

On the Confidentiality laws of HIV testing and/or HIV/AIDS positive individuals in the Dominican Republic

The Island of La Hispaniola, which includes the Dominican Republic and Haiti, has the highest prevalence of HIV in the Caribbean, if not in the western hemisphere (Congreso Nacional, 2011a, “Segunda consideracion¹”). Dominican Republic in specific has various factors that contribute to this phenomenon, including lack of reading and writing literacy, sexual violence, infant mortality, lack of health literacy, sex, race and gender discrimination, the predominance of low-income populations, and the high predominance of sexual trade and work in the island. As such, the Dominican Republic has programs, protocols, and statutes to ensure that this national pandemic is addressed in order to offer individuals optimal health. The country has positive initiatives to address this phenomenon, but in spite of this it also suffers from several human rights violations that hinder national outreach movements and optimal health. One of these consists of violations of confidentiality of HIV positive and HIV testing clients. The law in the Dominican Republic clearly states in its latest revision of the rights of individuals with HIV/AIDS in 2011 by the National Congress, that HIV test results are completely confidential and cannot be released without the individual’s consent. As a consequence, any violation of this law can result in sanctions and a punitive judicial process. Yet, the country faces several hurdles and impediments that limit correct and effective law implementation and enforcement regarding HIV testing confidentiality laws, such as the lack of emphasis on privacy as a social value, the cultural habit to vociferate regardless of training, and lack of consciousness and awareness to the detrimental consequences of the violations of confidentiality laws.

In Dominican Republic’s constitutional law number 135-11 of 2011, regarding the rights of people with HIV/AIDS, it is clearly stated that individuals with HIV have a right to complete and strict confidentiality. Indeed, in Article 13, point 2 it is emphasized that no one can communicate the health condition of someone with HIV or AIDS, in a public or private matter, without prior consent of the individual, except in conditions established by the law (Congreso Nacional, 2011a). Moreover, in Article 13 point 3 it is further discussed that the health personnel that knows the health condition of a person with HIV or AIDS, must respect the right of confidentiality in regards to diagnostic results, consultations, and the evolution of their condition (Congreso Nacional, 2011a). Furthermore, the results of HIV tests are confidential and must be given to the individual that had the test done and no one else (Congreso Nacional, 2011a, “Article 54”). Actually, this confidentiality guaranty has only two exceptions where confidentiality rights and the individual’s consent prior to disclosure are not applicable, and those are 1) due to probationary and/or court-related legal processes, and 2) due to the request of the status by a competent judicial authority (Congreso Nacional, 2011a, “Article 13,” para. 1). Otherwise, individuals with HIV have the right to not confide their status to their employer or co-workers, and if they choose to do so the employee and/or co-worker must keep their status completely confidential and not disqualify the individual due to their HIV or AIDS status (Congreso Nacional, “Article 8,9, 13” & “13,” para. 2). On the other hand, individuals that test HIV positive must report to partners they decide to have sexual relations with about their status (Congreso Nacional, 2011a, “Article 78”). Regarding the violation of confidentiality laws, there are sanctions involved. Violating the confidentiality statutes in articles 13 and 54 can result in a monetary fine depending on the individual’s wage (Congreso Nacional, 2011a, “Article 77”). To

¹ “Segunda Consideracion”: Second consideration point of the Dominican Constitutional law, No. 135-11, for people with HIV in 2011.

ensure enforcement, the client has full right of judiciary and legal action if the confidentiality law has been violated, and if the individual wants to pursue a lawsuit (Congreso Nacional, 2011a, “Article 19”). In addition, The Dominican Republic also has standards to promote confidentiality as a standard of HIV and STI testing. In fact, the government appointed a specific organization in order to ensure and protect HIV rights and start a national, political, and intersectional initiative to reduce the risk, impact, and vulnerability to HIV and/or AIDS. This organization, El Consejo Nacional para el VIH y el SIDA (The National Council for HIV and AIDS, [CONAVIHSIDA]) started a national initiative that follows the World Health Organization’s principles for good HIV testing. As CONAVIHSIDA (2015) aligns with the WHO’s principles, they promote consent, confidentiality, counselling, correct test results and connections to care, treatment and prevention services for people testing for HIV or with HIV.

Despite the clear laws and protocols in place for correct HIV testing and confidentiality parameters, the Dominican Republic faces several hurdles and hardships to implement these regulations. Some limitations that the culture and country as a whole have are: no value for privacy and or confidentiality as a society, the acculturation to discuss cases, the instilled stigma and discrimination of people with HIV and no awareness or consciousness of how the violations of these laws have negative repercussions on the individual and society. This is proven as medical and other personnel in the Dominican Republic, at both public and private hospitals, often released confidential HIV test results without the authorization or knowledge of the tested individual (Human Rights Watch [HRW], 2004b, “Unauthorized Release of Confidential HIV Tests Results”). Actually, discussing confidential HIV test results in the Dominican health care system was common despite training (HRW, 2004b, “Unauthorized Release of Confidential HIV Tests Results”). Even more, there are continuous violations of confidentiality by health team members despite various strategies and mediums of reinforcement, such as posters, workshops and/or sessions, and other mechanisms of education (COPRESIDA, DIGECITTS, SESPAS, & UNICEF, 2005, p.43). According to El Consejo Presidencial del SIDA (Presidential AIDS Council, [COPRESIDA]), La Dirección General del Control de Infecciones Transmisión Sexual y SIDA (General Directorate of Control of Sexual Transmitted Infections and AIDS, [DIGECITTS]), la Sociedad Española de Salud Pública y Administración Sanitaria (Spanish Society of Public Health and Sanitary Administration, [SESPAS]), & the United Nations International Children's Emergency Fund (UNICEF)(2005), when there is access to confidential information and confidentiality has no social value, then this confidential information has the potential risk of becoming public matter and bring immediate consequential repercussions to the person and the person’s surroundings (p.43). As a matter of fact, this is the first step towards a chain of actions and consequences that yield to the disrespect and discrimination of people with HIV, the stigma of HIV, and the ignorance about the pandemic in the Dominican Republic. Moreover, as the negative stereotypes of HIV and the lack of safety in the health care increase due to the violations of these laws, the Dominican society suffers from social consequences. These consequences are: lack of linkage to care from those with the virus due to fear of shaming, abandonment, discrimination, and isolation; lack of testing from those that might be exposed due to the same consequences, and lack of routine testing due to myths and faulty information in the social environment in regards to HIV. The Dominican society still has no clear and effective implementation to enforce these laws and values of confidentiality. As a result, solutions and rigorous implementation must follow.

It is apparent that in the Dominican Republic the violation of HIV testing laws and human rights of individuals with HIV is a national crisis, therefore the need of structure and social and political response is pivotal. However, even with organizations such as CONAVIHSIDA, created to ensure political action and structure, confidentiality laws are still broken and systemic failures are still a norm. Part of this generates from the lack of a clear and enforced judicial process to enforce laws regarding violations, and reporting such cases. The HRW states that “the U.N. Guidelines specifically recommend that ‘an independent agency should be established to redress breaches of confidentiality.’ [171] Such an agency does not exist in the Dominican Republic and Human Rights Watch is aware of no cases in which medical personnel have been prosecuted for such violations” (2004b, “Government Response”). The Dominican law specifies the sanctions and consequences for violating confidentiality laws, yet the enforcement of such law at the micro-environment of the health care and work setting poses an obstacle to the safety and well-being of HIV testing individuals. The HRW suggests the enforcement of a “zero-tolerance policy” on the unauthorized release of HIV test results (2004a). Nevertheless, despite the law, this initiative should also entail social consciousness and awareness of the consequences and repertoire of chain events and actions that harm the individual due to violations of confidentiality rules. The need for improvement of the system and protocols to ensure confidentiality is imperative, but cultural competency for the staff and the education of the Dominican society regarding the well-being and non-discrimination of HIV individuals, and positive collective effort to address the pandemic are as important (UNICEF, 2008).

The whole realm of HIV testing (and even health care) in the Dominican Republic is simply different and suffers from tremendous hardships to achieve a system of optimal safety and care. Confidentiality in HIV testing is an important foundation and value to testing. As such, because it is a right of the individual it is also a law. The demand and lack of structure in the Dominican Republic’s health system, and the lack of resources fused with cultural habits of disregarding the law hinder the depiction and development of ethical and rightful measures in the health system. Although the country has several positive takes on HIV testing and treatment, it needs to take this national project and initiative in a more rigorous matter. Law enforcement and clear law repercussions must follow, as well as national consciousness on privacy values and non-discrimination. The taboos and ignorance vis-à-vis HIV need to end, and the country must work towards serious improvement by allocating resources and efforts to create a safe environment for HIV people. I am an advocate for justice, and justice does entail putting myself and accept others’ needs and rights. It is not how I define justice that only matters, but also how fellow people also consider justice. And as Martin Luther King Jr said, “injustice somewhere, is injustice everywhere.”

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