajikistan, as of February 25th, 2017 has a strategic direction on HIV prevention, which consists of the following tasks:

1. Ensure high coverage of key populations at high risk (people who inject drugs, sex workers, convicts) and vulnerable groups (labor migrants, youth, pregnant women, children) with quality HIV prevention services;
2. Ensure timely detection of the human immunodeficiency virus among key and vulnerable populations and ensure their linkage with the care system;
3. To increase the coverage of people living with the human immunodeficiency virus with quality treatment, care and support in connection with the human immunodeficiency virus;
4. Strengthen the health care system for active participation in the HIV prevention, treatment, care and support.

It should be noted that all tasks are in line with international standards and outcomes are also determined based on the country's capabilities, except that the program does not include such a key population at high risk of HIV-infection as men who have sex with men.

During FGD, almost all participants stated that, in addition to ARV therapy and medical examination for HIV, neither drugs nor treatment were provided free of charge. FGDs with women living with HIV in Dushanbe have revealed following issues:

*"Sometimes we are denied treatment in dental clinics. Before initiation of your treatment, healthcare providers ask for an HIV-free certificate. Some of us do not have any teeth. All dental clinics are private, but we are not welcome there, we have no money, we can't afford dental services. We receive Anti-retroviral treatment: there is no low-quality and expired HIV medicines. Medical examinations are free of charge, we have to pay for fluorography, and we undergo fluorography at the outpatient clinic #12 in Dushanbe. Condoms are free."*

There is also discrimination against PLHIV and MARPs by the medical workers, both in polyclinics, AIDS centers and maternity facilities. One of the cases is given below:

*A story of a woman living with HIV in Dushanbe: "I needed an X-ray in the clinic. As soon as she'd seen my medical record, the doctor threw out my referral coupon and kicked me out of her office ... I was wrongly accused (guilty without guilt). Many women living with HIV are poorly educated people. They are very afraid. Many of them are married to labor migrants, drug addicts and/or victims of medical errors. "*

<sup>46</sup> <http://news.tj/ru/news/spetsdokladchik-oon-prizval-tadzhikistan-uvlichit-raskhody-na-meditsinskoe-obslyuzhivanie>

<sup>47</sup> The National Programme on Combatting HIV Epidemics in the Republic of Tajikistan for 2017-2020: adopted by the Resolution №89 of Government of Tajikistan, as of February 25<sup>th</sup>, 2017

A woman aged 30-34 years contracted HIV from her husband. With the first pregnancy at the time to be registered in the maternity clinics, she was diagnosed with HIV. In the last month of pregnancy she had a critical condition. She was hospitalized. Firstly she was not admitted into the maternity hospital of Bokhtar district. None of the medical staff approached her. She was bleeding. Her mother-in-law immediately called the NGO "Guli Surkh" based in Dushanbe. The Director of this NGO called the management of this maternity hospital. The woman was transferred into a separate ward and all employees were strictly forbidden to enter her ward. All staff avoided and disdained her; she was not allowed to go out into the corridor of the hospital. She was warned that when she goes to the toilet, toilet shall be washed thoroughly. She was told not to hold onto the railing in the stairwells. The woman was forced to undergo a caesarean section. That woman bought the feeding formula herself.

The grounds and procedure for referring citizens to compulsory treatment are regulated by the legislation of the Republic of Tajikistan: Article 53 of the Health Code of the Republic of Tajikistan and in chapter 23 of the Health Code of the Republic of Tajikistan. Article 154 of the Health Code of RT proclaims compulsory procedure for mandatory examination and treatment for TB. The article says: "Patients with infectious (bacillary) forms of TB, repeatedly violating the sanitary and epidemiological regime, and also deliberately evading the TB examination and treatment, are hospitalized in specialized TB facility for mandatory examination and treatment. The decision on hospitalization is taken by the court at the location of the TB facility, in which the patient with TB is under clinical supervision. The application for hospitalization is submitted to the court by the head of the TB, in which the patient with TB will be under clinical supervision. The participation of a prosecutor, a representative of a TB facility in which a TB patient is registered, a patient with TB in respect of whom the issue of compulsory examination and treatment is being decided, or his legal representative in the examination of the application for hospitalization is mandatory, while this condition is not stated in the Health Code. In addition, Article 154 of the Health Code of RT states that application to the court for hospitalization may also be filed by close relatives of the patient. Additional study is needed to study the legal status of people affected by TB in Tajikistan and their non-discrimination.

Concerning the link between TB and HIV, Article 152 of the Health Code of RT states following: "Persons who have been in contact with a TB patient or HIV patient and others MARPs are undergoing medical examination for TB in accordance with the procedure established by the authorized state body in the field of health care. Preventive vaccination against tuberculosis is carried out in accordance with the national calendar of preventive vaccinations. In order to detect tuberculosis, preventive medical examinations of citizens belonging to the risk group are periodically carried out, the procedure and terms, which are set by the authorized state body in the field of public health.

Article 163 of the Health Code of the Republic of Tajikistan envisages following right of PLHIV *to participate actively in determining the goals of treatment, including the time and method of treatment, as well as its cessation. That is, these people decide for themselves the need for treatment. This rule contradicts with Article 53 of the same instrument which proclaims that:* citizens with TB, leprosy, human immunodeficiency virus and acquired immunodeficiency syndrome, STIs and other dangerous diseases are obliged, at the request of health authorities, to undergo medical examination and treatment, which is unacceptable in relation to PLHIV by international standards.

#### **Chapter 4: Access of PLHIV and MARPs to social protection**

**Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>48</sup>**

<sup>48</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

The 2015 World Health Organization guidelines recommending that antiretroviral therapy be initiated for everyone living with HIV at any CD4 cell count... universal health coverage, social protection for people in vulnerable situations, strengthening of local, national and international health and social protection systems, including community systems, integrated responses to address non-communicable diseases and HIV and AIDS.

The right to social security, including social insurance, is enshrined in Article 9 of the International Covenant on Economic, Social and Cultural Rights. Initially, in national legislation, this human right is expressed in Article 39 of the Constitution of the Republic of Tajikistan: "Everyone is guaranteed social security in old age, in cases of illness, disability, loss of ability to work, loss of breadwinner and in other cases determined by law." In the context of HIV / AIDS, this right is also of high importance.

International Guidelines on HIV/AIDS and Human Rights: Guideline 5: Anti-discrimination and protective laws:

22. States should enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, people living with HIV and people with disabilities from discrimination in both the public and private sectors, that will ensure privacy and confidentiality and ethics in research involving human subjects, emphasize education and conciliation and provide for speedy and effective administrative and civil remedies.

The concept of "discrimination" in terms of equality of rights between men and women is provided at Article 1 of the Law of RT "On State guarantees of equality of men and women and equal possibility of their realization". Discrimination means any distinction, exclusion or restriction on the basis of sex/gender, which is aimed at weakening or nullifying the recognition of the equality of men and women in political, economic, social, cultural or any other field. In the legislation of the Republic of Tajikistan there is no concept of direct and indirect discrimination. At the 39th United Nations Session, the Committee on Economic, Social and Cultural Rights adopted recommendation No. 19 - The right to social security. In paragraph 2 of this recommendation, the following is stated: "The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents".

Also in 2015, the UN Committee on Economic, Social and Cultural Rights shared the following recommendation: "The Committee reiterates its previous concluding observations (E/C.12/TJK/CO/1, paras. 14–16) and urges the State party to expedite the adoption of a comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination and includes all the grounds for discrimination set out in article 2, paragraph 2, of the Covenant. In this regard, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights."

Article 167 of the Health Code of the Republic of Tajikistan envisages social safeguards for PLHIV and their family members. It says that:

- Social protection authorities, in cooperation with the health, education, labor and employment authorities, develop and implement social support programs for people living with the human immunodeficiency virus / acquired immunodeficiency syndrome and their families, including the awarding and payment of pensions and benefits, provision of social assistance, assistance in obtaining education, retraining and employment.
- The education, health and social protection authorities develop and implement social support programs for children orphaned or left without parental care due to the human immunodeficiency virus.
- People, who contracted HIV due to medical procedures performed in an official manner, are provided with pensions and the right to receive priority housing in the event of absence of housing or, if necessary, priority right to improve housing conditions in accordance with the procedure established by law.



- Ensure access for national minorities to receive education in their native language, preserving cultural and linguistic diversity in the educational environment;
- Support for children with disabilities and their integration into regular educational institutions.

*Children with HIV status or patients with opportunistic diseases are excluded from the Strategy.* Regarding the State Strategy for Developing the Labor Market in the Republic of Tajikistan until 2020, it also doesn't see PLHIV as beneficiaries. In paragraph 5 of Article 2 of the Strategy, there list of people that are vulnerable to social exclusion. Such people include persons who are unable to receive income, have insufficient income or irregular income - those who seek work with insufficient level of education, including students dismissed from educational institutions or people with insufficient skills or an outdated profession. According to the legislation, definitions of the vulnerable groups is as follows: persons of working age who have difficulties in finding a job and can't compete on an equal footing in the labor market: people with disabilities; minor orphans; persons dismissed from military service from the Armed Forces of the Republic of Tajikistan and other military structures; persons released from correctional institutions or from compulsory treatment institutions; single parents, as well as persons with minor children, children with disabilities; parents with more than five minor children; persons under the age of 18 who, due to the death of their parents or other cases, are household-heads; Persons who are two years old before retirement; persons under the age of 18 and young people who, after graduating from educational institutions, are sent to work as per referral of the state employment agency. As we can see, PLHIV are excluded from this strategy. Issues of discrimination and measures to overcome it are not reflected in the Strategy, although many PLHIV said during FGD that they are not able find a job: in addition to the high unemployment in the country, they require to undergo many health tests, including HIV testing; however it does not matter whether this profession is included in the list for mandatory examination for HIV – (even though applicant is seeking a job as a cook, janitor or salesman).

In Tajikistan, the Concept of Social Protection of the Population was adopted through Resolution of the Government of Tajikistan (No. 783 as of December 29, 2006). Concept envisages that the social protection system is a rather complex and confusing system consisting of various benefits and social payments, benefits and compensations to various categories of citizens, social assistance to the needy, subsidies to enterprises and organizations that produce goods and services for the population. Currently, there are more than 540 types of social guarantees, payments, benefits and subsidies provided by budgetary funds to almost 92 categories of citizens (veterans, disabled, children, unemployed, students, poor families, etc.). Then there are the problems of transparency and rationale of social benefits payments, lack of finance, etc. In general, the problem was raised correctly, but the Concept identified problems and some directions to address these problems. This is not a Programme, so does not have deadlines for implementation. Chapter 6 of the Concept states that the implementation of the Concept is to be implemented on the basis of the program-target method. A list of specific measures to implement this Concept for a certain time period (short, medium and long term) should be developed within the framework of the target program approved by the Government of Tajikistan. So far, no specific program on social protection of the population has been developed.

In the Concept of PLHIV and MARPs as categories of citizens entitled to social guarantees, benefits or allowances are not included.

In general, each of the policies analyzed from our side, apart from those deficiencies that we have mentioned earlier there are other imperfections: extremely prolonged implementation period, which makes them inflexible and not practical in implementation, there are no real indicators of evaluation, annual action plans, if developed, then they are not accessible to public.

Of the rights that are established in Article 167 of the Health Code of RT currently only one is carried out: the allocation of benefits/allowances to children under 16 living with HIV. The purpose of benefits is determined by the procedure for the allocation and payment of state benefits to children under 16 years of age who live with the human immunodeficiency virus or acquired immunodeficiency syndrome, approved by the Government of Tajikistan (Resolution No. 232, as of May 3<sup>rd</sup>, 2010, as amended by Resolution of Government as of June 3<sup>rd</sup>, 2013). The application for the allowance shall be submitted by the legal representative of the

child to the local bodies of labor and social protection of the population. The application must be accompanied by a medical certificate and a certificate from the place of residence. On this basis, all workers and commissions on the rights of the child, and the labor and social protection body will know the status of this child. This document does not provide that employees of those agencies are obliged to respect the confidentiality of information and there is no indication that they will be kept liable for disclosing of the HIV status to others.

A *Mechanism* that would realize the right of PLHIV, if they get contracted HIV during to medical procedures performed in an official manner, such as obtaining pensions and housing in the absence of it or, if necessary, improving housing conditions, *has not been developed*.

In the clarification to the Principle 5 it is said that laws on disability should also be adopted or revised, aiming at including HIV / AIDS in the definition of disability. It would be useful to refer to Recommendation 13 of the UN Committee on Economic, Social and Cultural Rights, shared with Tajikistan in 2015:

The Committee urges the State party to expedite the adoption of a comprehensive anti-discrimination law that provides a definition of direct and indirect discrimination and includes all the grounds for discrimination set out in article 2, paragraph 2, of the Covenant.

According to the list of medical indications giving the right to disabled children under the age of 18 to receive a social pension approved by the Resolution No. 543 of GoT (as of October 2, 2012), as well as the Regulations on the State Service of Medical and Social Expertise approved by the Resolution No. 601 (as of December 2), a diagnosis such as HIV / AIDS is not included in this list. Only tuberculosis of a certain kind gives the right to disability to both children and adults. Disability according to the diagnosis of HIV / AIDS, as well as the right to receive social pensions, can only be obtained by persons who have been infected while working in infectious diseases departments, AIDS centers and laboratories and other medical institutions, including those who have contact with blood and other body fluids. In other cases, the legal instruments of the Republic of Tajikistan do not allow to allocate disability allowance due to HIV/AIDS.

The process of allocating a disability allowance is very complicated. It is defined by the Regulation on Medical and Social Expertise (Appendix to the Joint order of the Minister of Labor and Social Protection of the Population of May 2, 2012, No. 73, and the Minister of Health of the Republic of Tajikistan dated May 2, 2012, No. 189). Also, most people with disabilities are obliged on a regular basis to undergo a re-examination. The disability of the first group is set for a period of two years, and the second and third disability groups are set for a period of one year. For disabled people who participated in the restoration of the consequences of the Chernobyl nuclear power plant accident, the disability group is established for an indefinite period.<sup>49</sup>

In practice, we have also revealed severe problems with obtaining a disability for PLHIV as per other indicators. The following case study is from a FGD:

HIV-positive man has an opportunistic infection (tuberculosis), before that he used to take narcotic drugs. Due to tuberculosis he had been receiving a temporary disability pension: since the disability was temporary and he recovered from tuberculosis, he doesn't receive pension anymore. However, he has some problems with his heart. Doctors are not able to provide him any conclusion about his heart problems. The TB specialist, to whom he usually goes for follow-up purposes, says that he can't provide any conclusion, and refers him to another doctor. Another doctor refers him back to the TB specialist. He ended up that doctors were referring him all the time. He does not know how to get a complete conclusion about his heart, as his heart is bigger in size and maybe he needs to get a new disability status due to his heart. Bureaucracy of healthcare providers prevents him from initiating the procedure for disability registration.

<sup>49</sup> Paragraph 10 of the Regulation on Medical and Social Expertise (Annex to the Joint Order of the Minister of Labor and Social Protection of the Population as of May 2, 2012, No. 73, and the Minister of Health of the Republic of Tajikistan as of May 2, 2012, No. 189)



Another issue is about treatment of PLHIV that have Hepatitis C. Based on the Regulation on medical and social expertise, only people with cirrhosis of the liver with abnormality of portal blood circulation (ascites) are entitled to receive an indefinite group of disability.

A man of about 30 years. He lives in the Rudaki district. He has HIV and injects drugs. He has had hepatitis C for a long time, but he is not officially diagnosed in Rudaki district, he is told that he needs to spend some time at the infectious hospital "Karabolo", and only after that, on the basis of the medical records and the conclusion of the doctors at "Karabolo", he might apply to Disability evaluation board to receive a disability pension. He wants to get a disability status, but he is not able due to lack of money Nobody will examine him for free.

Overall, as we see, the legislation and policies in various fields do not always take into account the interests of PLHIV, lack adequate protection of PLHIV from discrimination and various stressful situations. FGDs have shown that many PLHIV and MARPs do not apply for benefits, and if they want to apply, then face various barriers - financial, bureaucratic, etc. With regard to benefits for children living with HIV, they do not face any issues with awarding and receiving such benefits. However, existence of such right is not always reported through all AIDS centers in Tajikistan. Following issue was revealed in the course of interviewing a PLHIV in Kurgan-Tube:

*A woman of 30-34 years old: got contracted with HIV from her migrant- husband. When she was pregnant with her first child, she underwent some tests and she was diagnosed with HIV. She delivered a girl with HIV. To date, the girl is 9 years old. A year ago, accidentally from other women living with HIV, she came to know that children with HIV should receive cash-based assistance. Having issued all the documents, 8 years after delivering her child, she receives a cash-based assistance for her daughter each quarter in the amount of 840 TJS.*

Particular attention shall be paid to the Article 168 of the HC of RT that grants following rights to parents who have child/children living with HIV:

- Joint stay in hospitals with children (under the age of 14) with exemption for this period from work and payment of temporary disability allowance;
- The retention of one of the parents' seniority in the event of his/her dismissal from work in connection with the care of a child under 16 years of age. Seniority is retained for calculating a temporary disability allowance, provided that he/she enters the workforce before the child reaches the age of 16;
- Free travel of one of the parents or other legal representative of the child living human immunodeficiency virus (under 18) - as a person accompanying child living with HIV to the place of treatment and back.

This provision, has been established neither in the LC of the RT, nor in other legislative acts. In accordance with Article 71 of the Law of the Republic of Tajikistan "On Legal-Regulatory instruments", when there is a conflict between two acts of equal legal force, a special act of the latest edition will prevail. In this case such instrument will be the Labor Code, and this significantly violates the rights of such parents.

## **Chapter 5: Right to labor and education in the Republic of Tajikistan from HIV/AIDS perspective**

### **5.1 Right to labor in the Republic of Tajikistan in HIV/AIDS context**

## Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>50</sup>

63 d. Underscore the need to mitigate the impact of the epidemic on workers and their families and dependents, workplaces and economies, including by taking into account all relevant conventions of the International Labor Organization, as well as the guidance provided by the relevant International Labor Organization recommendations, including the Recommendation on HIV and AIDS and the World of Work, 2010 (No. 200), and call upon employers, trade and labor unions, employees and volunteers to take measures to eliminate stigma and discrimination, protect, promote and respect human rights and facilitate access to HIV prevention, treatment, care and support.

Article 6 of the International Covenant on Economic, Social and Cultural Rights upholds the right to work. It indicates that: «The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right». The Universal Declaration of Human Rights also proclaims protection against unemployment.<sup>51</sup> Fair and favorable working conditions preclude **discrimination** in any form. **This includes** «any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation»<sup>52</sup>.

Article 35 of the Constitution of the Republic of Tajikistan gives a broader interpretation of this right: "Everyone has the right to work, choice of profession, work, occupation safety and social protection against unemployment. Salaries should not be lower than the minimum wage. All restrictions in labor relations are prohibited. Equal pay is paid for work of equal value.

**International Guidelines on HIV/AIDS and Human Rights** (1996) in the context of HIV / AIDS, on labor and the right to work, states following: “Laws, regulations and collective agreements should be enacted or reached so as to guarantee the following workplace rights”:

- *A national policy on HIV and the workplace agreed upon in a tripartite body;*
- *Freedom from HIV screening for employment, promotion, training or benefits;*
- *Confidentiality regarding all medical information, including HIV status;*
- *Employment security for workers living with HIV until they are no longer able to work, including reasonable alternative working arrangements*
- *Defined safe practices for first aid and adequately equipped first-aid kits;*
- *Protection for social security and other benefits for workers living with HIV, including life insurance, pension, health insurance, termination and death benefits;*
- *Adequate health care accessible in or near the workplace;*
- *Adequate supplies of condoms available free to workers at the workplace;*
- *Workers’ participation in decision-making on workplace issues related to HIV and AIDS;*
- *Access to information and education programmes on HIV, as well as to relevant counseling and appropriate referral;*
- *Protection from stigmatization and discrimination by colleagues, unions, employers and clients;*
- *Appropriate inclusion in workers’ compensation legislation of the occupational transmission of HIV (e.g. needle stick injuries), addressing such matters as the long latency period of infection, testing, counseling and confidentiality.*

<sup>50</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

<sup>51</sup> Article 23: Universal Declaration of Human Rights, 1948

<sup>52</sup> Convention concerning Discrimination in Respect of Employment and Occupation, ILO (1958)

The new Labor Code of the Republic of Tajikistan, adopted on 23.07.2016, in accordance with the Constitution of the Republic of Tajikistan, determines the **state policy framework in the field of labor relations**. In addition to that, Labor Code establishes **governmental guarantees of labor rights of citizens** and is focused at ensuring compliance with the legitimate interests of employees, employers and the state. The prohibition of discrimination in labor relations is enshrined in Article.7 of the Labor Code of the Republic of Tajikistan. Paragraph 4 of Article 26 of the Labor Code of the Republic of Tajikistan sets a list of documents to be submitted to the employer, one of which is the tentative medical examination (for persons who are required to undergo such an examination in accordance with the Labor Code and other legal framework of the Republic of Tajikistan). The employer does not have the right to demand from the person entering the work any other documents, if otherwise is not required by the legislation of the Republic of Tajikistan - specified in paragraph 5 of Article 26 of Labor Code of the Republic of Tajikistan.

Article 13 of the Law of the Republic of Tajikistan "On Combatting HIV / AIDS" does not allow dismissal from work, refusal to hire, with the exception of occupations envisaged by a special list. This list is established by the Procedure for Medical Examination for the purpose of detecting HIV, recording, medical examination of HIV-infected persons and preventive monitoring of such people, approved by the Resolution №171 of Government of Tajikistan (as of 01.04.2008). That list includes some health professions:

- Operating surgeons of all specialties, obstetrician-gynecologists, specialists of the blood transfusion service and other specialists whose job is directly connected with blood;
- Specialists of infectious diseases hospitals and departments, where HIV-infected employees are exposed to opportunistic infections (tuberculosis, mycosis, etc.). But this document also establishes a list of professions that are subject to mandatory medical examination for the identification of HIV before entering the workplace and when performing medical examination of patients. These include:
  1. Doctors, middle and junior medical personnel of AIDS centers, healthcare institutions, specialized departments and structural subdivisions of health institutions engaged in direct examination, diagnosis, treatment and care of people living with HIV, as well as forensic medical examination and other occupations connected and who have direct contact with people living with HIV,.
  2. Doctors, middle and junior medical personnel of laboratories who conduct HIV testing and study blood and biological materials obtained from people living with HIV.
  3. Healthcare providers working in health care facilities and who have direct contact with blood:
    - operating surgeons of all profiles, operating rooms, nurses of treatment rooms, nurses;
    - obstetrician-gynecologists, midwives;
    - personnel of dental, hematological departments, operators of dialyzer, blood transfusion service, clinical, diagnostic and biochemical laboratories

*This list does not provide any other specialties and professions.*

In 2010 The International Labor Organization (ILO) has adopted the ILO Recommendation on HIV / AIDS and the World of Work (200). ILO / WHO also adopted joint guidelines on health services and HIV / AIDS. The purpose of these guidelines is to promote the sound management of HIV/AIDS in **health services**, including the prevention of occupational exposure. Furthermore, the purpose is to ensure that health-care workers have decent, safe and healthy working conditions, while ensuring effective care that respects the needs and rights of patients, especially those living with HIV/AIDS

Joint ILO and WHO recommendation on occupational safety and health states following: "An effective safety and health system requires joint commitment between the competent authority, employers, workers and their representatives. While the overall responsibility for providing a safe and healthy working environment rests with the employer, who should demonstrate commitment to OSH by putting in place a documented programme, available to workers and their representatives. Joint safety and health committees are a recognized mechanism through which such collaborative action can be achieved. **The core safe work practices** to minimize the risk of transmission of HIV and other blood-borne infections in the workplace are standard

precautions, including personal hygiene, good hand-washing practices and an infection control programme. Employers should ensure that hand-washing facilities are provided at clearly identified sites in the workplace”.

Tajikistan has rejected these recommendations. Despite this, this does not mean that Tajikistan should not comply with the requirements for occupational and health safety. In the World of Work, Tajikistan adopted the ILO Occupational Safety and Health Convention, 1981 (№ 155) and the ILO Convention (№ 111) as of 1958 on Discrimination in Work and Occupation, which could also affect labor protection for both PLHIV and those who work with PLHIV, and prevention of non-discrimination of PLHIV in the field of labor relations.

Article 4 of the ILO Occupational Safety and Health Convention, 1981 (№ 155) states that: “Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment”

The problem of regulating the observance of occupational safety standards, the detection of occupational accidents and occupational diseases was also noted in the National Strategy for the Development of the Labor Market until 2020. In particular, as the solution of problems for the future, it states the following: "To improve the system of labor protection in order to encourage employers to actively participate in the labor market, it is necessary to develop new approaches in the legislation on labor protection based on the Interstate Standard GOST 12.03.230-2007 and principles of the ILO Guidelines on occupational safety and health management systems, ILO-OSH 2001. In this regard, a Concept for a new national OSH system, including a national program for the job safety shall be developed, including enhancement of the legislation based on ILO standards on occupational safety and health management systems, ILO-OSH 2001. In addition, in the system of occupational safety it is necessary to introduce the principles of insurance and at the legislative level introduce a new type of compulsory social insurance against occupational accidents.

Occupational health and safety is regulated by the norms of the LC of the RT (Chapters 34, 35, 36, 37, 38). According to Part 3 of Article 333 of the Labor Code of the RT, in case of occupations with especially dangerous working conditions it is envisaged that workers shall undergo medical examinations before each shift. Employees do not incur expenses in connection with undergoing medical examination.

In the context of HIV/AIDS, according to the Resolution № 171 of Government of Tajikistan (as of 01.04.2008), amended on August 6<sup>th</sup> 2014, certain categories of workers (as indicated above) are subject to mandatory medical examination and HIV testing – upon hire and while performing medical examination of other people - but it is not specified how often medical examinations are conducted. In paragraph 5 of Article 333 indicates list of harmful production factors and works that require preliminary and periodical medical examination of employees, as well as the procedure and frequency of such medical examinations is established by the Government of the Republic of Tajikistan.

In addition to the general norms envisaged by the Labor Code of the Republic of Tajikistan, special provisions aimed at protecting workers who are exposed to HIV are enshrined in the Law of the Republic of Tajikistan "On Combatting HIV / AIDS" as well as in the Health Code of the Republic of Tajikistan. Thus, Article 169 of the Health Code of the Republic of Tajikistan provides:

<p>1. Employees engaged in providing medical assistance to the population, do laboratory or scientific research on the Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome and the viral preparation, as well as blood donors, social workers and others involved in providing assistance to persons living with the Human Immunodeficiency Virus and patients with Acquired Immunodeficiency Syndrome, are subject to compulsory state insurance if they contract the Human Immunodeficiency Virus in the performance of their duties, as well as the occurrence (in connection with this) of disability and death from</p>
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the acquired immunodeficiency syndrome. The procedure for compulsory insurance of these categories of employees is determined by the Government of the Republic of Tajikistan.

2. Managers of health facilities, whose workers conduct diagnostic tests for Human Immunodeficiency Virus, provide medical treatment to persons living with the Human Immunodeficiency Virus and patients with Acquired Immunodeficiency Syndrome, and also have contacts with blood and other materials from infected persons, are obliged to provide these workers with the necessary protective equipment, and ensure that such employees undergo systematic testing for the Human Immunodeficiency Virus.

3. When medical, pharmaceutical and other workers contract HIV in performing their official duties, then such situation is considered as occupation disease.

Proceeding from Part 1 of Article 19 of the National Law, HIV / AIDS is included in the list of occupational diseases which lead to the disability (as per Resolution №312 of Government of Tajikistan dated 04.05.1995). And in addition, on December 26<sup>th</sup>, 2011, GoT adopted the Law of RT "On Mandatory Professional Pension Insurance". Article 5 of this Law provides a list of employees subject to compulsory professional insurance. This list contains separate categories of health workers; however those categories are not specific. There is no by-law in this regard, or maybe it is not available in the public domain. Article 12 of this Law establishes the premiums for mandatory occupational pension insurance, which employers have to pay on annual basis. The interesting fact is that premiums are calculated on the actual profit of entity. Private and public health institutions operate in the health sector and public health institutions have no profit, they are not commercial organizations, according to Article 132 of the Civil Code of the Republic of Tajikistan. They are created by the owners, i.e. Government represented by the Ministry of Health and Social Protection of Population of the Republic of Tajikistan. Most likely, state health institutions will apply Part 2 of Article 12 of the Law of the Republic of Tajikistan "On Mandatory Professional Pension Insurance", namely: "in any case, the amount of the premium for mandatory occupational pension insurance calculated for each employee specified in Part 1 of Article 5 of this Law shall not be less than 1 percent of the size of twenty indicators for calculations".

Article 170 of the Health Code also envisages rights and responsibilities of health workers living with HIV:

1. Medical workers who have been infected with the human immunodeficiency virus or have acquired immunodeficiency syndrome as a result of their duties are eligible:

- for an extraordinary improvement of housing conditions in the manner prescribed by the legislation of the Republic of Tajikistan;
- Leave for retirement on preferential terms. In case of their death due to acquired immunodeficiency syndrome, pension in the amount of 100 percent of wages will be paid to incapacitated members of the family and children of minor age;
- For annual leave of at least 36 working days with the use of it in summer or any other convenient period;
- Referral for treatment in sanatoria, regardless of their departmental subordination;
- For compensation for damage, the size and procedure of which is determined by the legislation of the Republic of Tajikistan.

2. In the case if medical worker gets the human immunodeficiency virus in the event of improper performance of professional duties, as a result of violation of the rules, procedures and safety standards due to the fault of the employee, the employee's right to compensation for damage is determined by the legislation of the Republic of Tajikistan.

3. Medical workers who committed misconduct or negligence during the performance of professional duties and infected another person(s) with the human immunodeficiency virus will be kept liable as envisaged by legislation.

The Health Code of the Republic of Tajikistan (Article 170) and the Law "On Combatting HIV / AIDS" (Article 21) establish labor benefits for workers providing medical care to people living with human immunodeficiency virus and acquired immunodeficiency syndrome but not infected with HIV, as understood

by meaning of this norm. Thus, the relevant employees of the specialized public health organizations who provide medical or other assistance to people living with human immunodeficiency virus or patients with acquired immunodeficiency syndrome, or conduct research with the use of infected material, prepare biological products for diagnostics purposes, are entitled to:

- Retirement in accordance with the list approved by the Government of the Republic of Tajikistan for manufacturing facilities, occupations, professions, posts and indicators in underground work, jobs with particularly harsh working conditions, employment in which entitles a retirement pension on preferential terms;
- Surcharge to wages at a rate of 100 percent;
- Annual leave of up to 56 calendar days;
- Reduced working day /shift (6 hours a day).

Occupational safety protects employees' health and provides them a sense of security. The main elements of reducing the risk of contracting HIV and other blood-borne infections in the workplace are hygiene, staff training, safety and universal precautions. Universal or standard precautions envisage that blood and biological fluids shall be treated as potential sources of HIV risk, regardless of the diagnosis or workers' perceptions of the risk. Unconditional adherence to such precautions will also help to overcome fears, stigma and discrimination in the context of HIV infection.

Since 2009, in the Republic of Tajikistan relevant agencies implement a Decree on Post-Exposure Prophylaxis of HIV among medical workers. The kits for post-exposure prophylaxis are distributed among appropriate health facilities, and a notification scheme has been introduced on the possible cases of infection of medical workers during the performance of their duties and the provision of immediate preventive measures.

On the basis of Part 2 of Article 168 of Health Code of the Republic of Tajikistan, mothers who have minor children with HIV (under 16) are entitled to annual leave in summer or any period convenient for them. In the absence of a mother and the upbringing of such a child by the father or any other person, this right is granted to the father/guardian. Firstly, this norm is not gender insensitive. Such leave can be granted to both mothers and fathers and other legal representatives, in the absence of the child's parents. Secondly, this norm does not correspond to Part 2 of Article 222 of the LC of the Republic of Tajikistan, which states that woman who has two or more children under the age of fourteen or a disabled child, as well as single mothers and other persons with family responsibilities - if there is a child under the age of fourteen or a disabled child - annual leave, at their request, shall be provided in summer or any other convenient period for them. As we found out, HIV / AIDS does not belong to a disability among children. The LC does not take into account the rights of parents, guardians and trustees raising a child living with HIV/AIDS.

Article 7 of the LC of the RT envisages a ban on discrimination to hire and in the world of work. When we conducted FGD, we revealed a negative practice and a real violation of GoT Resolution №171 and a misinterpretation of clause 4 of Article 26 of KC of the RT. Currently, many employers require an HIV test - this is when hiring a janitor, shopkeeper, waiters, etc. One woman living with HIV said that she is unable to find a job. She said that she wanted to get a job as a cook, but she was told to undergo a medical examination, including an HIV testing. After that, she refused to get a job, fearing disclosure of her status.

In this particular case, the Criminal Code does not envisage any liability. Liability is provided for deliberately unlawful dismissal of a person, failure to comply with a court decision to reinstate in the previous role, as well as another deliberate violation of the labor legislation of the Republic of Tajikistan (Article 153 of the Criminal Code of the Republic of Tajikistan). But legislation does not provide any explanation for "deliberate violation of labor legislation".

In the Code of Administrative Offenses of the Republic of Tajikistan AP RT there are certain formulations of administrative offenses in the world of work, which entail administrative responsibility:

## **Article 94: Violation of labor legislation**

1. Violation of labor legislation, including:

- Unreasonable termination of the employment contract with the employee;
- Hire of an employee without the labor contract or non-observance of age requirements;
- Unilateral refusal of the employer to conduct collective bargaining;
- Unreasonable refusal to grant annual leave to employees, as well as failure to provide other guarantees provided for by the legislation of the Republic of Tajikistan on labor,
  - Envisage penalty at a rate from twenty to thirty indicators for calculations

2. Repeated commission of an administrative offense specified in part one of this article within one year after the imposition of an administrative penalty

- Envisage penalty at a rate from forty to fifty indicators for calculations.

## **Article 95: Unreasonable refusal to hire**

1. If an official unreasonably refuses to hire a person referred to an enterprise and organization, regardless of the form of ownership and organizational and legal forms, by the employment service of the population in view of the quota established in accordance with the legal framework of the Republic of Tajikistan, in the absence of signs of a crime

- Envisage penalty at a rate from thirty to forty indicators for calculations

2. If an official unreasonably refuses to hire a person for a vacant position that this person successfully passed through a competition, in the absence of signs of a crime

- Envisage penalty at a rate from forty to fifty indicators for calculations.

As we see, none of them has a formulation that requires additional documents for employment, which is not established by the legislation of the Republic of Tajikistan. There is no liability for refusal to hire on discriminating grounds.

With regard to other labor issues, many FGD participants could not respond to questions shared with them, because they were unemployed or employed informally. Unemployment is acute issue for the entire population of Tajikistan, in particular for PLHIV. The gaps and inconsistencies identified in this paragraph in regards to regulation between norms of equal legal force significantly impede the observance of the rights of PLHIV and their protection. And the new Labor Code of the Republic of Tajikistan only in general terms reflects the prohibition of discrimination and occupational safety/labor protection, but does not provide specific requirements for PLHIV.

### **5.2. Right to education in the Republic of Tajikistan in HIV/AIDS context**

The right to education as one of the fundamental human rights is enshrined in Article 13 of the International Covenant on Economic, Social and Cultural Rights:

1. The States Parties to the present Covenant recognize the right of everyone to education (...).
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - a) Primary education shall be compulsory and available free to all;
  - b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
  - d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.



Article 41 of the Constitution of the Republic of Tajikistan proclaims that: "Everyone has the right to education. General basic education is mandatory. The state guarantees that general basic education is compulsory and free in state educational institutions. Everyone, within the limits defined by law, can receive free general secondary, primary vocational, secondary vocational and higher professional education in state educational institutions. Other forms of education are determined by law. More details on education are available at the Law of RT "On Education". So, Article 6 of the Law indicates that:

1. The State guarantees to citizens of the Republic of Tajikistan, regardless of nationality, race, gender, language, religion, political opinions, social and property status, the right to education.
2. The State guarantees to citizens of the Republic of Tajikistan a free compulsory general basic education in state educational institutions, and also in the framework of state orders on a competitive basis, the State guarantees free subsequent levels of education.
3. Restriction of the citizen's rights to education by age, health status, previous convictions and other grounds can be carried out only in accordance with the legislation of the Republic of Tajikistan.
4. Citizens of the Republic of Tajikistan, foreign citizens and stateless persons have the right to choose an educational institution and the education format - day, evening, and correspondence, family, inclusive, distance and external.
5. The State guarantees one-time free education in state educational institutions of primary vocational, secondary vocational, higher vocational education and vocational education after a higher educational institution.
6. The State supports gifted students, assists in their education, allocates a special governmental scholarship and, if necessary, sends them to study abroad.
7. The State guarantees education and upbringing of orphans and children left without parental care, children with disabilities, disabled persons and other persons defined by the legislation of the Republic of Tajikistan in state educational institutions at the expense of budgetary funds, ensures their employment after the graduation from the educational institutions.
8. The State organizes free education at home or in medical institutions for citizens who, for a long time due to illness are not able to attend general educational institutions.
9. Graduates of educational institutions enjoy equal rights for continuing education in subsequent levels of education.
10. Foreign citizens and stateless persons have equal rights with citizens of the Republic of Tajikistan to obtain preschool education, primary, general basic and general secondary education.

As we see from paragraph 3 of this Article, in principle, it is possible to restrict the citizen's rights to education by age, health status, and criminal record if this is established by the legislation of the Republic of Tajikistan. With regard to the education of PLHIV or a special attitude against them, the law does not establish any provision. But some of the revealed facts of discrimination in the sphere of education make us think about raising the level of awareness of educators about HIV and non-discrimination of affected people.

Concerning education, we have already mentioned in paragraph 3 that children with HIV status, tuberculosis and other opportunistic diseases are excluded from national education policies. Here is a case study from the FGD in Kurgan-Tube, with subsequent analysis.

*A woman got contracted with HIV from her husband, she learnt about her status during pregnancy. After she delivered a daughter her husband passed away and in-laws kicked her out of the house with her child. Her current husband is also HIV-positive; his relatives did not accept her child. The woman was forced to give the child to her mother and visits her daughter when the husband and his relatives allow her to do that. In addition to HIV, the child has tuberculosis. Child is hospitalized every three months for TB treatment. In addition to that child receives ART at polyclinics №10, which is based in Dushanbe. Now the girl is 9 years old. The girl did not attend school in her life. Director of the school in Dushanbe did not enroll the girl, emphasizing that she was sick and could transmit TB to other children. The guardianship and trusteeship agencies never asked why that girl has never attended any educational facility.*

In this case, it is clear that a child with HIV was discriminated in an educational institution. In part 5 of Article 16 of the Law of the Republic of Tajikistan "On Education" provides that education in general educational institutions might be provided in various formats, including day, evening, correspondence, distance, inclusive, home-based and external formats, the procedure for implementation of which is determined by the authorized

state body in the field of education. In the National Strategy for the Development of Education of the Republic of Tajikistan until 2020 there is nothing about development and regulation of such format of education like home-based and distance education. To certain extent, this Strategy covers the inclusive education of children with disabilities. Two years ago a Public Fund "Your Choice" submitted a query to the Ministry of Education and Science of the Republic of Tajikistan the issue of the home-based format of education, including development of a document and practice on this format of education, but the query was never responded. Article 35 of the Law of the Republic of Tajikistan "On Education" states that local education authorities undertake measures to enroll students in secondary educational institutions and monitor their involvement in the subsequent levels of education, and local education authorities of regions, cities, districts maintain records of preschool and school age children, control their education before they complete basic general education. Regional educational authorities are responsible for enrolling students in education and they ensure their involvement in the subsequent stages of education (Article 36 of the Law of the Republic of Tajikistan "On Education"). But it is not defined how the mechanism for identifying children not covered by the compulsory basic general education is actually built.

The following case study is able to show the problem of discrimination of PLHIV in higher educational institutions. This story was part of the article, but it should be noted that this young woman came to participate at FGD in Dushanbe and shared this story with us. We brought only the case when she is discriminated in the field of education. This is only part of the problems with which she has to face at her young age.

*When I entered my college, I received a letter from the Ministry of Education, which indicated the reason why I'm studying at the expense of governmental funds (HIV status). The principal of my college started to threaten me openly. He was afraid that I could infect other HIV-free students. I tried to explain him that it was impossible, that I'm receiving treatment, and that I'm absolutely safe for healthy people. He did not want to listen. He did not even let me into his office. He began to threaten me that he would disclose my status to everybody in the college. I could enforce observance of my rights, could bring him to criminal liability for his action, but I have realized that I would be subject to harassment by my teachers and classmates. I can't fight against everyone; I can't convince everybody of my innocence and safety. I decided to change my college. Despite the fact that there is already a lot of information about HIV and AIDS available, people practically do not know anything about this disease<sup>53</sup>.*

Another problem faced by parents of children living with HIV is the intake of HIV medicines (ART) by children in schools. HIV medicines should be taken several times a day. Parents have no other choice but to deceive own children so that they are not discriminated against. So, one of the parents living with HIV, in the course of FGD in Dushanbe said that she asked the class teacher to control that her child takes HIV medicines timely, but she said to teacher that it was a medicine for intracranial pressure. After several weeks, the class teacher began to wonder why a little child needed to take these drugs so often. The mother referred to a non-existent doctor and his prescription. Since the research was not full-scale and limited in resources, the issue of medical workers in schools and kindergartens was not addressed, including information about the maintenance of patient cards for children and disclosure of the status of children to health staff in schools. This issue remains urgent and relevant and in need of additional study.

Mandatory general/secondary basic education in state educational institutions of the Republic of Tajikistan is free of charge (Part 2, Article 6 of the Law of the Republic of Tajikistan "On Education"). The Law of the Republic of Tajikistan "On Education" guarantees the right to education to everyone regardless of nationality, race, sex, language, religion, political opinions, social or property status. Children with HIV and adult PLHIV are excluded from the social policy in the sphere of education, which operates in the country until 2020. FGDs have shown that discrimination exists against PLHIV in education, both in higher and secondary educational institutions. In practice, a form of education such as family or distance education that would allow children who are not able to attend school has not been introduced. Some schools require the HIV testing results without

<sup>53</sup> Tajik people living with HIV: "We live in a constant state of fear". Anora Sarkorova. BBC Russian Service, Dushanbe

any justified reason. Another problem faced by parents of children living with HIV is the intake of HIV medicines (ART) by children in schools. HIV medicines should be taken several times a day. Parents have no other choice but to deceive own children so that they are not discriminated against. Since the research was not full-scale and limited in resources, the issue of medical workers in schools and kindergartens was not addressed, including information about the maintenance of patient cards for children and disclosure of the status of children to health staff in schools. This issue remains urgent and relevant and in need of additional study.

## **Chapter 6: Specific issues of the legal condition of women and children living with HIV – Issues of non-discrimination**

### **6.1. Women’s rights in HIV/AIDS context**

**Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>54</sup>**

<sup>54</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

61 c. Pledge to eliminate gender inequalities and gender-based abuse and violence, increase the capacity of women and adolescent girls to protect themselves from the risk of HIV infection, principally through the provision of health care and services, including, inter alia, sexual and reproductive health, as well as full access to comprehensive information and education, ensure that women can exercise their right to have control over, and decide freely and responsibly on, matters related to their sexuality, including their sexual and reproductive health, free of coercion, discrimination and violence, in order to increase their ability to protect themselves from HIV infection, and take all necessary measures to create an enabling environment for the empowerment of women and to strengthen their economic independence, and, in this context, reiterate the importance of the role of men and boys in achieving gender equality;

Globally, women and girls are still the most affected by the epidemic and that they bear a disproportionate share of the caregiving burden, note that progress towards gender equality and the empowerment of all women and girls has been unacceptably slow and that the ability of women and girls to protect themselves from HIV continues to be compromised by physiological factors, gender inequalities, including unequal power relations in society between women and men and boys and girls, and unequal legal, economic and social status, insufficient access to health-care services, including sexual and reproductive health, and all forms of discrimination and violence in the public and private spheres, including trafficking in persons, sexual violence, exploitation and harmful practices<sup>55</sup>.

It should be noted that in the National Programme on Combatting HIV/AIDS for 2011-2015, special attention within national HIV response is paid to gender mainstreaming. But despite that, statistics has shown that in recent years there has been a trend of increasing the proportion of women (both adults and minors) among new HIV cases: an increase from 28.9% in 2011 to 40.2% in 2015<sup>56</sup>.

The Government of Tajikistan adopted a National Strategy for Enhancing the Role of Women in Society for 2011-2020, (Resolution № 269 as of May 10, 2010). This document covers many aspects of women's life: politics, work, education, health, family, violence and mass media. In all areas, one of the goals is to achieve gender equality between men and women. For example, the main goal in health care is to improve the quality of life of the female population through the promotion of public health and reproductive health in particular. There is nothing in National strategy concerning HIV/AIDS in women and girls. In general, it is stated that it is necessary as a goal to eradicate violence in its various manifestations in all social spheres, including domestic violence. Domestic violence/violence against women is covered at paragraph 24 of Chapter 1 (Analysis of the general situation and the trend of domestic violence) of the State Program "On the Prevention of Domestic Violence for 2014-2023". It is noted that growth in number of HIV cases in society has a negative socioeconomic, health and psychological impact on women. At present, there 1 762 women registered with HIV-infection all over the country, which is 1202 more than in 2008. Women living with HIV are subject to discrimination, violence and brutality by the society (these figures were indicated at the time of the development and approval of the Programme). One of the objectives of this Programme is prevention of communicable diseases and promotion of the healthy lifestyle among the public. However there are no planned activities under this objective and nothing has been indicated to address discrimination against women and girls living with HIV and AIDS. Unfortunately, FGDs have shown that the highest level of discrimination and domestic violence is experienced by women living with HIV. Although vast majority of WLHIV get HIV from their husbands, after their death they are expelled from their husbands' homes, in-laws accuse them of infecting their son, sometimes women are beaten. Below is a case study which summarize all afore-mentioned.

*A woman with HIV: 30-32 years old. Was married. Widow. My husband died two years ago because of this disease. I have one child. The boy is three years old. "When it was time to be registered at the clinic, they told me that I'm HIV-positive. Then I was pregnant (six months). I got HIV from my husband. He was 12 years older than me. We went to the AIDS Center with him and the sister-in-law. I did not want to deliver a sick child. I asked them to terminate*

<sup>55</sup> Ibid.

<sup>56</sup> National Programme on Combatting HIV/AIDS in the Republic of Tajikistan for 2017-2020 (Paragraph 6 of Chapter 1), adopted by the Resolution №89 of Government of Tajikistan, as of 25.02.2017

*my pregnancy. I'm from a very poor family. Also I have thought that it will be very challenging for me to continue living with the sick child. My husband did not work anywhere. Our mother was sustaining our livelihood. But doctor at the Center refused to terminate my pregnancy. And in the end I gave birth through a cesarean cut. I did not breastfeed, and no one provided us with free feeding formulas, we bought feeding formula ourselves. My husband and I lived separately from my in-laws. After the death of my husband, my in-laws started to accuse me of his death (as if I had infected my husband) and kicked me and my child out of the house. None of my husband's in-laws are helping or visiting my child. They told everyone that I was not a virgin before marriage. They started to spread rumors that I sluttish and infected my husband. Vakhsh is a small area and soon everyone came to know about my status. Nobody offers me job because of my status. In the parents' house, only my mother takes care about me. We do not have a father. Brothers and their wives are squeamish about me and my child. We do not dine together around the same table. The brothers' wives set the conditions that either they or I should leave the house. Poor mother does not know what to do. Six months ago, I applied to the court against my in-laws "about moving into a dwelling and the recognition of a family member as the owner." The court of Vakhsh took decision in my favor and I moved into my husband's house two months ago this year. But after 3 days, the brother of the deceased husband tied me up beat me very badly. I lost consciousness. When I regained consciousness I called my mother. And my mom and the lawyer of the center applied for forensic examination at the department of internal affairs of Vakhsh. However, there are still no answers and actions. A lawyer is not able to represent me, as he is not a lawyer (he is a paralegal). He only consults me. Several times I wanted to commit suicide and drank vinegar. I still have such intentions. I'm tired, very tired (crying). Brothers and their wives continue to isolate and avoid me. Mom is very desperate. Nobody wishes to offer me a job. I can't do anything without money and my in-laws continue to brutalize me. I ask for help, but nobody responds. I do not go to visit my relatives as nobody invites me because of my health status. "*

Despite the adopted Law of RT "On Prevention of Domestic Violence", violence against women has not diminished. Up to date, there is no unified statistical information in Tajikistan about how many women are currently being subject to domestic violence. All this is due to the fact that domestic violence in Tajikistan has not been singled out as a separate crime. Under the Law of RT "On the Prevention of Domestic Violence", a protective order is issued as a warning to a person who has committed domestic violence that does not show signs of a crime. The mechanism for issuing a protective order is bureaucratic and ineffective. Until now, there has been no evaluation of the effectiveness of this mechanism for the protection of victims of domestic violence. But all the major cases of domestic violence, both in the media, and through appeals to legal reception offices, as well as to the Committee on Women and Family Affairs, show that the problem is still relevant and not addressed<sup>57</sup>.

International Guidelines on HIV/AIDS and Human Rights (Guideline 5: Anti-Discrimination and Protective Laws) says that: Anti-discrimination and protective laws should be enacted to reduce human rights violations against women in the context of HIV, so as to reduce vulnerability of women to infection by HIV and to the impact of HIV and AIDS. More particularly, laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity, so that discriminatory limitations are removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets upon divorce or separation, and retain custody of children.

In accordance with the norms of the Family Code of the Republic of Tajikistan, the aspects related to paternity, maternity, upbringing, education of children and other issues related to family affairs are decided jointly by the spouses on the basis of the principle of equality (Article 32 of the Family Code). As a guarantee for the future healthy generation of Tajikistan, in case of marriage with close relatives, including cousins, maternal uncle and niece, paternal uncle and niece, maternal aunt and nephew, paternal aunt and nephew, persons breastfed by one woman (Article 14 of the Family Code), the medical examination of persons entering into marriage, as well as counseling on possible inherited genetic and health issues, is mandatory and free of charge

<sup>57</sup> <https://www.news.tj/ru/news/tajikistan/laworder/20170216/podrostkovaya-prestupnost-v-tsifrah>, <http://novosti-tadzhikistana.ru/kanibadam-ubijstvo-zheny-i-dvux-detej/>, <https://news.tj/ru/news/18-let-za-iznasilovanie-nevestki>, <https://regnum.ru/news/polit/2139309.html>, <https://news.tj/ru/news/molodaya-devushka-brosilas-v-dushanbinku>  
Institute for War and Peace Reporting IWPR): «Experts are concerned with women's suicide in Tajikistan» <https://iwpr.net/ru/global-voices/эксперты-обеспокоены-женскими-самоубийствами-в>

(Article 15 of the Family Code), The Family Code is an institutional document that regulates and protects the rights of citizens in family relations.

The Law on "Occupational Safety" as well as the Labor Code are two important documents for protection of women's rights and social guarantees. These legal instruments envisage occupational safety/protection of labor rights of pregnant and lactating mothers; extended periods of maternity leave (in total - 140, and in case of complicated births - 156, at the birth of 2 or more children - 180 calendar days) with payment of the state insurance benefit; the provision of paid leave to take care of a child before reaching the age of 18 months and additional, unpaid leave to care for a child before he/she reaches 3 years old and etc. (Chapter 16 of the LC of the RT "Additional guarantees for women and persons with family responsibilities).

In part 3 of Article 87 of the Health Code of the Republic of Tajikistan is said that a woman is given the right to decide the matter of motherhood herself, at her request, contraceptive methods and methods aimed at preventing unwanted pregnancies may be recommended. The procedure for providing contraceptive aid is determined by the authorized public health authority. While analyzing the norms of the Health Code of the Republic of Tajikistan on observance of the reproductive rights of citizens, subject matter experts have identified discrimination on the basis of the official status of marriage and relations between men and women. Thus, Article 87 of the Health Code of the Republic of Tajikistan and paragraph 3 of Article 11 of the Law of the Republic of Tajikistan "On Reproductive Health and Reproductive Rights" states that Reproductive rights are based on recognition of the basic rights of married couples in making free and responsible decisions about the number of children, the time of their conception and the intervals between births, in obtaining the necessary means and information, to achieve reproductive health. Married couples in the RT are officially recognized if their marriage is officially registered at the civil registry office (based on the meaning of paragraph 3 of Article 1 of the Family Code of the Republic of Tajikistan). By virtue of this, it turns out that certain rights of non-married couples or single mothers are not recognized.

All these women rights are prescribed by the legislation of the Republic of Tajikistan, but in practice, women, especially in rural areas, are able to realize them. As for the policy in the field of reproductive health from 2007 to 2014, country had implemented the Strategic Plan for Reproductive Health of the Population (for 2005-2014). In 2012, network of civil society organizations carried out an analysis from the point of observance of human rights<sup>58</sup>. In particular, as an outcome of this analysis, the following might be concluded: "Services for the protection of reproductive and sexual health should be provided in the light of medical ethics and respect for cultural characteristics. This principle implies access to health services for adolescent girls, unmarried women, victims of sexual violence, widows, victims of trafficking, women working in the sex industry, women living with HIV, linguistic and national minorities, given the confidentiality of information and medical ethics. It also means access to contraceptive methods that are acceptable, taking into account the cultural and religious norms and characteristics of women and their families. The analyzed strategy does not specifically mention the confidentiality of information on reproductive and sexual health and there is no information on providing services to women living with HIV, victims of violence, victims of trafficking in persons, to workers, and there lack of information on providing services to linguistic and national minorities on accessible language."

We have placed a query to the Ministry of Health in regards to adoption of a new programme on reproductive health: it was said that Programme had been already adopted. But nobody could share with us that Programme. Aspects of reproductive and sexual health of women are not the part of the National Programme on HIV / AIDS for 2017-2020.

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<sup>58</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fTJK%2f15102&Lang=ru](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fTJK%2f15102&Lang=ru) Public Fund «Nota Bene», NGO «Human Rights Center», NGO «Center for Children's Rights». The right to reproductive health: an analysis of legal policies based on human rights. Dushanbe 2012. This analysis was carried out with financial support of the Ministry of Foreign Affairs of the Netherlands.

Below is the case study that represents discrimination of a woman due to her HIV status and the violation of her right to motherhood by relatives of her deceased husband.

*The woman G. told that after the birth of the child, regardless of the fact that she had HIV, her mother-in-law forced her to breast-feed. She does not know if the child is sick or not, because her husband's relatives took her child away. She got HIV from her husband. She has an elder daughter; she is disabled after the accident (vision impairment). The eldest daughter goes to a boarding school. She lives with her parents. No one consults her that she is entitled to receive cash-based assistance due to HIV, they do not know about their rights and the rights of their children. At the expense of milk replacer does not know, nursed.*

*"When my husband's relatives found out about my disease, they took my child away from me," says G., "They do not let me to see my child." I have another two children. The eldest daughter goes to a boarding school. Younger soon will be 6 years old. I don't what to do. A lawyer named Ravshan is working in the legal aid center. But she can't recall that he ever provide relevant counseling on any legal issue. She needs an advocate to protect her interests and return the child from her husband's relatives.*

Another problem faced by Tajik women is migration. Here is a part of the analytical material from the analysis of reproductive health. In recent years, the level of women's migration has also increased in Tajikistan. According to the Migration Service of RT for the period of 2011, the number of women leaving for migration was more than 80 thousands. Self-migrating women may find themselves in situations that make them particularly vulnerable to HIV. Many of them, as well as male migrants, are employed in relatively unskilled jobs, often without a legal status with severely restricted access or without access to health and HIV-related services. In such situations, they are often exposed to exploitation / or physical and sexual violence, in some cases by their employers, and may also provide sexual services for economic reasons, or in exchange for physical protection.

Despite the existence of numerous programs and projects in the field of prevention of HIV, AIDS and STIs among migrants, subject matter experts note that the presence of stigma and discrimination against people with HIV and AIDS is a very strong barrier to access for HIV treatment, care and support for vulnerable categories. Wives of migrants who face the same economic and other problems (such as food insecurity) that contributed to the migration of their husbands may also be forced to provide sexual services in exchange for food, shelter, protection or money, thus becoming vulnerable to HIV. In addition, as the problems restricting the access of family members of labor migrants to the exercise of their right to reproductive health, national experts pointed out that in rural areas it is almost impossible to discuss issues of sex and reproductive health in the family. Women are not entitled to decide and suggest the use of condoms and other measures to prevent STIs.

The interviews with family members of migrant workers conducted during this analysis also revealed the following problems that limit the right to reproductive health of this category of people:

- Interviewed wives of migrant workers noted that they do not raise the question of STIs testing after their husband return from migration. Some women noted that they are uncomfortable to start such a conversation and this is not accepted in their family, others said that they do not think about it.
- Men migrants are not actively undergo testing for HIV or AIDS upon return from migration. Interviewed medical workers of the jamoats Lokhuti and Karakchikum o(Kanibadam district, Soghd Province), as well as medical workers of the reproductive health center in Isfara district noted that doctors working in jamoats offer returned migrants free testing for HIV. However, doctors often are ignored, and a very small percentage of return migrants voluntarily apply for HIV testing upon return.
- Interviewed young women in the jamoats of Isfara and Kanibadam districts pointed to the fact that when a spouse is abroad as a migrant, all issues related to their health, including termination of pregnancy, are coordinated with their mother-in-law. In general, even the question of going to health facilities for any other issues connected with the reproductive health is coordinated with the spouse, and in his absence with the



mother-in-law. Women noted that their mother-in-law has a great influence on their spouses, including on issues related to reproductive health.

- Interviewed wives of migrant workers noted that they do not receive sufficient nutrients during pregnancy. In particular, their diet is not that comprehensive and lack meat, fruits and dairy products, as the consumption of these products is directly linked with the financial situation of the family.<sup>59</sup>.

In the course of FGDs in Dushanbe, Kurgan-Tube and Kulyab, following question was shared with the participants: "Do you know any case when PLHIV in general or you were limited to parental rights / rights for adoption in connection with HIV status?" All responses were negative. When interviewed in Dushanbe and Kurgan-Tyube, many women claimed that during follow-up talks, they were assured that they could not have children in the future. One woman from Tursunzade told that the gynecologist at the maternity hospital had told her that she could no longer bear children. In Kurgan-Tube they told them that if they decided to give birth, it would be possible only through cesarean section. To the question: "Have you ever been told, once you learnt about your status, that you should not marry, and have sex with someone," most single women living with HIV responded that they were told in the AIDS Center, that they should marry only an HIV-positive man. No need to infect healthy people. One of the girls in Dushanbe said that her potential husband is being picked up by doctors in the AIDS Center, but so far she didn't like any of candidates. No one was forced to terminate their pregnancy. In most of the cases, WLHIV are discriminated by their family members and relatives. If a husband does not have HIV, and his wife has it, she is immediately expelled from the home with her children. They are also discriminated once husband passes away due to AIDS (when husbands infect their wives). Sometimes even own parents try to cut any connection with HIV-positive daughter. For instance, during FGD in Dushanbe, seven of the respondents confirmed the fact of domestic violence by in-laws. According to one of the women, her mother-in-law became more supportive of her husband's second wife, and after her husband's death mother-in law kicked her out of the house. Despite the pressure by in-laws that woman and her children continue to live with her mother-in-law, since she has nowhere to go. Similar situation was observed in Kurgan-Tube. Answers provided by respondents also have shown that the highest level of discrimination is observed in rural areas. A high role of NGOs in the urban was noted by the respondents, which makes life easier for many PLHIV and MARPs.

During FGD among women living with HIV in Dushanbe and Kurgan-Tube, it was found out that most of the women got HIV from their husbands without knowing about that husband is living with HIV. None of the women appealed to the court or law enforcement bodies for the protection of their rights. In most cases, when a woman is infected with HIV, in-laws accuse her of all deadly sins, sometimes women are blamed for being the source of the diseases of their husbands. Women said that the attitude of the population towards HIV / AIDS is extremely negative, and HIV considered as something dirty and bad.

## 6.2. Rights of children in HIV/AIDS context

### **Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030<sup>60</sup>**

60 c. Commit to taking all appropriate steps to eliminate new HIV infections among children and ensure that their mothers' health and well-being are sustained through immediate and lifelong treatment, including for pregnant and breastfeeding women living with HIV, through early infant diagnosis, dual elimination with congenital syphilis, and treatment of their male partners, adopting innovative systems that track and provide comprehensive services to mother-infant pairs through the continuum of care, expanding case-finding of children in all healthcare entry points,

<sup>59</sup>[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fTJK%2f15102&Lang=ru](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fNGO%2fTJK%2f15102&Lang=ru) Public Fund «Nota Bene», NGO «Human Rights Center», NGO «Center for Children's Rights». The right to reproductive health: an analysis of legal policies based on human rights. Dushanbe 2012. This analysis was carried out with financial support of the Ministry of Foreign Affairs of the Netherlands.

<sup>60</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

improving linkage to treatment, increasing and improving adherence support, developing models of care for children differentiated by age groups, eliminating preventable maternal mortality and engaging male partners in prevention and treatment services, and taking steps towards achieving World Health Organization certification of elimination of mother-to-child HIV transmission;

At the first outset, it was believed that the HIV epidemics affect children only indirectly. However, later the international community realized that, unfortunately, children are at the very center of the HIV epidemics. According to the Joint United Nations Program on HIV / AIDS (UNAIDS), the latest trends in this area are reason for great concern: in most parts of the world, the majority of new HIV cases are young people (aged 15 to 24 and in some countries even younger). The number of HIV cases among women, including young girls, is steadily increasing. Adequate measures to combat HIV / AIDS can only be taken if the rights of children and adolescents are fully respected. In addition to those listed in paragraph 5 above, the most relevant rights in this regards include the right to access information and materials that are aimed at promoting social, spiritual and moral well-being and healthy physical and mental development (article 17); the right to preventive medical care, sex education and advocacy and family planning services (article 24 f); the right to an appropriate standard of living (article 27); the right to privacy (article 16); the right not to be separated from one's parents (article 9); the right to protection from violence (article 19); the right to special protection and assistance from the State (article 20); the rights of children who are mentally or physically disabled (Article 23); the right to health (Article 24); the right to social security, including social insurance (Article 26); the right to education and leisure (Article 28 and Article 31); the right to be protected from economic and sexual exploitation and abuse, as well as from the illicit use of narcotic drugs (Articles 32, 33, 34 and 36); the right to protection from abduction, trafficking and smuggling, as well as from torture or other cruel, inhuman or degrading treatment or punishment (Articles 35 and 37); the right to physical and psychological recovery and social reintegration (Article 39). Due to the HIV epidemic, the realization of the above-mentioned rights of children becomes very problematic. The Convention, on the Rights of the Child and, in particular, the four general principles with their integrated approach, constitutes a solid basis for efforts to reduce the negative impact of the pandemic on children's lives. The holistic, rights-based approach which is required for the implementation of the Convention is an optimal tool for addressing a wider range of problems related to prevention, treatment and care efforts<sup>61</sup>.

Anti-discrimination measures and protective laws are very important aspects of HIV prevention aimed at reducing violation of children rights in connection with HIV and HIV/AIDS impact. As a positive aspect in matters of child rights, it should be noted that in 2015, by Decree of the President of Tajikistan, Government approved creation of the Children's Ombudsman Office and Parliament adopted the Law of RT "On the Protection of the Rights of the Child". But despite of this, the situation of children in the country still remains complex. Some subject matter experts say that the Law of RT "On the Protection of the Rights of the Child" does not take into account the interests of children living with HIV and, in general, this law is declaratory and without mechanisms<sup>62</sup>.

Unfortunately, the number of children living with HIV in the Republic of Tajikistan continues to grow. For instance, since 2011, there has been an alarming trend in the growth of the number of new HIV cases among children aged 0-14 years. In the last four years (2012-2015), the proportion of children among all new HIV cases has ranged from 11.4% to 16.2%. As of December 2015, the cumulative number of officially registered HIV-positive children under the age of 15 in Tajikistan was 636 people, or 8.2% of the cumulative number of all people ever registered with the human immunodeficiency virus<sup>63</sup>.

<sup>61</sup> General Comment № 3 on HIV / AIDS and the rights of the child - thirty-second session: 2003

<sup>62</sup> Galina Derevenchenko. Analysis of Law of the Republic of Tajikistan "On protection the rights of child": Public Association "Legal Initiative"

<sup>63</sup> Clause 24-25, Chapter 1: The National Programme on Combatting HIV/AIDS in Tajikistan for 2017-2020 (approved by the Resolution №89 of the Government of Tajikistan, as of February 25<sup>th</sup>, 2017).

In order to prevent the transmission of HIV from mother to child in Article 12 envisage that parents or legal representatives or legal representatives of children born to HIV-infected mothers shall enjoy the right breast-milk substitutes from the moment of birth until the time of final HIV diagnosis, in order to reduce the risk of HIV transmission. Unfortunately, practice, as well statistics, shows that that there is no mechanism for realizing this norm. Which authority should issue feeding formula, at the expense of what budget: national or local? Other specific aspects on this matter are not properly regulated. Therefore, until now, people who do not have the opportunity to buy feeding formula feed their babies with breast milk, which increase the risk of mother-to-child transmission of HIV.

A vivid example of this problem was revealed during FGD in the Rudaki district, although such problems were identified in each region where we had conducted FGDs (Dushanbe, Vakhdat, Kurgan-Tube, Kulyab, and Rudaki). Sad to say but such cases are not unique.

*A man living with HIV said that due to the fact that they were not given a feeding formula for feeding their daughter, and his wife also had HIV status, their first daughter also got infected with HIV. They are very poor and there is no money to buy the feeding formula. He had a temporary disability pension due to TB. He told his wife to breastfeed. "What, the child should have died of hunger?" - He said. He accuses the doctor of the AIDS Center in the Rudaki district, who is responsible for the children living with HIV. He says that doctor had promised, but family did not get the feeding formula. The doctor said that then local administration did not allocate any money to buy a feeding formula.*

Analysis of this case leads to the conclusion that Government by not providing an accessible and transparent mechanism for feeding formula for children born from HIV-infected mothers (right to feeding formula is guaranteed by law), violates the child's right to physical and mental health, and perhaps the right to life.

Adolescents / girls were included in a number of questions raised in the course of FGDs; however, neither experts nor FGD participants did provide information on this topic. Parents pointed out the difficulties in communicating with adolescents, how to adapt children to this problem with age, there are no specialists who would work on this matter. Parents face this problem, but do not have any support and aid. The adolescents living with HIV did not attend to the Focus Group Discussions. Individual studies are recommended.

## **Chapter 7: Specific issues of the legal status of PLHIV in matters of criminal law, sex workers, people who inject drugs, men having sex with men, people under arrest or in custody. Issues of non-discrimination**

**Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030** <sup>64</sup>

42. Note with alarm the slow progress in reducing new infections and the limited scale of combination prevention programmes, emphasizing that each country should define the specific populations that are key to its epidemic and response, based on the local epidemiological context, and note with grave concern that women and adolescent girls, in particular in sub-Saharan Africa, are more than twice as likely to become HIV-positive than boys of the same age, and noting also that many national HIV prevention, testing and treatment programmes provide insufficient access to services for women and adolescent girls, migrants and key populations that epidemiological evidence shows are globally at higher risk of HIV, specifically people who inject drugs, who are 24 times more likely to acquire HIV than adults in the general population, sex workers, who are 10 times more likely to acquire HIV, men who have sex with men, who are 24 times more likely to acquire HIV, transgender people, who are 49 times more likely to be living with HIV, and prisoners, who are 5 times more likely to be living with HIV than adults in the general population;

## 7.1. Specific issues of the legal status of PLHIV

### International approach to the problem

International Guideline 4 on HIV/AIDS and Human Rights (1996 Version) on Criminal Laws and Correctional Systems recommends following:

21. «States should review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV or targeted at vulnerable groups».

Recommendation is explained as follows:

a) Criminal and/or public health legislation should not include specific offences against the deliberate and intentional transmission of HIV but rather should apply general criminal offences to these exceptional cases. Such application should ensure that the elements of foreseeability, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties

Criminal Code of the RT provides for criminal liability - Article 125. ***Infecting others with the human immunodeficiency virus***

1) Deliberately placing another person in danger of becoming ***infected with the human immunodeficiency virus*** is punishable by imprisonment for two to three years.

2) ***Infecting*** another person with ***HIV*** while being aware of your own HIV status - is punishable by imprisonment for a term of two to five years.

3) The act provided for in part two of this article, committed against:

a) Two or more persons;

b) A minor - shall be punishable by imprisonment for a term of five to ten years.

It is necessary to pay attention to the disposition of Part 1 of Article 125 CC of the Republic of Tajikistan. It provides for a gravamen of a charge not only for the intentional transmission of HIV, but also posing a risk of contracting HIV. Almost all PLWH who get into sexual contact fall under this disposition, and thus this rule deprives PLHIV of the right to sexual health, as an element of the right to physical and mental health. Moreover, this disposition does not take into account the informed consent of the other partner. Also, legislation does not take into account such issues as the use of condoms as a means of safety and protection

<sup>64</sup> Political Declaration on HIV and AIDS: On the Fast Track to Accelerating the Fight against HIV and to Ending the AIDS Epidemic by 2030. June 8th, 2016, Accessed on April 2017: [http://www.unaids.org/sites/default/files/media\\_asset/2016-political-declaration-HIV-AIDS\\_ru.pdf](http://www.unaids.org/sites/default/files/media_asset/2016-political-declaration-HIV-AIDS_ru.pdf)

during sexual intercourse or an undetectable viral load in which HIV is not transmitted according to the latest scientific research. The legislation does not define the ways of HIV transmission. There is no Decree of the Plenum of the Supreme Court on such categories of cases that would explain to the courts what is meant by posing in danger of HIV. The guidelines for the prosecution authorities in these categories of cases have not been adopted. Finally, there is no practice of addressing such cases at judicial bodies.

Thus, in point b of International Guideline 4 on HIV / AIDS and Human Rights (1996): «Criminal law prohibiting sexual acts (including adultery, sodomy, fornication and commercial sexual encounters) between consenting adults in private should be reviewed, with the aim of repeal. In any event, they should not be allowed to impede provision of HIV prevention and care services».

It should be noted that this explanation does not in any way promote a depraved lifestyle. The case concerns the prevention of HIV. The more citizens will be prosecuted under Article 125 of the Criminal Code, as well as part 1 and 2 of article 130 of the Code of Administrative Offenses RT (Engagement in prostitution), the more they will be in the sidelines and avoid HIV prevention procedures; thus the risk of spread of infection within the country will increase. Based on outcomes of FGDs, most women living with HIV get contracted from their husbands. None of them knew (before they got infected) that their husbands had HIV. But at the same time, not a single man was brought to criminal responsibility for any part of Article 125 CC of the Republic of Tajikistan. For instance, one of the women –respondent said that her husband had infected both her and the second wife with whom he lived.

## 7.2. Specific issues of the legal status of People who inject drugs

### International approach to the problem

As per point d of the International Guideline 4 on HIV/AIDS and Human Rights (1996 Version) - Criminal law should not be an impediment to measures taken by States to reduce the risk of HIV transmission among injecting drug users and to provide HIV-related care and treatment for injecting drug users. Criminal law should be reviewed to consider:

- The authorization or legalization and promotion of needle and syringe exchange programmes;
- The repeal of laws criminalizing the possession, distribution and dispensing of needles and syringes

Strategic Guidance No. 1 of the National Program on Combatting HIV/AIDS in the Republic of Tajikistan for 2017-2020 proclaims following:

#### 1. HIV prevention

Task No. 1: Ensure high coverage of key populations at high risk (people who inject drugs, sex workers, convicts) and vulnerable groups (migrant workers, youth, pregnant women and children) with quality HIV prevention services:

- Outcome 1.1. By the end of 2020, reduce the prevalence of the human immunodeficiency virus among all key populations and vulnerable groups by at least 20%.

As a part of strategic activity declared by this task, following objectives are envisaged:

- Procurement of condoms, as well as syringes and needles for needle and syringe exchange programs with annual financial input of the state in the amount of at least 5%.
- Provide people who inject drugs with sterile injecting equipment, condoms, opioid substitution therapy and naloxone.
- Provision of sexual and reproductive health services, including STI services for sexually transmitted infections for people who inject drugs and their sexual partners.
- Conducting Integrated Biological Surveillance Study and research of knowledge, attitudes, practices among people who inject drugs.
- Support for the activities of 60 needle exchange points and low-threshold centers operated by NGOs and health institutions through external and public funding.
- Procurement of methadone for opioid substitution therapy programs with annual financial input of the state.
- Procurement of naloxone for programs operated by NGOs and health institutions for prevention of opiate overdose.

Based on these spheres of activities, it should be noted that the implementation of the above activities should be carried out in cooperation with the Ministry of Internal Affairs, since methadone is on the List of Narcotic Drugs, Psychotropic Substances and Precursors (Appendix No. 1 to the Criminal Code of RT). If PWID arrive to the health facilities to take methadone, the police should not prevent this and not detain PWID, and in hospitals the dose should correspond only to the use purposes. In this connection, a joint instruction on supervision and implementation of the syringe exchange and substitution therapy program should be adopted in the public health and internal affairs system.

While interviewing PWID, it became clear that many of them were brought to criminal liability under article 200 of the Criminal Code of the Republic of Tajikistan (Illicit traffic in narcotic drugs or psychotropic substances for the purpose of distribution and sale). During detailed interview, it turned out that PWID purchase narcotic substances in larger amounts but still for consumption: however, they were brought to criminal liability for distribution and sale. During analysis of Article 201 of the Criminal Code of the Republic of Tajikistan (Illicit handling of narcotic drugs or psychotropic substances for the illicit manufacture, manufacture, processing, acquisition, storage, transportation or transfer without the purpose of selling narcotic drugs or psychotropic substances in shallow amounts) it turned out that it might be applied against all persons who use drugs. It is necessary to clarify this component of crime: as it considers all actions in the aggregate or each action separately. In practice, investigative bodies are attracted only for acquisitions in shallow amounts. Thus, almost every PWID is in risk zone of arrest, detention, including subject to unauthorized forms of interrogation, for example, using the withdrawal syndrome of the detainee. In Article 1 of the Health Code of RT it is said that **drug addiction** is a disease caused by chronic intoxication of the body due to the abuse of narcotic drugs that are attributed to those in the relevant international Conventions and the National List and characterized by mental and physical dependence. **Thus, special attention should be paid to proper treatment and rehabilitation of people who use drugs, rather than to their persecution.** According to Article 193 of the Health Code of RT "Drug treatment is carried out on the basis of the principles of charity and humanism, proceeds from the right of everyone to dispose of their health, as well as the primary duty of the doctor to assist the patient by following his/her medical duties and professional ethics. Narcological aid to patients is provided on the basis of their application or upon their consent ..." Forced treatment is prohibited. Also, persons suffering from narcological diseases have the right to receive information about the nature of their diseases, the purpose and duration of the recommended type of drug treatment, the prescribed procedures and methods of treatment, the expected results, possible side effects, as well as alternative methods of treatment and other rights, pre-established by Article 195 of the Health Code of RT.

From the above it follows that the measures of criminal influence against PWID only aggravate their situation and do not help them in recovery. In 2016 five Policy Recommendations and 10 operational recommendations of UNAIDS were adopted for the United Nations General Assembly Special Session on the World Drug Problem. Within the framework of the ten operational recommendations, the following are highlighted from the point of view of respect for human rights, although they are all of undoubtedly important:

2. Ensure that all people who inject drugs and are living with HIV have access to life-saving antiretroviral therapy and other health services to manage tuberculosis, viral hepatitis and sexually transmitted infections. In addition, ensure adequate availability and access to opioids for medical use to reduce pain and suffering.

3. Ensure that all people who use drugs have access to non-coercive and evidence-informed drug dependence treatment consistent with international human rights standards and the Principles of Drug Dependence Treatment articulated by the United Nations Office on Drugs and Crime and the World Health Organization (16). All forms of compulsory drug and HIV testing and drug treatment should be replaced with voluntary schemes. The use of compulsory detention centers for people who use drugs should cease, and existing centers should be closed.

4. Adapt and reform laws to ensure people who use drugs do not face punitive sanctions for the use of drugs or possession of drugs for personal use. Countries should consider taking a range of measures, including



alternatives to criminalization, incarceration, penalization and other penalties based solely on drug use or possession of drugs for personal use. These measures include decriminalization, steps to reduce incarceration, removal of administrative penalties and de-penalization.

5. Ensure that the human rights of people who use drugs are not violated, by providing access to justice (including through legal services), prevention, treatment and other social services. Adopt smart policing measures to encourage people to access public health services.

6. Recognize that stigma and discrimination impede access to HIV prevention, treatment and other health and development services, and ensure that all people who use drugs are not discriminated against while accessing health, legal, education, employment and other social protection services.

7. Recognize that incarcerating people in prisons increases their risk of drug use, HIV infection and other health conditions and take steps to ensure that harm reduction and other health services are available in prisons in parallel with efforts to reduce the number of people being incarcerated for non-violent drug offences.

With regard to compulsory treatment in part 2 of Article 25 of the Criminal Code of the Republic of Tajikistan it is stated that in the event of a crime committed by an alcoholic, a drug addict or a toxicoman, the court, along with the sentence, may prescribe compulsory measures of a medical nature provided for in this Code. From the FGD survey, PWID also confirmed existence of such practice, answering "No" to the question "Had this treatment actually helped them?"

While analyzing the norms of the Code of Implementation of Criminal Penalties of the Republic of Tajikistan, it was also revealed that it is possible to apply compulsory medical measures for patients with tuberculosis, alcoholism, drug addiction or substance abuse, as well as patients that suffer a mental disorder that does not exclude sanity. If during the serving of the specified persons the types of punishments it will be established that the convicted person has TB or suffers from alcoholism, drug addiction or substance abuse, the institution executing punishment submits to the court a request for compulsory measures of a medical nature against such person (Article 24 of the CICIP of RT)

In the note to Article 200 and Article 201 in item 2 it is specified: The concept of shallow, small, large and especially large amounts stipulated in Articles 200-202 and 204 of this Code is determined in accordance with the "List and the amount of illicit narcotic drugs, psychotropic substances and precursors as per Appendix No. 1 to this Code". In this appendix, the shallow size is not indicated, and other sizes have a large range within themselves, for example, a small size for heroin the range is from 0.5 gram to 10 grams.

As we see from the recommendations of UNAIDS, UNAIDS calls for decriminalization for possession of drugs for personal, as we discussed above. Another acute issue is about PWID who suffer from tuberculosis and viral hepatitis. Firstly, these PWID are not able to find a job due to the fact that they are discriminated against, and they are not hired. In order to receive a disability category and receive benefits, they simply need to pass all the tests, as well as to be monitored in the hospital. All these services are paid. For some PWID the issue of getting a disability and even some kind of a benefit for treatment is extremely critical [For more details see Chapter 4 - Access of PLHIV and MARPs to social protection]. As we have indicated above, during the FGD it was revealed that unlawful methods of interrogation are used by the police during detention/arrest. To the question: "In your experience, are there any obstacles to the implementation of harm reduction and substitution therapy programs related to laws, conditions and enforcement?" PWID in Dushanbe noted that the methadone programme allows people living with HIV to recover; however, law enforcement bodies are raiding near the needle and syringe exchange points. In the Vakhdat district, the unethical attitude of law enforcement bodies was noted, in particular "When we come to take methadone to a hospital, officers of the Department for Countering Illicit Trafficking of Drugs (part of Ministry of Interior) or police officers often have eyes on us. Even they try to see who comes to see the doctor and who doesn't. If, one of PWID does not come to the doctor for several days, the police officers might stop and interrogate us. "Who are you? How long have you been in methadone programme? Where is the guy who did not appear for several days? Why



does not he/she come to take his/her methadone? Or is he/she taking drugs, etc.?" Usually they are not using much polite words when interrogating us. Police officers usually tell us: "Do not take methadone, it will kill you. Take heroin: it is better. Heroin is better than methadone". Respondents from Kulyab also noted that any employee from local Police department, Department for Countering Illicit Trafficking of Drugs or SNSC might enter methadone distribution room and take photo of patients at any time.

In general, the survey among PWID has shown that they are discriminated against both by law enforcement agencies and by health personnel. If a person who injects drugs is entered into a narcological register, then he/she will be in a vulnerable position from law enforcement view. Even if a person stops using drugs, he/she won't be excluded from this register. It's already like a stigma. It was noted that the register of drug addicts is used to pin cold cases (thefts, robberies) on someone from that register. Case study shared by one of the respondents (FGD in Kulyab) is a vivid confirmation of this.

*There is a guy who also is part of methadone programme. I do not know his name exactly, but he was born in 1999. Recently, police detained him on suspicion of stealing a mobile phone from a woman. But, in fact, he did not steal. The woman whose phone was stolen in the bazaar is the wife of the prosecutor. After losing the phone, she went to the police with her husband to find a thief. The policemen could not find the thief; the prosecutor had warned them and demanded that they quickly find the thief. The policemen detained the innocent guy and began to charge him with theft. A few of us were taken to the police office by the policemen that we would testify against this guy. We saw that this poor guy was subject to tortures. In the upper back he has bruises. Investigation is ongoing. We can't appeal against the police to the prosecutor's office or the local administration that we are being tortured and forced to testify against that guy. If we appeal, the state still does not fire a policeman. The state trusts them more than us.*

It was also noted that police officers try to recruit clients of the methadone programme and asked to whistle against other others who are still taking heroin. Also PWID noted that law enforcement officers forcibly test them for HIV, and disclose their status to relatives or try to blackmail if test result is positive.

### 7.3. Specific issues of the legal status of Sex workers

#### International approach to the problem

The situation of sex workers was also noted in the International Guidelines on HIV/AIDS (principle 4, point c) where it is stated: «With regard to adult sex work that involves no victimization, criminal law should be reviewed with the aim of decriminalizing, then legally regulating occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work. Criminal law should not impede provision of HIV prevention and care services to sex workers and their clients».

In Tajikistan, prostitution is subject to administrative liability. Part 1 of Article 130 of the Code of Administrative Offenses of RT states that: engaging in prostitution is punishable by a fine in a range of ten to twenty indices for settlements. In the second part of this article, the same action provided for in part 1 of this article, committed repeatedly within one year after the administrative penalty, shall be sanctioned by a fine in the amount of twenty to forty indices for settlements or administrative arrest for a period of ten to fifteen days. Part 2 was amended in 2015, which exacerbated the situation of sex workers, mainly women. Often these women have no means of subsistence at all. This provision does not comply with the International Guidelines on HIV / AIDS and Human Rights, in particular, with Guideline 4 and Recommendation 20 (b) of the CEDAW Committee of the United Nations, given to Tajikistan in 2013: Revise legislation in regards to prostitution so that prostitution is not subject to criminal prosecution, and to intensify efforts aimed at counteracting/reducing the demand for prostitution and consider imposing sanctions on buyers of sexual services.

It should be noted that sex workers are subject to various kinds of discrimination and violations of their rights, both by the police and their clients, as well as by employers, if they are employed and want to leave this environment. During FGD among sex workers, many of them who worked as waitresses told that the owners of the restaurants/cafes where they worked made them stay till morning, serving the clients and including sex services, for free. One of the respondents said that she had to agree, because at that moment she really needed

money, she had a younger child, and two older children.

Forced testing for HIV and other STIs by the police during their detention was noted by other women-respondents. SWs in Dushanbe reported that law enforcement bodies violate their rights. Each of us pays 20 TJS, if caught with the client. Very often police officers use our "services". When we ask for a pay they immediately begin to show their police ID card, and if we insist they might fine us: so they never pay. When we ourselves meet with our "regular customers", police officers immediately begin to demand a cut from us. Area police officers installed surveillance cameras in areas we meet to talk with our clients. One of the participants of the FGD complained that the area police officer always calls her without any reasons and, under the pretext that there are not complains by neighbors that police officer asks for a bribe. One of the most egregious cases of violation of the rights to health, access to justice and protection of sex workers is shared below:

*The female sex-worker lives in Dushanbe (Sakhovat borough): was beaten with a baton by the precinct office of this borough. During FGD she came with bruises on her legs and arms. She barely walked. She underwent a medical examination and received forensic conclusion. With this conclusion, she went to file an application at the Firdavsi district prosecutor's office. But her application was not accepted. She was insulted and said that she is a sex-worker, nobody would receive her statement and she might go anywhere she wants to go and submit her complains.*

In the media, we can also find publications on the detention of women engaged in prostitution<sup>65</sup>. The facts of violation of the rights of the SWs are described in the Shah-Ayyim - alternative interim report on the measures taken to implement the concluding observations to the combined fourth and fifth periodic reports of Tajikistan (56th CEDAW session, October 2013). In particular, the report cites a mass violation of the rights of the SW and LGBT communities by the law enforcement bodies in June 2014. On 6 June 2014, the Minister of Internal Affairs of the Republic of Tajikistan during the regular meeting of the Ministry of Internal Affairs (MIA) had shared his concern about the deterioration of the situation with so-called moral crimes. He instructed that from now on, the detainees for such crimes shall be tested for Sexually Transmitted Diseases (HIV, syphilis, gonorrhoea), and also registered in a special database of the Ministry of Internal Affairs with fingerprints. In addition, he ordered special raids throughout the country to identify those involved in prostitution, pimping and running brothels<sup>66</sup>. On June 6, 2014, Radio Free Europe / Radio Liberty immediately released the news "The oldest profession in the world is being discussed in Tajikistan," which read: "Tajik Interior Minister Ramazon Rahimzoda told RFE / RL that, amid general attention, he instructed police to draw up a list of those detained in connection with prostitution and send sex workers detained during police raids in brothels to a compulsory medical examination for HIV / AIDS and sexually transmitted diseases."<sup>67</sup>

However, it should be noted that in recent times at the level of programmes and by-laws the situation with the issue of respect for the rights of SWs, PWID and MSM has some positive changes. Thus, MoI Decree No. 35 as of October 28, 2015 approved the Instruction on HIV prevention among the personnel of the Ministry of Internal Affairs of the Republic of Tajikistan, particularly those who work with vulnerable groups of population. This instruction specifies in particular how HIV can be transmitted, how the personnel Ministry of Internal Affairs should explain to vulnerable groups about the ways of HIV transmission, help in facilitating the needle exchange program, hold meetings with NGOs supporting PLHIV, PWID, SWs, MSM and others.

Strategic Guidance No. 1 of the National Program on Combatting HIV/AIDS in the Republic of Tajikistan for 2017-2020 proclaims following:

- Coverage of sex workers with services for STIs prevention, as well as sexual reproductive health, condoms and education about safe sex.
- Purchase of condoms, lubricants and drugs for the treatment of sexually transmitted infections among sex workers with a financial input of the state in the amount of at least 5%.

<sup>65</sup> <http://www.dialog.tj/news/nakazanie-36-zhenshchin-prostitutok-za-nepodchinenie>

<sup>66</sup> Operational meeting of the Ministry of Internal Affairs of June 5, 2014 (In Russian language) - Source: <http://mvd.tj/index.php/ru/glavnaya/4164-operativnoe-soveshchanie-pri-ministre-vnutrennikh-del> (as of January 15th, 2016)

<sup>67</sup> World's Oldest Profession Up For Discussion In Tajikistan Source: <http://www.rferl.org/content/tajikistan-prostitution-in-spotlight/25412872.html> (as of January 15th, 2016)

- Provision of sexual and reproductive health services for sex workers, including services for sexually transmitted infections.
- Sentinel epidemiological surveillance and research of the knowledge, attitudes and practices among sex workers.

But this, unfortunately, is not enough, while in the RT there is a massive violation of the rights of this category of vulnerable groups of the population. During FGD we have found out that SWs are subject to the very strong discrimination both from police officers, healthcare workers and society as a whole. The issues of non-discrimination, for example, in gynecological offices are very acute. Below is the case of discrimination of a sex-worker in the field of reproductive services.

*The female sex-worker, roughly 30 years old. With regard to discrimination by healthcare providers, she said that when she went to terminate her pregnancy to a gynecologist, she had already agreed with her in advance. When she arrived on the appointed day, she saw her neighbor sitting there. Neighbor started to whisper to the gynecologist. The gynecologist asked her to leave the cabinet. Then after a few minutes, gynecologist told her that she can't terminate her pregnancy, since she does not have the right tools. I already felt and knew that they would deny me everywhere. I already had a feeling that everyone knows who I am and how I earn my life. I had no other chance but to delivery my third child. And now it's hard to go to another gynecologist, located not at the place of my residence. Before it was easier. And we have no money for a private clinic.*

During FGD in Dushanbe, a young sex-worker shared her own story:

*Young woman, looks like 18-20 years old. Her mother is engaged in pimping. She "sold" her when she was virgin. Once her daughter was back, she paid for a plastic surgery to restore the hymen of her daughter; then she made her marry a man. Her husband broke with her after a while: she was pregnant and was back to her mother's house. Mother waited till her daughter delivered a girl. Her mother took away a new-born baby and kicked her daughter out of the house. Now she has no other choice but to be a prostitute. Similar story happened to her cousin. Now they are both renting an apartment and engaged in sex working. When asked why they did not submit an appeal to police, they said that it was useless, she had people like her mother have connection everywhere and also they pay bribes to the police.*

In recent study «National sex work policy and HIV prevalence among sex workers: an ecological regression analysis of 27 European countries»<sup>68</sup>, it was found out that countries that legalized certain aspects of sex work had significantly lower HIV prevalence among sex workers than countries that criminalize all aspects of sex work. The study found that the balance of sex work and HIV epidemics among sex workers can be partially regulated by the effectiveness and fairness of law enforcement agencies; proposals to legalize certain aspects of sex work can reduce the HIV epidemic among sex workers to a large extent in countries where law enforcement agencies operate fairly and effectively.

On this issue in Tajikistan, there is an operational Law "On Combating Trafficking in Persons and Assisting Victims of Trafficking in Persons". The Criminal Code of the Republic of Tajikistan provides for punishment under article 130<sup>1</sup> "Trafficking in persons" and Article 132 "Recruiting people for sexual or other exploitation."

International Guidelines on HIV/AIDS (principle 4, point c) states that: Criminal law should ensure that children and adult sex workers who have been trafficked or otherwise coerced into sex work are protected from participation in the sex industry and are not prosecuted for such participation but rather are removed from sex work and provided with medical and psycho-social support services, including those related to HIV

Such measures are provided for in **the Law** of the Republic of Tajikistan "On Combating Trafficking in Persons and Providing Assistance to Victims of Trafficking in Persons".

**Article 19 of the Law proclaims:**

<sup>68</sup>The Lancet. National sex work policy and HIV prevalence among sex workers: an ecological regression analysis of 27 European countries. A. Reeves, S. Steele, D. Stuckler, M. Mckee, A. Amato-Gauci, J. Semenza. Mapt 2017, Accessed on April 2017 at [http://thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018\(16\)30217-X.pdf](http://thelancet.com/pdfs/journals/lanhiv/PIIS2352-3018(16)30217-X.pdf)

A person who has been victim of trafficking in persons before being recognized as a victim of trafficking in persons has the right to apply to a specialized state or non-governmental institution for providing him/her with a minimum package of social services, including shelter and overnight stay, food, emergency medical, psychological, legal and material aid, as well as sanitary and hygienic services in the amount determined by the legislation of the Republic of Tajikistan.

The governmental authorized body shall undertake measures to grant a minimum package of social services on a gratuitous basis to a person who has suffered from trafficking in persons in the amount determined by the legislation of the Republic of Tajikistan within 24 hours from the time that potential victim submits an application for recognition as a victim of human trafficking in the manner established by article 21 of this Law.

The dissemination of information that constitutes the secret of the personal and family life of persons affected by trafficking in person, as well as other information, the disclosure of which poses a danger to their life or health, including the safety of their loved ones, is not allowed. According to paragraph 4 of Article 20 of this Law, the victim of trafficking in persons is not brought to administrative or criminal responsibility for the commission of unlawful acts resulting from her being a victim of human trafficking.

As we might see, in general terms, the legislation of Tajikistan on the protection of victims of trafficking in persons meets international standards. A deeper analysis requires a separate study. The scope of this analysis is limited. But it should be noted that discrimination of SWs by law enforcement bodies, mutual cover-up and corruption causes such terrible phenomena as human trafficking, including children, as well as, hidden facts and their non-detection, as well as continued violations of rights of victim, including inside the country. Accordingly, international standards in this regards are not properly implemented in Tajikistan.

When asked about bank loans, two women during FGD Dushanbe noted that they do not have a permanent job and income, as well as residence permit in Dushanbe and lack of residence permit in Dushanbe is an obstacle to obtaining a loan: although they tried to get a loan in order to leave this profession. However, continuous financial difficulties do not allow them to do so. In addition many SWs say that they are up to the hub in business and SW stigma will be with them until the end of their days. Evidence of self-stigmatization of female SWs is also reflected through many articles in the media<sup>69</sup>.

#### 7.4. Specific issues of the legal status of people under arrest or in custody

##### **International approach to the problem**

The international community recognizes and admits that all civil rights are retained for people in prisons, who were not deprived of them specifically or in connection with the necessary consequences caused by imprisonment. However, only a small number of international laws examine in detail the conditions of imprisonment and the rights of people in prisons and other closed setting. In this regard, international recommendations on rules and standards of conditions of detention are extremely important.

There are a number of international documents of a recommendatory nature regarding the situation of prisoners in the context of HIV / AIDS:

- WHO recommendations on HIV / AIDS in prisons
- Declaration of Commitment on AIDS of the UN General Assembly Special Session on HIV / AIDS, 2001, 2011 and 2016.
- International recommendations on HIV / AIDS and human rights

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<sup>69</sup> <http://www.dialog.tj/news/nakazanie-36-zhenshchin-prostitutok-za-nepodchinenie>

WHO recommendations on HIV and AIDS in prisons (1993) -“define public health standards that should be adhered to by prison administrations seeking to prevent the spread of HIV in prisons and to provide assistance to prisoners living with HIV / AIDS”. WHO recommendations address issues such as HIV testing, preventive measures, communicating with HIV-infected prisoners, confidentiality, care for HIV-positive prisoners and their support, TB and HIV, female prisoners, juvenile detention, release, contacts inside community, resources, evaluation and research.<sup>70</sup>

In particular, the recommendations state that all prisoners are entitled to such medical care, including preventive care, which all members of society enjoy, without any discrimination, including with regard to their legal status or citizenship. The recommendations provide for health standards recommended for the effective prevention of the spread of HIV in prisons and for the care of people living with HIV. The main obstacle to preventing HIV transmission in prisons is the denial by many governments of the use of drugs, including the use of injecting drugs and sexual contacts in closed setting. At the same time, there is ample evidence that the use of drugs, and particular injecting drugs, is common, as well as sexual contacts between prisoners. Recognizing the fact that prisons are a high-risk area for HIV transmission, governments will be able to develop a wide range of programs to prevent the spread of HIV in closed settings.

Supporting the principle of healthier prisons at the political level should be based on the recognition that:

- well-organized health care in prisons is an integral part of high-level public health;
- High-level public health will allow the full use of the opportunities provided by correctional facilities;
- Correctional facilities can improve public health by helping to improve the health of some of the most disadvantaged/marginalized members of society.

International Guidelines on HIV/AIDS (principle 4, point e) recommends that:

Prison authorities should take all necessary measures, including adequate staffing, effective surveillance and appropriate disciplinary measures, to protect prisoners from rape, sexual violence and coercion. Prison authorities should also provide prisoners (and prison staff, as appropriate), with access to HIV-related prevention information, education, voluntary testing and counseling, means of prevention (condoms, bleach and clean injection equipment), treatment and care and voluntary participation in HIV-related clinical trials, as well as ensure confidentiality, and should prohibit mandatory testing, segregation and denial of access to prison facilities, privileges and release programmes for HIV-positive prisoners. Compassionate early release of prisoners living with AIDS should be considered.

Voluntary HIV testing, pre- and post-test counseling is also mentioned in the WHO recommendations. In particular, recommendations state that compulsory HIV testing among prisoners is unethical and ineffective, and it should be banned.

The question of conducting an independent anonymous study for the purpose of carrying out epidemiological monitoring/surveillance can be set only when such an approach is applied to the rest of the population of a given country. Prisoners should be informed about epidemiological research in their prison, and the results of such survey should be brought to their attention.

Prison staff should be informed about HIV / AIDS prevention during orientation classes, and subsequently on a regular basis.

Increasing awareness of prisoners in this regards should begin from the very first days of their stay in prison, continue for the whole term, and after release. All prisoners should be able to discuss the findings with

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<sup>70</sup> HIV, HUMAN RIGHTS AND THE LAW IN THE REPUBLIC OF TAJIKISTAN (Comprehensive Review of the Legislation): review was prepared by the civil society organization SPIN PLUS; experts: P. Jamolov, M. Sattorov and V. Magkoev. Dushanbe, 2011

qualified specialists. Since the exchange of information between members of the same circle is important, prison staff and prisoners themselves should be involved in the dissemination of information.

Persons in prisons constitute one of the high-risk groups for HIV infection. Preventive sub-programs on HIV / AIDS among prisoners are included in the **National Programme for Combatting the HIV / AIDS Epidemic in the Republic of Tajikistan for 2017-2020** (Resolution No. 89 of the Government of Tajikistan as of February 25th, 2017) as a priority task ensuring safe behavior among groups most subject to a high risk of HIV infection. According to sentinel surveillance among convicts (N=800) conducted in Tajikistan in 2013, the prevalence of HIV infection among respondents was 8.4% (sentinel epidemiological surveillance in 2010 - 9.0%), hepatitis C virus-11, 0% (sentinel epidemiological surveillance in 2010 - 18.0%), syphilis - 13.1% (sentinel epidemiological surveillance in 2010 - 9.0%).

According to official statistics, as of January 1st, 2016, the number of people living with the human immunodeficiency virus in the penitentiary system was 222; 130 of whom continue to receive antiretroviral therapy. In 2015, all 222 convicts living with HIV were consulted by a TB doctor, 59 of them were preventively treated with isoniazid<sup>71</sup>.

Deprivation of liberty does not entail the deprivation of human rights, including the right to health. Conditions in correctional facilities characterized by confinement, overcrowding and insecurity impose a special duty on prison authorities to protect the health of prisoners.

In 2005, the Resolution of the Government of the Republic of Tajikistan (No. 150 as of 28.12.2005) came into force in respect of testing convicts and detainees, and from 01.04.2008 Resolution of the Government of Tajikistan (No. 171) introduced voluntary testing. The country has programs for the prevention and treatment of HIV / AIDS in closed settings. Needle and syringes exchange programmes are introduced in closed facilities of Tajikistan since 2010<sup>72</sup>. The benefits of Needle and syringe exchange programme are stated in the National Program for Combatting HIV / AIDS for 2017-2020.

The following areas of strategic activity are envisaged in the National Program for Improving and Prevention of HIV / AIDS among convicts and detainees:

- Coverage of convicts with information, training, condoms, treatment of sexually transmitted infections and social support services during the transition period.
- Purchase of condoms, drugs for the treatment of sexually transmitted infections, syringes and needles to ensure that HIV prevention and harm reduction programs with a financial input of the state in the amount of at least 5%.
- Provision of sexual and reproductive health services for convicts, including for sexually transmitted infections.
- Assessment of the number of people who inject drugs in prisons.
- Sentinel epidemiological surveillance and research about knowledge, attitudes and behavioral practices among convicts.
- Support for the activities of 6 civil society organizations that implement the “Start Plus” programme – HIV prevention and the social support of convicts through external and public funding.
- Public funding of 3 civil society organizations that provide services for HIV prevention and social support for released under the Start Plus programme.
- Purchase of methadone for the needs of opioid substitution therapy programmes in prisons with co-financing from the Government.

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<sup>71</sup> Clause 54 and 55 of the National Programme to Combat the HIV / AIDS Epidemic in the Republic of Tajikistan for 2017-2020, approved by Resolution No. 89 of the Government of Tajikistan on February 25<sup>th</sup>, 2017.

<sup>72</sup> HIV, HUMAN RIGHTS AND THE LAW IN THE REPUBLIC OF TAJIKISTAN (Comprehensive Review of the Legislation): review was prepared by the civil society organization SPIN PLUS; experts: P. Jamolov, M. Sattorov and V. Magkoev. Dushanbe, 2011



As we see, convicts are covered by the public social programme on HIV / AIDS prevention, but unfortunately, the National Programme does not cover prison staff with information and capacity building on how to stop spreading of HIV / AIDS, safe sex, the rights of PLHIV and other issues related to HIV.

At the level of legislative acts, the situation of convicts is regulated by the provisions of the Law of RT "**On Public Health Protection**", the Law of RT "On combating HIV / AIDS" (in the future the norms of the Health Code of the Republic of Tajikistan) and the Code on the Implementation of Criminal Penalties. Thus, the Law of the Republic of Tajikistan "**On Public Health Protection**" regulates the legal status of a particular category of persons in the context of HIV / AIDS and correctional facilities, in particular:

Article 66: Provision of medical assistance to persons detained, arrestees or people serving punishment in places of deprivation of liberty or people subject to administrative arrest

Persons detained, arrested or serving sentences in places of deprivation of liberty or subjected to administrative arrest are entitled to receive medical assistance, in public health institutes as required.

Pregnant women, women during delivery and in the postpartum period are entitled to specialized care, including in maternity hospitals.

The procedure for organizing medical assistance to persons detained, imprisoned, serving a sentence in places of deprivation of liberty or subjected to administrative arrest is established by the legislation of the Republic of Tajikistan, by legal instrument, by the Ministry of Justice of the Republic of Tajikistan and the Ministry of Health of the Republic of Tajikistan.

Part 3 and 4 of Article 166 of the Health Code envisage following:

A person whose HIV test result is positive has the right to appropriate medical care, counseling and referral to other support services while in prison or in pre-trial detention.

Prisoners and detainees are entitled to free confidential HIV testing and counseling on the basis of informed consent, as well as information on their health status. Information on the state of health should be contained in documents available only to medical personnel and should be disclosed only with the consent of the prisoner or, if necessary, to ensure the safety of other prisoners and prison staff. It is prohibited to discriminate against prisoners living with the human immunodeficiency virus.

A convicted person has the right to seek advice and treatment in the system of paid medical services. Payment for such services and purchase of necessary medicines is carried out by the convict or his/her relatives at their own expense. Counseling and treatment in such cases is carried out in the health unit at the place of serving the sentence under the supervision of the personnel of the health unit."

**The essence of this norm concludes that treatment in closed settings is paid. Nothing is said about free treatment.** With regard to the conditionally early release of persons with AIDS, Article 78 of the Criminal Code does not provide for anything. It has a general procedure for conditional early release for good behavior. But Article 79 of the Criminal Code of the Republic of Tajikistan stipulates that a person who fell ill after he/she has been sentenced and the illness impedes the serving of punishment, then he/she may be released from a closed setting by the court or punishment may be replaced by a softer one. This takes into account the gravity of an offense, the identity of the convict, the nature of the disease and other circumstances.

FGD among detainees and convicts had revealed following:

- Prisoners in prisons are tested for free, but not voluntarily. There is almost no counseling;
- In pre-detention facilities ARV drugs are taken by guards, as legislation doesn't allow that. In prisons, some released prisoners noted that they received medication (ARV drugs) from their parents, and some prisoners received ARV drugs from doctors at health unit in penitentiary facility;
- Prisoners are subject to very strong discrimination and many prisoners say about various violations of their rights by police officers;
- Confidentiality of HIV status is not always maintained



The correctional facility is an environment in which it is particularly difficult to conduct work to for promotion of the healthy lifestyle. At the same time, imprisonment is also a unique opportunity to realize all aspects of health promotion, health education and disease prevention. The correctional institution provides access to socially disadvantaged groups of people, which are difficult to reach under normal conditions. It therefore offers an excellent opportunity to address the problem of health inequalities through specific health interventions, as well as measures that impact on broader determinants of health. But as long as we see, even the legislation does not yet meet these recommendations and opportunities.

## 7.5. Specific issues of the legal status of men having sex with men

### **International approach to the problem**

In the International Guidelines on HIV/AIDS (principle 5) it is stated that: “Anti-discrimination and protective laws should be enacted to reduce human rights violations against men having sex with men, including in the context of HIV, in order, inter alia, to reduce the vulnerability of men who have sex with men to infection by HIV and to the impact of HIV and AIDS. These measures should include providing penalties for vilification of people who engage in same-sex relationships, giving legal recognition to same-sex marriages and/or relationships and governing such relationships with consistent property, divorce and inheritance provisions. The age of consent to sex and marriage should be consistent for heterosexual and homosexual relationships. Laws and police practices International Guidelines on HIV/AIDS and Human Rights relating to assaults against men who have sex with men should be reviewed to ensure that adequate legal protection is given in these situations”.

These recommendations have a legal and non-discriminatory aspect, but also touch upon issues of religion and morality. More than 90% of the people of Tajikistan are Muslims. At present, the society itself is not yet ready to accept such changes in family relations. This process might be very painful for society. To this end, it is more important for Tajikistan to seek non-violation of the rights of this category of persons, their respect and protection. From the point of view of criminal legislation of the Republic of Tajikistan, the criminal liability for voluntary sexual contacts between adult men has been abolished. Only same-sex sexual intercourse or other acts of a sexual nature with the use of violence or threat against victim or victim’s relatives or the use of the helpless condition of the victim are subject to criminal punishment (Article 139 Criminal Code of RT), as well as coercion of a person to such relations by blackmailing, threatening, damaging or seizure of property or using the material or other dependence of the victim (Article 140 of the Criminal Code of RT). However, same-sex intercourses of a sexual nature committed with a person who has obviously not reached the age of sixteen is subject to criminal punishment if there are no signs of a crime provided for by Articles 138 and 139 of the Criminal Code (Article 141 of the Criminal Code of the Republic of Tajikistan). We believe that this norm is fully in line with international human rights standards and protects children. Moreover, Tajikistan ratified the Convention on the Rights of the Child, in Article 19 of which it is stated that States Parties shall take all necessary legislative, administrative, social and educational measures to protect the child from all forms of physical or psychological violence, abuse or neglect and exploitation, including sexual abuse, from the parents, legal guardians or any other person caring for the child.

Concerning the punishment for defamation (dissemination of untrue defamatory information) regarding persons who maintain sexual relations with persons of the same sex, the CC of the RT contains a general article that can be applied for MSM cases. This is article 144 - Illegal collection and dissemination of information about private life. Although the Constitution of the Republic of Tajikistan and the legislation of the Republic of Tajikistan in general do not violate the rights of this category in any way, it is necessary to state facts that are not recognized, such people are discriminated against in society as a whole, and across national policies in particular. So, this category was not taken into account while developing the National Programme on HIV / AIDS in Tajikistan for 2017-2020, as well as across other governmental programs and strategies of the country. Accordingly, it can be concluded that this category of key groups will be deprived of the opportunity to enjoy the social and legal benefits of these policies. If this group is not taken into account,

resources for changing the behavior of the police, other public servants, and the general population towards them will not be allocated. And accordingly, the rights of men who have sex with men will be violated, and the risk of HIV in their environment will increase.

FGDs among this category of key populations at high risk in Dushanbe and Kulyab have shown that the rights of MSM are often violated by law enforcement agencies. This group is much hidden and is afraid that somebody will reveal their sexual orientation. During interview with the leader of an NGO that supports MSM, he indicated that they are ready for anything, only to not disclose their status to parents, close relatives and friends. One of the male FGD participants in Dushanbe told how he had a fight with another man at work.<sup>73</sup>

To the question: "How do representatives of law enforcement bodies treat MSM? Do they apply violence?" MSM in Kulyab responded that law enforcement bodies know what we are engaged at. Sometimes police officers offer to cooperate. For instance, they offer us to have sex with other people and then blackmail and

*After a street fight, the assailant of the FGD participant submitted an appeal to the police. The MSM man submitted a counter-appeal. The investigator, who was leading the case, recognized him, since earlier he worked at the information department of the police. But once they came to know about his orientation, he was fired. The investigator told about this to the man who submitted a statement against that MSM man. The judge during case examination fined only the MSM man, and his assailant was not punished, although he broke jaw of the MSM man. After that, his orientation became known at his new workplace and he was asked to leave his job at his own will, which he did, because he did not want any publicity.*

extort money from those people. Condoms are free. But if police officers discover a condom, they are often threatening us with a penalty/sentence for pimping, and through that extort money. We can't complain about the actions of law enforcement agencies, we know that no actions will be done against them. In Kulyab, we all know each other. We have neither lawyers, nor psychologists. There are such days that you want to pour out your heart to somebody; in this case we seek for the help of our peers. We hesitate to go to doctors if we need medical aid. Not everyone will understand us. For example, doctors like an urologist or a gynecologist. Similar problems were expressed by MSM in Dushanbe. So, one of the representatives of this group told about the unethical behavior of a nurse in the Diagnostic Center when he was taking an HIV test. For free testing, they are given a referral ticket. In the ticket, the surname, first name and patronymic are not indicated, but only a unique code. The code helps to understand to which category the patient belongs to (sex worker or MSM) and health professionals know this. The woman who had drawn a blood sample from him began to shame him (a man, doing such dirty staff and etc.). The same man told how he was supposed to be a witness and suddenly turned out to be a suspect. He was kept in the investigator's office for several days without any reason. His mother was rudely told that her son is MSM and had barely let him go (that guy shared that police used illegal methods, threatened him and etc.).

Another case of violence by law enforcement bodies against MSM was recorded during the FGD in Kulyab regarding the violation of the rights of this category of people.

*A man of 20 years works as an outreach worker in the CSO "IMRAN". He receives salary in the amount of 1 113 TJS. He was 15-16 years old when he had his first sex with another man. Then he studied in the 8<sup>th</sup> grade. The man with whom he had "a contact" afterwards began to blackmail him, that he will tell everyone and his parents. He knew that man; he used to work as a policeman. After that "contact", he left him unconscious in the mountains. He spent two days in the mountains. His father beat him to the hell and kicked him outside of their home. Now he sleeps at his friends' house. After the 8<sup>th</sup> grade, he did not continue his study. He entered the vocational school in Kulyab and studies at computer programming department. He wants to get a complete secondary education so that he can be enrolled to higher education facility. In January of this year, he left for Russia for a while to his brother because of family circumstances. Upon returning, I learnt that he was expelled from the vocational school. He very much wants to go back to vocational school, but does not know to whom and how to apply for legal aid.*

<sup>73</sup> The FGD participant refused to indicate the name of the organization and his personal data.

## Chapter 8: Access to justice for PLHIV and MARPs

International Guideline 7: Legal Support Services: States should implement and support legal support services that will educate people affected by HIV about their rights, provide free legal services to enforce those rights, develop expertise on HIV-related legal issues and utilize means of protection in addition to the courts, such as offices of Ministries of Justice, ombudspersons, health complaint units and human rights commissions». Currently, the system of state free legal aid is undergoing a reform. The adoption of the Law "On Free Legal Aid" was postponed until the completion of the implementation of the Free Legal Aid Concept, approved through the Resolution of Government of Tajikistan (№425, as of 02.07.2015).

In accordance with clause 14 of the Concept, free primary legal aid is aimed at providing legal information to the public through the counseling on legal information in state legal bureaus, during outreach counseling sessions and via hotlines. FPLA is also supportive in preparation of applications, complaints and other document and focused at providing informational support to people in regards to access to free secondary legal aid and informing about the opportunities of pre-trial resolution of legal disputes within the framework of existing legislation. FPLA is available to everyone without any exceptions. The implementation of this Concept is entrusted to the Ministry of Justice of the Republic of Tajikistan.

It should be noted that according to the Regulations of the Ministry of Justice of the Republic of Tajikistan, approved by the Resolution № 587 of the Government of Tajikistan (as of December 28), the Ministry of Justice should undertake measures to increase the scope of legal aid to citizens and legal entities through employees of civil registry and state notary offices. This also means that the employees of the civil registry offices and notary should also provide legal aid to citizens who applied for such aid, by clarifying the norms of legislation.

In accordance with Article 11, the Ombudsman should promote the legal education of citizens in the field of human and civil rights and freedoms, the forms and methods of their protection, the restoration of violated rights and freedoms of man and citizen.

But these norms are general and they do not specifically specify the rights of PLHIV and / or MARPs. To this end, Ministry of Justice staff working in public offices and the Ombudsman's office (including staff working in the regions) shall take separate courses or workshops to improve their capacity in the issues related to PLHIV rights.

Free secondary legal aid consists of drafting procedural documents, protection from criminal prosecution, representation of citizens in courts and other public authorities.

The right of persons to free secondary legal aid is determined taking into account the interests of justice and is provided to persons who are unable to pay for such services. This assistance is provided by professional lawyers - advocates, who are members of the Bar Union of the Republic of Tajikistan, included in the special register of the Coordination Center. The Coordination Center is established under the Ministry of Justice in accordance with the procedure established by law and its activities are determined by the Regulations approved by the Ministry of Justice.

At the initial stage, the Concept includes the following categories of people entitled to receive free secondary legal aid in criminal cases:

- Persons officially recognized as unemployed and registered with employment agencies;
- Persons whose monthly income is below the amount of the indicator for calculation for each member of the family;
- Single mothers;
- Minors, that don't have guardian or trustee;
- People with disabilities;
- Pensioners;

- Domestic violence and torture victims, their close relatives and family members;
- Persons injured during military service, their parents and family members;
- Refugees.

In civil cases according to Article 32 of the Law of the Republic of Tajikistan "On Legal Profession" members of the Bar Union of the Republic of Tajikistan provide free legal assistance to following people:

- Plaintiffs in the courts of first instance in cases related to the recovery of alimony and on reinstatement at work;
- Participants of the Great Patriotic War and persons equated to them, as well as persons affected by the Chernobyl nuclear power plant accident, disabled persons and refugees;;
- Citizens on complaints about mistakes in the lists of voters;
- Minors, who don't have guardians and/or trustee;
- Military draftee and drafted;
- Low-income citizens whose total income for each family member is less than one indicator for calculation and in other cases stipulated by the legislation of the Republic of Tajikistan<sup>74</sup>.

In the special rights of persons living with human immunodeficiency virus and/or acquired immunodeficiency syndrome, recorded in Article 163 of the Health Code, there are no rights of PLHIV to free legal primary aid and free legal secondary aid.

The National HIV / AIDS Programme of Tajikistan (for 2017-2020), approved by the Resolution №89 of GoT (as of 25.02.2017) doesn't envisage measures aimed at improving access to justice for PLHIV and MARPs. For instance, Programme does not specify that AIDS Centers shall have full-time lawyers in their staffing table.

FGDs have shown that AIDS centers not always provide the right legal advice and counseling. In general, legal counseling for PLHIV and MARPs are delivered by NGOs. But not all of the respondents are satisfied with the quality of these services. For instance, during the FGD in Kurgan-Tube, it was revealed that a woman living with HIV had been beaten by brother of her deceased husband (due to AIDS). He tied her to a tree and beat her after she filed a lawsuit for taking possession in the house of her deceased husband (as earlier she was kicked out from that house by her in-laws). That woman appealed to a lawyer of a local NGO who helped her to submit an appeal to the police. She also enclosed the original forensic report proving that she was beaten. The lawyer submitted an appeal to the police together with the original forensic conclusion, without leaving even a copy and not taking a "proof of submission" of appeal to the internal affairs bodies. However, the police did not address the appeal for more than three months. How can this woman now prove that she filed an application if the police representatives cooperate with the criminal, in this case the brother of the deceased husband, and destroy all the documents? In such a situation, the low qualification of lawyers has a very negative impact on the legal situation of the affected, vulnerable groups of the population, in our case, PLHIV and MARPs.

The modern system of professional lawyers in Tajikistan differs from foreign countries, for example, the USA. In the Republic of Tajikistan, the Bar Union under the new Law "On the Legal Profession" was formed in a new format only a year ago. But not all lawyers must necessarily enter the Bar Union to practice law. Membership in the Bar Union of the Republic of Tajikistan entitles to participate as a lawyer in criminal cases, to protect persons suspected of crimes / offenders of criminal and administrative codes. Unlike criminal cases, it is not necessary to be the member of Bar Union to participate in civil cases. For instance, to participate in trial hearing recovery of alimony, compensation for moral and material harm in connection with HIV infection, it is sufficient that PLHIV, as a trustee, issues a power of attorney to the lawyer so that lawyer represents his/her interests at all stages of the trial process, as well as represent his/her interests in other state bodies and third parties. In addition to that NGO lawyers may not be members of the Bar Union It is enough for them to have a diploma on the completion of higher legal education.

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<sup>74</sup> Clauses 22,23,25,25 of the Free Legal Aid Concept in the Republic of Tajikistan, approved via Resolution№425 of the Government of Tajikistan (as of 02.07.2015)

When interviewing other PLHIV and MARPs, it was revealed that none of them applied to advocates (not to NGO lawyers) for several reasons:

- Advocates render only paid services and almost all beneficiaries are poor;
- Lack of willingness to disclose HIV status;
- Very low legal literacy of PLHIV and MARPs;
- Lack of trust against the judicial system;
- There are no NGOs that would professionally provide legal support to PLHIV and MARPs in protecting their rights at law enforcement agencies and courts, and not just providing legal advice and counseling (orally).

In addition to FGDs with PLHIV and MARPs, series of interviews with lawyers and representatives of the Supreme Court and the Attorney General's Office were conducted to identify the conditions for access to justice of PLHIV and MARPs.

While interviewing lawyers, many of them did not want to talk about protecting PLHIV rights, they were not sensitive to this problem, and accordingly knew little about this disease. Only three attorneys out of six could clearly answer the question and one of the lawyers was a representative of the NGO "Human Rights Center", where this NGO conducted FGDs in Kulyab and Kurgan-Tube. That lawyer was lucky as FGDs helped her to understand the problem from perspective of affected populations: PLHIV, SW, MSM and PWID. Moreover, several cases for protection were identified in the course of FGDs. Another lawyer represented Sex-workers in the police, while the other represented PWID during the investigation. None of lawyers have faced with PLHIV (so they say), people do not disclose their status in the course of appeal, and they can't know their diagnosis. They know nothing about the rights of PLHIV, except that they have the right to free antiretroviral treatment.

For instance, the lawyer defending the rights of PWID pointed out that the investigators, in the course of interrogation, do not take into account that PWID are in need of treatment. PWID are detained even for minimum amount of heroin. That lawyer believes that PWID have the right to protection. Another lawyer represented Sex-workers in the course of illegal detention, interrogation and administrative violations, as well as PWID for the distribution of narcotic drugs. She pointed out that investigator and judge had violated legislation. Detained PWID are not considered as human beings within the law enforcement system. Sometimes it happens that during trial judge is asking questions: "Why do you use drugs?" "I think it is PWID personal business, when, why and with whom use narcotic drugs," – was comment of that lady-lawyer. As for Sex-workers, she explained the following: "They are also not considered as human beings, police mock them during interrogation, sometimes frankly speaking, I myself feel ashamed to protect them. Most likely sex work fall under administrative liability".

The representative of the Supreme Court of the Republic of Tajikistan explained that there is no judicial practice on PLHIV rights, both for criminal and civil cases. Usually case law analysis is prepared, when judges consider cases similar to the subject covered by this study, including frequent violations of the rights of citizens of procedural and material character which are revealed during hearing of such cases. But no cases accumulated so far on the rights of PLHIV. It doesn't mean that there are no cases at all. If exact number is that important then it is necessary to go through all judicial cases heard in the country: which will require lot of time and resources. Abundant jurisprudence already exists on criminal cases related to trafficking in narcotic drugs. Commentary on these categories of cases was provided in the chapter on the rights of PWID. Initially, when we asked the question of how access to justice for PLHIV is addressed in the courts, the representative of the Supreme Court considered that there were no problems with PLHIV access to justice. He did not understand (at all) the peculiarity of hearing such cases. He said: "We all judge the same, and we make no difference between PLHIV and someone else."

But with regard to judges, the lawyer of the NGO "Human Rights Center", who had experience in protecting the rights of PLHIV to recover material and moral harm due to the fact of HIV infection (i.e. somebody intentionally infected claimant with HIV), explained: "Judges often start to fear PLHIV once they come to

know about the HIV status of claimant. As if their disease is air-borne disease. Fear is visible in their eyes. Some judges asked me, but how is this disease transmitted? Is it scary for me to protect them?"

We see that not even all judges know what HIV is and how it is transmitted, not to mention respecting the rights of PLHIV and protecting them from discrimination and stigmatization.

The Attorney General's Office has also no practice work on such matters like intentionally infecting somebody with HIV, protection against discrimination in relation to HIV and etc. However, the Attorney General's Office is concerned about the growth of HIV infection in Tajikistan, and who shall be kept liable in the context of general supervision. On this matter, the Attorney General's Office is planning to cooperate with the Ministry of Health and Social Protection.

In each professional legal community (prosecutors, police, judiciary and lawyers) there are institutes for professional development. While in public authorities such institutions function since the Soviet era and they have traditions and historical memory. There are premises, staff and accumulated experience. The Bar Union of the Republic of Tajikistan has just recently established an institute for professional development.. According to Article 39 of the Law of the Republic of Tajikistan "On Legal Profession", the Board of the Bar Union promotes retraining and enhancing capacity of lawyers, and also approves a uniform methodology for capacity development of lawyers and training of interns-lawyers. In this regard, in 2015 a body was established within the Bar Association, which is engaged in the professional development of lawyers. However, there are difficulties in implementing the tasks assigned to that body. They do not have their own premises, lack financing to hire specialists, rent premises and etc.

## ANNEX

### 1. Methodology for legal environment assessment

Two consultants were involved in the development of the methodology for assessment of the legal environment: international and national. The tasks of the international consultant were as follows: provision of technical assistance in the development of the methodology for LEA based on UNDP standards, including development of questionnaires for FGDs with PLHIV and MARPs, and drafting of an analytical report of the study.

Below are tasks of the national consultant:

- Develop LEA methodology jointly with the international consultant;
- Develop questionnaires for focus group discussions with PLHIV and MARPs;
- Train interviewers and develop tools for focus group discussions with PLHIV and MARPs (consent to interview, coordination of meetings);
- Conduct interviews with government officials and SMEs on HIV prevention, treatment and care and leaders of PLHIV and MARPs communities;
- Preparation of requests to state bodies of the Republic of Tajikistan;
- Processing results of interviews with PLHIV and MARPs;
- Analysis of national legislation in HIV and human rights context;
- Analysis of international documents in HIV and human rights context, studies, reports and other international documents on this topic provided by an international expert;
- Review of recommendations provided to Tajikistan by UN treaty and statutory bodies;
- Review of information that covers discrimination and stigmatization of PLHIV and MARPs in national media;
- Developing final version of the LEA report

All of the above tasks were included accordingly in the LEA methodology.

The Legal Environment Assessment was carried out by qualitative methods of data collection and analysis. There are no quantitative estimates and scales of any phenomena or approaches in this study. The result of qualitative methods is only the collection and analysis of facts (cases) of implementation of the existing regulatory framework and identification of problems that create barriers for PLHIV and MARPs to access

HIV treatment and prevention and that are seeking solutions at the institutional and policymaking level. Even single replies (non-repeating) were the subject of analysis to determine the reasons for this behavior of the respondent - whether they are caused by insufficient legal literacy of the respondent, or such behavior is caused by unclear definitions, gaps or collisions in the legal framework. The legal environment assessment the gender approach was taken into account, as well as the methods based on the human rights.

Following methods of data collection and analysis were used in the course of study:

➤ Desk study, which consisted of the following actions:

- Review of legal framework and programs / strategies in the field of HIV and international law on human rights, rights of PLHIV, and their non-discrimination. (A detailed list of documents analyzed for study is attached to this methodology).

- Review of studies / reports of international and non-governmental organizations active in the field on the rights of PLHIV and affected groups, as well as reporting on the situation of these groups in Tajikistan. The survey covered researches conducted over the past 3 years.

- Review of media materials (in Tajik and Russian languages) covering issues related to HIV and respect rights of the most-at-risk populations. The main goal of media coverage was to track the frequency of coverage of HIV issue, to determine which HIV-related issues are most often published and on what resources, to determine the tonality of the material (i.e. what message the material contains in relation to target audience in terms of observing the rights of PLHIV), to track, if possible, the response of civil society and state bodies to published materials. In addition to that, in the course of the study, consultants reviewed all related materials published in Internet resources for the last 3 years.

- Acquisition with websites of authorized public bodies and non-governmental organizations with the aim to determine the level of availability of information essential for MARPs to receive HIV-related services.

➤ Queries to key ministries and agencies

➤ Key Informant Interviews

➤ Focus Group Discussions (FGDs)

**Review of regulatory and legal acts and programs / strategies in the field of HIV and international law on human rights, rights of PLHIV, their non-discrimination** includes review of international documents ratified by the RT, as well as laws and by-laws regulating access to HIV prevention and treatment, observance of the rights of PLHIV and MARPs and their non-discrimination. Based on the identified problems and the recommendations of UNAIDS and the Global Commission on HIV and the Law, the analysis resulted in the development of questionnaires for PLHIV and MARPs (for the purpose of confirming or refuting the hypotheses that certain regulatory frameworks create barriers to access to HIV prevention and treatment, as well as to protect the rights of PLHIV and MARPs in case of violation of their rights and discrimination).

For analysis purposes following international instruments, laws and regulations and social policies were used:

- International Covenant on Civil and Political Rights

- International Covenant on Economic, Social and Cultural Rights

- Convention on the Elimination of All Forms of Discrimination against Women

- The Convention on the Rights of the Child;

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

- Political Declaration on HIV and AIDS: On the Fast-Track to Accelerate the Fight against HIV and to End the AIDS Epidemic by 2030, as of June 10<sup>th</sup>, 2011;

- Political Declaration on HIV / AIDS, 2006;



- Declaration of Commitment on HIV / AIDS, 2001.
- International Guidelines on HIV / AIDS and Human Rights, 2006.
- UPR Recommendations and Recommendations of the UN Committees for Tajikistan on the implementation of the above international documents on HIV / AIDS;
- The CIS Agreement on Cooperation in Addressing HIV Infection, as of November 25<sup>th</sup>, 1993;
- ILO Recommendation 200, Recommendation on HIV / AIDS and the World of Work 2010;

The following laws and by-laws of the Republic of Tajikistan were analyzed:

- Criminal Code of the Republic of Tajikistan (Article 125 - Infecting with the human immunodeficiency virus. Article 126 - Infecting with a sexual transmitted infection. Article 129 - Improper performance of professional duties by a medical employee, Article 145 - Disclosure of medical secrecy, article 143<sup>1</sup>. Article 200 – Torture, Article 205 - Drug trafficking. Chapter 15 - Purpose, grounds and procedure for the application of compulsory medical measures. Article 239 - Establishment or running of brothels, or pimping);
- Code of Republic of Tajikistan on Administrative Offenses (Article 119 - Failure from Compulsory Medical Examination and Preventive Treatment of Persons Suffering from Infectious Diseases, HIV. Article 120 - Hiding the source of HIV Infection, Infectious Disease, and Contacts that Create the Risk of Exposure to Infection. Article 123 - Infringement of the established order of realization of paid medical services in state medical institutions. Article 128 - Illegal production, manufacturing, processing, acquisition, storage, transportation and shipment or narcotic drugs, psychotropic substances or their precursor);
- Family Code of the Republic of Tajikistan (Article 14 - Conditions preventing marriage and Article 15 - mandatory medical examination of persons entering into marriage);
- The Code of Criminal Procedure of the Republic of Tajikistan (the rules for granting counsel, who might be a legal counsel, the secrecy of the investigation and the storage of other confidential information);
- Labor Code of the Republic of Tajikistan (norms on hiring, dismissal and mandatory medical examination);
- Law of RT "On Education";
- Law of the Republic of Tajikistan "On Adult Education";
- Code on the enforcement of criminal penalties of the Republic of Tajikistan;
- Civil Procedure Code of RT;
- Law of RT "On the Police";
- Law of RT "On the Prevention of Domestic Violence";
- Law of RT "On targeted social assistance";
- Law of RT "On State Social Insurance";
- Law of RT "On state occupational social insurance";
- Law of RT "On the right to access to information";
- Law of RT "On Information";
- Law of RT "On appeal of individuals and legal entities";
- Health Code of the Republic of Tajikistan;
- The procedure for medical examination for the purpose of detecting the Human Immunodeficiency Virus infection, recording, medical examination of HIV-infected persons and preventive monitoring of such people (as amended by Decree №528 of the Government of the Republic of Tajikistan as of August 6, 2014);
- The procedure for assigning and paying government allowance to children under the age of 16 living with the human immunodeficiency virus or people with acquired immunodeficiency syndrome (as amended by Decree №262 as of June 3<sup>rd</sup>, 2013 and Decree №459 as of October 4<sup>th</sup>, 2013);
- Provisions on the National Coordination Committee on the Prevention of AIDS / STIs (Sexually Transmitted Infections) of the Republic of Tajikistan, approved by Decree №163 of GoT, as of 9.04.1997)
- Resolution №600 of the Government of the Republic of Tajikistan, as of December 2<sup>nd</sup>, 2008 "On the Procedure for Providing Healthcare Services to Citizens of the Republic of Tajikistan by Public Health Institutions"
- Rules and procedures for the mandatory medical examination of persons entering into marriage, approved by Government Decree №374 as of August 23<sup>rd</sup>, 2016.
- Resolution №812 - "On the state institution - Center for Medical and Social Expertise of People with Disabilities" as of December 31<sup>st</sup>, 2014;

- Regulations on medical and social expertise (annex to the Joint Decree №73 of the Minister of Labor and Social Protection of the Population as of May 2<sup>nd</sup>, 2012 and Decree №189 of the Minister of Health of the Republic of Tajikistan as of May 2<sup>nd</sup>, 2012);
- Resolution №120 of the Government of the Republic of Tajikistan "On the approval of the list of occupational diseases resulting in disability" as of March 19<sup>th</sup>, 1994;
- Resolution №543 of the Government of the Republic of Tajikistan "On approval of the list of medical indications that entitle children with disabilities up to 18 years of age to receive a social pension" dated October 2, 2012
- Resolution of the Plenum of the Supreme Court of the Republic of Tajikistan on the resolution of court cases related to trafficking in narcotic drugs.

Social policies of the Republic of Tajikistan:

- National Development Strategy of the Republic of Tajikistan up to 2030;
- National Health Strategy of the Republic of Tajikistan for 2010-2020;
- National program on combating the human immunodeficiency virus epidemics in the Republic of Tajikistan for 2017-2020;
- State Youth Strategy of the Republic of Tajikistan up to 2020;
- National strategy for increasing the role of women in the society (2011-2021)

### **Queries to key ministries and agencies**

Queries were sent to the Ministry of Education and Science of the Republic of Tajikistan, Ministry of Labor, Employment and Migration of the Republic of Tajikistan, Ministry of Justice of the Republic of Tajikistan. Interviews were conducted with the representatives of the Supreme Court of the Republic of Tajikistan, the Prosecutor General's Office of the Republic of Tajikistan, the Ministry of Internal Affairs of the Republic of Tajikistan and the Tax Committee of the Republic of Tajikistan, as those agencies are members of the Technical Working Group (once approval is granted by the Executive Office of the President of the Republic of Tajikistan). It should be noted that at present any queries to state bodies should be coordinated with the Executive Office of the President of the Republic of Tajikistan.

Requests are essential to obtain statistical data and clarify the norms of legislation and practice. The present methodology is accompanied by forms of statistical queries.

### **Key information interviews**

Semi-structured in-depth interviews were conducted with authorized state bodies represented by officials of the Ministry of Internal Affairs, the Prosecutor General's Office, the Supreme Court, members of the Lower Chamber of National Parliament of the Republic of Tajikistan, the Ministry of Health and Social Protection and the National AIDS Center, independent experts and NGO representatives (total 20 Key informants and five lawyers in Dushanbe, Direct Rule Districts, Soghd Province, Khatlon Province and Gorno-Badakhshan Autonomous Oblast). A total of 30 key informants, including lawyers and specialists of state institutions were interviewed. Leaders of PLHIV, WLHIV, MSM and PWID communities were interviewed in Dushanbe; some of them were also running community-based NGOs (PLHIV, PWID and WLHIV).

### **Focus Group Discussions (FGD)**

FGDs with the affected groups and PLHIV were conducted according to the list of questions, taking into account the specific situation of both PLHIV in general and certain thematic issues, based on the gender component, the specifics of vulnerable and affected groups such as children, drug addicts, sex workers, men, having sex with men. In the course of Focus-Group Discussions the main research hypotheses were refined on the basis of analysis of national legislation. In the course of Focus-Group Discussions participants discussed the effectiveness of appeal mechanisms in cases of violations of the rights of people living with HIV and the availability of information in the course of receiving HIV-related services. Prior to the FGDs,

preliminary written consent was obtained from the respondents to be interviewed and recorded (audio and video). The FGD guidelines are attached to this report, as well as the text of the consent (these documents were compiled and adapted in accordance with the recommendations of the UNDP manual on the legal environment assessment for HIV).

Total 20 FGDs were conducted in Dushanbe, DRD and Khatlon Province:

- People who inject drugs (PWID) – 5 FGDs, 50 people
- Sex workers (SWs) – 5 FGDs, 50 people
- Men having sex with men (MSM) – 5 FGDs, 50 people
- PLHIV – 5 FGDs, 50 people

Out of 200 FGD participants, including SWs, MSM and PWID, not all were living with HIV. We estimate that 50 PLHIV have participated in FGD. It is not possible to share exact number, as some SWs and PWID were HIV-positive, but were not eager to disclose their status.

## **2. Terms of Reference for the Technical Working Group**

**A Technical Working Group was established within the framework of LEA.**

**The main goal of the Technical Working Group: Support to the assessment of the legal environment in the field of HIV in Tajikistan**

### **Tasks/Objectives**

1. Clarify and expand information for the assessment
2. Feedback
3. Dissemination of results/outcomes
4. Implementation of results/outcomes
5. Establish a Grievance Redress Mechanism to respond to systematic problems;
6. Supervision to ensure feedback and increased awareness about outcomes of the assessment, as well as adherence to human-rights based measures;
7. Consultations: ensure technical input in the field of HIV, legal environment and human rights;
8. Liaison with mass media

### **Competences of the Technical Working Group**

- Bringing a legal assessment in Tajikistan in accordance with national priorities
- Facilitate the mobilization of resources for the next steps to implement measures to remove legal barriers to treatment, care, and support in relation to HIV
- Review and approval of the recommendations of the legal assessment;
- Clarification of the outcomes of the legal assessment and the need for actions, as recommended;
- Support for planning actions to strengthen the legal environment in the field of HIV;
- Raising awareness on HIV, legal and human rights issues at the national level;

### **Working group composition:**

Representatives of the following state bodies:

- Ministry of Health and Social Protection of Population of the Republic of Tajikistan;
- Ministry of Interior of the Republic of Tajikistan;
- Supreme Court of the Republic of Tajikistan;
- Attorney General's Office of the Republic of Tajikistan;
- Members of the lower chamber of National Parliament;
- Country Coordination Mechanism/National Coordination Committee of the Republic of Tajikistan;
- National AIDS Center

NGO and International Community in the Republic of Tajikistan:

- CSO “Human Rights Center”
- CSO “SPIN PLUS”
- CSO “Guli Surkh”
- CSO “Marvorid”
- CSO “Network of Tajik Women Living with HIV”

- UN Joint HIV/AIDS Programme;
- UNAIDS

Once final version of the LEA is approved it is planned to conduct a national roundtable to discuss the results of the Legal Environment Assessment, identify and agree on further steps to improve the legal environment for the implementation of HIV prevention and treatment programmes among key populations.