COERCION AND CRIMINALIZATION IN TB-RELATED PUBLIC HEALTH LAWS: INSUFFICIENT AND INCONSISTENT RIGHTS PROTECTIONS IN 20 HIGH-BURDEN COUNTRIES

An effective response to infectious diseases like tuberculosis (TB) requires protection of core human rights as a key component of public health. This review of laws in 20 high-TB-burden countries, however, demonstrates a troubling incongruence between the espoused commitment to a “rights-based” response and domestic legal frameworks governing the TB response. Very few of the TB-related laws reviewed align with core World Health Organization (WHO) recommendations and human rights laws and principles.

States around the world have the legal responsibility and authority to address TB epidemics, including by measures to identify TB cases and prevent further transmission. States are also bound by domestic and international law to respect, protect, and fulfill a range of human rights. These laws provide frameworks and procedures that countries must adhere to when the limitation of these rights is necessary. Here we review and code laws governing these activities in key areas: isolation and confinement; entry and search of homes and medical examination of persons therein; and reporting requirements. The review shows that the norm is for laws related to TB to provide health authorities broad and essentially unfettered powers to enter and search homes and medically examine people therein as well as to detain and isolate people without the basic procedural and substantive rights protections required by human rights law and that we expect in every other area of life. The norm is also for the law to require lay people to report disease, even if they do not have the expertise to do so, and punish them with fines or incarceration for a failure to do so.

Human rights instruments and normative guidance from public health officials provide a framework for state action in this context with several components. First, liberty and security of persons are foundational rights of all people, from the Universal Declaration of Human Rights onward. Deprivation of liberty must be based on grounds established in law and able to be challenged in a court. The Siracusa Principles—general principles of international law relating to the limitation of rights—clarify that, while public health needs can justify limiting liberty, these limitations cannot be arbitrary. They instead must be specifically aimed at preventing disease and cannot justify indefinite deprivation of liberty or lack of due process. WHO guidance on TB has incorporated these principles and provides that public health measures must be based on clear grounds, no more than what is necessary to address the threat, and that involuntary isolation should only be used in specific, exceptional circumstances in which voluntary measures have been refused and isolation is the only option. In addition, international agreements and most domestic constitutions recognize the fundamental right to be free from arbitrary or unlawful interference in the family and home. Nonconsensual searches must be based on objective evidence and are subject to authorization by an impartial authority through a warrant or other means. Even more so than the home, the physical person—the right to security of person and bodily autonomy—is protected as sacrosanct. Laws typically require considerable cause and rigorous due process for its invasion.

In this analysis, we reviewed the laws of 20 countries to identify whether these core human rights protections are included in TB-related laws—which we color code below. Some countries have laws specific to TB, while broader public health laws related to infectious diseases are applicable in others. Note that where countries have federal systems this coding analysis is limited to central/federally applicable laws. Coding is, by necessity, reductive, and further legal analysis is necessary; however, this analysis shows some important trends.

Some countries in each category have enacted laws in line with human rights doctrine and best public health practice. Overall, however, we find that key TB-related laws of most countries have little or no provision for basic human rights protections. This does not, however, necessarily mean that public health officials act arbitrarily—only that these laws often empower them to do so.

The term “a rights-based approach to tuberculosis” has become an accepted feature of international and domestic discourse related to the TB response. This suggests that the TB response has embraced the language yet disregarded the content of human rights. For those who believe in human rights and the necessity of a “human rights-based approach to TB,” this incongruence demands attention and resources to support the reform of laws in order to align them with basic human rights.

1 Universal Declaration of Human Rights (UDHR), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 9.
2 ICCPR 9 (1.4).
3 UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (1992) stating that the ICCPR “includes the right to control one’s health and body... and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.”
4 World Health Organization. Ethics guidance for the implementation of the End TB Strategy, 2017; p 6, 37.
5 UDHR, Article 12; ICCPR, Article 17.
6 See e.g. UN Committee on Economic, Social and Cultural Rights, General Comment No. 14 (1992) stating that the ICCPR “includes the right to control one’s health and body... and the right to be free from interference, such as the right to...”

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This review of TB-related laws in 20 high-burden countries shows insufficient and inconsistent protections for basic human rights such as liberty, privacy, and due process.

1. Reasons for Forced Isolation: Does the country’s law include substantive protections that dictate when mandatory isolation can be used, in accordance with the World Health Organization Ethics Guidance for Implementation of the End TB Strategy?

2. Fair Process in Forced Isolation: Does the country’s law include procedural protections including the right to notice and appeal or challenge when coercive (mandatory) measures are used, in accordance with the World Health Organization Ethics Guidance for Implementation of the End TB Strategy?

3. Arbitrary Entry & Inspection of Homes: Does the country’s law include procedures for noncompliance that are punishable by imprisonment, though it may be subject to a fine. They are coded green if the offence is not punishable by imprisonment, though it may be subject to a fine. They are coded green if they do not place notification requirements on lay people or if a failure to comply with such a requirement is not an offense subject to penalty.

4. Forced Medical Examination While Inspecting Homes: Does the country’s law include procedures for noncompliance that are punishable by imprisonment, though it may be subject to a fine. They are coded green if the offence is not punishable by imprisonment, though it may be subject to a fine. They are coded green if they do not place notification requirements on lay people or if a failure to comply with such a requirement is not an offense subject to penalty.

5. Reporting Obligations & Criminalization: Does the country’s law reflect ethical guidance and creating criminal or civil offenses for noncompliance?