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The Impact of criminalising the transmission of HIV/AIDS in the United Arab Emirates

A thesis submitted for the degree of Doctor of Philosophy

Mohamed Nekhaira Al Dhaheeri

University of Sussex

September 2010

I hereby declare that this thesis not been and will not be submitted in whole or in part to another University for the award of any other degree.

Signature.....

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September 2010

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**The Impact of criminalising the transmission of HIV/AIDS
in the United Arab Emirates**

Abstract

HIV/AIDS is a disease which emerged in the early 1980s and rapidly became a grave problem of global proportions. Millions of people fall victims to HIV/AIDS while its cause and remedy have not yet been discovered.

This epidemic has captured the attention of politicians, economists, sociologists, clergy, lawyers, judges and police officers all over the world and mobilised them to curb or control it by finding solutions that limit the extent of its transmission.

Through this research, I have investigated the possibility of criminalising the intentional or unintentional transmission of HIV in the United Arab Emirates.

The importance of this research emanates from the fact that there is no stipulation in the UAE penal code which incriminates this act. The study also examines the impact of criminalisation and whether criminalisation is compatible with the Islamic teachings, drawing on the experiences of Arab states and other advanced countries, and finally whether it is in line with the views of human rights organisations.

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Chapter One

Introduction to the Study

1.1. General introduction

Acquired Immune Deficiency Syndrome (AIDS) is caused by the Human Immunodeficiency Virus (HIV)¹. The virus was discovered in France in 1983 and in the United States in 1984². In the United States, it was initially identified in 1981 after a new disease was found to be targeting homosexual men and leading to uncommon types of cancer appearing on the skin.³

HIV is transmitted in many ways: From sexual contact without protection, from blood transfusion, through an infected pregnant woman to her fetus or after the birth, and from sharing unsterilised needles already used by an HIV positive person. The HIV is a very weak type of virus and cannot survive outside the body.⁴

When HIV/AIDS first emerged it was not possible to predict how the epidemic would evolve; how it would devastate whole regions, undermine national development, and pose threats to marginalised groups.⁵

Although this disease has plagued all areas of the globe, the scope of the problem in the Arab world has not been accurately assessed due to socio-cultural attitudes towards the disease, which is still viewed with feelings of shame and as a social stigma. Nor has the problem of HIV/AIDS been adequately reflected in the legislation or legal practice of the region.

1 Bradford, N. (1995), "Men's health matters, The complete A-Z of male health", London: Vermilion, p 255.

2 Murphy, S. M. *et al.* (2000), "HIV Infection and AIDS", London: Harcourt Publishers, p 1.

3 Available at: <http://www.cdc.gov/hiv/topics/basic/index.htm#history>. Accessed on 1/4/2007.

4 *ibid.*

5 UNAIDS: Report on the global HIV/AIDS epidemic, July 2002 Available at: www.unaids.org. Accessed on: 28/5/2008.

This study focuses on the transmission of HIV (whether intentional or unintentional) in the UAE, and on different attempts in the Arab world and globally to deal with this growing problem. The extent to which social and legal policies have had an impact on the transmission of HIV will be investigated, and in particular, whether the criminalisation of HIV/AIDS transmission impacts upon the spread of the disease, or merely serves to further marginalise and stigmatise already vulnerable groups in society.

1.2. The Problem of HIV/AIDS

The picture is bleak: by the end of 2001, 21.8 million people around the world had died of AIDS, 4.3 million of them children⁶. Figures from the Joint United Nations Programme on HIV/AIDS "UNAIDS" and the World Health Organisation "WHO" put the number of new infections in 2003 at five million - a record number⁷. The number of reported infections has been rising sharply from previous years, mostly due to HIV transmission through injecting drug use and unsafe sex. It is estimated that three million people died from the disease in 2003⁸. In 2004 nearly 40 million people were living with HIV, and most of these are likely to die over the next decade or so⁹. Of these, 2.5 million are children. According to UNAIDS, an estimated 38.6 million people worldwide were living with HIV at the end of 2005, and an estimated 4.1 million became newly infected and 2.8 million died¹⁰. An estimated 4.3 million in 2006 became newly infected¹¹. In 2007 the number increased to 40 million people living with HIV¹². The figures could rise sharply in the years ahead, with Eastern Europe and Central Asia on the verge of epidemics¹³. In addition to the fatalities,

6 UNAIDS: AIDS Epidemic Update, December 2002. Available at: www.unaids.com. Accessed on: 15/5/2004.

7 UNAIDS: AIDS epidemic update, December 2003; UNAIDS: AIDS Epidemic Update, December 2002. Available at: www.unaids.org. Accessed on: 13/3/2004.

8 The World Health Report 2004 'Changing History' published May 11, 2004. Available at: www.who.com. Accessed on: 11/12/2005.

9 *ibid*.

10 Available at: <http://www.uaeinteract.com/news/default.asp?ID=38>. Accessed on: 1/9/2006.

11 "Global summary of the AIDS epidemic", December 2006. Available at: http://data.unaids.org/pub/EpiReport/2006/02-Global_Summary_2006_EpiUpdate_eng.pdf. Accessed on: 5/2/2007.

12 "7th meeting of the Reference Group on HIV and human rights". Available at: http://www.unaids.org/en/Issues/Impact_HIV/20070216_Ref_group_HIV_HR.asp. Accessed on: 5/10/2007.

13 European Centre for the Epidemiological Monitoring of AIDS. HIV/AIDS Surveillance in Europe. Mid-year report, 2003. Saint-Maurice: Institut de Veille Sanitaire, 2002. N°68.

HIV/AIDS has had a social, culture and economic impact, and the consequences include children becoming orphaned each year due to the death of their primary carers from AIDS, and loss of economic activity due to ill-health, not to mention the spiralling healthcare costs. (The economic and social consequences will be discussed in Chapter 2).

Moreover, there are increasing indications that HIV/AIDS is indeed becoming a problem in the Gulf States:¹⁴ In an initiative aimed at preventing the disease from becoming a major health problem. In 2008 UNAIDS released the latest epidemiological data for the Middle East and North Africa which estimated the new HIV cases to be 40,000 in addition to the 380,000 people already living with HIV in these regions.¹⁵

According to the United Nations Development Programmes "UNDP's" 2002 Human Development Report, the UAE and neighbouring countries have among the lowest numbers of reported HIV/AIDS cases in the world¹⁶. The WHO reported as few as 22 AIDS cases (from 1990-1999) in the UAE¹⁷. The UNDP report also stated that in the previous two decades the number of HIV/AIDS cases in the UAE has not demonstrably increased, nor have there been any recorded cases of transmission through blood or blood products provided in the UAE facilities¹⁸. However, it is pertinent to note that these statistics were incomplete: no data were available on cases by age or gender categories, nor on the percentage of HIV/AIDS in high-risk groups, nor indeed on projections for the spread of the disease. This difficulty in obtaining complete data can be attributed – at least partly – to a general reluctance to publicly debate the HIV/AIDS issue, as it is associated with sex, and because of the conservative and traditional Islamic culture which regards sex outside marriage and homosexual sex as forbidden.

14 Available at: <http://www.ips.org>. Accessed on: 14/10/2005.

15 "Middle East and North Africa", Fact Sheet, 2008, p 1. Available at: <http://search.unaids.org/Results.aspx?q=+middleeast&o=html&d=en&l=en&s=false&x=11&y=9>. Accessed on: 15/3/2009.

16 Available at: www.undp.org. Accessed on: 15/12/2005.

17 UNAIDS/WHO Epidemiological Fact Sheet (2002) for UAE, p 6.

18 *ibid.*

1.3. Attempts to Address HIV/AIDS Globally

The criminal laws in many countries have set legal liability for those who cause any harm to others whether intentionally or unintentionally; some contain HIV transmission liability under existing legislation¹⁹ such as in the UK²⁰, while others have enacted laws criminalising HIV transmission clearly, such as Florida state in the USA, where "*it has now become a criminal offence for 'any person who [is HIV positive and] when such person has been informed that he may communicate this disease to another person through sexual intercourse, to have sexual intercourse with any other person'*",²¹ (see Chapter 3 for a more in-depth analysis of different approaches adopted by different countries). On the other hand, the approach of the United Nations organisation is based on upholding human rights and the protection of the afflicted and those infected through transmission.²²

1.4. Domestic attempts to address HIV/AIDS

The UAE Government does not treat HIV/AIDS as a priority²³, as Government figures seem to reflect that it is not a problem²⁴. Moreover, HIV/AIDS is still treated as a social taboo in the UAE: The major reason for resentment and possibly lack of sympathy towards HIV/AIDS victims is the association with what is seen as sexual promiscuity and with homosexuality (and the intolerance of this type of sexual orientation in the Arab/Islamic cultural tradition), and also, the growing awareness that drug addicts are potential victims.

19 In the case of *R v Dica*, (2004) EWCA Crim 1103, the Court sentenced the defendant to eight years but in the final hearing in March 2005, the sentence was reduced to four and a half years and he was found guilty of Reckless Grievous Bodily Harm according to the "Offences Against the Person Act" (OAPA/1861). For more details see: <http://www.avert.org/criminal-transmission.htm>. Accessed on: 15/6/2006.

20 Kouwen, W. V, & Bruinenberg, K. (2006), "Supreme Court of the Netherlands, Criminal Division (Hoge Raad der Nederlanden, Strafkamer): HIV Transmission: Criminalisation" *70 Journal of Criminal Law* (485), pp 492-493.

21 Pearl, D. & Pearl, S. (1989), "Medicine-AIDS an overview of the legal implications" *86 Law Society Gazette* (28), pp 10-11.

22 Available at: www.who.int/whr/2004/en/report04. Accessed on: 16/5/2004.

23 "FNC to consider law against HIV discrimination" Available at: <http://www.thenational.ae/article/20081025/NATIONAL/848024663/1010> Accessed on: 12/3/2009.

24 Available at: www.gulfnews.com/articles/news.asp. Accessed on: 11/5/2004.

Thus, the official focus has been on health. The UAE has a comprehensive, government-funded health service –The National AIDS Programme, established in 1985, under the jurisdiction of the Ministry of Health – and a developing private health sector with the latest HIV/AIDS treatment²⁵. The UAE National AIDS Control and Prevention Programme was established in response to a growing awareness of the socioeconomic and health implications of the disease as well as growing fears of the HIV/AIDS crisis. It is thought that the implications are particularly important for the UAE in view of the large communities of expatriates which make up more than 80% of the population, some of whom come from countries with a high rate of infections²⁶. The programme is a partnership between governmental and private institutions and organisations with fund allocations from federal and local governments as well as from other sources. The main objective of the programme is to prevent transmission of the disease and to control its importation into the country through primary prevention, early detection and effective management. The programme is implemented, coordinated and supervised by the Federal Ministry of Health in cooperation with other federal and local health authorities. These functions are conducted through central and district-level committees for national HIV/AIDS control and prevention²⁷. The programme has several mechanisms including legislation, prevention and early HIV detection and a number of laws and decrees have been implemented to cover many aspects of the programme. One of the key regulations in this field concerns the issue of confidentiality of HIV/AIDS data. For example, the HIV tests or patients' records are classified as highly confidential information which should not be disclosed or accessed except when necessary and with permission by the relevant health authority.²⁸

The most important of these orders and decrees are the Council of Ministers Order No.10/1985, which added HIV/AIDS to the list of contagious diseases, and the Ministerial Decree No.502/1989, which authorised the National AIDS Control Programme and mandated the screening of all blood, blood products, tissues or organs before

25 Rustom, H. (2003), "The Right of Health and Its Protection by the Federal Legislations of the UAE", 1 Security & Law Journal Dubai, Dubai Police Academy, p 25.

26 Elgendy, I. (2002), "The mode of AIDS Transmission", 22 Security Research Journal, Riyadh: King Fahad Security College, p 51.

27 *ibid.*

28 Al Baher, M. (1999), "Legal Liability for AIDS Transmission" 207 Arab Journal For Security Studies & Training, Riyadh: Nayef Academy, p 45.

transplantation in addition to population groups at high risk of infection. This decree also called for the formation of a Central Committee for the National AIDS Programme with members from various relevant governmental and non-governmental sectors and the Ministerial Decree No.506/1989 which stipulated the formation of AIDS control committees at the district level. These committees would be responsible for the implementation of all preventive measures in accordance with the National AIDS Control Plans of Action and directives issued by the Central HIV/AIDS Committee.²⁹

HIV/AIDS activities and awareness are integrated with other programmes, i.e. reproductive health and health schools, through the close coordination and cooperation of responsible departments under the Ministry of Health. In addition, the fears of importing contaminated blood led the Government to set tight blood-safety regulations, making any kind of importing of blood and blood products impossible by implementing a system of public unpaid donations which reached 100 per cent³⁰. All voluntary donated blood and transfusion services must include HIV testing initially and there is regulated control and surveillance for different population groups (HIV sentinel surveillance)³¹. The UAE imposes regular compulsory HIV/AIDS-tests for all emirates' employees, both locals and expatriates³², and foreigners working in government or special sectors who are found infected with HIV or other contagious diseases are repatriated to their countries of origin.³³

1.5. Criminalising transmission

The criminalisation of intentionally spreading HIV has become a key approach in the fight against HIV/AIDS. *"Since 1987, twenty-four (USA) states have enacted legislation that explicitly outlaws an intentional transfer of HIV. State courts now freely, and consistently,*

²⁹ *ibid*, p 79. UAE do not have a strategic plan to combat HIV/AIDS.

³⁰ "China, UAE making big progress in ensuring safe blood donation" Available at: <http://www.who.int/mediacentre/news/releases/2008/pr18/en/index.html>. Accessed on: 12/3/2009.

³¹ Available at: www.emro.who.int/AIDS. Accessed on: 18/11/2005.

³² See UAE Immigration Law No.13, 1996, Chapter 3, article 65 (a) and (b), whereby a resident permit cannot be issued without a full medical test, which must confirm that the applicant does not have any fatal disease, such as HIV/AIDS.

³³ Available at: www.gulf_news.com. Accessed on: 10/5/2004.

convict defendants based on these statutes"³⁴. In 2004, the number increased to 28 States which have passed a law criminalising the transmission of HIV. In 2008 the number reached 32 states, among these are Washington, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi Illinois,³⁵ and others³⁶. The US approach on criminal transmission is reflected in the fact that in several US states taking precautions to prevent transmission (such as using contraceptives) does not protect against criminal liability; other states (such as Georgia, South Arkansas and Tennessee) have imposed harsher sentences for illegal acts (such as prostitution or sodomy) if the offender is HIV-positive.³⁷

HIV/AIDS transmission has been criminalised by implementing a new legislation in other countries such as Germany, Denmark, Austria, and Switzerland³⁸. However, in Canada, there are no specific HIV-related crimes under Canadian law. Rather, existing *Criminal Code* offences have been applied in related prosecutions that have taken place to date.³⁹

The first and one of the most convincing arguments for the criminalisation of knowingly transmitting HIV is "*Criminalization may force people to think twice before acting, and to be more responsible in their decision making. This will be beneficial both for the*

34 Reeder, P. (1996), "AIDS Infect the Canadian Legal Community: Canada's Inconsistent Application of Common Law Criminalizing Carriers", 18 Loyola of Los Angeles International & Comparative Law Review (401), pp 427-428.

35 According to the Illinois Criminal code, 720 ILCS 5/12-16.2b, "*a person is guilty of criminal transmission of human immunodeficiency virus HIV " if, possessing the knowledge that they are infected with the HIV or any other identified causative agent of acquired immunodeficiency syndrome, they, nevertheless: expose another to the infection through intimate contact; transfer, donate or provide any potentially infectious bodily fluid, such as blood or semen, or organ to another for the purpose of transfusion, transplantation, insemination or any other means of administration to another; transfer non-sterile intravenous or intramuscular drug paraphernalia by dispensing, delivering, exchanging or selling the equipment"*. Available at: Lisa, K. *et al*, (2004), "Criminal Law and procedure, part six, particular crimes and offences, chapter 68, sex offenses and related crimes" 68 Illinois Jurisprudence (8), pp 1-2.

36 Available at: <http://www.statehealthfacts.org/comparetable.jsp?ind=569&cat=11>. Accessed on: 24/10/2007. And see also Appendix (1), "HIV/AIDS Transmission punishments in the USA".

37 See for example, the HIV Prevention Act 1997, and interesting discussion of the legislation by Ruby, R. (1999), "Apprehending the weapon within: the case for criminalizing the intentional transmission of HIV", 36 American Criminal Law Review (313).pp 321-323.

38 Abu Shama, A. (1999), "Defining The New Crime Phenomena", Riyadh: Nayef Academy of Security Studies, p 58.

39 "Criminalization of HIV exposure: current Canadian law", Canadian HIV/AIDS Legal Network, 2008, p 2. Available at: <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=847> Accessed on: 14/3/2009.

*individuals involved and society at large. Ideally, criminalization would lead to a reduction in both the intentional and the unintentional transmission".*⁴⁰

Another argument is that, transmitting the virus intentionally or otherwise can be viewed as denying another's rights to a stable medical, economic and social life. It could also be seen as, in effect, murder⁴¹. Obviously, this is illegal and those who break the laws will be prosecuted and punished if they committed a crime and to stop HIV/AIDS spreading.⁴²

In addition, criminalising HIV transmission in Islamic countries could increase popular awareness of the consequences of violating Islamic laws which forbid adultery and sodomy. On the other hand, it could also fuel social stigma especially in a conservative community ruled by Islamic principles⁴³. This is a particular problem due to inherent prejudices against anyone who might contract HIV as it is often assumed that an HIV infection is due to illicit sexual practice.

However, there are many arguments against criminalisation. Firstly, some states witnessed a prosecution of HIV-positive people for all forms of transmission, intentional, reckless and accidental; this, it is argued, sets a precedent for similar trials in future, and has created a worrying trend.⁴⁴ Another argument is that criminalisation is ineffective: it will not prevent the spread of HIV, since the most common form of transmission occurs through consensual sex, when neither partner is aware of his condition. Regardless of legislation, this will still happen.⁴⁵

40 Reeder, (*op.cit*), pp 427-428.

41 See Harris, K. (1993), "Death at First Bite: A *Mens Rea* Approach in Determining Criminal Liability for Intentional HIV Transmission", 35 Arizona Law Review (237). And also: Heth, J. (1993), "Dangerous Liaisons: Criminalizing Conduct Related to HIV Transmission", 29 Williamette Law Review (843).

42 Schulman, E. L. (1996), "Sleeping with the enemy: Compating the sexual spread of HIV-AIDS through a heightened legal duty", 29 John Marshall Law Review (957), pp 976-977.

43 Mohsen, M. "AIDS in the new century" Itihad News Paper, October 13, 2004, p 7.

44 Available at: <http://www.avert.org/criminal-transmission.htm>. Accessed on: 14/3/2009.

45 "HIV/AIDS Policy & Law Review" Canadian HIV/AIDS Legal Network, Volume 13, Number2/3, December 2008, p 66. Available at: <http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=906> Accessed on: 14/3/2009.

Opposers of criminalisation raise their fear of "*the danger of unfair discrimination against those with HIV/AIDS and its impact upon their willingness to disclose HIV positivity. It also acknowledged the incentive which criminalisation might generate to remain ignorant of one's HIV status in order to avoid liability for subjectively reckless transmission*"⁴⁶. On the other hand, in Islamic countries, many religious scholars believe that the Islamic *Sharia* has a ready punishment of those who transmit the HIV to others in *Qisas* ordinance and there is no need for legislative involvement.⁴⁷

The overall thesis of the study is that the dramatic spread of HIV/AIDS has made it imperative for governments to move rapidly and adopt policies to combat the disease, treating afflicted individuals on the one hand while protecting all members of society on the other, and at the same time respecting individual rights and freedoms. The competing approaches will be investigated in light of the fact that current efforts appear to be entirely inadequate for an epidemic that is spiralling out of control.

The thesis argues that what is needed is a comprehensive HIV/AIDS prevention strategy in the UAE, as well as rigorous scientific evaluation of criminal law provisions and improved co-operation at all levels. Moreover, the solution is not to be found in the short-term, but requires a long term commitment.

However, in the UAE, the police and legal bodies are never involved at any stage; no investigation into the source of the infection takes place, nor is there any legal redress for individuals infected⁴⁸. This project is closely related to the author's field of criminology and investigation and the absence of legislation means that the UAE police are unable to take action even if a complaint is reported.

Throughout this study, the author will be exploring the implications of a criminal approach to this problem in the UAE, in particular, examining the UAE Penal Code, which is closely

46 Munor, V. E. (2007), "On responsible relationships and irresponsible sex — criminalising the reckless transmission of HIV, R v Dica and R v Konzani" *Child and Family Law Quarterly* (112).

47 Kamal, R. (2008), "Islam and diseases", Nouakchott: The Capital Press, p 18.

48 Arsfa, M. (1999), "Compensation of AIDS Victims" *207 Journal of Security & Life*, Riyadh: Nayef Academy, p 352.

related to the *sharia* rules of Islam and its approach to the transmission of disease and the infliction of harm on people.

1.6. The purpose of the study.

This study will examine the possibility of criminalising HIV transmission in the UAE as well as the impact of criminalising HIV transmission, through available information and from the analysis of the field work. Moreover, as noted above, the researcher has included in this study the UN efforts and many Human Rights Conventions relating to victim protection as well as a chapter on the UK and USA HIV/AIDS prevention policy. This study will investigate the position of the UAE and neighbouring countries under existing criminal law and from an Islamic sharia law perspective. The main enquiries of this study are to review: the Emirati penal code in order to assess if it is adequate for HIV transmission cases, the UAE's laws pertaining to Immigration, Labour, Health Insurance and to examine whether they support and observe the rights of HIV/AIDS patients and contribute to their wellbeing as well as limiting the spread of HIV, the strategies of countries that share the same culture and religion as the UAE in combating the spread of HIV, Islamic legislation and its position with regard to HIV transmission and the protection of victims, the efforts exerted by developed countries (in particular the UK and USA) in enacting criminal and other laws pertaining to HIV/AIDS and what UAE has to learn from these approaches, of the efforts extended by the United Nations concerning criminalisation of HIV transmission and the protection of patient's and victim's rights, the views of professionals in the legal, medical fields and the public regarding the scope of the problem and the possibility and impact of criminalising HIV transmission.

In order to explore and investigate the possibility of criminalising the transmission of HIV and the impact of HIV transmission, the researcher has posed the following questions:

1.7. Research Questions.

1. Do the provisions of the UAE penal code address adequately the incidence of HIV transmission?

2. Do other UAE laws have a role in limiting the spread of HIV and supporting the patients?
3. What can the impact of criminalising HIV transmission in the UAE be?
4. What has UAE to learn from the approaches adopted by other countries for the protection of their residents?

1.8. The significance of the study.

The significance of the study lies in the fact that the Arab and Islamic world have been closing their eyes to the problem as it is considered a social stigma which has religious and moral implications. Not a single study has discussed this issue in depth as most academic have shied away from the problem due to lack of available information and access to data as well as the potential trouble that may be encountered.

The criminal law of UAE also does not tackle the problem seriously for laws are made by Man and Man creates culture and is affected by the prevailing culture. The researcher's own experience in this field as a police officer reflects that of many law enforcement agency members who are aware that there is no legislative support for dealing with these types of HIV transmission cases if they happen in the future it could reflect badly on the case members, and this gap could affect at the first stage the police and the judiciary reputation.

It is hoped that this study may constitute the first step in this important area and a foundation for researchers to build upon. It is hoped that this study can also serve as an aid for legislators when dealing with the transmission of contagious diseases other than HIV/AIDS.

1.9. The limitations of the study.

The study took place between April 2004 and April 2009. Lack of information and access to data were two of the major problems that faced the researcher when dealing with this study. The media in this part of the Arab and Islamic world have always focused on HIV transmission in other parts of the world, ignoring the state of HIVAIDS in the region. This

study cannot be applied beyond Arab and Islamic areas due to the fact that they share the same cultural, social, inherited traditions background and similar legislation. In spite of this, it can still be seen as a step forward that might help other researchers in dealing with this issue in the future.

However, it has to be emphasised that the data is often partial, as cultural and social restrictions may impede AIDS patients or other professionals from fully acknowledging the situation.

The researcher visited Kuwait to obtain more information about any studies regarding the Kuwaiti provisions of penal code (amended in 1992) relating to HIV transmission. However, it is pertinent to note that the availability of data in the whole region varies enormously, depending on the willingness of government officials to provide the relevant information. In fact, the researcher attended all of the event arising from AIDS World Day which has taken place in the first of December every year in the UAE since 2002, trying to locate any data, a great deal of which is provided by newspapers and UNAIDS reports, and all of which, although useful as giving a general idea of the problem in the region, provided only a limited and somewhat disjointed picture of the situation.

1.10. Methodology.

The aim of my research is to obtain valid and reliable data, which can then be used as a basis for credible conclusions. There is no single best way of collecting data. Therefore, this study will use a combination of methods to achieve its objectives. It will combine library and field research. The former will entail the reviewing of published material, such as books and articles, while the latter will comprise of government statistics and documents, unpublished material and data arising from my field research in the UAE.

The dangers of using official statistics for comparative research such as this have been stressed by others⁴⁹. However, it does seem that a comparison can be undertaken for trends rather than levels of offending. Moreover, the objection that official crime statistics reflect

49 Jupp, V. *et al*, (2006), "Doing criminological research", London: Sage Publications, p 58.

the activities of law enforcement agencies, rather than actual trends or levels of offending will depend on the type of crime measured and on the availability of alternative data.⁵⁰

Thus, together with the analysis of official information, questionnaires were administered to a wide sector of medical experts (in particular, those working at the Medicine Prevention Department of the Ministry of Health in the capital of the UAE) and legal practitioners (prosecutors, judges and lawyers), and law enforcement officers, particularly those working in The Criminal Interrogation Unit in the capital of the UAE. In addition, in order to maximise responses (and consequently, elicited data), questionnaires were also sent to chosen members of the general public.

Blaxter define questionnaires as:

"one of the most widely used social research techniques. The idea of formulating precise written questions, for those whose opinions or experience you are interested in, seems such an obvious strategy for finding the answers to the issues that interest you" ⁵¹

Short questionnaires are preferable – to facilitate evaluation and analysis and also to maximise the co-operation of the respondents, and while the closed-ended question is often easier for a respondent to answer⁵², the open-ended question encourages the respondent to express and represent his/her views less restrictively and to recommends freely in the space provided⁵³. Open-ended questions are helpful as they can avoid biases that a questionnaire may contain⁵⁴. Therefore, the questionnaires I administered were a combination of both closed and open-ended questions. Replicated quantitative information from the questionnaires was organised into lists and tables and then analysed.

Although HIV/AIDS has plagued all areas of the globe, the scope of the problem in the Arab World has not been accurately assessed. This study focuses on the transmission of

⁵⁰ *ibid*, p 77.

⁵¹ Blaxter, L. Hughes, C. *et al*, (2001), "How to research – Second Edition", Philadelphia: Open University Press, p 179.

⁵² Preece, R. (1994), "Starting research", London: Biddles Ltd, p 111.

⁵³ Kenneth, D. B. (1987), "Methods of Social Research", New York: Free Press, p 217.

⁵⁴ Buckingham, A. Saunders, P. (2004), "The survey methods work book, from design to analysis", Cornwall: MPG Books Ltd, p 57.

HIV/AIDS and on different attempts in the Arab World and globally to deal with this growing problem. The extent to which social and legal policies have had an impact on the transmission of HIV/AIDS will be investigated, and, in particular, the data I obtained through my research was interpreted in terms of the research questions.

The instruments used for the field research in this study were questionnaires, as the researcher perceived that the questionnaires would be the most appropriate for this type of study. The questionnaires would facilitate the gathering of information from the subject-groups which are traditionally very sensitive with regard to the giving of information about their work. The questionnaires which were developed were used to measure the role and effectiveness of the UAE penal code, secondary laws, awareness, social stigma, the scope of the problem, the impact of criminalising the transmission of HIV/AIDS and prevention programmes in the UAE through the opinions of three separate sample groups working in the field: Legal Professionals (Police Officers, Prosecutors, Lawyers, Judges), Medical Professionals and the General Public. The researcher carried out the administration of the three questionnaires to the three sample groups over a period of eight weeks. Because of cultural sensitivities, and, indeed, a general lack of awareness of the HIV/AIDS problem, the questionnaires included some very basic questions, which suited all groups and sub groups. As Muijs pointed out:

" Simple random are excellent for generalising to the population as a whole, we might in some cases want to generalise to specific sub population that is too small to be reliable picked up in any but the largest of samples....therefore, to insure a suitability in we might want to use stratified random sampling".⁵⁵

Consequently, respondents were picked from different sectors of the three sample groups. The total number of distributed questionnaires was: 150 to the legal professionals, 102 to the health professionals and 345 questionnaires to the chosen sample of the public. It is pertinent to note that prior to this study, no such research had been conducted on this field in the UAE, and that, as a result, the responses to the questions (see Chapter 6) are important findings in themselves.

55 Muijs, D. (2004), "Doing quantitative research in education with SPSS", London: Sage Publication, pp 38-39.

To analyse the data of the three questionnaires, the SPSS programme “Statistical Package for Social Sciences version 11.5” was utilised. Descriptive statistics were used to answer the research questions of the study, together with frequencies and percentages, tables, and charts for each variable in order to summarise and organise the data.

The first questionnaire was designed for legal practitioners who contain four sub groups (Police officers, Prosecutors, Lawyers and Judges). It contained 20 closed ended and open ended questions. The second questionnaire was designed for the Department of Preventive Medicine⁵⁶ staff; it contained 21 closed and open ended questions. The third questionnaire was designed for the public. It is contained 17 closed and open ended questions.

1.11. The Plan of the Study.

The thesis is divided into eight chapters: the first chapter represents a general introduction to the study, including a statement of the HIV/AIDS problem as an international phenomenon, purpose of the study, the study questions, the significance of study, the limitations and the methodology. The Second chapter will focus on the impact of the spread of HIV/AIDS i.e. on the global community, in addition, the question of human rights is discussed in relation to the treatment of HIV victims, taking into consideration the role of the UN and other human rights organisations in safeguarding the rights of HIV victims throughout the world and the UN approach to the issue of criminalising the HIV transmission. The experiences of developed countries like UK and the USA will also be considered on the third chapter. The work will also study the various aspects involved through explorative and comparative study of the situation in countries similar to the UAE as far as the social, religious and cultural features are concerned, such as Kuwait and Egypt, in which the transmission of the HIV virus is considered a crime punishable by the law. The Islamic point of view on this issue will be examined, as Islam is the official religion of the UAE will be covered in the fourth chapter. The fifth chapter will investigate

⁵⁶ The Department of Medicine Preventive is a Department work under the UAE Ministry of Health, located in the capital of United Arab Emirates (Abu Dhabi), the Department have nine medicine preventive centres covering the whole country and they focus on widening immunisation, public awareness, health screening, research, educational programmes, Immigrants check up for new and renew their visas, a main role in design the health strategy and prevention methods.

the present situation in the UAE, concentrating on the penal code especially chapter seven on the code which deals with crimes against the person, procedure law, immigration law and other complementary laws relating to infected persons and HIV/AIDS victims, in addition to the medical efforts exerted to combat the spread of the disease. Chapter Six and Seven will present the field work and will discuss the issue from the perspective of UAE societal tendencies, including the opinions of professionals from all walks of life, such as the legal, the judiciary and the medical professions, in addition to a random sample of members of the UAE society. This is very much related to the discussion in Chapter five, to provide empirical evidence for the analytical facets to the study. Finally, the study ends with a conclusion including recommendations and suggestions.

Chapter Two

The Impact of HIV/AIDS on a worldwide level

2.1. Introduction.

It is now acknowledged that HIV/AIDS has assumed epidemic proportions, undermining the very fabric of society⁵⁷. The disease knows no frontiers and has created huge problems for public health authorities and governments across the globe in their attempts to halt its spread⁵⁸. The high rates of fatality and the varied modes of transmission have raised questions about the means of defences against this disease. With no cure in sight, the disease continues to spread at an alarming rate.⁵⁹

The scale of the HIV/AIDS pandemic is enormous. In 2006, 40 million people were estimated to have contracted the HIV⁶⁰ and the UN has reported that the virus could claim up to 65 million more victims by the year 2020⁶¹. The most evident indicator that shows the intensity and seriousness of HIV/AIDS is its spread rates in the developing world that hosts most of the infected people.⁶²

Yet HIV/AIDS is not just the problem of a single country or continent. Instead, it must be seen and treated as a global problem. As Spectar has stated "*You cannot deny AIDS a visa; you cannot embargo it or quarantine it; you cannot stop it at a border*"⁶³. However, the legal approach to HIV/AIDS criminalisation in particular is fraught with difficulties, not least because of the cultural differences between states, which mean that, for instance what

57 The World Health Report, 2004, "Changing History", published May 11, 2004. Available at: www.who.org. Accessed on: 15/9/2004.

58 Bigger, R. J. (1986), "The AIDS problem in Africa", 1:79-83; In: Bayer, R. AIDS, power and reason. 64 *The Milbank Quarterly* (1), p 168.

59 Bayer, R. *et al.* (1986), "AIDS, the public context of an epidemic". 64 *The Milbank Quarterly* (1), pp 1-4.

60 Available at: <http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2006/> Accessed on: 2/3/2009.

61 Renquin, M. (2003), "U.N. Report: AIDS 2002, Barcelona", 19 *New York Law School Journal of Human Rights* (869), pp 870-871.

62 Available at: <http://www.fao.org/docrep/meeting/006/y9066a/y9066a.htm>. Accessed on: 17/7/2006.

63 Spectar, J. M. (2003), "The olde order crumbleth: HIV-Pestilence as a security issue & new thinking about core concepts in international affairs", 13 *Indiana International & Comparative Law Review* (481), pp 513-514.

is allowed in the UK and acceptable within this community might be illegal in others. Also, the legal problems which the AIDS disease raises cannot be ignored because of the implications for privacy and human rights, both for the infected person and the healthy person living in society. AIDS has not only been a terrible disease that has caused the deaths of millions of people worldwide, it also creates human rights abuses.⁶⁴

Before exploring the experience of some developed and developing countries that are trying to fight against the spread of fatal and incurable diseases like HIV/AIDS, it is necessary to examine the global issues and the current picture of the world. In this chapter also the United Nations' approach to the issue of criminalising the transmission of HIV/AIDS will be examined as well as the impact of criminalising the transmission of HIV/AIDS. Thus, the first section looks at the spread of the disease in the world according to the statistics published by many organisations such as World Health Organisation and UNAIDS. This is followed by an examination of the protection of HIV/AIDS patients, under international human rights law and, the third section of this chapter will discuss criminalising the transmission of HIV/AIDS from the United Nations perspective and the final section concludes.

2.2. World-wide spread of the disease.

A range of problems closely related to and caused by HIV/AIDS have emerged since the early eighties and have become a pressing concern of the whole world during that time, not only in terms of the problems it creates but also in the quest for finding suitable solutions to these problems.⁶⁵

By destroying the front defence lines of the body, the virus opens the doors for other diseases and viruses to invade the infected body. It is deeply troubling that the total number

64 McGuire, A. L. (1999), "AIDS as a weapon: criminal prosecution of HIV exposure" 36 Houston Law Review (1787), pp 1788-1789.

65 Epidemics, which assailed so many areas in the world in the past, claimed the lives of thousands upon thousands of people. In 1918 and 1919, the Spanish Flu claimed the lives of more than half a million individuals in America and around twenty millions all around the world. In 1848, Cholera claimed the lives of more than one million people in Russia alone. For further information see: Ab-Alhadi, A. (1999), "AIDS: The Killer epidemic", Beirut: Al-Afaq Al-Jadeida Publishing House, p 19.

of infected people reached 33.2 million in 2007 according to the statistical resources from UNAIDS organisation and this clearly shows how serious the situation is⁶⁶. At an early stage of the spread of the disease, the UN has played an important role in co-ordinating concerned bodies and facilitating the efforts to combat the disease through the World Health Organisation.

In 1981, the United States Centre for Disease Control and Prevention reported the initial cases of a "opportunistic illnesses"⁶⁷. In 1986 the WHO named the new disease the Acquired Immune Deficiency Syndrome⁶⁸. In 1996, the United Nations jointed together the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Educational, the Scientific, and Cultural Organisation (UNESCO), the World Health Organisation (WHO), and the World Bank to form UNAIDS⁶⁹. In spite of the spread of the HIV/AIDS disease all over the world, and the international conferences held to address this new problem, the contemporary world was unable to adopt a courageous and decisive approach to control the spreads disease especially in the developing poor countries in Africa.

The WHO reported a huge number of infections in 1986 in Africa, the United States and Europe. The statistics, according to the WHO Declaration in the 9th International Conference on AIDS which was held in Germany, showed that the number of infected people amounted to 14 million, one million of whom were children⁷⁰. By the end of 1998 UNAIDS and WHO estimated that this figure had risen to 33.4 million, a 10 per cent increase over the previous year, the vast majority of whom were in developing countries, notably 22.5 million people (70 per cent) in sub Saharan Africa (43 per cent of whom were

66 "UNAIDS: AIDS epidemic update: December 2007", p 7. Available at:

http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf. Accessed on: 26/11/2007.

67 Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr4813a1.htm> Accessed on: 2/3/2009.

68 Rashed, A. *et all*, 'Knowledge, attitudes, beliefs and practices of the population in Kuwait about AIDS-a pilot study', Volume 1, Issue 2, 1995,p 4. Available at:

<http://www.emro.who.int/Publications/EMHJ/0102/11.htm>. Accessed on: 12/3/2005.

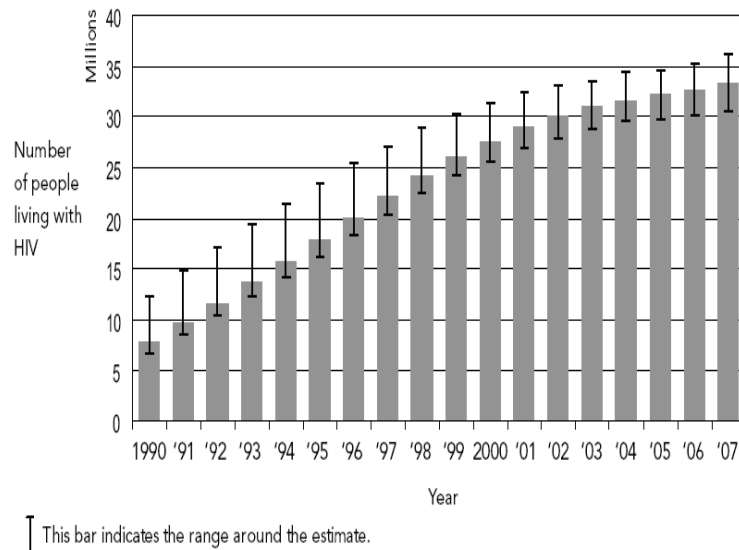
69 Renquin, (*op. cit*), pp 870-871. (UNHCR, WFP, UNODC and ILO also joints UNAIDS recently)

70 Al Zohaily, W. (1993), "Criminal responsibility", In: Islamic view on the AIDS patient social problem conference. Kuwait, 6-8 December 1993, Islamic organisation press, p 138. And see also the history of HIV/AIDS up to (1986) at: http://www.avert.org/his81_86.htm Accessed on: 15/3/2009.

women over 15 years old), 7 million people in South and South East Asia and the deaths estimated were of 2.5 million people.⁷¹

Figure 1: 1990-2007⁷²

Estimated number of people living with HIV globally,
1990-2007



By 2001 an estimated 3.4 million new infections had taken place, thus bringing the total number of Africans suffering from HIV/AIDS to over 28 million⁷³. It is also estimated that there were 2.3 million AIDS-related deaths in Africa in 2001.⁷⁴

It is noteworthy that in 2001 the UNAIDS recognised the difficulty of giving precise figures for the extent of HIV/AIDS in the world and warned that the majority of HIV-infected persons were not aware of being infected, which means that the most affected countries are facing a grave danger.⁷⁵

71 "Global summary of the HIV/AIDS epidemic, December 1998". Available at: http://www.northnet.org/robbinsr/global_aids1998.htm. Accessed on: 2/3/2009.

72 "UNAIDS: AIDS epidemic update: December 2007", p 5. Available at: http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf. Accessed on: 26/11/2007.

73 "Estimated number of people living with HIV globally". Available at: http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf. Accessed on: 7/12/2007.

74 "The current situation". Available at: www.unfpa.org/hiv/2002update.htm. Accessed on: 11/5/2006.

75 "People living with AIDS". Available at: <http://www.unaids.org/en/PolicyAndPractice/KeyPopulations/PeopleHIV/>. Accessed on: 10/3/2009.

Thus in June 2001, the United Nations General Assembly "one of the five main UN organs" adopted a Declaration of Commitment on HIV/AIDS: "Global Crisis-Global Action". In the Declaration, 189 governments decided to implement a programme to reduce HIV new infection cases by twenty-five per cent, this programme planned to focus on how to protect the young people in the worst affected countries by 2005. It will globally expand until 2010, and international organisations, such as UNAIDS, the World Health Organisation (WHO) and the World Bank, will also participate in issuing calls for action.⁷⁶

In 2002, around three million people died from AIDS⁷⁷, and infections reached 42 million, thus becoming the worst pandemic since the Black Death in the fourteenth century. The following year (2003) the figure was lower, at around 40 millions, apparently a reflection of more accurate data analysis which been provided by 130 countries to UNAIDS.⁷⁸

Until 2007 the UNAIDS estimated the number of people newly infected with HIV still between 2 million and 3 million.⁷⁹ In 2004, nearly 5 million people were newly infected⁸⁰, 5 million in 2005⁸¹ and there were estimated 2.4 million deaths from AIDS in Sub-Saharan Africa alone⁸².

76 Gostin, L. O. (2003), "The global reach of HIV/AIDS: science, politics, economics, and research" 17 Emory International Law Review (1), pp 12-13.

77 *ibid*, pp 3-4.

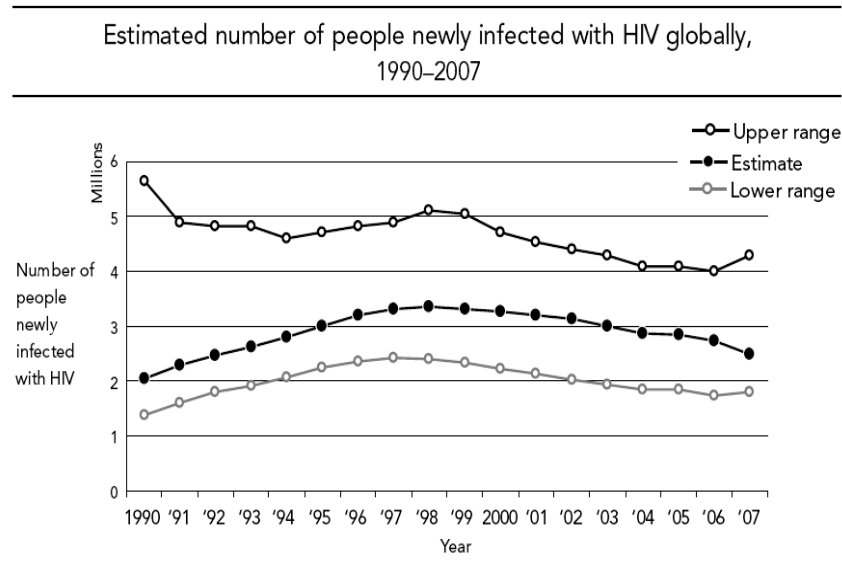
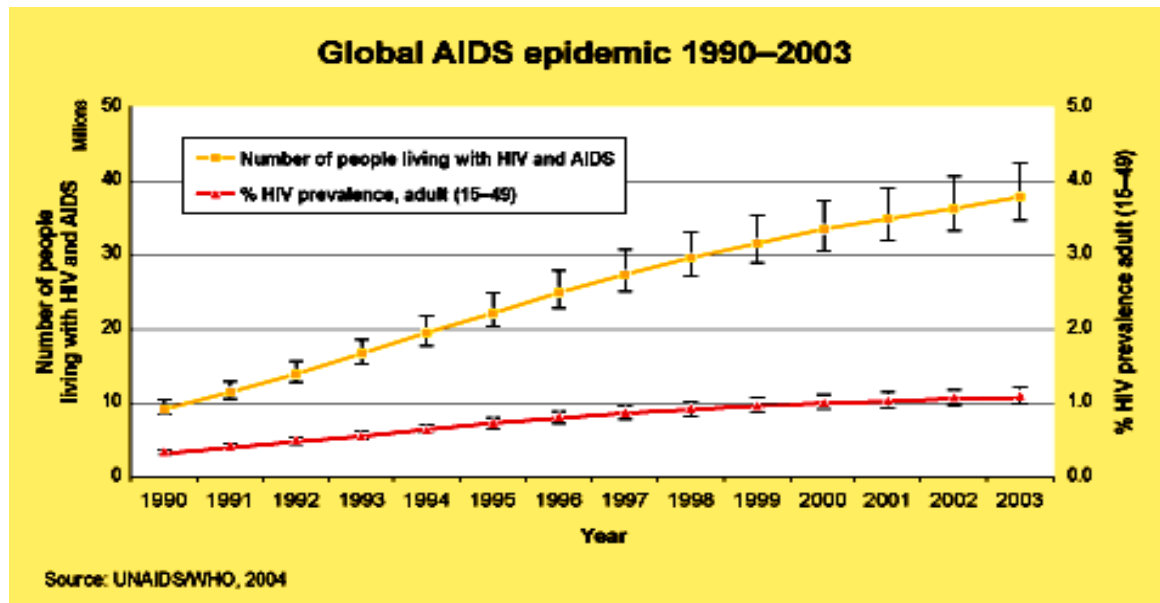
78 "UN issues grim AIDS warning". Available at: <http://english.aljazeera.net/NR/exeres/31D27A04-7841-4AEF-BD07-3F9385A234B6.htm>. Accessed on: 15/11/2008. And see also the "UNAIDS 2004 global report" and "2004 Report on the global AIDS Epidemic".

79 "Estimated number of people living with HIV globally". Available at: http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf. Accessed on: 7/12/2007.

80 "Action against AIDS in the work place", p 3. Available at: http://www.data.unaids.org/Publications/.../jc0876-partnershipmenu_global_en.pdf. Accessed on: 16/3/2009.

81 "HIV and AIDS". Available at: http://www.bbc.co.uk/radio1/one/health/sex/hiv_aids1.shtml. Accessed on: 24/11/2005.

82 Available at: http://www.unaids.org/epi/2005/doc/EPIupdate2005_html_en/epi05_05_en.htm. Accessed on: 22/2/2006.

Figure 2: Newly Infected 1990-2007⁸³**Figure 3: Global AIDS epidemic 1990-2003⁸⁴**

⁸³ "UNAIDS: AIDS epidemic update: December 2007", p 6. Available at:

http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf. Accessed on: 26/11/2007.

⁸⁴ "A global overview of the AIDS epidemic". Report on the global AIDS epidemic, 2004. As published and available at: http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_03_en.htm#Figure1. Accessed on: 25/5/2006.

Table 1: Regional statistics for HIV & AIDS end of 2005⁸⁵

Region	Adults & Children Living with HIV/AIDS*	Adults & Children Newly Infected*	Adult Infection Rate (%)	Deaths of Adults & Children*
Sub-Saharan Africa	25.8	3.2	7.2	2.4
East Asia	0.87	0.14	0.1	0.041
South and South-East Asia	7.4	0.99	0.7	0.48
Oceania	0.074	0.0082	0.5	0.0036
Eastern Europe & Central Asia	1.6	0.27	0.9	0.062
Western & Central Europe	0.72	0.022	0.3	0.012
North Africa & Middle East	0.51	0.067	0.2	0.058
North America	1.2	0.043	0.7	0.018
Caribbean	0.3	0.03	1.6	0.024
Latin America	1.8	0.2	0.6	0.066
Global Total	40.3	4.9	1.1	3.1

* *millions*

⁸⁵ "World HIV/AIDS Statistics". As published at: <http://www.avert.org/worldstats.htm>. Accessed on: 25/5/2006.

In 2005, according to the UNAIDS news press, life expectancy in nine African countries fell to below 40 per cent creating 11 million orphans as a result.⁸⁶

HIV/AIDS, as stated earlier has a devastating impact and constitutes a particularly serious problem for children. The United Nations Children's Fund (UNICEF) estimated in 2003 that 20 million children will have lost at least one parent to AIDS in sub-Saharan Africa alone by 2010⁸⁷. In addition, the survival rate for newborns with HIV is estimated as very low, most dying before their first birthday⁸⁸. World wide, one out of six deaths among children, below the age of fifteen years, is caused by AIDS, and although the price of medicine has fallen recently, only 5 per cent of HIV contracted children actually receive these drugs and worse still, only 10 per cent of pregnant women can afford these medicines to prevent transmission of the disease to their children.⁸⁹

Many developing countries cannot afford the price of Anti Viral Zidovudine (AZT) and other HIV/AIDS drugs such as South Africa which pressed the government to passed legislation⁹⁰ aimed at providing greater access to HIV/AIDS drug treatment⁹¹, namely *"The Medicine Act 1997 and the South African Medicines and Medical Devices Regulatory Act"*.⁹² However, in response the United States imposed special export conditions on South Africa and *"placed South Africa on the Special 301 "Watch List"*, and the Pharmaceutical Manufacturers' Association (PMA) of South Africa sued the South African government.⁹³

86 "UN: 80m Africans may die of AIDS". Available at: <http://english.aljazeera.net/NR/exeres/32F7F196-F68E-4747-9161-D2C7806DB432.htm>. Accessed on: 11/5/2005. And see: Whiteside, A. (2008) *"HIV/AIDS Avery short introduction"*, London: Oxford University Press, p 20.

87 In 2003 the UNICEF Report said that: "by 2010, about 20 million African children will have lost one or both parents to the disease. In countries worst hit by the epidemic such as Botswana, Lesotho and Swaziland, where HIV prevalence rates are higher than 30%, as well as in Zimbabwe, more than one in five children will be orphaned by 2010, 80% of them by AIDS". Available in: AIDS orphans "11m African children" Sunday, November 30, 2003. Available at: <http://english.aljazeera.net/NR/exeres/316B96A9-6278-486B-94F5-821010DFBCEB.htm>. Accessed on: 15/11/2005.

88 Cooper, J. (1996), "The Politics of Pediatric AIDS", 3 *Cardozo Women's Law Journal* (53), pp 57-58.

89 Available at: http://www.unicef.org/arabic/media/24327_33891.html?q=printme. Accessed on: 18/7/2006.

90 This law considered as against the intellectual property rules which introduced through the TRIPS (Trade-Related Aspects of Intellectual Property Rights).

91 Driver, J. C. (2002), "African AIDS Crisis: Implications from the rise of managed care in South Africa", 30 *The Georgia Journal of International and Comparative Law* (305), pp 307-309.

92 Dolmo, B. C. (2001), "Examining Global Access to Essential Pharmaceuticals in the Face of Patent Protection Rights: The South African Example" 7 *Buffalo Human Rights Law Review* (137), pp 137-138.

93 Jiang, P. (2002), "Fighting the AIDS epidemic: China's options under the WTO TRIPS agreement" 13 *Albany Law Journal of Science & Technology* (223), pp 241-242.

However, following public pressure from AIDS activists and public health groups, US previous president Clinton issued an executive order in May 2000 to promote access to HIV/AIDS medicines in sub-Saharan Africa.⁹⁴

This was indeed a significant and important development. Dr Bernard Fabre-Teste, WHO's adviser for the disease in the Western Pacific region has said "*The lack of low-cost Aids drugs was a key problem for many developing countries*". Now, it is hoped the cost of HIV/AIDS treatment will assist in escalating the access to vital drugs for millions especially in the poor countries and across the globe.⁹⁵

In 2006 the UNAIDS estimated that the number of people living with HIV globally will be nearly 39.5 million⁹⁶. But in November 2007, the UNAIDS said that the estimation in 2006 was not accurate and in 2007 the UNAIDS estimated the current of people living with HIV is to be 33.2 million.⁹⁷

The Global Fund Against HIV/AIDS and other diseases such as Tuberculosis and Malaria was established in 2001 by the UN "*to manage and distribute financial resources to*

94 "*The order promised not to take retaliatory action against sub-Saharan African countries with respect to any intellectual property law or policy of a beneficiary sub-Saharan African country ... [that] promotes access to HIV/AIDS pharmaceuticals or medical technologies ... [and that] provides adequate and effective intellectual ... property protection consistent with the [TRIPS] Agreement.*"

"*The pharmaceutical manufacturers also dropped their lawsuit against the South African government, and one of the companies, GlaxoSmithKline Plc, even granted a voluntary license to a major South African generics producer (Aspen), allowing them to share the rights to their drugs AZT, 3TC and the combination Combivir without charge. South Africa's success in defending its Medicines Act has set an encouraging precedent for all developing countries suffering an AIDS epidemic*". For more detail See: Kapczynski, A. *etal* (2005), "Addressing Global Health Inequities: An Open Licensing Approach for University Innovations" 20 Berkeley Technology Law Journal (1031), pp1034-1037. For example, in 2004 Brazil reached a deal with pharmaceutical companies to reduce the price of HIV/AIDS drugs by around a third". For more details please see: Driver, J. C. (2002), "African AIDS Crisis: Implications from the rise of managed care in South Africa", 30 The Georgia Journal of International and Comparative Law (305), pp 307-309. And see: Dolmo, B. C. (2001), "Examining Global Access to Essential Pharmaceuticals in the Face of Patent Protection Rights: The South African Example" 7 Buffalo Human Rights Law Review (137), pp 137-138.

95 "Bypass patent laws on Aids drugs WHO". Available at: <http://www.gulf-news.com/Articles/WorldNF.asp?ArticleID=183449>. Accessed on: 16/11/2005.

96 "UNAIDS releases dramatically revised global HIV estimates". Available at: <http://www.avert.org/aidsnews.htm>. Accessed on: 23/11/2007.

97 "Global HIV prevalence has leveled off; AIDS is among the leading causes of death globally and remains the primary cause of death in Africa". Available at: http://data.unaids.org/pub/EPISlides/2007/071119_epi_pressrelease_en.pdf. Accessed on: 23/11/2007.

*countries in need*⁹⁸, and although AIDS expenditure increased from US\$300 million in 1996 to US\$5 billion in 2003, it is widely thought that even this will not be sufficient. In 2005 UN figures suggested that US\$20 billion will be needed by 2007 to continue different types of programmes such as prevention and medical treatments especially in African countries⁹⁹ and more by 2008 (see next table).

Table 2: AIDS Resource needs (US \$billions)¹⁰⁰

Programme Type	2006	2007	2008
Prevention	8.4	10.0	11.4
Treatment and Care	3.0	4.0	5.3
Orphans &vulnerable children.	1.6	2.1	2.7
Programme cost	1.5	1.4	1.8
Human Resources	0.4	0.6	0.9
Total	14.9	18.1	22.1

According to Peter Piot, the UNAIDS previous Executive Director, UNAIDS “*must secure over \$20 billion every year from 2008 on to make headway towards universal access and to overcome the weak capacity of the health and social sectors*”.¹⁰¹

In recent years the United Nations has held a number of conferences and adopted a number of recommendations on how to combat HIV/AIDS, in 2006, it issued a Declaration aimed at “*enhancing the means of combating the disease*”. The Declaration stated that about 12

98 Flood, C. M. & Williams, A. (2004), "Global health and wellness: A response to international health threats: A tale of Toronto: national and international lesson in public health governance from the SARS crisis" 12 Michigan State Journal of International Law (229), pp 245-246.

99 "1.1 million People infected with HIV in Asia last year alone". New UNAIDS Report unveils latest global epidemic trend, UNAIDS, (2004), p 2. Available at: http://data.unaids.org/Media/Press-Releases02/PR_Globalreport2004_06Jul04_en.pdf?preview=true. Accessed on: 1/6/2005.

100 "US\$ 22 Billion needed in 2008 to reverse spread of AIDS", press release, UNAIDS, (2005), p 2. As published at: http://data.unaids.org/Media/Press-releases03/PR_FUNDING_22June05_en.pdf?preview=true. Accessed on: 1/6/2005.

101 "Statement at the UN General Assembly High Level Meeting on AIDS". New York, 31 May, 2006. Available at: http://data.unaids.org/pub/Speech/2006/20060531_SP_Piot_HLM_en.pdf. Accessed on: 31/5/2006.

billion pounds are required annually until 2010 to combat the disease¹⁰². The annual resources had increased since 2001 with an annual average of 1.7 billion dollars until 2004, 2006 required double of the amount spent in 2005 which amounted to 8.3 billion dollars¹⁰³ and the participating countries have also decided to search for additional resources to ensure comprehensive free access to treatment by the year 2010.¹⁰⁴

However, the previous General Secretary of the U.N. Kofi Annan described the Conference as “short sighted” because it neglected to specify the categories which are most prone to the risk of the disease, such as drug addicts and prostitutes, especially as some countries consider such activities to be illegal activities according to their penal codes.¹⁰⁵

Currently, however, many African countries appear to be experiencing HIV epidemics throughout the general population, rather than them simply occurring within ‘high risk’ groups such as sex workers, homosexual men, and injecting drug users¹⁰⁶ *“although in some regions, up to 90 per cent of all injecting drug users are HIV infected”*.¹⁰⁷ Moreover, according to the WHO, the overwhelming majority of the world's population in developing countries does not have access to safe blood and 31 countries of 133 cannot afford all the facilities of screening the donated bloods¹⁰⁸. Reporting of the disease can also pose problems in developing nations as they may not have the necessary diagnostic resources, or may not wish to disclose *“the true extent of the disease for fear of damaging their valuable tourism industry or admitting the existence of certain underlying social problems”*.¹⁰⁹

102 "UN Aids wording frustrates Annan", 3/6/2006. Available at:

http://news.bbc.co.uk/2/hi/in_depth/5039948.stm. Accessed on: 10/3/2009.

103 "Report on the global AIDS epidemic executive summary, a UNAIDS 10th Anniversary special edition", p 3. Available at: <http://search.unaids.org/Results.aspx?q=short+sighted+&d=en&l=en>. Accessed on: 13/1/2009.

104 "AIDS Epidemic looking for a solution". Available at:

http://www.alkhaleej.ae/arabic/articles/show_article.cfm?val=277971. Accessed on: 20/6/2006.

105 *ibid*.

106 "A global overview of the AIDS epidemic", 2004 Report on the global AIDS epidemic. Available at:

http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_03_en.htm#Figure1. Accessed on: 25/5/2006.

107 "HIV-AIDS Epidemic Can Be Prevented and Reversed among Injecting Drug Users, Says UNODC Head". Available at: <http://www.unis.unvienna.org/unis/pressrels/2003/nar824.html>. Accessed on: 27/2/2006.

108 "10 facts on blood transfusions", 14 June 2008, p 2-3. Available at: <http://www.who.int/bloodsafety/en/>. Accessed on: 10/3/2009.

109 Nelson, L. (1987), "Current development: International travel restrictions and the AIDS epidemic" 81 *American Journal of International Law* (230), pp232-233.

As Somerville and Wilson have asserted:

"Throughout human history, epidemic disease has constituted a natural experiment in how societies respond to disability, dependence, fear and death. In this sense, the manner in which a society responds reveals its most fundamental cultural, social, and moral values. Disease is not merely a biological phenomenon; it is shaped by powerful behavioural, social and political forces. Social values affect both the way we come to see and understand a particular disease and the interventions we undertake. In this view, disease is "socially constructed".¹¹⁰

While the WHO has undoubtedly played an important role in supporting all nations in their struggle against HIV/AIDS, it is submitted that this role is limited because of the links with other issues, such as poverty, unstable political situations, education, religion and tradition. As we mention in the first chapter, many people are unaware of the fact that sharing a living space or having physical contact with infected persons or breathing the same air are not some of the means of transmitting the HIV. This is also true with regard to dining together, or going to the same swimming pools or sharing crockery etc. However, HIV/AIDS is a killer disease and there is no final cures or vaccines, and people are deeply frightened of being in close proximity with an infected person by HIV, which is evidence of the lack of necessary awareness's-raising campaigns concerning the ways of HIV transmission and on how to relate safely to infected persons without having to resort to a stigmatic shunning of them.

The spread of the disease is not confined to the Asian world or Africa alone. It has actually crossed borders to affect the Arab world as well. Certain Arab governments might prefer not to disclose the actual or official statistical figures of the spread of the disease, as it is mythically associated in the consciousness of people with immoral practices shunned by the very conservative traditions of the Arab world.

According to the 2008 UNAIDS report, Sudan is the exception in the Middle East. It is indicated that Sudan harbours the biggest number of reported cases of HIV/AIDS and this is considered to be 522,720 infections. Unsafe sexual intercourse between men and women stands high among the suggested means of transmitting the virus which accounts for about

¹¹⁰ Somerville, M. A. & Wilson, S. (1998), "Crossing Boundaries: Travel, Immigration, Human Rights and AIDS", 43 McGill Law Journal (781), pp 788-789.

97 per cent of infections and hence, increasing the rate of the spread of the disease in that Arab country¹¹¹. Paid sexual intercourse is considered the major cause of the epidemic spread of the disease in the Arabic countries, while transmission of the HIV via contaminated syringe injection is said to be the major cause of the spread of the disease in countries like Libya and Tunisia and to a lesser degree in Algeria, Morocco and Syria.¹¹²

Being infected with the HIV entails various repercussions, including both medical ones relating to the infected persons and also social and economic ones. From an economic point of view, HIV/AIDS creates an almost insurmountable problem for all concerned persons and bodies, involving them in intense controversy about public budgets allocated to the treatment of sick persons. For example, the cost of treatment in neighboring country like Saudi Arabia¹¹³ ranges between 80.000 to 200.000 Saudi Riyals (12.000-30.000 Sterling Pounds) per year, that is in addition to unemployment benefits paid to the infected persons and the losses incurred from being unable to engage in any sort of productive work.¹¹⁴

The US government has spent up to 89 billion dollars, since 2001 until 2007, for the treatment and care of diseased persons. The funds allotted for treatment increased up to 47 per cent. Furthermore, the administration allocated more than 18 billion dollar for research related to HIV and AIDS in an attempt to discover a cure or a vaccine for the disease. The financing of this item increased by 20 per cent within the same period.¹¹⁵

In the 25 African countries most affected by the epidemic spread of the disease, the disease has claimed the lives of more than 7 million farmers in the period between 1985 to 2002 and it is estimated that a further 16 million persons will have perished by the end of the coming 20 years.¹¹⁶

111 "United Nation General Assembly, special session on HIV/AIDS (UNGASS) report", 2006-2007, p11-12.

112 Available at: <http://www.aljazeera.net/news/archive/archive?ArchiveId=1076723>. Accessed on: 15/6/2008.

113 The annual cost of treatment in UAE for HIV/AIDS patients is unpublished.

114 Available at: <http://www.alarabiya.net/articles/2008/06/09/51237.html>. Accessed on: 5/7/2008.

115 Available at: <http://usinfo.state.gov/xarchives/display.html?p=washfile-arabic&y=2007&m=November&x=20071130152732bsibhew0.1774866&chanlid=ar>. Accessed on: 14/4/2008.

116 Available at: http://www.accnetwork.net/news/news/feb2002/aids_ar.htm. Accessed on:

In 2005, the Food and Agriculture Organisation of the United Nation "FAO" estimated the number of orphans who had lost one or both parents by succumbing to the fatal disease to be 11 million children in Africa¹¹⁷, and according to a joint report released by UNICEF, UNAIDS and WHO in excess of two million children were living with HIV/AIDS in 2007.¹¹⁸

The AIDS epidemic is having a devastating impact on rural populations in developing countries. *"The heavy loss of agricultural labour in countries where the majority of the population lives in rural areas is likely to affect productivity, food production, food security and poverty for decades to come,"* said Marcela Villarreal, Director of FAO's Gender and Population Division.¹¹⁹

It is quite evident that the epidemic is not just a mere health problem, for it had and still has a devastating impact on food security in various parts of the world. It effectively abolishes the hard-won achievements in agricultural and rural development which have occurred over the last 40 years. According to the Kenyan Ministry of Agriculture and Rural Development, the total number of lost working days as a result of the epidemic HIV/AIDS in 2002 reached up to 329,000 days within the agricultural sector alone. It is not surprising to know that the number was a mere 45000 in 1990.¹²⁰

One of the real dangers resides in the fact that infected persons may be tempted to resort to the sex trade as a lucrative business to make up for the shortage they face in covering treatment expenses¹²¹. The UNAIDS has declared that if HIV/AIDS spread exceeded 20 per cent in any given community, individual income will decrease at a ratio of 2 per cent. It is therefore expected that the spread of this unpreventable disease may affect GDP

16/3/2008.

117 FAO News Room, (2005), "Schools for life: training for HIV/AIDS orphans in Sub-Saharan Africa". Available at: <http://www.fao.org/newsroom/en/news/2005/1000169/index.html>. Accessed on: 16/3/2008.

118 Available at: http://www.kaisernetnetwork.org/daily_reports/rep_index.cfm?DR_ID=51371. Accessed on: 14/4/2008.

119 FAO News Room, (2006), "AIDS Epidemic worsens in rural areas: FAO tackles problem on several fronts". Available at: <http://www.fao.org/newsroom/en/news/2006/1000449/index.html>. Accessed on: 19/5/2008.

120 "World food Summit-Five years later". 10-13 June, 2002. Available at: <http://www1.fao.org/ar-cp/worldfoodsummit/arabic/newsroom/focus/focus4.htm>. Accessed on: 2/5/2008.

121 "Guidelines for HIV interventions in emergency settings" UNHCR/WHO/UNAIDS: 1996, p 3.

tremendously by the advent of the year 2010 at a rate of 17 per cent which is approximately 22 billion dollar in South Africa.¹²²

From the social perspective, any death from AIDS helps to increase fear of the disease amongst thousands of persons. Psychiatrists claim that a new derivative disease to be named AIDS Scare is bound to affect millions of people and which has already affected millions of people in the recent years around the world.¹²³

As for the social impact, it is also evident that HIV/AIDS does not only affect patients but the community at large. It causes significant psychological and social turmoil. The infected persons suffer from bodily swellings and deformities caused by the deterioration of their immune system's ability to fight back, and which consequently lead to their being shunned and stigmatised by healthy people for fear of contracting the virus. In the advanced stages of the disease a general weakness befalls the patient to the extent that the patients would not be able to look after themselves and to cope with others in a normal manner. A complete isolation from the social surroundings may eventually lead to a devastating lack of confidence on the part of patients.

Psychologically speaking, the physical suffering of HIV/AIDS patients normally results in psychological disturbances such as acute depression as they lethargically contemplate the menacing idea of their imminent death, knowing only too well that there is no cure available for their disease. The situation is aggravated by the image of HIV/AIDS patients in the collective mind, especially in Arab societies where the stigma is embedded within a keen suspicion of wrong-doing on the part of the patient, such as being involved in homosexual practices or drug addiction. Adding assault to injury, the relatives of such patients usually fail to provide the necessary and badly-needed support as they share the public fear of HIV/AIDS patients with the rest of the community, due to lack of awareness of the nature of the disease and the ways in which it spreads or transmitted.

122 Kalla, K. (2003), "Care USA Global: HIV/AIDS Strategy overview". Available at: <http://www.care.org>. Accessed on: 15/8/2008.

123 Sabour, S. (2006), "AIDS", Cairo: Aharam Publishing House, p 5.

It is quite understandable that HIV/AIDS patients receive the news of their being infected with the virus with disbelief and denial. The final realisation that the diagnosis is correct may cause a sort of rebellious fury. Starting to count their numbered days, some patients wish to hasten the process of dying to spare themselves psychological and physical agony. The worst type of such psychological traumas are those befalling innocent patients who were not involved in the practices known to be the main causes of transmission of the virus¹²⁴, such as promiscuity and drug addiction but received the virus through negligence like taking in contaminated blood in blood transfusion after an accident or surgery. Such patients have got every right to be enraged at contracting the disease through no fault of theirs. Also this category of HIV/AIDS victims includes the spouse who is infected by the virus from his/her drugs addict partner, or the newly born baby from its infected mother.

Women are more at risk from contracting HIV. In the year 2004 the percentage of women victimised by the disease is estimated to be half of the 40 million or so patients around the world. The percentage of infected women in Africa amounts to more than 57 per cent of the total number of HIV/AIDS patients¹²⁵. The position of women is aggravated if we realise that the number of orphans who opt for leaving school to earn a living is on the increase. The impairment is coupled with humiliation; stigmatisation and even physical violence by husbands against women who dare to admit to their being infected with the HIV, which is quite out of control in Africa.¹²⁶

Many law professionals and researchers around the world worked to scrutinise the problems associated with the HIV/AIDS disease, arriving, in the process, at very different and sometimes contradictory conclusions. HIV/AIDS, from a legal perspective has a diverse range of affects. However, and for the absence of common regulations and principles amongst sovereign states, each one had to face up to the challenge by resorting to its own set of laws and regulations, which naturally led to issuing different laws suitable for different peoples and adhering to socially and economically disparate cultural backgrounds.

124 Ittihad Newspaper, May 14, 2002, p 7.

125 "Women and HIV/AIDS: Confronting the crisis", (2004), joint report by UNAIDS/UNFPA/UNIFEM, p 2, 6.

126 Kiai, W. "Media functions in HIV/AIDS prevention and managements", p 38. Available at: http://www.unesco.org/webworld/publications/media_aids/chapter_3.pdf. Accessed on: 16/3/2008.

The idea of punishing HIV/AIDS victims, within the criminal law framework, could be ethically unacceptable for some people, for the very simple reason that such victims have already suffered enough and have yet to suffer for the rest of their lives. Nevertheless, it remains equally valid that society cannot turn a blind eye to the HIV/AIDS victims who deliberately seek to infect healthy people out of sheer malice.

Developed countries have forgotten about epidemics for more than a century after putting into place the essential structural foundations for a healthy and secure society including childcare and vaccination against contagious diseases. They managed to accomplish strategic health planning whereby highly advanced diagnostic procedures and early intervention to curb the spread of any emerging health threat have been made available. The necessary funding for medical research for providing medicines, manufactured according to the most advanced findings of scientific research have also been provided.¹²⁷

The HIV/AIDS threat is no longer the concern of one sector of the society but it involves all sectors including law professionals, medical doctors, scientists, researchers, sociologists and other related professions, in their concerted attempt to provide the badly needed help and support for the millions of AIDS victims. Their role is not just limited to giving of help and support but is extended to organising awareness-raising campaigns and inviting the concerned authorities to take the necessary actions in handling the crisis.

This could be clearly recognised in the role played by the U.N. and its affiliated organisations, which have become the major sponsor and the chief coordinator of these campaigns. By assuming a leading role, the UN is actually creating a sort of balance in handling the disparate attempts undertaken by individual states. It also supplied financial funding and logistic support to these attempts as the HIV/AIDS threat has become an international phenomenon, assailing countries as widely different and diverse as France, USA, UK, Congo, Sudan, UAE and many other poor states all over the world.

127 Al Saleh, A. (2006), "The new diseases and it is effect on the community", Sana'a: Al Forqan Library, p 27.

With the ominous threat of the HIV/AIDS epidemic and its overwhelming demoralising corollaries, it is pertinent to delineate and define clearly the roles to be played by international, human rights, U.N. affiliated and civic society organisations, together with influential forces within any given society like religious bodies that normally engage in organising interrelationships within their communities. The role played by the latter is far reaching, involving relations between individuals, and governmental institutions that are supposed to shoulder the responsibility of preserving human dignity and rights be it of victims or felons.

2.3. The protection of HIV/AIDS patients, under international human rights law.

The Universal Declaration of Human Rights states in article 25(1):

"Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control".¹²⁸

The significance of this Declaration¹²⁹ derives from the fact that although it is not a legally binding document, the Universal Declaration of Human Rights has "*inspired more than 60 human rights instruments which together constitute an international standard of human rights. These instruments include the ICESCR and the ICCPR, both of which are legally binding treaties*"¹³⁰. The U.N. has established for this purpose a Commission on Human Rights which was developed by the UN into the council "HRC" in 2006¹³¹. In addition, the European Convention on Human Rights has been ratified by all European members¹³². Article 7 confirms that no one shall be punished without laws, article 8 protects the privacy of the family rights and article 14 protects the individuals from any type of racism or

128 Yamin, A. E. (2003), "Not just a tragedy: access to medications as a right under international law" *21 Boston University International Law Journal* (325), pp 342-343.

129 To the Universal Declaration has been added two other major International Covenants, one on Civil and Political Rights and the other on Economic, Social and Cultural Rights as well as further elaboration through many important treaties and declarations.

130 Available at: <http://www.humanrightsandtolerance.org.uk/udhl.html> Accessed on: 2/5/2010.

131 Available at: <http://www2.ohchr.org/english/bodies/hrcouncil/>. Accessed on: 19/4/2010.

132 Available at: http://www.europa-eu-un.org/articles/en/article_1008_en.htm Accessed on: 12/5/2010.

discriminations¹³³. As we noted, all these Articles protect Human Rights in general and will protect the HIV/AIDS victims in particular when it's necessary to ensure for them a stable life.

It needs to be noted that when the Universal Declaration of Human Rights was issued, only three Arabic countries were independent and members of the United Nations (Saudi Arabia, Egypt and Lebanon), but Saudi Arabia abstained from voting for the Universal Declaration stating that Articles 16/1, and 18¹³⁴ contradicted with Islamic *Shari'a* Law¹³⁵. Later, following independence, most Arab¹³⁶ states signed most of the later international Human Rights Conventions¹³⁷. The majority of the Gulf State Countries, including the United Arab Emirates signed many UN covenants, UAE has acceded to three of the seven covenants in the field of human rights, such as the UN Convention on the Rights of Child, International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women¹³⁸. In 2008 UAE confirmed its respect to the Human Rights by ratifying the 2004 Arab Charter on Human Rights and became a party on it with other seven Arab countries.¹³⁹

133 "Convention for the protection of the human rights and fundamentals freedoms as amended by protocol No.11", Council of Europe. Available at: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>. Accessed on: 15/3/2009.

134 Article 16/1 stated that: "*Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. Article 18 stated that: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*". Available at: <http://www.arabhumanrights.org/cbased/ga/hr-declaration48e.html>. Accessed on: 16/5/2006.

135 Faye, M. (2004a), "The human rights", Beirut: Arabic Union Study Centre, p 104.

136 There were many documents and meeting in the field of Human rights in the Islamic world to make it as a commitment between the Islamic and the Arabic countries like, the human rights Declaration project and its duty in Islam, published by Islamic World Committee on 1979, and the Islamic World Statement, published by the European Islamic Council in London on April 1980, and the Global Declaration on the human rights in Islam, published by the European Islamic Council in London on September 1981, and a document of project about the human rights in Islam (a suggestion forefront to the Islamic conference in Saudi Arabia on January 1981, and another one in Tehran on December 1989. None of them has been effect until now. For more information please see: Alfilaly, M. (2004), "Analysis view in the human rights throw the treaties", Beirut: The Arabic Union Study Centre, and see also, Faye, M. (2004b), "The human rights between the privacy and the globalisation", Beirut: Arabic Union Study Centre.

137 Available at: <http://www.hrw.org/english/docs/2006/01/18/uae12233.htm>. Accessed on: 5/5/2010.

138 UAE did not ratify or join the: ICESCR, ICCPR. For the whole list of the UAE Ratification of Human Rights Conventions please see: <http://www.arabhumanrights.org/en/ratification/index.asp?id=1>.

139 Available at: http://www.uaeinteract.com/docs/UAE_ratifies_Arab_charter_on_human_rights/28218.htm. Accessed on: 12/5/2010.

The Emirates rely to a great extent on the expertise of the UN as a body of high professionals and therefore have accepted without questioning issues related to criminalisation and the core interests of human being¹⁴⁰. Thus, when the question involves human rights and criminalisation, the most relevant reference that links the interest of the UAE and the UN will be the Human Rights Declaration instruments.¹⁴¹

As has been shown previously, the UAE has signed or supports most UN treaties and among those promoting and maintaining human rights and human dignity. It is also significant that the UAE is one of the active members positively responding to UN recommendations.¹⁴²

The HIV/AIDS epidemic has created fear and discrimination among people¹⁴³. In some Islamic countries they can be described as 'disobedient', who by committing a sin, has caught the disease. At the early stages of the epidemic, some suggested quarantine of individuals with AIDS and tattooing of homosexual men. Another suggestion was to apply compulsory HIV testing¹⁴⁴. The fear of contracting HIV leads on some occasions to refusing even the funeral services for death of HIV/AIDS victims¹⁴⁵. Exploration of the HIV/AIDS situation in some conservative countries is limited; an Iranian¹⁴⁶ journalist was an example when she was suspended for five years as a result of writing an article on HIV/AIDS in a newspaper¹⁴⁷. Yet the individual right to privacy and freedom of expression is a human right which must be protected. This is also reflected in international agreements, such as the

140 Available at:

http://www.unaids.org/en/PolicyAndPractice/HumanRights/humanrights_criminalization.asp. Accessed on: 1/4/2010

141 Available at: http://www.un.org/esa/socdev/csd/2008/documents/United_Arab_Emirates.pdf. Accessed on: 12/4/2010

142 Available at: <http://www.un.org/ga/63/generaldebate/uae.shtml>. Accessed on: 7/4/2010

143 Gostin, L. O. *et al* (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: article: "The names debate": The case for national HIV reporting in the United State" 61 Albany Law Review (679), pp 727-728.

144 Closen, M. L. (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: article: The decade of Supreme Court avoidance of AIDS: Denial of certiorari in HIV-AIDS cases and its adverse effects on human rights" 61 Albany Law Review (897), pp 907-908.

145 *ibid*, pp 908-909.

146 The Defence Lawyer of the Iranian Journalist reported that: his client was suspended from her profession and deprived from her social rights for 5 years as a result of her Article on the weekly "Tamadoon" titled "Let's be frank and open about AIDS". This young Journalist on her twenties was sentenced to 1 year in jail.

147 Available at: http://www.alkhaleej.co.ae/articles/print_friendly.cfm?var=283132. Accessed on: 05/7/2006.

International Covenant on Civil and Political Rights (ICCPR) which aimed to protect individuals' privacy from "*arbitrary or unlawful interference*".¹⁴⁸

It is not easy to achieve the right balance between giving any State the power to deal with the problem and protect the community in general in an effective manner, while also ensuring that the rights of individuals will not be violated in the process¹⁴⁹. For example, individuals will not come voluntarily to be tested if they feel that in so doing they will put themselves face to face with some kinds of "*discrimination and breaches of confidentiality*" and even could cause the loss of their work¹⁵⁰. However, allowing people at risk of being infected with HIV to choose voluntarily not to know whether they are HIV infected has been described as "*a perversion of human rights and a formula for HIV disaster*".¹⁵¹

The U.N. General Assembly has taken the view that controlling the incidence of the disease is improved by providing testing but that "*confidentiality requirements must protect individuals from inappropriate disclosure or misuse of information*"¹⁵². Moreover it has been argued that it is sometimes more difficult for women in developing countries (specially in an Islamic countries) to discuss their HIV status with their partners/spouses and that even going to check their status could be difficult as this would make their partner mistrustful and affect their relationship.¹⁵³

The International Guidelines on HIV/AIDS and Human Rights published by The Office of the High Commissioner for Human Rights (OHCHR) and UNAIDS in 1998 promote an "*increasing awareness of the human rights principles underlying the response to HIV/AIDS while providing measures to be used by Governments in the areas of law, administrative*

148 Thornton, B. S. (1995), "The new international jurisprudence on the right to privacy: A head-on Collision with *Bowers v. Hardwick*" 58 Albany Law Review (725), pp 731-733.

149 Dawkins, K. & Briggs, M. (2005), "Review: Criminal Law" 3 New Zealand Law Review (393), pp 422-424.

150 Dwyer, J. M. (1993), "Legislating AIDS away: The limited role of legal persuasion in minimizing the spread of the Human Immunodeficiency Virus" 9 Journal of Contemporary Health Law & Policy (167), pp 170-171.

151 Cooper, (*op. cit*), pp 66-67.

152 Burris, S. (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: Article: Law and the social risk of health care: Lessons from HIV testing" 61 Albany Law Review (831), pp 839-840.

153 Baggaley, R. (2001), "The impact of Voluntary Counselling and Testing: A global review of the benefits and challenges", Geneva: UNAIDS Press, pp 19-20.

*policy and practice to achieve HIV-related public health goals*¹⁵⁴. Under the ICESCR, states parties must refrain from "*denying or limiting equal access for all persons...to preventive, curative and palliative health services; [and] abstaining from enforcing discriminatory practices as a state policy*"¹⁵⁵. Moreover, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, and the Committee on Economic, Social and Cultural Rights, which monitors the Covenant, in 2000 made it clear that the right to health included *inter alia* access to care, treatment, support and to HIV-related education.¹⁵⁶

Yet, it is pertinent to note that, in spite of all these international declarations and resolutions, around 25 million Africans contracting HIV and suffering from AIDS have no access to any health care and there is no availability of any kind of treatment services while half a million women die during the critical period of pregnancy and delivery.¹⁵⁷

Another area where HIV infected individuals have suffered discrimination is when travelling. In 1985, the WHO stated:

"In accordance with Article 81 of the International Health Regulations...no health document, other than those provided for in the Regulations, shall be required in international traffic; thus it is pointed out that there is no provision for any certificate guaranteeing that a person entering any country or coming from any country is free from a given disease. This also applies to AIDS, and no country bound by the Regulations may refuse entry into its territory to a person who fails to provide a medical certificate stating that he or she is not carrying the AIDS virus".¹⁵⁸

Also in 1988, the WHO issued a resolution entitled "*Avoidance of Discrimination in Relation to HIV-infected People and People with AIDS in National Policies, Including Those Affecting Travel*" and a "*Statement on Screening of International Travellers for*

154 "HIV/AIDS and the sale of children, child prostitution and child pornography Commission on Human Rights resolution on HIV/AIDS". Available at:

<http://www.ohchr.org/english/issues/children/rapporteur/hiv.htm>. Accessed on: 2/6/2006.

155 Yamin, (*op. cit*), pp 352-353.

156 "HIV/AIDS and Human Rights International Guidelines" Third International Consultation on HIV/AIDS and Human Rights, (2002), Geneva: United Nations Publication, p 6.

157 *ibid*.

158 Fitzpatrick, J. & Bennett, W. M. (1995), "Symposium on immigration policy: A lion in the path? The influence of international law on the immigration policy of the United State" 70 Washington Law Review (589), pp 610-611.

Infection with Human Immunodeficiency Virus”, which asserts that screening international travellers for HIV is “*ineffective, impractical and wasteful*”¹⁵⁹. However, sixty countries around the world refuse foreigners entry to their country unless they prove that they are HIV free.¹⁶⁰

Also article 8 of the European Convention on Human Rights establishes an individual's fundamental right to respect and protect his privacy such as private and family life. Non-nationals convicted of crimes in the signatory countries have invoked this right to prevent deportation for "the protection of health or morals"¹⁶¹. Nonetheless, it has been argued that some countries around the world use prevention methods as an excuse to violate human rights and to discriminate against people with HIV/AIDS¹⁶². Also in the political Declaration on HIV and AIDS (2006) the UN recommends that governments should increase their commitments to the human rights protection of HIV Patients and provide all necessary support in many levels by implementing a different and wide range of awareness and prevention programs.¹⁶³

2.4. The United Nations and Criminalising the Transmission of HIV/AIDS.

Laws are created to protect human rights and freedoms, which entails bringing those responsible for law enforcement to an awareness that their role is to combat the spread of the disease and not to oppress the victims. The campaign is against the spread of the virus and not the carriers of it. Without the clear realisation of this simple fact the efforts, exerted by developed and developing countries alike, to stop the spread of the virus would be essentially futile. That is why so many countries have rendered the transmission of the virus

¹⁵⁹ *ibid*, pp 611-613.

¹⁶⁰ Thompson, A. (2005), "The Immigration HIV Exclusion: An Ineffective Means for Promoting Public Health in a Global Age" 5 Houston Journal of Health Law and Policy (145), pp 151-152.

¹⁶¹ "Convention for the Protection of Human Rights and Fundamental Freedoms". Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>. Accessed on: 5/6/2006.

¹⁶² Qureshi, S. N. (1995), "Global ostracism of HIV-positive aliens: International restrictions barring HIV-positive aliens" 19 The Maryland Journal of International Law & Trade (81), pp 3-4.

¹⁶³ UNAIDS Reference Group on HIV and Human Rights, Seventh Meeting, 12-17 February, 2007, p1. Available at: >>

http://data.unaids.org/pub/BaseDocument/2007/070216_HHR_2_UniversalAccessCivilSociety.pdf. Accessed on: 1/9/2007.

illegal. The Netherlands' penal code stipulates that the transmission of the virus is punishable by the law under the provisions of article No.82, 300-302 concerning serious harm or injury to other persons, to mention but one example. It is also significant here that the text of the law does not clearly mention HIV/AIDS, however the act is included as falling within the jurisdiction of this particular article¹⁶⁴. The Dutch government argues that it is more important to combat the spread of the virus than work out a legal provision incriminating the offenders by amending the laws or instituting a new article into the code¹⁶⁵. *"Other instances of using existing laws to prosecute persons who perpetrated the act of transmitting the disease to others took place in Australia, New Zealand and France"*.¹⁶⁶

Currently much debate focus on how HIV/AIDS may be minimised and slow the spread through legal means. The United States of America and Australia have taken the lead and starting before others countries in criminalising HIV transmission and made it a crime punishable by law; the United Nations has adopted a different approach.¹⁶⁷

The United Nations' International Guidelines on HIV/AIDS and Human Rights (23rd -25th September, 1996 in Geneva) recommend that:

"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 foreseeable, intent, causality and consent are clearly and legally established to support a guilty verdict and/or harsher penalties".¹⁶⁸

According to UNAIDS, while laws against people suffering of HIV/AIDS have been passed in the hope they will reduce HIV infection and reassure citizens, only in some cases

164 Ahmed, A. (2007), "Criminal liability in Islamic jurisprudence and criminal laws", Cairo: New University House, p 20

165 Kouwen, W. V. & Bruinenberg, K. (2006), "Supreme Court of the Netherlands, Criminal Division (Hoge Raad der Nederlanden, Strafkamer): HIV Transmission: Criminalisation" 70 Journal of Criminal Law (485), pp 488-489.

166 Csete, J. & Seshu, M. S. (2004), " Still underground: searching for progress in realizing the human rights of women in prostitution" 9 Canadian HIV/AIDS Legal Network, IV/AIDS Policy & Law Review (3), p 62-63.

167 Gostin, (2003), *op. cit*, pp 10-11.

168 Elliott, R. (2002), "Criminal Law, Public Health and HIV Transmission: A Policy Options Paper", p 30. Available at: http://data.unaids.org/Publications/IRC-pub02/JC733-CriminalLaw_en.pdf?preview=true. Accessed on: 4/6/2006.

can such laws be implemented - and evidence suggests they simply make no progress in reducing the spread of HIV¹⁶⁹. In a report entitled "Criminal Law, Public Health and HIV Transmission" (released at the 14th International AIDS Conference in Spain, 2002) it was stated that, charging of those who transmit the virus under criminal law as a deterrent should not be permitted, and using public health laws, which is more effective, instead to reduce transmission¹⁷⁰. On the other hand the Human Rights Watch has claimed that:

*"These laws are often arbitrarily applied and are ineffective at preventing HIV transmission".*¹⁷¹

UNAIDS experts have also pointed out that criminalisation can be counterproductive as it forces individuals to lead "double lives" to hide their infection, making their access to health and educational programmes more difficult. In addition, it increases "*discrimination, perpetuates myth and misinformation, and inhibits open discussion and public education*"¹⁷². Moreover, its effectiveness in reducing the spread of HIV is highly doubtful¹⁷³. In the same vein, the use of control measures has been rejected by the U.N. as "*comprehensive contact tracking in the case of HIV would be practically impossible without extensive and expensive surveillance techniques, which would place unacceptable limits on civil liberties*".¹⁷⁴

There is no real agreement about the best method of fighting the spread and preventing the intentional transmission of the virus¹⁷⁵. The report *Criminal Law, Public Health and HIV Transmission* (2002), however, does suggest that criminal penalties may be appropriate in cases of deceit, but that merely failing to disclose HIV-positive status should not amount to

169 "N JAILS "(2002), *AIDS Policy and Law*, Vol 17, No.14, p 1.

170 Renquin, (*op. cit*), pp 874-875.

171 Human Rights News "AIDS Conference: Drive for HIV Testing must respect rights". Available at: <http://hrw.org/english/docs/2006/08/09/canada13944.htm>. Accessed on: 23/9/2007.

172 "UNAIDS Reference Group on HIV and Human Rights Seventh meeting, 12-14 February, 2007, Issue paper for the session: Criminalization of HIV transmission", p 1. Available at: http://data.unaids.org/pub/BaseDocument/2006/070216_hhr_3_criminalization.pdf?preview=true. Accessed on: 26/11/2007.

173 Ormerod, D. (2001), "Criminalizing HIV Transmission-still No Effective Solution" *30 Common Law World Review* (2), p 141.

174 *ibid*.

175 Ruby, R. (1999), "Apprehending the weapon within: The case for criminalizing the intentional transmission of HIV" *36 American Criminal Law Review* (313), pp 313-314.

a criminal offence¹⁷⁶. Yet UNAIDS does not have a clear cut view at the start with regard to HIV/AIDS criminalisation nor a clear stand whether individual countries should or should not criminalise the transmission of HIV/AIDS¹⁷⁷. The organisation has let countries have a free hand in this matter of criminalisation, and has not put pressure on any country that criminalised HIV transmission such as the USA or Kuwait when it is passed such laws in 1992.

On the other hand, Weait pointed that:

"Both of these guidelines, as is the case with the others, are exhortatory rather than prescriptive – because they are guidelines, they are not legally binding on state. Nevertheless, each concerns the potentially oppressive use of law against PLHA and each, in its further elaboration, is categoric and detailed about the ways in which States should avoid using the law".¹⁷⁸

The UNAIDS organisation instead has fixed its field of vision on prevention and education as vital elements to curb this disease. The stand of UNAIDS has mainly resulted from the nature of the organisation and the concerns of the member organisations that are mainly concerned with health and prevention, namely the WHO, UNESCO and UNICEF. However, although detecting the virus in early stage and others preventative measures such as blood testing have helped in reduce HIV transmission cases in developed countries, this approach has been less effective in undeveloped nations because of inherent social, economic, health and education issues.¹⁷⁹

In 2006, the WHO and UNAIDS consulted a representatives of NGOs experts and organisation of people living with HIV/AIDS (PLHA) and the consultant participants suggested that:

176 Elliott, R. (2002), "Criminal Law, Public Health and HIV Transmission: A Policy Options Paper", p 10. Available at: http://data.unaids.org/Publications/IRC-pub02/JC733-CriminalLaw_en.pdf?preview=true. Accessed on: 4/6/2006.

177 For more details please see "WHO technical consultation in collaboration with the European AIDS Treatment Group and AIDS Action Europe on the criminalization of HIV and other sexually transmitted infections" Copenhagen, 16 October, 2006. Available at: http://www.keele.ac.uk/research/lpj/Law_HIV-AIDSPROJECT/WHOCrimconsultation_latest.pdf. Accessed on: 23/9/2007.

178 Weait, M. (2007), "Intimacy and Responsibility: The Criminalisation of HIV Transmission", London: Routledge, p 9.

179 Bartschi, K. J. (1995), "Legislative responses to HIV/AIDS in Africa" 11 Connecticut Journal of International Law (169), pp 193-194. And please see: Rebecca, R. (*op.cit*) pp, 318 320.

"It was strongly suggested that the criminal law should be limited to only intentional contact and should not extend to criminalising recklessness, whether considering situations of actual transmission or simple exposure".¹⁸⁰

In 2008, the UNAIDS requested again all governments around the world to use the criminal law in the intentional transmission of HIV cases only where the person knows that he/she is infected and intends to transmit the virus to another and he/she does. The UNAIDS requested also that legislators and legal authorities take a precautionary step and "reject" any application of laws to avoid violating human rights regulations especially where the person did not know that he/she is carrying the virus or there is no intention of transmission by practising a safe sex. If such a law is applied it must be under the criminal law in general and compatible with human rights rules rather than a specific law. At the same time UNAIDS argued that legal authorities should establish a specific and clear definition of the word "intention" to avoid any misunderstanding by the police and legal authorities.¹⁸¹

2.5. Conclusion.

Twenty eight years on, the HIV/AIDS epidemic has spread to every corner of the globe. Each day 14,000 new HIV infections add to the epidemic's impact on health and, ultimately, on the social and economic stability of nations¹⁸². While at the international level there is no clear resolution to the question of *"whether or not criminal prosecution of those who transmit the virus should be pursued, it is clear that more needs to be done to fight the deadly disease"*.¹⁸³

The suffering caused by the HIV/AIDS epidemic is recognised in many countries worldwide, especially Africa where many of its nations have experienced the greatest

180 "WHO technical consultation in collaboration with the European AIDS Treatment Group and AIDS Action Europe on the criminalization of HIV and other sexually transmitted infections" Copenhagen , 16 October 2006, p 9. Available at: http://www.keele.ac.uk/research/lpj/Law_HIV-AIDSPROJECT/WHOCrimconsultation_latest.pdf. Accessed on: 23/9/2007.

181 For more in depth please see: "UNAIDS policy brief: Criminalization of HIV transmission" Available at: www.unaids.org. Accessed on: 7/10/2008.

182 "The current situation". Available at: <http://www.unfpa.org/hiv/2002update/1a.htm>. Accessed on: 11/5/2006.

183 Renquin, (*op. cit*), pp 875-876.

impact,¹⁸⁴ and the adult infection rates have now exceeded 20 per cent in South Africa and nearly double that in Botswana.¹⁸⁵

Side by side with education the community can build links as stated in the Universal Declaration of Human Rights, Article 26.2:

"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".¹⁸⁶

Most importantly, governments should move fast and act as soon as possible. As Dr. Peter Piot, the previous UNAIDS Executive Director, told an audience at the Fourteenth International AIDS Conference in 2002, *"It is now clear that the AIDS epidemic is still in its early stages. And let us be equally clear: our fight back is at an even earlier stage."*¹⁸⁷

Although legislation alone will be powerless and can't solve the problems created by HIV/AIDS, a suitable legislative and governmental immediate response can play an important role in reducing the transmission of this incurable deadly virus amongst people.¹⁸⁸ In the mean time, Islamic principles in Arab countries in general and in the UAE in particular alone will not reduce the spread of the HIV infection unless they are co-ordinated together in one framework in order to implement a fully equipped protection campaign.

However, there needs to be an acceptable balance between the right of society to protect individuals from the infection and the rights of the individuals to the protection of their private life and basic freedoms, such as voluntary testing with fully informed consent, avoiding any kind of isolation based on their status which could fuel social stigma. Any

184 Gostin, (1998), *op. cit*, pp 6-7.

185 Wesley, A. & Cann, J. (2004), "Symposium: Corporate & legal implications of re-pricing medicines in developing nations: Article: On the relationship between intellectual property rights and the needs of less-developed countries for access to pharmaceuticals "creating a legal duty to supply under a theory of progressive global constitutionalism" 25 University of Pennsylvania Journal of International Economic Law (755), pp 757-758.

186 "Human rights education" Human Rights Day, 10 December, 2004. Available at: <http://www.unis.unvienna.org/unis/en/news/2004/news20041210.html>. Accessed on: 13/5/2006.

187 Gostin, (2003), *op. cit*, pp 15-17.

188 Bartschi, (*op. cit*), pp 197-198.

legislative response which is directed at individuals infected with HIV/AIDS can be counter-productive as it can isolate these people, who may be feeling vulnerable, "*while also falsely reassuring those who are not infected*".¹⁸⁹

UNAIDS in the latest 2008 report, confirm its previous guideline on avoiding the involvement of the criminal laws in the case of reckless transmission and for the disease to be considered as a public health matter. Deliberate transmission should be categories, if necessary under a general criminal law rather than a special offence created for this purposes.¹⁹⁰

189 Somerville, (*op. cit*), pp 833-834.

190 "UNAIDS policy brief: Criminalization of HIV transmission". Available at: <http://www.unaids.org>. Accessed on: 7/10/2008.

Chapter Three

Criminalisation of HIV Transmission: pros and cons.

3.1. Introduction.

One of the prime objectives of the criminal law would appear to be the protection of the public from harm; the question of what is meant by 'harmful' - and therefore criminal - conduct, falls to those who make or interpret the law.¹⁹¹

Reeder describes the HIV/AIDS fight as:

"The battle against Acquired Immune Deficiency Syndrome (AIDS) has spread from hospitals and laboratories into the courtrooms of the world. Recently, courts have experienced an influx of cases where a person afflicted with HIV has intentionally, or recklessly, exposed others to the virus. Different countries' legal systems deal with the transmission of HIV in different ways".¹⁹²

The researcher reviewed legislation and measures to address the spread of AIDS in general and HIV in particular in developed countries to identify some approaches which have been used to combat HIV/AIDS; in addition, in response to research question number four on the efforts of other states and how the UAE can learn from other countries' experiences, the researcher has chosen the United Kingdom and the United State of America as examples to represent the western hemisphere particularly in view of the availability of updated sources and data.

This chapter will trace the developments, both legislative and non-legislative in the UK and USA from their initial approach in the 1980s, through to the present day and the advantage or disadvantage of criminalising the HIV/AIDS transmission. This however will not involve an in-depth study as that would be beyond the remit of the research. The aim is simply to draw upon differing approaches in order to compare and inform the approach of the United Arab Emirates to these issues.

191 Earle, M. (1998), "HIV and reform of the law" 148 New Law Journal (6841), pp 757-756.

192 Reeder, (*op. cit*), pp 401-402.

3.2. *The UK.*

The first case of AIDS in the UK was in the 1980s. HIV, the virus that causes AIDS, was identified later¹⁹³. As can be seen from the table on the next page, at the end of 2004, a total of 64,599 people had been diagnosed with HIV in the UK¹⁹⁴, and it is known that at least 13,082 of these people have died¹⁹⁵. The figures from the Health Protection Agency (released on 24/11/2005) put the figure of HIV diagnoses higher: at around 58,300¹⁹⁶. *"2005 saw a large increased in annual new HIV diagnoses in the UK, where the number of people been diagnosed have doubled since 2000"*¹⁹⁷ and there has been an 83 per cent increase since then to put the number to 7095 of new HIV cases diagnosed in 2006¹⁹⁸ and 6840 new cases estimated to be diagnosed in 2007¹⁹⁹. The NHS estimated that the total number of people living with HIV is 73000 in 2007 and nearly 21000 of these are unaware of their infection²⁰⁰. Weait mentioned that: *"by the end of March 2007 there had been a total of 86,738 HIV diagnoses in the UK, 45 per cent of which were among men who have sex with men, 40 per cent among heterosexuals, and 5 per cent among injection drug-users. Of those diagnosed, 70 per cent have been male and 30 per cent female"*²⁰¹. In 2007 the National AIDS Trust estimated that the numbers of people living with HIV in UK will be nearly 100,000 by 2010.²⁰²

In this part we will see the approach which has been adopted by the UK as a developed country which took many steps to slow the spreading of HIV in many different levels such as public awareness side by side with medical research.

193 Available at: http://www.bbc.co.uk/radio1/oneline/health/sex/hiv_uk.shtml. Accessed on: 29/5/2005.

194 HPA Communicable Disease Surveillance Centre (HIV and STI Department) and the Scottish Centre for Infection and Environmental Health: *Unpublished Quarterly Surveillance. Tables No.65, 04/4, Table 1.*

Available at: <http://www.avert.org/AIDSfaqs.htm#q1>. Accessed on: 27/9/2005.

195 Available at: <http://www.avert.org/AIDSfaqs.htm#q1>. Accessed on: 27/9/2005.

196 Health Protection Agency, 'Press Release: Number of people living with HIV in the UK is now over 58,000', 24 Nov 2005. Available at: http://www.hpa.org.uk/hpa/news/articles/press_releases. Accessed on: 24/11/2005.

197 North America, western and central Europe, Fact Sheet, Last update December, 2006, p 2. Available at: http://data.unaids.org/pub/EpiReport/2006/20061121_epi_fs_nawce_en.pdf. Accessed on: 19/7/2007.

198 Available at: <http://www.tht.org.uk/informationresources/factsandstatistics/uk/>. Accessed on: 15/9/2007.

199 Available at: <http://www.medicalnewstoday.com/articles/102111.php>. Accessed on: 15/9/2008.

200 Available at: <http://www.nhs.uk/Livewell/LGBhealth/Pages/HIV.aspx>. Accessed on: 17/9/2008.

201 Weait, (2007), *op.cit*, p 4.

202 Available at: <http://www.nat.org.uk/>. Accessed on: 13/8/2007.

Table 3: HIV infected individuals by country, region and year of HIV diagnosis²⁰³

Country and region of diagnosis		1988 or Earlier	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	Total
ENGLAND																			
	North East	250	25	26	27	37	22	32	22	24	35	22	30	37	56	96	136	48	925
	Yorkshire & Humberside	432	56	81	66	87	79	66	81	90	82	85	91	103	181	302	424	111	2417
	East Midlands	207	44	57	48	69	67	56	51	47	45	62	89	101	197	260	320	121	1841
	Eastern	283	50	51	73	90	83	62	77	57	75	87	96	186	314	489	535	137	2745
	London	6954	1375	1643	1757	1693	1636	1585	1679	1708	1731	1767	1954	2336	2770	2877	2973	737	37175
	South East	1025	167	192	194	228	221	232	167	227	213	207	217	353	496	681	802	223	5845
	South West	376	78	97	88	86	67	107	88	78	92	104	103	104	136	178	204	65	2051
	West Midlands	366	71	88	84	83	82	75	99	64	99	110	104	180	214	400	425	66	2610
	North West	677	116	145	158	171	148	147	182	186	149	187	207	233	424	408	401	17	3956
ENGLAND (total)		10570	1982	2380	2495	2544	2405	2362	2446	2481	2521	2631	2891	3633	4788	5691	6220	1525	59565
WALES		169	34	36	37	50	40	46	45	36	45	30	34	47	63	76	102	11	901
N IRELAND		55	10	12	19	12	12	14	12	16	9	9	14	19	20	26	32	20	311
SCOTLAND		1273	116	119	172	133	171	148	148	164	167	159	148	152	164	217	248	123	3822

203 As Published by: Communicable Disease Surveillance Centre (HIV & STI Department) and Scottish Centre for Infection & Environmental Health. Unpublished Quarterly Surveillance, Tables No. 63, 04/2 Table. As published at: <http://www.avert.org/AIDSfaqs.htm#q1>. Accessed on: 27/9/2005.

The figures of the HIV epidemiology have shown worrying trends over the past few years - diagnosed HIV infections increased between 2001 and 2002 by 20 per cent to 34,300, and undiagnosed HIV infections by 17 per cent to 15,200. According to the Health Protection Agency "HPA" 5,047 new HIV diagnoses were reported for 2003 compared to 4,204 at the same time in 2002, an increase of nearly 20 per cent²⁰⁴. It has been further estimated that 30 per cent of the people who contracting the deadly virus are not aware of it.²⁰⁵

The two largest groups infected with HIV are homosexuals and people infected through heterosexual sex (see next table), but there has also been an increase in the number of heterosexual people being diagnosed with HIV in the UK. In fact, since 1999 the number of new HIV cases in this group of people has been higher than the number of people diagnosed through sex between men. The majority of these are from Africa. Around 80 per cent of these cases are thought to have been contracted abroad²⁰⁶. On the other hand, after 1997, HIV infections due to the sharing of syringes to inject drugs have accounted for less than 5 per cent of infections diagnosed in the UK. This could be partly due to improved awareness among drug users and the availability of clean needles from needle exchanges.²⁰⁷

204 The UK Response to the HIV Epidemic: An Assessment of the UK's Compliance with the UNGASS Declaration of Commitment on HIV/AIDS. Available at:

http://www.nat.org.uk/documents/UNGASS_REPORT.doc. Accessed on: 3/5/2005.

205 Health Protection Agency, HIV and other Sexually Transmitted Infections in the United Kingdom in 2003 (Annual Report), November, 2004. Available at: <http://www.avert.org/AIDSfaqs.htm#q1>. Accessed on: 27/9/2005.

206 *ibid.*

207 *ibid.*

Figure 4: United Kingdom: data to end June 2004²⁰⁸HIV infected individuals²⁰⁹ by year of HIV diagnosis and exposure category

Year of UK diagnosis	Sex Between Men ²¹⁰	Sex between men and Women			Injecting drug use (IDU)			Mother to Infant			Sub Total	Blood / tissue transfer or blood factor ²¹¹		Other / undetermined		Total ²¹²
		M	%	F	M	%	F	M	%	F	(100%)	M	F	M	F	
1988 or earlier	7923	333		379	1089		563	18		18	10323	1361	56	291	32	12088
	77%		7%			16%			0%							
1996	1554	358		480	118		54	30		33	2627	10	11	45	10	2703
	59%		32%			7%			2%							
1997	1409	451		558	122		48	51		33	2672	16	13	35	13	2750
	53%		38%			6%			3%							
1998	1369	520		643	96		35	47		51	2761	4	6	44	19	2835
	50%		42%			5%			4%							
1999	1367	600		836	78		34	37		41	2993	10	11	54	18	3088
	46%		48%			4%			3%							
2000	1516	758		1249	73		39	55		48	3738	9	15	57	33	3852
	41%		54%			3%			3%							
2001	1765	1066		1812	98		36	53		41	4871	14	11	101	43	5040
	36%		59%			3%			2%							
2002	1809	1309		2257	81		25	51		55	5587	13	17	198	202	6017
	32%		64%			2%			2%							
2003	1735	1336		2465	71		36	69		64	5776	14	14	434	368	6606
	30%		86%			2%			2%							
2004 ²¹³	440	317		535	26		5	13		14	1350	0	4	166	159	1680
	33%		63%			2%			2%							
Total ²¹⁴	31870	9238		13768	2850		1274	588		566	60154	1530	234	1753	965	64678
	53%		38%			7%			2%							

208 The table and the footnotes below are published by: Communicable Disease Surveillance Centre (HIV & STI Department) and Scottish Centre for Infection & Environmental Health. Unpublished Quarterly Surveillance Tables No.63, 04/2 Table.

209 Individuals with laboratory reports of infection plus those with AIDS or death reports for whom no matching laboratory report has been received.

210 Includes 736 men who had also injected drugs.

211 Includes 5 tissue recipients and 1358 blood factor recipients (mainly males with hemophilia).

212 Includes 42 patients with sex not stated on report.

213 Reported in first two quarters of year.

214 The total number conclude the cases since 1989 until 2004.

One problem resulting from the rising number of the HIV infections is the increased cost of health care and treatment, estimated in 2000 to be between £135,000 and £181,000²¹⁵ for lifetime treatment of an HIV-positive person, while the total cost of treatment and care in 2002-03 reached £345 million²¹⁶. The fast spread of HIV and other infection diseases have led to an increase in the calls to criminalise the HIV transmission among people, the reason behind that was to control HIV transmission which is caused by sexual activity - considered as a major reason and nearly a (84%) of all cases of HIV transmission.²¹⁷

It is almost inevitable that illness and diseases will spread among people but in most circumstances criminal liability would generally be nonsensical (hence the reason why there are no prosecutions for the transmission of the common cold). However, there are more serious cases where, as for example HIV, where the transmission can cause death and transmission methods are well known, it is somewhat different²¹⁸. There are many groups in the UK that argue against the criminalisation of HIV. Such as the civil liberty and equal rights lobbies which have claimed that the measures which have been already adopted by which they mean the public health approach are sufficient. Until now it is not clear whether both education campaigns and health-prevention and awareness-based policy have been ineffective. Indeed there may also be a space for the criminal law to be involved and a role to be played as an important tool in controlling the spread of disease by punishing those who are endangering and threatening others intentionally, or unintentionally²¹⁹. Thus, this section will examine the current approach, together with proposals for reform and the arguments put forward by both opponents and supporters of the criminalisation of the transmission of the HIV/AIDS virus adopted in the United Kingdom.

215 'Sexual Health: Third Report of Session 2002-03', House of Commons Health Committee, May 2003, p 46. Available at: <http://www.avert.org/AIDSfaqs.htm#q1>. Accessed on: 27/9/2005.

216 *ibid*.

217 Ormerod, (*op .cit*), p 136-137.

218 Warburton, D. (2004), "A Critical Review of English Law In Respect of Criminalising Blameworthy By HIV+Individuals" 68 Journal of Criminal Law (1), p 55-56.

219 *ibid*.

3.2.1. *The current legal position.*

A crime can be defined as an act or omission or (exceptionally) a state of affairs which contravenes the law. Prosecution by the relevant authorities may follow, as well as punishment on conviction.²²⁰

One of the main functions of criminal law is censuring, that is, for the state to publicly express censure of the wrongdoing²²¹. The criminal law therefore represents "*a legitimate exercise by the state of its power to investigate crime and punish criminals*" on behalf of wronged citizens. In addition, the criminal law operates as a guide to the citizen as to what activities are permitted, and what are not. Thus "*the criminal law represents the rules of social control within a society*".²²²

The "harm principle" provides justification for the state in criminalising any conduct that causes harm – or the risk of harm - to others²²³. This approach however, has to be balanced, and the 'last resort principle' holds that any expansion of the criminal law should take place only where necessary, both with regard to the creation of new offences and to the expansion of existing offences. This is to ensure the protection of freedom, civil liberties and privacy – an underlying principle of criminalisation is that the criminal law should respect fundamental rights and freedoms²²⁴. *There are two sources of fundamental rights relevant to English criminal law – European Community Law, and the European Convention on Human Rights.*²²⁵

As Laurie mentioned:

"Whereas no system of criminal justice is particularly clear in its goals, it is widely accepted that one of the prime objectives of the criminal law is the protection of the public by the maintenance of law and order. In deeming certain kinds of conduct as 'harmful', it is thought that the law can be used to influence

220 Allen, M. (2001), "Text Book on Criminal Law", London: Black Stone Press Limited. P1.

221 Ashworth, A. (2003), "Principle of Criminal Law-Fourth Edition", Oxford: Oxford University Press. Pp 36-38.

222 Allen, M. (2007), "Text Book on Criminal Law", Oxford: Oxford University Press. P2-3.

223 Ashworth, A. (1999), "Principle of Criminal Law-Third Edition", Oxford: Oxford University Press. P32.

224 Clarkson, C. M. V. (2009), "Attempt: The Conduct Requirement", 29 oxford journal of legal studies (25), pp36-37.

225 Ashworth, A. (1999), *op.cit*, p62.

the acts of individuals in society. The decision as to which acts are 'harmful', and therefore criminal, is taken by those who make or interpret the law, normally in the name of reasserting the community's values or representing its moral outlook".²²⁶

There are two possible approaches of the criminal law in UK in this field: the first to be examined here is the use and extension of existing provisions through the common law to deal with the transmission of the virus, either during sexual conduct or in relation to blood-borne transmission, (such as through the sharing of 'dirty' needles, or where an infected individual physically attacks another, for example, by biting); the second approach to be considered will be the introduction of HIV/AIDS-specific legislation.

3.2.2. The current approach in England and Wales.

The first requirement for criminal responsibility in England and Wales is the existence of an *actus reus* –that is, an act forbidden by law. With regard to HIV, the *actus reus* would clearly be the transmission of HIV from one individual to another.²²⁷

However, there are other factors which are also necessary constitute the completed *actus reus*. For example, under the criminal law it must be declared that the particular criminal result of any action is the consequence caused by the accused's conduct. It would therefore have to be proved that the defendant actually transmitted the virus to his victim, but as it is known that the HIV infection has a long incubation period, it might be difficult for the prosecution to prove the causes element in this case.²²⁸

While the transmission of a disease -in general- may simply be an unfortunate event, HIV is different, *as it is transmitted only in specific circumstances*, which involve a voluntary act. This difference also demonstrates the second necessary element of a serious crime at common law in England and Wales, namely *mens rea* (the requirement for a 'guilty mind', or mental state of an individual when committing the *actus reus*). As HIV infection is not

226 Laurie, G. T. (1991), "AIDS and Criminal Liability under Scots Law" 36 Journal of the Law Society of Scotland (8), p 312-313.

227 Warburton, (*op. cit*), p 60-61.

228 Laurie, (*op. cit*), p 312-313.

only an accidental event, it is argued that it therefore indicates intention or recklessness on the part of the individual in question.²²⁹

However, difficulties of proving intention to infect have arisen in many HIV prosecutions around the world. Someone who has avoided infecting partners and continues to engage in unprotected sexual intercourse could claim that he had no intention to infect others.²³⁰

However, intention is not always required, and in most cases "*the mental element of a crime can be constituted by evidence of recklessness*".²³¹ Recklessness is a question of fact, to be proved by the prosecution. Laurie mentions that: "*Yet as Gordon has noted regarding the uncertain nature of recklessness questions '[in such cases] the accused is at the mercy of the moral indignation of the jury'*".²³²

Homicide in England and Wales principally involves the offences of murder and manslaughter at common law. Murder is the unlawful killing of a human being under the Queen's peace with malice aforethought. According to Sir Edward Coke (*Institutes of the Laws of England*, 1797):

"Murder is when a man of sound memory, and of the age of discretion, unlawfully killeth within any country of the realm any reasonable creature *in rerum natura* under the King's peace, with malice aforethought, either expressed by the party or implied by law, so as the party wounded, or hurt, etc. die of the wound or hurt, etc. within a year and a day after the same."²³³

The *mens rea* for murder is malice aforethought. The House of Lords in *R v Moloney* [1985] AC 905 held that nothing less than intention to kill or cause grievous bodily harm would constitute malice aforethought: merely foreseeing the victim's death as probable was insufficient. In *R v Cunningham* [1981] 2 All ER 863, the House of Lords stated that an intention to cause "really serious injury" was sufficient to amount to the *mens rea* for murder.²³⁴

229 *ibid.* And for more about *actus reus* please see: Molan, M. (2008), "Cases and materials on criminal law – Fourth Edition", London: Routledge.Cavendish, p 54.

230 *ibid.*

231 *ibid.* For more please see: Ormerod, D. (2008), "Smith and Hogan Criminal Law-12th Edition", London: Oxford University Press, p 94.

232 *ibid.*

233 Huxley-Binns, R. (2009), "Criminal Law", Oxford: Oxford University Press. P80.

234 Martin, J. & Storey, T. (2007), "Unlocking Criminal Law-Second Edition", London: Hooder Education. p297.

Voluntary manslaughter occurs in certain situations where the law has recognised that someone who has killed with the *mens rea* for murder should be treated differently: these situations are provocation, diminished responsibility and suicide pacts. None of these is a full defence, as a successful plea results in a conviction for voluntary manslaughter.²³⁵

Diminished responsibility has undergone significant changes in recent months by reason of the Coroners and Justice Act 2009, Part 2 which makes major changes to the law of partial defences to murder. Previously, the law had been contained in s.2 (1) Homicide Act 1957, according to which:

"Where a person kills or is a party to the killing of another, he shall not be convicted of murder if was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or in being party to the killing".²³⁶

In England and Wales there are three types of assault in ascending order of gravity²³⁷: first, common assault (s39 Criminal Justice Act 1988), secondly, assault which occasion's actual bodily harm (s47 Offences Against the Persons Act 1861) and, thirdly, a wound or assault which inflicts grievous bodily harm (s18 and s20 of the Offences Against the Persons Act 1861).²³⁸

In *R v Donovan*, Swift J, delivering the judgment of the Court of Criminal Appeal, said:

"Bodily harm" has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor. Such hurt or injury need not be permanent, but must, no doubt, be more than merely transient and trifling".²³⁹

One of the most well known cases in this field is that of (*R v Clarence*, (1889) 22 QB 23). Clarence, aware that he had gonorrhoea and continued practicing sexual intercourse with his wife²⁴⁰. She contracted the disease, and Clarence was convicted under Sections 20 and 47 of the Offences against the Person Act 1861. However, on appeal his conviction was

235 Elliot, C. & Quinn, F. (2004), "Criminal Law- Fifth Edition", London: Pearson Education Limited. p45

236 Mahendra, B. (2006), "The law of homicide—expert reform?", 156 New Law Journal (320). Pp 158-159.

237 Please refer to the UAE Penal code, Chapter seven in the Appendix to see the difference.

238 Clarkson, C. M. V. (2005), "Understanding Criminal Law-Fourth Edition", London: Sweet & Maxwell, p 184.

239 Laurie, (*op. cit*), pp312-313.

240 Spencer, J. (2004), "Retrial for reckless infection" 154 New Law Journal (7129), p 762.

reviewed. The Court of Appeal said that the consent in this case will not meet if there is a mistake according to the nature and quality of the act, but that in this case there was no such a mistake: the act was simply sexual intercourse between a wife and a husband, which they were agreeing to²⁴¹. However, this decision has been criticised on the grounds that sexual intercourse with a man infected with a serious disease is different in nature and quality from that with a healthy individual.²⁴²

Thus the decision in *Clarence* stood as the authority, until the first conviction in England and Wales for knowingly transmitting HIV to a partner, which took place on 14 October 2003. Mohammed Dica²⁴³ was convicted of two counts of inflicting "biological" grievous bodily harm, according to section 20 of the Offences against the Person Act 1861 where, knowing he had contracted the deadly virus, he engaged in sexual relation with two women without informing them about his condition and that two women subsequently contracted HIV.²⁴⁴

The judges concluded that:

"The ultimate question is not knowledge, but consent. We shall confine ourselves to reflecting that unless you are prepared to take whatever risk of sexually transmitted infection there may be, it is unlikely that you would consent to a risk of major consequent illness if you were ignorant of it ... the question whether the defendant was or was not reckless, and whether the victim did or did not consent to the risk of a sexually transmitted disease, is one of fact, and case specific".²⁴⁵

The jury in the same case seems to be hesitant about the difficulties of the defendant conviction, many thought would be critical to such prosecutions: notably *Clarence*, but also, as noted above, causation.²⁴⁶

241 Foster, C. (2003), "The questions to ask a husband (or wife) before sex" Time Newspapers, October 21, 2003, p 6.

242 Weait, M. (2004), "Dica: knowledge, consent and the transmission of HIV" 154 New Law Journal (7130), pp 826-827.

243 (R v Dica (2004) EWCA Crim 1103).

244 Warburton, (*op.cit*) pp 61-62.

245 "Retrial order for Dica case", (2004) 154, New law Journal (7127), p 674," News".

246 Foster, (*op. cit*), p 6.

It is perhaps worth pointing out that had Mohammed D (a Muslim as appears from his name) been prosecuted in the UAE, he would have been tried according to his religion i.e. Islam (and consequently, he would have received far harsher punishment), as in the UAE, offenders are tried according to the laws stipulated by their religion, rather than the laws of the state which apply to all citizens regardless of their religion (as is the case in the UK).

Thus, while there are still no HIV-specific offences in England and Wales, there have recently been several prosecutions for sexual transmission of HIV²⁴⁷ using existing legislation (The Offences Against the Persons Act 1861)²⁴⁸. Specifically, since the M Dica case, Feston Konzani, from Malawi was sentenced to 10 years in prison for infecting three women with HIV²⁴⁹ and in January 2004, another man, Kouassi Michék Adaye, was sentenced to 6 years for infecting his sexual partner²⁵⁰. In the former case, the jury was told how Konzani was informed that he was HIV positive, but carried on having unprotected sex with other women²⁵¹. Judge Peter Fox said: "*The grievous bodily harm which you inflicted falls into the category of the very worst sort.*" He told Konzani that, *he had acted "callously" and destroyed the life of his schoolgirl victim, who was a virgin at the time*²⁵², adding:

"In the UK there are approximately 50,000 people suffering from this dreadful plague and until recently it has been increasing at the rate of 4,000 to 6,000 a year... I have to send a clear message to those who suffer your infection and that is that they must disclose it to their sexual partners and they must take protection if sexual intercourse is to occur".²⁵³

247 See all cases since 2001 until 2006. Available at: <http://www.nat.org.uk/document/331>. Accessed on: 15/11/2007.

248 See Mohamed Dica case at: <http://news.bbc.co.uk/1/hi/uk/3191312.stm>. The first criminal prosecution for the sexual transmission of HIV took place in Scotland. In March 2001. Stephen Kelly, an ex-prisoner, was convicted of having "recklessly injured" his former partner by infecting her with HIV.

249 See: www.AIDSmap.com/news/newsdisplay2.asp?newsId=2711.

And: www.guardian.co.uk/uk_news/story/0,3604,1217343,00.html.

250 "The UK Response to the HIV Epidemic: An Assessment of the UK's Compliance with the UNGASS Declaration of Commitment on HIV/AIDS". Available at:

http://www.nat.org.uk/documents/UNGASS_REPORT.doc. Accessed on: 3/5/2005.

251 For more detail about the case please see: http://www.hmcourts-service.gov.uk/judgmentsfiles/j3177/r-v-feston_konzani.htm. Accessed on: 1/11/2007.

252 Stokes, P. (2004), "10 years' jail for gay HIV asylum seeker who infected women" *The Daily Telegraph*, May 15, 2004, p 12.

253 *ibid*.

In a recent development, on July 18 2005, the first woman was convicted in the UK of knowingly infecting her sexual partner with HIV – of ‘inflicting grievous bodily harm’ under the OAPA 1861²⁵⁴ which give us a clear indication that the current law can deal with HIV transmission, the important element here is which provisions are suitable in view of the biological and chemical nature of the HIV. It has been suggested, for example, that the nature of the virus makes it similar to a poison or other toxic thing. Indeed there is judicial authority to the effect that '*an infection is a kind of poisoning. It is the application of an animal poison*'.²⁵⁵ This would lead to the fact that the transmission of HIV is considered to be in the same category of the administration of a poison and, certainly, if this similarity was adopted, then transmission would fall within the current provisions of the 1861 Act (ss23 and 24).²⁵⁶

Yet it is important to assess the actual merits of an extension of the law in this way to cover prosecutions for transmission of HIV. The existence of criminal provisions serves as an expression of disapproval and according to Strickland:

"the range of circumstances in which there is a real risk of the transmission of HIV is so varied that it is wishful thinking to aim to criminalise transmission. To avoid offending particular groups in society, especially those regarded as high-risk groups for the transmission of HIV, such as homosexuals, bisexuals or drug users".²⁵⁷

Strickland believes that it is necessary to categorise the circumstances and the ways of transmission so that more than one type of existing offence can be used depending on the transmission styles". Her proposed range of circumstances which she suggested in 2001 is shown in the next table.

254 Bruxelles, S. (2005), "Woman who knew she had HIV is jailed for infecting boyfriend", The Times, July 19, 2005. The report did not mention the section of OAPA 1861 which been used on this trial, for more detail please see also: http://www.walesonline.co.uk/news/wales-news/tm_objectid=15752308&method=full&siteid=50082&headline=welsh-girl--20--first-in-britain-to-be-jailed-for-deliberately-infecting-boyfriend--with-hiv-name_page.html. And see: Weait, (2007), *op. cit*, p 29.

255 Laurie, (*op. cit*), p 312.

256 *ibid*.

257 Strickland, C. (2001), "Why Parliament should create HIV specific offence". Available in as published by: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>. Accessed on: 52/9/2005.

Table 4: Circumstances of transmission and the possible prosecution option.

Circumstances of transmission	Possible existing prosecution options
Sexual transmission	ss 18 and 20 of the OAPA 1861 or murder or manslaughter
Blood transfusions	ss 23 and 24 of the OAPA 1861 or manslaughter
Needles/syringes	ss 18, 20, 23 and 24 of the OAPA 1861 or murder or manslaughter
Perinatal transmission	ss 18 and 20 of the OAPA 1861
Postnatal transmission by breast feeding	ss 23 and 24 of the OAPA 1861 or manslaughter or infanticide
Medical/surgical procedures	ss 18 and 20 of the OAPA 1861

3.2.3. AIDS-specific legislation.

An alternative approach to be considered here is that of HIV-specific legislation. At present, as noted, there are no criminal statutes in the UK dealing with this issue.

English law reform agencies have made various attempts to address HIV criminalisation. For example, in 1993 the Law Commission Report ‘Criminal Law, Legislating the Criminal Code, Offences against the Person and General Principles’, stated that intentional or reckless transmission of disease could constitute an offence against the person, two years later, the report ‘Criminal Law, Consent in the Criminal Law (1995)’ proposed precluding a defence of consent for the proposed offence of recklessly causing seriously disabling injury.²⁵⁸

In 1998²⁵⁹, the Home Office issued a consultation paper entitled ‘Reforming the Offences Against the Person Act 1861’, which concluded that the present position regarding

²⁵⁸ Ormerod, (*op. cit*), p 167.

²⁵⁹ "In 1998, following a recommendation from the Law Commission, the official law reform body, ministers issued a consultation paper proposing a new offence of "intentional transmission of a disease with intent to cause serious harm", and in Mohamed Dica case," the prosecution followed a decision by the Home Office

Intentional transmission of HIV was not satisfactory. It proposed a new offence criminalising those who on purpose cause grave harm by transmitting HIV. Those people would be treated as if they had perpetrated a violent act such as stabbing or shooting. The proposal was not an attempt to change the law in any important way, but to represent a clarification of the law that has been in practice since 1861.²⁶⁰

One of the main problems with these new proposals is their lack of deterrent effect, even though with the availability of retroviral therapy. Earle²⁶¹, for example, says that someone who believed that his life is limited and suffering from HIV/AIDS, who has intentionally infected someone else is unlikely to serve the rest of his sentence in a prison.²⁶²

Moreover, with regard to the *mens rea* of the new proposed offence, the proposal is not clear in its definition of the intentional and surrounded with ambiguities. The Terrence Higgins Trust, for example, argues that "*the word 'intentional' should be given a very precise, and narrow, legal meaning, requiring a person to want to infect someone with HIV, and then act in such a way as to make this happen and the virus transmit, the same as injecting someone with HIV-infected blood with the intention of infecting them*".²⁶³

Another proposal is for sections 23 and 24 of the 1861 Act to be subsumed into s 11 of the new Bill, creating an offence of *administering a dangerous substance*, which could be the basis for a prosecution for the transmission of HIV²⁶⁴. Many people rejected the crime described in s 11. The reason behind that is "administration" offences are not sufficient to cause actual injury and many of the problems related with issues of causation would disappear and that the administration itself is enough for the crime to be completed as long

*some years ago that there were enough powers under the Offences against the Person Act 1861 to secure convictions in such cases". Available at: <http://news.bbc.co.uk/1/hi/uk/3191312.stm>. Accessed on: 15/2/2007. 260 *ibid*, p 142.*

261 Earle draws a parallel with the proposal in 1997 by the Home Secretary Michael Howard that "*mandatory life sentences be imposed for a second rape offence. This was condemned by the legal establishment as losing the deterrent factor within criminal sentencing by imposing the same sentence as that for murder, which would lead to victims of rape becoming victims of murder and at no greater risk to the offender*".

262 Earle, (*op.cit*), pp 757-756.

263 Ormerod, (*op. cit*), pp 148-149. The UNAIDS also requested the world governments to define the meaning of the word "intentional" on its latest report on 2008, "Policy Report: Criminalization of HIV Transmission".

264 Earle, (*op. cit*), pp 757-758.

as the accused is aware of the danger of the substance. This in turn would also make the *mens rea* requirement easier to prove because of the current state of public awareness of the method and how HIV is transmitted²⁶⁵. Thus statutory offences may have the advantage of being able to circumvent evidential problems (through appropriate definitions) that exist with the existing law.

3.2.4. The Non-Legislative approach in the UK.

As seen above, the criminalisation of HIV/AIDS transmission in the courtroom is a new phenomenon which is not hitherto known to the UK, and legal precedent is scarce. The present political climate of the country in which the transmission occurs determines the treatment of the HIV-carrier both in the courtroom and in the broader approach of the country to the issue of AIDS/HIV infection. Thus, in the belief that HIV/AIDS prevention should take precedence over drug abuse because HIV is the greater threat, a public health approach to drug-related HIV/AIDS has developed in the UK.

In Britain, for example the National Health Authority bill for treating HIV and AIDS was 345 million pounds in 2002, double that of the previous year²⁶⁶. HIV alone will cost Britain billions of pounds in the future in preventions and treatment programs²⁶⁷. In the NHS, more and more resources are being committed to dealing with imported diseases such as TB, which was once virtually eradicated in the United Kingdom, and HIV, which is showing a marked increase among people, according to some, to the fact that Britain (unlike other countries, such as Kuwait and the UAE) does not insist on tests for migrants.²⁶⁸

In order to stem the tide of rising NHS costs, the government extended the power to charge for NHS treatment (which originates in the NHS Act 1977, s 121) to many migrants on 1

²⁶⁵ *ibid.*

²⁶⁶ Marsh, B. (2003), "Crackdown on health tourists is unworkable", *Daily Mail*, July 30, 2003, p 10.

²⁶⁷ "Britain, bogus asylum seekers, and why enough is enough", *Daily Mail (London)*, November 29, 2002, p 12.

²⁶⁸ Britain does not force immigrants to take HIV tests when they enter, unlike many other countries including the U.S. and Australia. But this policy is being reviewed, and the Government may introduce compulsory screening for those from 'high risk' countries. Found at: Marsh. B. (2003), "Crackdown on health tourists is unworkable", *Daily Mail (London)*, July 30, 2003, p 10.

April 2004. Thus, the NHS (Charges to Overseas Visitors) Amendment Regulations 2004 (SI 2004/614) excludes the right to free hospital treatment for some groups such as asylum-seekers who have not met the conditions of citizenship, or unlawful immigrants, foreign students on short courses, and patients who came to the UK seeking medical care and treatment²⁶⁹. Although there are no charges for many infectious diseases, the law give the right to hospitals to charge for anti-retroviral HIV drugs.²⁷⁰

Yet, while it costs around £16,000 a year to treat somebody with HIV drugs, the cost and the high load that can be placed on the NHS by the spread of the infection will be limited²⁷¹. Indeed, the Department of Health's estimates that if a single onward transmission of the virus is prevented; it would save the NHS between £500,000 and £1m. This estimate of the lifelong treatment provided to 899 asylum seekers who entered Britain with the virus between October 2003 and September 2004 would be saved²⁷². Moreover (as will be discussed below), the US have a policy of screening people for HIV at borders, yet their HIV rate is the highest of any developed country.

Another alternative approach is the Needle Exchange Programme (NEP). The first one opened in Amsterdam in 1984²⁷³, and soon afterwards, another's were opened in the United Kingdom²⁷⁴. This public health approach to drug-related HIV/AIDS has seen some remarkable and rapid successes. And one of it is advantages is seen for example, in Liverpool, which has many prostitutes and suffers a high rate of drug addiction, but has a low HIV infection rate among Injection-drug users at only 1 per cent, compared to about 60 per cent in a large population city like New York in the United State of America.²⁷⁵

269 Willman, S. (2004), "A healthy approach to human rights?", *155 New Law Journal* (7173), p 605.
270 *ibid.*

271 "UK HIV/AIDS FAQs". Available at: <http://www.avert.org/aidsfaqs.htm>. Accessed on: 6/9/2007.

272 Boseley, S. (2005), "Doctors urge free HIV drugs for all". *The Guardian (London) - Final Edition, Guardian Home Pages, March 8, 2005*, p 9.

273 "UC Davis study shows syringe-exchange programs effective in reducing the spread of AIDS" Available at: http://www.ucdmc.ucdavis.edu/news/syringe_exchange.html. Accessed on: 6/9/2007.

274 United State General Accounting office, Report to the chairman select committee on narcotics abuse and control, House of Representative, Needle exchange program, p 3. Available at: <http://archive.gao.gov/d44t15/148846.pdf>. Accessed on: 1/9/2006.

275 Eldredge, D. (2000), "Ending the war on Drugs: A solution for America", New York: Bridge Works Publishing, p 131.

In the field of education, sex education in the UK also has an important role in raising awareness among the new generation²⁷⁶. Currently, the position in UK schools is that there is a requirement that sex education be taught, but unfortunately, information about HIV/AIDS in the National Curriculum for Science has been removed²⁷⁷. In addition, the sex education classes are not compulsory and the parents are allowed to withdraw their children from sex education classes.²⁷⁸

As a result of these provisions, according to 'Sex and Relationships', a published report by the Office for Standards in Education in 2002 noted that, *"British schools are not doing enough to address HIV prevention in sex and relationships education"*.²⁷⁹

Taylor argues that the state of sexual health overall in the UK is poor, and asks: *"So without the education - the last HIV/AIDS campaign was in 1985, so not many people under 25 remember that one - how can our young, alcohol-fuelled, sexually adventurous teenagers avoid becoming another statistic?"*.²⁸⁰

276 Monk, D. (2000), "Sex, education and children rights: Recent local and global perspectives" 1 Education Law Journal, p 206.

277 As we will see in chapter five that, UAE included the information about HIV/ADS in the Islamic Curriculum.

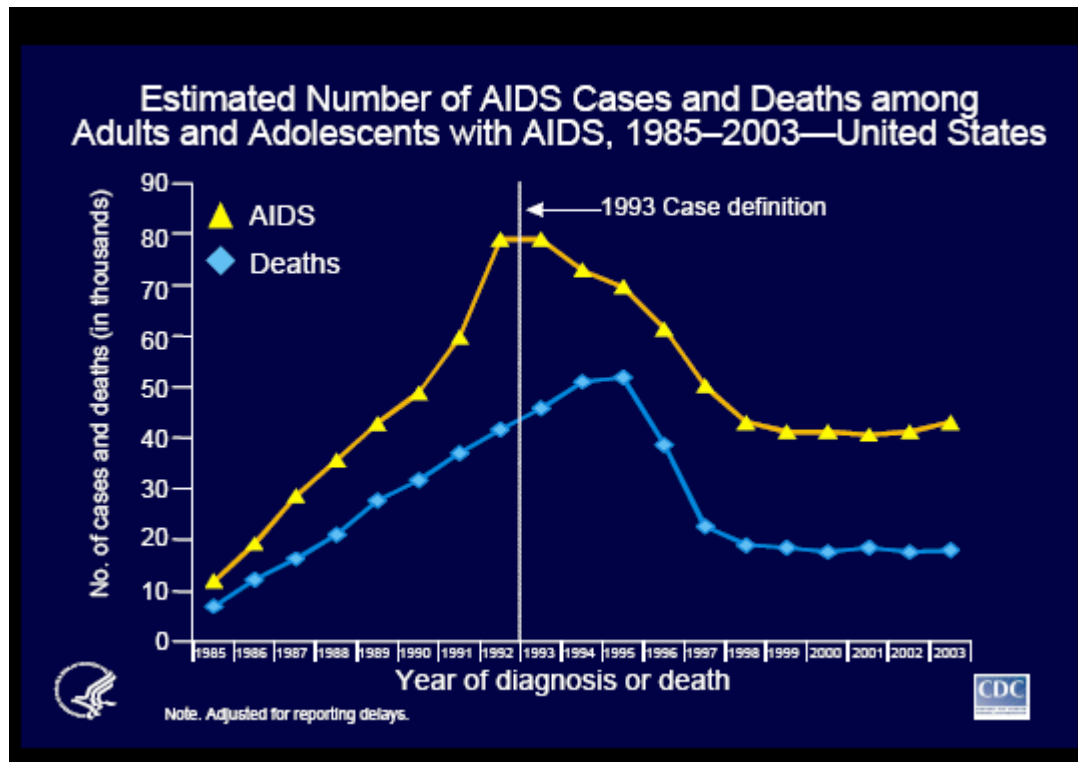
278 "Sex and relationship Education Guidance" Department Of Education and Employment, July 2000, p 28. Available at: <http://www.dfes.gov.uk/sreguidance/sexeducation.pdf>. Accessed on: 15/11/2006.

279 "n Education" AIDS Policy and Law, Vol. 17, No.10, May 24, 2002, p 1.

280 Taylors, S. (2005), "Medical experts are not surprised at increasing infection rates; Second opinion" Birmingham Post, December 1, 2005, p 4.

3.3. The USA.

Figure 5: The Number of AIDS Cases and Death, 1985-2003, USA.²⁸¹



Since the identification of HIV in 1981 amongst a small cluster of homosexual men in North America, its spread has been frightening²⁸². The number of recorded deaths from the infection had reached 524,060 by the end of 2003²⁸³. As Morris mentions that, because of spread of AIDS through the contaminated needles by HIV it is considered as one of the ten most common causes of death among the children in American whom are under the age of five. In a high population city such as New York State it believed that the AIDS is the second leading cause of death among black and Hispanic children below five years old.²⁸⁴

²⁸¹ Center for Disease Control & Prevention National Center for HIV, STD, and TB Prevention Divisions of HIV/AIDS Prevention Surveillance Branch, March 3, 2005, Slide 1. Available at: <http://www.cdc.gov/hiv/graphics/images/1178/1178-1.htm>. Accessed on: 13/11/2005.

²⁸² Gostin, L. (1988), "The facts of life-including AIDS –The official thinking internationally" *The Guardian*, June 22, 1988.

²⁸³ Centers for Disease Control and Prevention. HIV/AIDS Surveillance Report, 2003, (Vol.15). Atlanta: US, Department of Health and Human Services, Centers for Disease Control and Prevention; 2004, p 10. Available at: <http://www.cdc.gov/hiv/stats/hasrlink.htm>. Accessed on: 17/7/2005.

²⁸⁴ Morris, E. *et al* (1996), "Drug war politics: The price of denial", Los Angeles: University of California Press, p 35.

The table on the previous page shows in the upper yellow curve the rise of the new infection cases, while the blue one draw the line of the estimation of the number of deaths of adults cause by AIDS. The reason behind the decrease after the peak in 1993 "case definition" *"was associated with the expansion of AIDS surveillance, while in recent years, AIDS incidence and deaths of persons with AIDS has levelled; this are due in part to the success of highly active antiretroviral therapies, introduced in 1996"*.²⁸⁵

According to the UNAIDS 2004 Report on the global AIDS epidemic, overall, an estimated one third of new infections are occurring through heterosexual contact, while injecting drug use is responsible of about 25 per cent of newly acquired HIV infections. Sex between men accounted for 42 per cent of HIV transmissions in the United States in 2002 and around half of the new cases targeting the African-Americans and this number considered as 12 per cent of the country's population, with African-American women accounting for an increasing proportion of new infections. Many of the women do not engage in high-risk activities, but are contracting HIV through unsafe sex with their male partner.

285 Center for Disease Control & Prevention National Center for HIV, STD, and TB Prevention Divisions of HIV/AIDS Prevention Surveillance Branch, March 3, 2005. Available at: <http://www.cdc.gov/hiv/graphics/images/1178/1178-1.htm>. Accessed on: 13/11/2005.

Table 5: UNAIDS Regional HIV and AIDS estimates, end 2003²⁸⁶

Adult (15-49) HIV prevalence rate	0.6% (range: 0.3-1.0%)
Adults (15-49) living with HIV	990 000 (range: 510 000- 1 600 000)
Adults and children (0-49) living with HIV	1 000 000 (range: 520 000- 1 600 000)
Women (15-49) living with HIV	250 000 (range: 130 000- 400 000)
AIDS deaths (adults and children) in 2003	16 000 (range: 8 300- 25 000)

According to the CDC "Centre for Disease Control and Prevention", in the USA it is estimated that 15 per cent of the 850 000-950 000 people living with HIV and near to exhibiting the AIDS symptoms are unaware that they are HIV-positive.²⁸⁷

Between 2004 and 2007 the number of HIV/AIDS infections exceeded one million and more than 500.000 have died after developing AIDS symptoms²⁸⁸. In its report "AIDS epidemic update: December 2007" The UNAIDS described the situation in USA as critical and dangerous as it is one of countries which is suffering from this epidemic at a high percentage rate and it has the largest number of people infected with HIV in the world.²⁸⁹

286 "UNAIDS 2004 Report on the global AIDS epidemic". Available at: http://www.unaids.org/EN/Geographical+Area/By+Region/north_america.asp. Accessed on: 3/5/2005.

287 *ibid*.

288 Available at: <http://www.avert.org/usastaty.htm>. Accessed on: 14/10/2007.

289 Available at: http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf, p33. Accessed on: 1/12/2007.

3.3.1. Towards criminalisation.

In the mid-eighties, most district attorneys and state courts (Crown Prosecution Service in England and Wales- Fiscal in Scotland) were wary of criminalising the spread of HIV because of concerns about violation of the personal liberties of HIV-infected citizens. For the same reason, state legislatures were initially reluctant to pass laws that dealt directly with the transmission of the virus.²⁹⁰

However, increasing numbers of U.S. citizens demanded such legislation from their state governments. Thus the federal government left the door open on criminalisation of the transmission of HIV to individual states, and this has resulted in a "*diversity of statutory positions*"²⁹¹. In many states, such as Florida, Idaho and Washington DC, the legislator has prohibited the intentional transmission of the virus and made it a crime such as knowingly to expose another person to HIV, with a different penalties starting from the minimum fine of \$5,000 to ten years in prison.²⁹²

Commencing in 1987, twenty-four states introduced legislation to make illegal the intentional transmission of HIV. (See the Appendix for a full list of states and their relevant legislation). This had led consistent of defendants based on these statutes,²⁹³ and this legislation clearly defines these acts as felonies,²⁹⁴ and thirteen of which specifically criminalise HIV exposure or transmission through sexual contact.²⁹⁵ The statutes do differ however as to whether for example, "*intent to transmit is required for conviction, and*

290 Reeder, (*op. cit*), pp 403-404.

291 *ibid*, pp 404-405.

292 Laurie, (*op. cit*), pp 312-313.

293 Reeder, (*op. cit*), pp 403-404.

294 Jonsen, A. & Stryker, J. (1993), "The social impact of AIDS in the United States", Washington D.C: National Academy Press, p 36.

295 For example Illinois Jurisprudence create the law § 68:08.Criminal transmission of HIV which stated " A person is guilty of criminal transmission of human immunodeficiency virus HIV if, possessing the knowledge that they are infected with the HIV virus or any other identified causative agent of acquired immunodeficiency syndrome,..... they, nevertheless: expose another to the infection through intimate contact; transfer, donate or provide any potentially infectious bodily fluid, such as blood or semen, or organ to another for the purpose of transfusion, transplantation, insemination or any other...means of administration to another; transfer nonsteriles intravenous or intramuscular drug paraphernalia by dispensing, delivering, exchanging or selling the equipment. For more detail please see: Fox, L. & Margolis, L. (2004), " Criminal Law § 68:08." Illinois Jurisprudence, criminal law and procedure, part six. Particular crimes and offences Chapter 68. Sex offenses and related crimes.

*whether informed consent can be a defence*²⁹⁶. In Missouri, for example, a defendant can be found guilty to 'placing another at risk of HIV transmission' "*regardless of whether the other person has consented to the sexual act while knowing of the infection risk*".²⁹⁷ However, as HIV/AIDS experts have pointed out, because of these laws, there is now no incentive to become aware of one's serostatus;²⁹⁸ a point also made by critics in the UK.

A further six states in the USA criminalise the act of the transfer of "bodily fluids" among people specially if an individual knows that he or she is HIV positive, where they do differ is that some require "specific intent" to instate prosecution but all made no differentiation between protected and unprotected sexual intercourse.²⁹⁹

Another group of five states made the potential 'exposure to HIV' a crime but without specifying what leads to exposure. Again, there are differences in these statutes on whether specific intent to transmit is required and whether consent can act as a defence.³⁰⁰

In addition, twelve American state's have adopted provisions targeting high risk groups especially prostitutes, by making prostitution and/or solicitation when the person involved knows that he or she has contracted HIV, a more serious crime than when a person does not, or believes that he or she is HIV-free.³⁰¹

However, concerns about these laws have begun to surface³⁰² as critics have pointed out that, The White House had played a major role and significantly influenced AIDS policy in general in the USA to a greater extent than the Public Health Service³⁰³. For example, The California Attorneys for Criminal Justice, California Nurses Association and Life Lobby, (a health care and civil rights group that tracks legislation for gays and lesbians), criticising

296 Carol, L. *et al.* (2004), "Toward Rational Criminal HIV Exposure Law" 32 Journal of Law, Medicine & Ethics (327), pp 327-328.

297 Wampler, D. (1998), "Felony Assault by the HIV-AIDS Infected" 54 Journal of the Missouri Bar (31), pp 32-33.

298 "Intervention efforts retreat as criminal laws advance" AIDS Policy and Law: HIV Policy; Vol.18, No.19, October 10, 2003.

299 Carol, (*op. cit*), pp 327-328.

300 *ibid*.

301 *ibid*, pp 327-329.

302 Closen, (*op. cit*), pp 936-937.

303 Gostin, (1988), *op.cit* , p 3.

the law involvement, argue that the criminal law should not involve and deal with this matter as a public health issue, not through criminal law and that the Bills are too broad as they include the criminalisation of sexual activity and the sharing of needles.³⁰⁴

The most difficult issue involving disclosure of HIV information is whether, or under what circumstances, an individual may be forced to submit to an HIV test by court order. Such testing in criminal cases in the USA has been mainly restricted to sexual offences, assaults such as biting, or prostitution. In these cases, courts have held testing is appropriate because the rights of the victim are paramount: on the one hand, a negative test result would allay the fears of the victim while on the other; a positive result would allow the victim to seek appropriate medical treatment.³⁰⁵

Where a defendant has raised constitutional objections to court-ordered HIV testing, it has been held not to violate the defendant's right to equal protection, freedom of religion or substantive due process. The court, for instance, in *U.S. v. Ward*³⁰⁶, a kidnapping involving a sexual assault, determined that a compelled blood test did not constitute an 'unreasonable search and seizure' under the USA Constitution's Fourth Amendment.³⁰⁷

304 McKee, M. (1992), "HIV Bill Would Criminalize Sex; Tough fight expected over legislation punishing failure to disclose HIV status to partners" The Record, February 12, 1992, p 1.

305 *ibid*.

306 131 F.3d 335 (3d Cir. 1997),

307 Miller, R. (2002), "Validity and propriety under circumstances, of court-ordered HIV testing" 5 American Law Reports (87), p 2a.

3.3.2. *The criminal offences.*

The case of 21-year-old Nushawn Williams shocked the public in 1997 in New York when it came to light that, while aware of his HIV positive status, he had engaged in unprotected intercourse with hundreds of women and one of them was aged only 13. Unfortunately this is not an isolated case and the criminal law is required to protect the society by preventing, and punishing this kind of behaviour. The difficult question is how.³⁰⁸

3.3.2.1. *Homicide.*

The result of homicide is the death of human being. The American Model Penal Code S210.2. defines murder as:

"Criminal homicide constitutes murder when it is committed purposely or knowingly; or it is committed recklessly under circumstances manifesting extreme indifference to the value of human life. Such recklessness and indifference are presumed if the actor is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committing or attempting to commit robbery, rape or deviate sexual intercourse by force or threat of force, arson, burglary, kidnapping or felonious escape".³⁰⁹

Thus murder is a killing caused by conduct where the accused was acting with either extreme recklessness which shows 'extreme indifference' to human life - or when death is the purpose of the act³¹⁰, or the defendant does the act knowing that a death would occur. Manslaughter is a killing committed with a lesser degree of blameworthiness, since either ordinary recklessness or gross negligence suffices for the mental element of manslaughter.³¹¹

There is a practical problem in homicide prosecution of HIV/AIDS transmission in that the offender may actually die before the victim. Also, a homicide prosecution may not be

308 Warburton, (*op. cit*), p 59.

309 Zemring, F. E. & Hawkins, G. (1987-1988) "Murder, the model code and the multiple agendas of reform" 19 Rutgers Law Journal (773). P773.

310 Rafael, R. (1995), "Criminal law: Attempted felony murder, an improbable legal fiction meets its demise" 69 The Florida Bar Journal (63), pp 63-64.

311 Paula, A. (2003), "The over –criminalization of social and economic conduct" 27 Champion (28). pp 32-33.

possible because the "victim" will not have died. Attempted murder is a more appropriate charge, and this charge has the additional advantage of not requiring actual infection of the victim. For example, Warburton cites the case of an attack with an HIV-infected syringe, where a charge of attempted murder could be justified, whether or not the virus was actually transmitted to the victim.³¹²

A number of US cases have recently considered whether an accused can be convicted of 'felonious assault with intent to kill' by biting, scratching, or throwing blood when the person knew and was aware of his own HIV-AIDS infection³¹³. The problem is that there must not only be: "*proof of an assault, but also proof of intent to kill*". Intent to kill may be inferred from the use of a deadly weapon but there must be proof beyond a reasonable doubt that the accused knowingly took a substantial step toward the commission of murder.³¹⁴

In one case a prison guards complained that a HIV positive prisoner endangered his life by spitting saliva into his face. In another, a prison guard sued a HIV Positive prisoner because he bit him and punctured his skin by which means the HIV can be easily transmitted. In this case the court give permission at trial to proceed with a charge of assault with intent to kill, if there is "*ample evidence . . . that [the] defendant did all that he believed was necessary to infect [the corrections officer]*"³¹⁵. However, in another case, where a defendant attacked in the same way one of the emergency technician staff and police, the conviction was quashed on appeal because there was doubt as to whether the defendant took a "*substantial step in a course of conduct planned to culminate in towards his commission of the crime.*"³¹⁶

A defendant could be charged instead with intent to do great bodily harm or a lesser category of felony³¹⁷. An example is the case of Brian Stewart in 1998, who was convicted in Missouri of first-degree assault, having stolen a specimen contaminated with HIV and

312 Warburton, (*op. cit*), pp 75-60.

313 Wampler, (*op. cit*), p 31-32.

314 *ibid.*

315 *ibid.*

316 *ibid.*

317 *ibid.*

injected it into his son because of his financial concerns and the difficulty of paying child support for his son.³¹⁸

3.3.2.2. Other AIDS-specific offences.

Dr. Cindy Struckman draw attention to prison rape which has led to the introduction of specific HIV/AIDS legislation, it been estimated by some experts that up to 600,000 prisoners in the USA are raped every year and that half acquire life-threatening diseases from this act. She claimed that in Nebraska prison found 22 per cent of male inmates acknowledged being pressured or forced into sex acts³¹⁹. With HIV/AIDS five times more prevalent among prisoners than the general population, the seriousness of this led to the introduction of new legislation.³²⁰

3.3.3. Non-legislative approaches in the United States of America.

In the USA, a public health approach has also been adopted in certain spheres. The growth of HIV/AIDS and other infectious disease has demanded a global battle to defeat this threaten. For example, in 2000, Congress passed "The Global AIDS and Tuberculosis Relief Act", authorising funding for many types of infection and support for those living with HIV or who have reached the AIDS stage, as well as conducting many programmes of training to increase the ability of health practitioners in many scientific fields related to the development of HIV/AIDS preventions science³²¹. Another example is the New York Needle Exchange Program (NEP) which was established in 1992, governed by the provisions of the New York Penal Law³²², section 3381 New York Public Health Law, and the New York Code of Rules and Regulations, under which knowingly and unlawfully

318 Strickland, C. (2001), "Why Parliament should create HIV specific offence". Available at: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>. Accessed on: 52/9/2005.

319 "Congress moves to reduce HIV/AIDS transmission in prison" *AIDS Policy and Law ,Legislation:* Vol.17, No.12, July 8, 2002.

320 "HIV in Prisons and Jails, 1999 "U.S. Department of Justice Bureau of Justice Statistics. Available at: <http://www.ojp.usdoj.gov/bjs/abstract/hivpj99.htm>. Accessed on: 15/11/2007.

321 Murphy, S. D. (2001), "Contemporary Practice of the United States Relating to International Law" *95 American Journal of International Law* (132), pp 132-133.

322 See: Hamblett, M. "Judge says needle exchange arrests in N.Y. must stop "New York Law Journal, 2002. Available at: <http://www.law.com/jsp/article.jsp?id=1036630464088>. Accessed on: 15/2/2006.

possessing or selling a hypodermic needle or syringe and to knowingly and unlawfully possess a controlled substance were criminalised.³²³

However, there has been much opposition to such approaches. Opponents have argued that Needle Exchange Programs encourage drug use because it implies that the use of clean needles make the drug taking in some way less dangerous than was not the intention of the NEP³²⁴. Thus, a Federal ban was passed in 1988 prohibiting Federal funding unless it could be proved that NEPs reduce the transmission of HIV and did not increase illicit drug use³²⁵. Significantly, however, research has shown that between 4,394 and 9,666 HIV infections could have been prevented between 1987 and 1995 had there been a Federal NEP. It has also been estimated that the cost of treating those infected is between \$244 million and \$538 million, an expense that would have been avoided.³²⁶

Education on HIV/AIDS in the USA is also limited and patchy. There is no Federal mandate about sex education in schools curriculums, therefore it falls to individual states to determine what is taught. 38 states and the District of Columbia currently opt for education on HIV/AIDS, but only 17 of those include information on contraception as means of preventing infection.³²⁷

Other USA HIV/AIDS-related legislation pushed through during the HIV/AIDS panic of the 1980s requires anybody who is HIV positive to obtain a visa waiver to enter the US - their passport is endorsed to show that they may not enter without the document or the proof, which must be checked by the Immigration staff on each entry. To obtain a visa waiver, the travellers must have a health insurance certificate cover any medical treatment, but many UK insurance companies did not cover HIV/AIDS treatment in their policies³²⁸.

323 "Report on needle exchange programs and deregulation of needles and syringes" The New York State AIDS Advisory Council, 1996. Available at: <http://www.health.state.ny.us/diseases/aids/workgroups/aac/docs/needleexchangeprograms.pdf>. p 5. Accessed on: 28/6/2006.

324 Eldredge, (*op. cit*), p 135.

325 Fernandez, H. (1998), "Heroin", Minnesota: Hazelden Press, p 189.

326 *ibid*.

327 Norcraft, D. M. (2004), "Book Review: A Nation scared: Children Sex, and the denial of humanity: a review essay on Judith Levine's harmful to minors: The Perils of Protecting Children from sex" 12 American University Journal of Gender, Social Policy & the Law (483), pp 501-503.

328 Boseley, S. (2002), "Drive to end US curb on HIV visitors" The Guardian (London), Guardian Home Pages, March 5, 2002, p 8.

Also, part of the application procedure for a Green Card involves a mandatory test for a number of diseases, including HIV/AIDS and TB; if the applicant fails to meet the condition that he/she is free from any infectious disease they will be asked to leave the country.³²⁹

Revealing a similar climate of fear, a 1988 US survey found that a large apportion of hospitals were testing for HIV entirely without the specific consent of their patients and this leads to the possibility of breach of the USA law³³⁰. Similarly in the UK there was a move by doctors at the 1987 British Medical Association (BMA) annual conference voted for HIV testing 'at the discretion of the doctor', but this decision was overturned by the BMA. Possibly covert testing still occurs in the British hospitals.³³¹

In order to try to combat the widespread climate of fear and discrimination, in August 1985, Los Angeles became the first state in the nation to enact law to prevent people with HIV/AIDS from discrimination against work refusal or services in some businesses or terminations from employment. Subsequently, this lead to many others areas in an attempt to avoid discrimination against HIV and AIDS suffers.³³²

3.3.4. The effect of criminalisation of disease transmission on the spread of the disease: a discussion of the relative advantages and disadvantages.

In the UK, many civil liberty and equal rights groups have proposed a public health approach to HIV-related issues³³³. The National AIDS Trust, for example, is against the criminalising of reckless transmission of HIV through consensual sex on the grounds that consensual sex means that both adults are sharing the responsibility for their own sexual health and that as long as the sex was consensual this means that there is consent to the risk of HIV infection³³⁴. In a similar vein, the Terrence Higgins Trust 'Lighthouse' believes the

329 "Around the world, how they deal with threat of infection", Daily Mail (London) ED. 1ST; August 5, 2003, p 16.

330 Gostin, (1988), *op.cit*, p 4.

331 *ibid*.

332 Ratzan, A. (1993), "AIDS: Effective Health Communication for the 90s" USA: Taylor & Francis Press, p xxii.

333 Warburton, (*op. cit*), p 55.

334 "Criminalisation of HIV Transmission" NAT Policy update, November 2004. Available at: <http://www.nat.org.uk/documents/Criminalisation%20NOV%2004.doc>. p 8. Accessed on: 15/6/2005.

focus should not be on transmission, but it must include and develop many steps such as prevention, medical care, and trying to minimise social exclusion, prejudice and discrimination against people living with HIV/AIDS³³⁵. The fear is that criminalisation could be a barrier against voluntary testing and seeking treatment³³⁶. Indeed, many are worried and concerned about the new criminalisation laws and believe that they could cause HIV-infected people to shy away from seeking help³³⁷, or even create a false complacency in that people may think that sexual partners will be more honest about their HIV status, whereas, in fact, criminalisation could encourage HIV positive individuals to conceal their status, especially given that, despite modern advances in treatment for HIV infection and AIDS, a real stigma still attaches to a person when he or she tests positive for HIV.³³⁸

As Martin Foreman, Chair of the UK NGO AIDS Consortium, has pointed out:

"Although almost all [public health] law enacted in this field does have the admirable good of wanting to restrict the spread of HIV, the problem is that some laws trespass on human rights and may inadvertently create situations where the transmission of the virus is more, rather than less, likely".³³⁹

However, it is not at all clear that education campaigns and a health awareness based policies have been sufficient. It is arguable that there is also a strong case to put for backing those campaigns with a legal powers such as the criminal law and that an important step in controlling the disease is punishing those who intentionally, or recklessly, expose others to it.³⁴⁰

335 All party Parliamentary Group on AIDS: The UK, HIV and Human Rights: recommendations for the next five years, July 2001, London, p 23. Available at: <http://www.appg-AIDS.org.uk>. Accessed on: 5/5/2005.

336 Chrisafis, A. "Man guilty of infecting two women with HIV" The Guardian - Final Edition, October 15, 2003. Guardian Home, p 2.

337 Richardson, L. (1998), "Wave of Laws Aimed at People With H.I.V." CDC HIV/STD/TB Prevention News Update Friday, September 5, 1998, p A25. Available at: <http://www.cdc-npin.org/PrevNews/1998/sep98/update092598.txt>. Accessed on: 30/9/2005.

338 Scott, K. " HIV man jailed for knowingly infecting lover: Five-year sentence will deter openness about virus and discourage testing, say support groups" The Guardian (London) March 17, 2001. Guardian Home Pages, p 9.

339 All party Parliamentary Group on AIDS: The UK, HIV and Human Rights: recommendations for the next five years, July 2001, London, p 29. Available at: <http://www.appg-AIDS.org.uk>. Accessed on: 5/5/2005.

340 Warburton, (*op. cit*), p 55.

Warburton mentioned that: as Ormerod observes, “education and health campaigns are proving ineffective” but, “*if the chief goal is to curb the spread of the disease, it must be recognized that the criminal law has definite limitations in addressing that end*”.³⁴¹

Yet, the creation of specific statutory provisions may have considerable advantages. For example, there would be none of the ambiguities associated with trying to make AIDS-related crimes fit into pre-existing law crimes. In the US, for example, a wide range of offences have been created, including *knowingly exposing another to the virus, engaging in a sexual act while knowing oneself to be infected*, or, in the case of New Jersey legislation, *committing an act of sexual penetration conscious of one's own HIV antibody status*. An important advantage of these offences is that they do not require HIV to be transmitted, thereby eliminating the difficulties involved in proving causation.³⁴²

In addition, enacting HIV-specific criminal statutes could lead to a proper definition of what is prohibited and the punishments for such an act rather than leaving the courts to provide an interpretation of the law how far to extend traditional offences.³⁴³

On the other hand, such legislation could face many problems; a statute depends on its drafter. In New Jersey, USA, for example, the Assembly Bill 966 proposes legislation which would criminalise transmission of HIV *knowingly or purposefully*, by an act of *sexual penetration*. The central or external element of the offence is knowledge, which is deemed to be present if the individual is aware of his condition and has received medical information to put him 'on notice' of his HIV status. Additionally, male homosexuals and intravenous drug users are said to be 'on notice', *whatever their antibody status*. This, as Black points out³⁴⁴, effectively means that all such individuals could be criminally liable should they transmit the virus.³⁴⁵

³⁴¹ *ibid.*

³⁴² Laurie, (*op. cit*), p 312-313.

³⁴³ Elliot, R. (2002), "Criminal Law, Public Health and HIV Transmission: A policy Option Paper", Geneva: UN publisher, p 11.

³⁴⁴ Black, L. (1991), "Criminalizing HIV Transmission: New Jersey Assembly Bill 966" 15 Seton Hall Legislative Journal (171), p 197.

³⁴⁵ Laurie, (*op. cit*), p 312-313.

Moreover, opponents of the criminalisation of HIV transmission in the UK believe that criminalising this act will increase discrimination among people within the community, in particular against other minorities such as black Africans, for example, in the UK, there has been a tendency to focus on cases which are easy-to-prosecute particularly against those of African extraction about whom the general public may be unsympathetic”, for example Konzani ,Adaye and Mohamed Dica are asylum seekers and refugees.³⁴⁶

Another concern is that, by extension, such legislation could also have a negative impact on public health by deterring people from testing for HIV and/or accessing services because of the fear of being discriminated against. It could also interfere with the right to privacy.³⁴⁷ This argument is founded upon the belief that such provisions would "*bring the criminal law into the bedroom*". It is thought unacceptable for the criminal law to get involved in the private relation of consenting people³⁴⁸, but, as Spencer has eloquently suggested, this argument is only valid as long as there is consent in the relationship between parties," *and this is freely given; "it is not the case where one does not appreciate the risks involved, and the other takes advantage of it"*.³⁴⁹

Opponents also argue that far from having the desired deterrent effect, AIDS-specific legislation would actually be counter-productive in terms of public health, as individuals who are concerned that they may have contracted sexually transmissible diseases may choose not to have an HIV test, in order to ensure that they cannot be accused of behaving recklessly if they should then infect any partners³⁵⁰. Indeed, it is believed that the use of the criminal law neither protects from infection, nor empowers the infected. Pushing HIV underground undermines health promotion campaigns, marginalises those living with HIV, and will ultimately lead to more infections.³⁵¹ As Warburton noted:

In addition," *human rights challenges would likely form a significant aspect of resistance*" to any changes in the criminal law, "*particularly under Article 8 of the European*

346 Available at: http://www.nat.org.uk/documents/UNGASS_REPORT.doc, p 29. Accessed on: 3/5/2005.

347 Spencer, (*op. cit*), p 448.

348 *ibid* .

349 *ibid*.

350 *ibid*.

351 *ibid*.

Convention on Human Rights". In addition, the Home Office has had to check their policy and strategy on people infected with HIV to see if it is compatible and to insure that they are in line with the Act and related Strasbourg case law.³⁵²

As seen above, the number of people infected by HIV/AIDS epidemic is also on the rise in the United States—even after two decades of trying to educate the community. The disease costs the Americans millions of dollars from tax spent on finding a cure for HIV³⁵³. All of this demonstrates why "education" is insufficient in the fight against AIDS infection and why there is widespread support in the US for use of the criminal law.

Regarding HIV specific legislation, Strickland pointed that:

"Properly drafted HIV specific statutes provide a more legitimate and effective means for criminalising HIV-transmitting behaviour, the HIV specific statutes must not be vague or over-broad and must not be used for the purpose of selectively prosecuting and harassing members of high risk groups".³⁵⁴

The difficulty with these laws, as we have seen, is that it can be almost impossible to prove the intention—which has led Roland Foster, a Congressional Aid on the Subcommittee for Criminal Justice, Drug Policy and Human Resources, to describe the "*intent to transmit*" requirement in California's criminal HIV statute³⁵⁵ as a "*nearly impossible standard to meet*", making the law "*pretty much meaningless*".³⁵⁶

There is little uniformity on this issue among the various states. Some criminalise all undisclosed exposures while others require evidence of intent to transmit; some criminalise activities that pose virtually no risk of transmission while others criminalise only the

352 Warburton, (*op.cit*) p 71-72..

353 "AIDS Education' Has Failed: HIV Infections Are On The Rise Again". Available at: <http://www.traditionalvalues.org/modules.php?sid=28>. Accessed on: 17/9/2005.

354 Strickland, C. "Why Parliament should create HIV specific offence". Available at: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>. Accessed on: 25/9/2005.

355 Any person who exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV, is guilty of a felony ... Evidence that the person had knowledge of his or her HIV-positive status, without additional evidence, shall not be sufficient to prove specific intent.

356 Carol, (*op. cit*), p 334-335.

riskiest behaviours; some do not permit consent to be a defence, while in others consent can be a valid defence.³⁵⁷

The USA has made a huge effort to ensure and normalise infected people lives by enacting appropriate laws. As Closen mentioned, the US adopted nearly 12,000 statutory provisions and regulations related to HIV/AIDS which been introduced in many different fields³⁵⁸. Almost every law has been geared towards HIV/AIDS and HIV/AIDS has become "*a very significant issue in the criminal justice system*". As we seen, many states have criminalised intentional transmission specially if someone is aware of being infected with HIV and exposes another to the virus, many of these perpetrators received a sentences under traditional laws and specific HIV/AIDS statutes³⁵⁹. It is worth noting that some states impose much greater penalties than others where the crimes are higher in their category and classified as attempted murder, battery, reckless endangerment or aggravated prostitution. The sentences vary and could reach up to life imprisonment and a fine.³⁶⁰

Yet, even with all the HIV/AIDS education efforts, and awareness's-raising programmes, "*the circumstances for people with HIV/AIDS remain difficult as many of them continue to suffer from unwarranted prejudice and discrimination*"³⁶¹. Thus, opponents of the continued criminalisation of HIV transmission argue that such a policy simply leads to abuse and discrimination. Contracting HIV can easily lead to perceived discrimination and can negatively influence the HIV/AIDS patient's life in many ways such as employment, education, accommodation and medical treatment³⁶². Indeed, at the extreme, many politicians in the USA called for those infected with HIV to be clearly identified and most USA state have an "*HIV-related statute in operation*"³⁶³. It can be said that HIV/AIDS epidemic is a new example of the earlier treatment of the fatal leprosy disease.³⁶⁴

357 Closen, (*op. cit*), pp 943-944.

358 *ibid*, pp 909-910.

359 For more details please see: "What trials for criminal transmission have been there". Available at: <http://www.avert.org/criminal-transmission.htm>. Accessed on: 14/9/2008.

360 Closen, (*op. cit*), pp 909-910.

361 *ibid*.

362 *ibid*, pp 906-907.

363 Warburton, (*op. cit*), pp 55-56.

364 Closen, (*op. cit*), pp 906-907.

A vivid illustration of this discrimination is provided by the reaction of some Alabama judges, who decided not to allow HIV/AIDS infected defendants to plead in person but demanded that they not enter the court room but plead by telephone.³⁶⁵

3.4. Conclusion.

The National AIDS Trust is warning that unless the UK Government starts to act quickly, HIV rates will continue to rise and there will be thousands more new infections every year. As we have seen, the total number of people living with HIV in the UK is estimated at around 58,300, according to a report released on 24/11/2005 by the Health Protection Agency³⁶⁶. In 2006 the number of new cases diagnosed with HIV increased to 8928 and the Health Protection Agency estimated that the number will continue to reach nearly 73000 in 2007³⁶⁷. The number exceeds the HPA prediction and reached 86,738 in the first quarter of 2007³⁶⁸. The charity says the UK was one of just a few developed countries which failed to submit a report to UN in October 2003 on its compliance with agreed targets.³⁶⁹

Whilst early actions by the UK Government to tackle the HIV epidemic in the eighties led to a successful containment of the disease, subsequent complacency appears to have led to the “*de-prioritization*” of HIV and a report by the House of Commons Health Select Committee (Third Report of Session 2002-03) called for urgent government action and blamed a lack of political direction and under-funding over many years for the current crisis.³⁷⁰

One of the most arresting statistics is that since 1998 the incidence of transmission of HIV through heterosexual intercourse has surpassed that of transmission through homosexual intercourse: “*Data for 2000 show that there were 1,315 heterosexually-acquired diagnoses*

³⁶⁵ *ibid*, pp 910-911.

³⁶⁶ “Number of people living with HIV in the UK is now over 58000,” Health Protection Agency, Press Release, 24 November 2005. Available at:

http://www.hpa.org.uk/hpa/news/articles/press_releases/2005/051124_hiv_sti.htm. Accessed on: 24/11/2005.

³⁶⁷ “UK HIV Cases among top in Europe”. Available at: <http://news.bbc.co.uk/1/hi/health/7108922.stm>. Accessed on: 23/11/2007.

³⁶⁸ Wait, (2007), *op.cit*, p 4.

³⁶⁹ “The AIDS explosion” *Western Daily press*, August 10, 2004, p 20.

³⁷⁰ *ibid*.

*compared to 1,096 cases among gay and bisexual men. The belief that HIV is a 'gay disease' has thus been totally discredited".*³⁷¹

While, as noted above, the use of the existing law to tackle these issues is a recent development in the UK specially after the trial of Mohamed Dica, and as such it is perhaps too early to say whether, and to what extent, the current legal approach has had an impact on the transmission of the virus among people, the use of the existing criminal law to criminalise the transmission of HIV intentionally or unintentionally has distinct advantages. First, it could make it easier for the government to avoid charges of discrimination specially the high group at risk," *it complies with the suggestion*" (by the UN) "*that there should be no HIV-specific transmission offence*"³⁷², the public will be more confident that the law will not involve their private lives (as the law already exists). Finally, it can be flexible, and be applied to the different circumstances of criminalisation, and the law could play an important role by raising the public awareness in this field.

On the other hand, as Strickland noted that:

"the creation of HIV specific offences will help avoid many of the problems surrounding possible criminalization of the actual transmission of HIV such as proving the *mens rea* of the accused or proving the causal link between the conduct of the accused and the infection of the victim. Carefully drafted legislation (working alongside a public health approach) has the potential to help protect society from the risk of the transmission of HIV. It also has the potential to help protect potential offenders from the risk of arbitrary or prejudicial interference in their private lives".³⁷³

For these reasons, it is submitted, that if the use of the criminal law is adopted in the UK in an attempt to curb the spread of AIDS, then it would seem that the best way to achieve this would be through statutory provisions creating specific offences, such as those which already exist in the USA.³⁷⁴

371 Strickland, C. (2001), "Why Parliament should create HIV specific offence", p 6. Available at: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>. Accessed on: 52/9/2005.

372 Weait, (2007), *op.cit*, p 9.

373 Strickland, C. (2001), "Why Parliament should create HIV specific offence", p 6. Available at: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>. Accessed on: 52/9/2005.

374 Laurie, (*op. cit*), pp 312-313.

Fears in the community that vindictive HIV carriers are seeking revenge by exposing others to their HIV have raised demands for criminal sanctions in the USA³⁷⁵. Yet, in spite of sweeping legislative steps, and somewhat fewer public health measures, HIV has spread throughout the United States. Indeed, The Centre for Disease Control has estimated that between 40,000 and 80,000 individuals are infected with HIV annually.³⁷⁶

In general, there are without doubt problems involved in criminalising the transmission of HIV, which include the difficulties of enforcement and the danger that the process could interfere with the private life of citizens. Nonetheless, governments have to make sure and to be careful that HIV prosecutions will not limit the main objective of the prevention of HIV, (with people increasingly refusing to participate in the voluntary test for HIV),³⁷⁷ one of the prime objectives of the criminal law is the protection of the community. Moreover, criminalisation of HIV transmission whether intentionally or unintentionally is also to punish those who have exposed others to the risk of infection of an incurable and fatal disease and expanding punishments to protect others from becoming victims.³⁷⁸

375 "Over 50 criminal prosecutions have been brought alleging intentional transmission of HIV". Available at: Gostin, (1988), *op. cit*, p 4.

376 Fernandez, (*op. cit*), pp 189-190.

377 Available at: http://www.nat.org.uk/documents/UNGASS_REPORT.doc. Accessed on: 3/5/2005.

378 Warburton, (*op. cit*), pp 67-77.

Chapter Four

Arab World Perspective on the HIV/AIDS problem

4.1. Introduction.

HIV/AIDS disease has plagued all the regions of the globe, the scope of the problem in the Arab region has not been accurately assessed, mainly due to socio-cultural attitudes towards the disease, which is still viewed as a social stigma; nor, with the notable exception of Kuwait, has the problem of HIV/AIDS been adequately reflected in the legislation or legal practice of the region.³⁷⁹

In most Arab countries, HIV spread appears to be on the rise³⁸⁰, although scant surveillance data in several countries could mean that serious outbreaks in certain populations were missed. Even in Kuwait, where legislation has been passed specifically to address the HIV/AIDS issue³⁸¹, there is a distinct lack of information, both on the extent of the problem and on the impact of the legislation. The epidemic threatens to expand through diverse means in the region, including through blood transfusions and sexual contact. Also of concern is the rise in HIV infections among injecting drug users, particularly in Bahrain and Libya, while HIV infections linked to this mode of transmission have also been reported in Algeria, Egypt, Kuwait, Morocco, Oman and Tunisia.³⁸²

Several vulnerable groups face an increasing risk of HIV infection in the region, notably prostitutes and homosexuals. Too little is known about the transmission of HIV between homosexuals in this region, and the shortfall of information is largely due to the stigma attached to homosexuality. Egypt is one of the few countries to have monitored

379 Al-Owaish, R. & Mohamed, A. (1995), "Knowledge, attitudes, beliefs and practices of the population in Kuwait about AIDS-a pilot study". Available at: <http://www.emro.who.int/Publications/EMHJ/0102/11.htm>. Accessed on: 16/11/2004.

380 "UNAIDS Organization: Report on the global HIV/AIDS epidemic", July 2002.

381 "Kuwait Fourth International Conference on AIDS: AIDS, The Challenge", (1994) Kuwait: Ministry of Health Press. And see also: 'Kuwait Fifth International Conference on AIDS: United Against AIDS' (1997), Kuwait: Ministry of Health Press.

382 "UNAIDS Organization: Report on the global HIV/AIDS epidemic", Dec. 2003.

transmission of HIV in groups of homosexuals, amongst whom HIV prevalence appears to have been around 1 per cent at the turn of the century and in Morocco research similarly found that sexual HIV transmission between men accounted for 7 per cent in the previous decade.³⁸³

Yet, while there appears to be consensus on the alarming increase in the rate of HIV infections in the Middle East, there remain very different opinions over the legal character of an HIV/AIDS infected person who transmits the virus to others. In the Islamic Fatwa³⁸⁴, any form of intentional virus transmission to a healthy person is considered a forbidden act and a great sin that necessitates the imposition of a secular penalty based on the seriousness of the act and its impact on the society³⁸⁵. The intentional transmission act is regarded as a form of *Hiraabah* (highway robbery) and corruption in the Earth that necessitates the imposition of one of penalties mentioned in the Holy Quran³⁸⁶.

However, as regards substantive national law, the Egyptian law does not have special provisions regarding the penalty for virus transmission³⁸⁷, although some jurisdictions, such as Kuwait, provide for special penalties for virus transmission³⁸⁸. Yet the lack of official statistics means that there is no clear indication of the operation or effectiveness of this legislation. Indeed, given the official view that the incidence of HIV/AIDS is very low in Kuwait³⁸⁹, one has to query why this legislation was introduced in the first place. Notably, in Egypt there has only been one reported case relating to HIV transmission from a husband to his wife.³⁹⁰

383 Available at: http://www.Keralamonitor.com/aids_arabs.html. Accessed on: 29/11/2004.

384 Fatwa means the Islamic deductive and inductive rule.

385 Abu Zaid, M. (1999), "Legal Problems Resulting From AIDS", Kuwait: Kuwait University Press, p 99.

386 Allah says: "The recompense of those who wage war against Allah and His messenger and to mischief in the land is only that they shall be killed or crucified or their hands and their feet be cut off from opposite sides or be exiled". Available at: The Holy Quran, Surah AL_Maidah, Verse No: 33.

387 Abu Zaid, (*op. cit*), p 261.

388 *Ibid*.

389 Ministry of Health (1997), "Kuwait Fifth International Conference on AIDS: United Against AIDS", Kuwait, Ministry of Health, p 14.

390 This suit took place at Deqhahiah Province in Egypt. However, the criminal suit was terminated following the husband's death in 1985. Al-Ahram News Paper, Vol 6185, 11/2/1985. In: Ittihad news paper, June 17, 2005, p 31.

Moreover, there is disagreement in the Arab states over the appropriate legal character of transmission of infected blood. Some courts could categorise the act of transmission as a “poisoning felony”, while other courts could regard it as a “misrepresentation of goods” (in the case, say, of infected blood transfusion), or “refraining from providing help to a person in a dangerous situation”. Egyptian legislators believe that intentional HIV transmission to others may be punished under existing provisions relating to “intentional killing” or manslaughter, or “harming injuries”, depending on whether or not there is intent.³⁹¹

Nonetheless, it is submitted, the HIV/AIDS phenomenon is accompanied by particular and extremely complex issues. One such issue is the need to prove the causal relationship between the victim’s death and the intentional or unintentional conduct that resulted in virus transmission to the victim, as criminal responsibility will not be established against the accused unless it can be shown that his/her act caused the victim’s death. There are no special rules for HIV/AIDS disease as to causal relationships; liability merely has to be proved on the basis of the existing provisions and laws. Yet in the case of HIV transmission, it may be very difficult to establish the exact date of the transmission, or who the culprit was, as the symptoms may only become apparent after the elapse of a long period. Moreover, death usually occurs many years after transmission, which again makes it difficult to identify the culprit or to consolidate the circumstantial evidence or the causal relationship.

In this chapter, I will discuss the crimes in the Islamic *Sharia*, the aspects of *Sharia* law specifically relating to intentional and unintentional disease transmission, and undertake a review of legislative steps taken to criminalise transmission in the Arabic Regions by a discussion of the position in Egypt and Kuwait.

The choice of these two countries emanates from the fact that Egypt has to date found no reason for introducing laws specifically pertaining to HIV/AIDS transmission, and the similarity of the United Arab Emirates Penal Code with the Egyptian Penal Code. The main reason was related to the availability of sources which describe the possibility of criminalising the transmission of HIV/AIDS under the Egyptian Penal Code which has

391 Mustafa, M. (1999), "Criminal Protection of blood", Alexandria: Alexandria Press, p 67.

been dealt by more than one researcher in the past, although not in the same way as this research project with one want but at least it could clarify many points and offer a comparative opportunity to the researcher.

Kuwait is unique in that it is the only state in the "Gulf Countries Council"³⁹² (GCC) to have enacted laws dealing directly with the intentional HIV/AIDS transmission³⁹³, and Kuwait is the one of the Gulf countries that has the same tradition, religion and language as the United Arab Emirates. However, first I will take a brief look at the current situation in the wider Arab World as regards the incidence and extent of AIDS/HIV infection.

4.2. The current picture in the Arab world.

UNAIDS estimates in the Middle East indicate that 55,000 people acquired the HIV infection in 2003, bringing the total number of people living with HIV/AIDS in the region to 600,000 out of which 45,000 people died in 2002³⁹⁴. However, at a workshop held under the auspices of the International Labour Organisation (ILO), in Beirut in July 2003, at which the disturbing rise in the number of HIV/AIDS victims in the Arab countries within two years was discussed³⁹⁵, the number of victims was stated to be approaching 800,000, the number having doubled in the years 2002 - 2004. In 2006 an estimated 68000 [between 41000 to 220000] people contracted HIV, bringing to 460000 [between 270000-760000] the total number living with HIV in the Middle East ³⁹⁶, in 2007 the UNAIDS estimated the new cases to be 35,000 and 25,000 people died in the same year because of AIDS.³⁹⁷

While the Arab region is generally regarded as a low prevalence region, (about 0.3% of the adult population), HIV figures indicate a rise among women with HIV and a trend of general upsurge of the epidemic³⁹⁸. Sexual intercourse is apparently the main mode of

392 "GCC" Contain United Arab Emirates, Oman, Kuwait, Bahrain, Qatar and Saudi Arabia.

393 Mustafa, (*op.cit*), p 109.

394 "UNAIDS Organization: Report on the global HIV/AIDS epidemic", July 2002.

395 "Medical Journal", Alkhaleej News Paper, Sharjah Issue No: 299, (2004), p 14.

396 "Middle East and North Africa." Available at: http://data.unaids.org/pub/EpiReport/2006/10-Middle_East_and_North_Africa_2006_EpiUpdate_eng.pdf. Accessed on: 2/9/2007.

397 "Insight into AIDS responses in Middle East and North Africa", 4/2/2009. Available at: http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2009/20090201_Insight_into_UNAIDS_responce.asp. Accessed on: 28/2/2009.

398 *ibid*, p 32.

transmission in most countries, with significant increases in HIV infection among injecting drug users also reported. According to the most recent data, by far the most common method of infection is through sexual intercourse (70-80 per cent), while drug-related HIV infections and transmission from mother to infant both account for 5-10 per cent of cases. Far fewer infections were caused through contaminated equipment at medical centres (1 per cent), or through contaminated blood transfusions (3-5 per cent)³⁹⁹. In addition to the human cost, a World Bank study on macro-economic impacts of HIV/AIDS in nine countries in the region concluded that GDP losses over the next 25 years could average 35 per cent of today's GDP - and could go far higher.⁴⁰⁰

Miss M Gazi, the ILO consultant, also pointed to the ignorance and cynical attitudes which engulf the phenomenon of HIV/AIDS in the Arab World- it is difficult to curtail HIV as you cannot talk about protective measures while the disease in question is a taboo. Consequently, there is an acute lack of health education within all ranks of society, particularly among young people and adolescents.⁴⁰¹

Also highlighted at the workshop was the strategic location of the Arab countries, i.e. between the HIV/AIDS high-rate counties of South-eastern Europe, south-western Asia and South of the Sahara in Africa, as a major factor in encouraging the spread of the disease in the region⁴⁰². The environment in the Arab countries can also be said to be propitious for the spreading of the disease, particularly with augmenting drugs problem, the changing nature of sexual relationships and burgeoning extramarital practices - according to Miss M Gazi, women constitute 55 per cent of the (known) HIV positive cases, having been infected by their spouses.⁴⁰³

399 "AIDS and the strategic fight", Medical Journal, Alkhaleej News Paper, Sharjah Issue No:299, (2004), p 14.

400 "Arab region acts to break silence on HIV/AIDS". Available at: <http://www.keralamonitor.com/aidsarabs.html>. Accessed on: 27/5/2004.

401 *ibid*, p 16.

402 "AIDS and the strategic fight", Medical Journal, Alkhaleej News Paper, Sharjah, Issue No:299, (2004), p 18.

403 *ibid*, p 16.

This fact raises another, related issue, in that traditional Islamic family structures appear to be in conflict with the containment of the virus, and instead can be seen as increasing the possibility of HIV/AIDS infection for women (and, by extension, for children too)⁴⁰⁴. As Amina Wadud suggests, *"a traditional Islamic theological response can exacerbate the spread of HIV as a Muslim wife is expected to be unconditionally sexually available to her husband. According to Sharia, if a Muslim man desires intercourse with his wife, she must comply. If she does not, she is guilty of 'nushuz', recalcitrance. A wife who is 'nashizah' is no longer eligible for 'nafaqah': maintenance or financial support. 80% of the heterosexual women with HIV/AIDS are monogamous and have only ever had sex with their husbands"*⁴⁰⁵. These women have sexual intercourse with their husbands who have contracted HIV and in turn, they may then give birth to or infected at birth their innocent child, especially if they are not under medical supervision.

Another relevant factor contributing to the rapid spread of the disease was identified as the vast movement of people to and from countries suffering from the spread of HIV/AIDS, where young people may catch the disease and then bring it back home with them. In Djibouti and Sudan, for example, political instability, socio-economic disparities and large-scale population mobility have led to widespread epidemics.⁴⁰⁶

Yet there are encouraging exceptions to what seems to be a general trend of official denial in the region. Algeria, Lebanon and Morocco, for instance, are developing more substantial prevention programmes, while some countries, notably Egypt and Libya, appear willing to acknowledge and tackle epidemics associated with injecting drug use⁴⁰⁷. With the increase of HIV/AIDS infections, in 2004 the UNDP has joined with all seventeen Arab governments in an initiative to break the silence surrounding the epidemic and bring forward all social and legal aspects relating to AIDS to light⁴⁰⁸. An advocacy campaign

404 Wadud, A. "Vulnerabilities: HIV and AIDS". Available at: www.muslimwakeup.com/mainarchive/000100.html. Accessed on: 15/6/2004.

405 *ibid*.

406 "Arab region acts to break silence on HIV/AIDS". Available at: <http://www.keralamonitor.com/aidsarabs.html>. Accessed on: 23/3/2005.

407 "AIDS and the strategic fight", *Medical Journal, Alkhaleej News Paper, Sharjah Issue No:299, (2004)*, p 18.

408 *ibid*.

under the regional project has been targeting stigma and discrimination, reinforcing the theme of the World AIDS Campaign for 2002 – 2003, "Live and Let Live".⁴⁰⁹

Moreover, the 2003 workshop held in Beirut focused on the change of attitudes and the relation among workers in the region. The theme of the conference was "AIDS and the work environment", and entailed discussion of the negative impact of this epidemic upon public health, productivity and economic progress. According to the regional director of ILO, Dr. Talib Al, this epidemic is to be viewed as a threat to the work environment rather than merely a biological or medical problem. Dr. Abdallah Zarroog, the representative of the Lebanese Ministry of Labour, also echoed his concerns, stating that their "top priority is to safeguard the necessary means and resources for waging a bitter war against the epidemic."⁴¹⁰

4.3. Aspects of the Islamic Criminal Legislation 'Sharia' with regard to HIV/AIDS

Transmission to a Healthy Person.

4.3.1. Crimes and punishments in Islamic law of sharia:

The Arabic word "*Shariah*" means "way" or "path to the water source, also it refers to the laws and way of life prescribed by "Allah" for his worshippers in general. *Sharia* is the divine law of Islam by which Muslims should live their lives. It covers every aspect of life, including family, community relations, inheritance, purification, worship, punishments, law .etc. and it provides the Moslem with the rulings in different matters and *sharia* came through the Glorious Quran and the saying and actions of the Prophet Mohamed.⁴¹¹

The Islamic law has *Hudood* Ordinances. The *Hudood* Ordinances are "limitations imposed by "Allah" and relate to "*sharia*" law⁴¹². Crimes that fall under this category can be defined as legally prohibited acts that "Allah" forcibly prevents by way of fixed and

409 "Stigma and Discrimination: World AIDS Campaign 2002-3". Available at: [http://data.unaids.org/pub/Presentation/2002/20020927_wac_presentation_en.ppt#274,1,World AIDS Day, 1 December: a primary vehicle for AIDS awareness](http://data.unaids.org/pub/Presentation/2002/20020927_wac_presentation_en.ppt#274,1,World+AIDS+Day,+1+December:+a+primary+vehicle+for+AIDS+awareness). Accessed on: 15/4/2005.

410 "HIV/AIDS", *Medical Journal, Alkhaleej News Paper, Sharjah* Issue No:235 (2004), p 58.

411 Ibn Taymiah, A. (1983), "*Majmoo Al Fatawi-Part 19*", Damascus: Dar Olom Alquran Press. Pp 38-42.

412 Ahmed, S. (2006), "*Islamic Sharia and Law*", Khartoum: Izzah Press, p 9.

as "Allah" mentions it by name in the Holy Quran, predetermined punishments, the execution of which is considered the right of Allah.

Table 6: Hudood Category⁴¹³

1	Adultery ⁴¹⁴ "Zina"	Man or a woman has a sexual relation with others which is unlawful (outside marriage). The punishment for unmarried offender is one hundred lashes and exile for one year, for a married offender is death by stoning.
2	Highway robbery ⁴¹⁵ "Hirrabah"	Activity of an individual or a group of individuals, armed with any type of weapons such as swords or knives on the public highway with the intention of preventing the passage or seizing and holding the property or money of passers-by or otherwise inflicting upon them bodily harm or killing. The punishment is death or cross amputation of leg and hand or exile.
3	Theft "Sareqah"	Intentionally taking the wealth of another party without permission. The punishment is amputating the right hand and if indicted in a second theft crime, the left leg is amputated
4	False Accusation "Qadhef"	Accusing an innocent person of adultery or sodomy. It also includes denying the lineage of a person from his/her father or mother (which implies that his parents committed adultery). False accusation includes any claim of adultery that did not have a proof acceptable by Islamic Sharia (four witnesses to proof). The punishment is one hundred lashes and not accepting his legal testimony in any case on front of courts in the future.
5	Drinking Alcohol "Shorpalkhamer"	Drinking is prohibited even a small amount of alcohol or wine. The punishment is eighty lashes.
6	Apostasy "Redah"	A Muslim Changing or converted his religion to another religion. The punishment is the death penalty.

The other types of crime in the Islamic penal system are the crimes of *Qisas* or (Retaliatory punishment) and *Diyah* (blood money), also called crimes against the integrity of society. The crimes which are clearly stated in the Holy Quran are: murder,

413 Al Sabooni, M. (2002), "Fiqqeh Al moamelat", Beirut: Al-Maktaba al-A'sryiaa, pp 88-174.

414 Another area of the criminal law that would appear to undermine attempts at dealing with HIV transmission is that relating to the crime of Adultery "Zina". Adultery is considered one of the most serious offences under Islamic law and as such the proscribed penalty (death by stoning) is mandatory.

415 As for the crime of armed robbery or banditry or highway robbery "*Hiaraba* in Islamic jurisprudence", its punishment is the death, if the bandit perpetrator actually goes out and commits banditry that causes panic or kills, whether the act actually involved robbing money or property or not. The punishment is understandable because banditry poses a real threat to lives and security of the community at large.

quasi intentional homicide, accidental homicide, intentional wounding and culpable wounding⁴¹⁶. The Divine Ordinance has set two sets of punishments for these five crimes: a penalty equal to the crime in kind, (in cases of deliberate acts) and blood money. The legislator – Almighty *Allah*- also prohibited remission of punishment. However, the victim or guardian of the victim is allowed to drop the whole or part of the punishment and, if the punishment is dropped, blood money is paid instead⁴¹⁷. This type of crimes has very specific punishments without maximum or minimum range.⁴¹⁸

The *Qisas* crimes are limited to homicide, severance of limbs, causing permanent disabilities and injuries and wounds. The punishment provided for these crimes must be equal to the criminal act, if comparable. Those who have the right for punishment may choose to replace it by blood money or drop it altogether. On a different level, the punishment for *Qisas* crimes requires the submission of complaints while doctrinal provisions or punishments (*Hudood* crimes) do not require the submission of complaints and the punishment follows the act immediately even if no one has complained to the law enforcement authority.⁴¹⁹

The third types of Islamic penalties are labelled as penalties of chastisement and castigation "*Tazir*". These are any acts prohibited by the legislator-Almighty *Allah*- but without providing specific penalty. Absolute authority is given to the governor in this regard and he may decide to sentence perpetrators to death, if that measure is necessary to uphold national security.⁴²⁰

416 Abd Alkarem, A. (not dated), "Al-Hudud Doctrinal Punishments in Islam", Kuwait: Dar Al-Fikr Al-Arabi, p 49.

417 Al Ani, M. (1998), "Jurisdiction of transactions in Islamic Shari'a", Amman: dar al-maseriah, p 71.

418 Al-Khalaf, A. (2005), "Crimes and Punishments in Islamic Jurisprudence", Yemen: Abbad's center for studies and publication, p 28.

419 Akhdar, A. (1982), "The penal system and its principles", Riyadh: Institute for administration and studies, p 43.

420 Al Hafedh, A. (2001), "Almenat Alkobra", Riyadh: Al Rasheed Library, p 310.

4.4. *The traditional perspective.*

It is well established that the HIV may enter the body through blood, thereby causing the infection. Therefore, physicians advise people to avoid anything that may penetrate the skin. It is also known that the virus may be transmitted to a healthy person through injury⁴²¹. There have even been cases where HIV infected individuals tried to attack police officers by causing them minor injuries or biting them. In Egypt, a nurse injected a patient with a needle, after a dispute, causing him hepatitis⁴²².

Many jurists consider that these cases are similar to 'killing with poison' or 'sorcery' or other forms of 'invisible killing'⁴²³. Here I will discuss three traditional opinions on 'killing with poison' held by four schools of Islamic jurists'.

Firstly, the majority of Hanafi Fuqaha (followers of Imam Abu Hanifa al Numan School of Islamic law, which is one of the four major schools⁴²⁴) believes that putting a poison in any food or drink intentionally to "harm others without leading to death" does not require *Qisas* (retaliatory punishment) or *Diyah* (blood money). In this case only *Tazir* (discretionary punishment) is required and the person committing such an act should be imprisoned.⁴²⁵

Secondly, Shafi'i scholars (followers of Imam AlShafiia', founder of one of the four major schools of Islamic law) believe that to harm some one intentionally by using poison is a quasi – intentional killing, and that blood money should be paid.⁴²⁶

Thirdly, Malikite scholars (followers of Imam Malik Bin Anas) and Hannabla (follower of Imam Abu Hanbal) believe that giving poison to a person with the intention of killing

421 Murphy. S. M. (*op. cit*), p 9.

422 Kamal, R. (2002), "The story of AIDS", Cairo: Al-akhbar Press, p 12.

423 Al-Bar, A. (2002), "Infection through Medical and Islamic Perspectives", Cairo: AL- Ihram Press, p 22.

424 In Islamic Shariaa, the four Islamic schools that interpret and issue rules are named after the four scholars: Abu Hanifa, AL Shafi'I, Malik and Ibn Hanbl.

425 Ibn Abdeen, M. (1995), "Al-Dur Al Mukhtar", Halab: Al Halaby Press, p 211.

426 Alramli, M. (1999), "Nihayat Al-Muhtaj", Riyadh: Islamic Library, p 73.

Al-Mahali, M. (1994), "Sharh Al-Muhtaj", Cairo: Albaby Press, p 21.

Al-Nawawi, M. (1972), "Rowdat Al-Talibeen", Damascus: Islamic Press & Publishing, p 374.

him calls for *Qisas* (retaliatory punishment) and should be viewed as if the victim had been killed by a sharp tool.⁴²⁷

Contemporary Sharia scholars are divided as to which opinion is correct. Some do not find *Qisas* 'retaliatory in punishment'. Imam Malik, for example, narrates how a lady gave the Prophet Mohamed some poisoned meat. He ate some of it but did not order her execution⁴²⁸. The same position is adopted by AL-Sarkhasi who cites the *Hadith* (Prophet saying) which says where a person eats poison voluntarily he is viewed as if he killed himself with a knife.⁴²⁹

As noted, murder, though really serious, is classified as a second class type of crime in assigning it a punishment as part of a group of certain crimes mentioned by name in the holy Quran; "Retaliatory punishment". Murder crimes fall in three categories according to Islamic *Sharia'a* or jurisprudence; the first type is murder with intent. The four major Islamic sects are in disagreement as to what satisfies an act of intentional assault that causes death. Imam Malik considers assault as an act that leads to death and hence it is deemed intentional. He recognizes only one type of intentional murder citing the holy Quran which mentions only the two types, intentional and unintentional killing. The third type which could be called homicide does not exist in Islam according to Imam Malik who insists that the first type is committed by the mere act of assault (physical element) without taking into consideration the *mens-rea* aspect; the non-material element.⁴³⁰

The other three Imams; Abu Hanifa, Al-Shafi'e and Ahmed Ibn Hanbal, consider intentional assault to lead either to murder with intent or manslaughter and distinguish between the two types by the tool or weapon used by the perpetrator to affect the death of the victim. If the tool is one of the ones known to be used for causing death, like

427 AL-Bahooti, A. (1995), "Sharh Muntaha AL-Iradat. In AL-Thubaiti, S. (eds), "AIDS", Riyadh: Ibn Hazm Printing Press, p 59.

428 Ibn Aljozi, M. (2000), "Al-Bukhari Al-Jamie Al-Saheeh", Cairo: Dar AlHadeeth Press, p 178.

429 Al-Sarkhasi, S. (1982), "Al-Mabsoot", Cairo: Al-Sada Press, p 238.

430 Hassanain, E. (1983) "Murder crimes between Shariah and law", Riyadh: Riyadh Press and Distributions. Pp 36-49.

attacking the neck of a victim with a sword, or the tool is generally known to hurt or injure without necessarily causing death. The tool, according to them, is the evidence to be considered in deciding on the actual intent of the perpetrator, the second element of the crime. They stopped short of specifying all the types of tools, apparently because they are too many to count. However, they named just a few of the main types of tools and divided these into three categories. The first are the ones that are known generally to cause the death of the victim such as swords, knives and spears. The second category consists of tools which are not generally used to kill, such as sticks. The last category consists of tools that rarely cause death, such as kicking or slapping or knocking by the fist. All these tools may cause death but with the presence of an uninterrupted cause and effect relationship between the act and the result. The two elements in Islamic *Sharia'a* law for the three types of murder are not very much different from modern secular laws.⁴³¹

The four school of Imams do agree on the third type of murder, homicide, which is inadvertently caused because criminal liability could only be considered in case of intentional act, depending on the Quaranic verse which indicates that there is no sin on you if you are mistaken, and the *Hadith* of the Prophet that you are not to be blamed for forgetfulness or mistake. However, the *Sharai'a* law provides punishment for such crimes which is less than *Qisas* and is left to the ruler or judge to decide⁴³². The cause-effect relationship in this type of crime is realised if the link between the act and the consequence death is not interrupted; to the extent that death could not have happened for any other reason. Deciding on the causal relationship in the cases of homicide is decided by the competent court.⁴³³

For example Abu Zaid noted that: "if an HIV infected person intends to transmit the infection to a specific person and the means used by him to do so actually transmit the virus to the victim and cause his death, the transmitter is punished by "*Qisas*" (retaliatory

431 Al Shawarbi, A.(1991) "Explanation in the crime punishments", Alexandria: Al Maref Press. Pp 25-59.

432 Appeal No.123. (1993). Criminal, 29/1/1994, Dubai Courts.

433 Appeal No. 84. (1996). Criminal, 11/1/1994, Dubai Courts.

punishment)"⁴³⁴. In the event that an HIV infected person intends to transmit the virus to a specific person and actually infects the victim without causing his death, he is punished by "*Taziir*" (discretionary punishment) and where death ensues he has to pay "*Diyah*" (blood money) to the "inheritors" (close relatives) of the deceased⁴³⁵. Al-Sagheer added that: "Where an infected person intends to transmit the virus but the infection is not actually transmitted, the doer is punished by "*Taziir*"⁴³⁶.

In contrast, the majority of scholars support *Qisas* or retaliatory punishment in cases of killing with poison and consider that act to be a form of murder. This group of scholars base their position on the following Quoranic verses where "Allah" says: "O you who believe! *Al Qisas* (the law of equality in punishment) is prescribed for you in the case of murder"⁴³⁷, and also: "And whoever is killed is given his heir the authority to demand *Qisas*"⁴³⁸. Moreover it was stated in "Sunan Abi Dawood" that the Prophet Mohamed did approve the execution of *Qisas* on a lady when her victim died.⁴³⁹

There is a further controversy with regard to the means of murder, and whether a killing necessitates *Qisas*, regardless of whether the tool is traditional, such as knives and guns, or invisible such as poison or viruses. The evidence of those who reject *Qisas* for those who murder their victims with poison is considered to be very weak, as it was stated in "Sunan Abi Dawood" that while the Prophet Mohamed did not order the execution of the lady before the death of the victim, the order of execution will be in the event of the death of the victim.⁴⁴⁰

4.5. The Position with regard to HIV /AIDS.

In pre-Islamic times and before the new written laws involvement, retaliatory punishment was considered as deterrence, a warning and a penalty against the crimes

434 Abu Zaid, (*op. cit*), p 201.

435 *ibid*.

436 Al-Sagheer, J. (1995), "The Criminal Law and AIDS", Cairo: Al-Nahda Publisher, p 31.

437 Holy Quran, Surah Al-Isra'a: Verse No: 33.

438 *ibid*.

439 Ibn Majeh, A. (1997), "Al-Sunan", Syria: Al Tazzirah Press, p 231.

440 *ibid*.

committed. “And there is (a saving of) life for you in *Qisas*, Oh! men of understanding, that you may become pious”⁴⁴¹. This adds support to the view that the transmission of HIV can be considered as a crime. Thus where an HIV positive person infected a healthy person causing his death, he too might be killed following the death of the victim. In fact the majority of scholars believe that a retaliatory punishment should be executed even if the injury is very minor-regardless of the size of injury or infection, the transmitter of HIV should face a retaliatory punishment as the victim will die sooner or later as a result of the virus⁴⁴². Moreover, even if the perpetrator did not intend to kill, he will be killed because this conduct is regarded as offending against acceptable and normal practices, and his punishment acts equally as a deterrent, a warning, and a penalty.⁴⁴³

Islamic Jurisprudence of the *Sharia* has also dealt with the issue of one spouse transmitting the HIV to the other, as it is well– established that semen may carry the HIV and that therefore, any sexual intercourse between a virus infected spouse and a healthy one will most probably transmit the virus. In fact a many of wives have been infected as a result of sexual intercourse with their infected husbands⁴⁴⁴. The question here is about the role of the Islamic law where a virus-carrier who is aware of his situation has sexual intercourse with a healthy person, and whether the rule differs if he is not aware that he is infected. In this regard, there is a well-established principle in Islamic law which states that one should neither cause harm to others nor participate in harm.⁴⁴⁵

Therefore, if an HIV-infected person is aware of his infection, he must not have sexual intercourse with his spouse. Otherwise, he will be criminally liable for his act and will be considered a murderer after the death of the victim⁴⁴⁶. Interestingly, Islamic *Fatwa* ‘Islamic inductive or deductive rule’ in Algeria has pronounced such a marriage as legal

441 Holy Quran, Surah AL-Baqarah: Verse No: 179.

442 AL Thubatti, S. (1995), "AIDS and Islamic rules", Saudi Arabia: Ibn hazri Printing Press, p 12.

443 AL-Bahooti, A. (1995), "Sharh Muntaha AL- Iradat. In AL-Thubaiti, S. (eds), "AIDS and Islamic rules", Riyadh: Ibn Hazri Printing Press, p 72.

444 Al-Bar, M. & Safi, A. (2001), "AIDS", Syria: Alsham Press, p 22.

445 Ibn Majeh, M. (1995), "Sunnan Ibn Majeh-Part Three", Beirut: Dar Alkoteb Al Elmiah. Hadeeth Number: 1909-1910.

446 *ibid.*

if the infected spouse informed the other about his/her status before the marriage⁴⁴⁷. However, where one of the spouses did not disclose to the other his/her status as virus carrier, the marriage contract shall be deemed void and should be abrogated⁴⁴⁸. On the other hand if the virus infected person is not aware of his/her infection when having sexual intercourse with a healthy person, it is accepted that ignorance, error and forgetfulness totally erase any sin committed by man in his relationship to God: "Our Lord! Punish us not if we forget or fall into error"⁴⁴⁹. Prophet Mohamed said that "Allah forgives my nation in case of error, forgetfulness and what they do by force"⁴⁵⁰. However, the rule in this case is that error does not also cancel the rights of others. Therefore, committing such deeds still necessitates the imposition of *Diyah* (blood money) and *Kaffaarah* (atonement).⁴⁵¹

Sodomy is prohibited by Islamic Sharia and considered as a major sin, Allah says: 'We also (sent) Lut: he said to his people: "Do ye commit lewdness such as no people in creation (ever) committed before you? For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds"⁴⁵². The Prophet Mohamed Said: "If you found two persons committing sodomy kill them both".⁴⁵³

Blood transfusion and organs transplanted from an infected person to a healthy one may also cause an infection⁴⁵⁴. In the case of a medical mistake that results in the transmission of the virus, it is likely that this would not be discovered until much later, when the symptoms of the disease appeared, and it could prove difficult for the patient to prove

447 *Ittihad News Paper*, Vol.12211, 15/4/2003, p5.

448 *Asharq Al-Awsat Newspaper*, Vol 26, No:93277, 11/6/2003, p 23.

449 "Holy Quran" Surah Al-Baqarah, Verse No: 286.

450 Ibn Majah, (*op. cit*), p 135.

451 AL-Sayoti, A. (1982), "*Ambiguous issues*", Cairo: Dar Al Kittab, p 207.

452 "Holy Quran", Surah Al-Aaraf, Verses No: 80-81.

453 Available on Abo Dawwod and Altermethy, and on line at: www.islam-for-everyone.com. Accessed on: 15/8/2008.

454 "AIDS and HIV infection" Information for United Nation Employees and their families. Available at: http://search.unaids.org/Html.aspx?p=%2fcgi-bin%2fMsmGo.exe%3fgrab_id%3d0%26page_id%3d4441%26query%3dblood%2520trans%26PV%3d1. Accessed on: 15/7/2006.

that the medical instruments had been contaminated or that the transfused blood had contained HIV.⁴⁵⁵

Such infections are nevertheless of great concern: for example, Libya has witnessed allegedly intentional transmission of the HIV as they claimed, by Bulgarian members of the medical staff who were sentenced to death⁴⁵⁶ along with a Palestinian doctor who was also sentenced to die by firing squad for allegedly deliberately infecting hundreds of babies with HIV.⁴⁵⁷

Islam has viewed this issue from different angles. Jurists appreciate that while medicine aims at providing medical treatment for people, medical staff are human and may make mistakes. Thus malpractice is punished by *Qisas* 'retaliatory punishment' in the case of committing intentional acts, or compensation, in the case of unintentional mistakes or negligence.⁴⁵⁸

In addition, it is well established that an infected mother may transmit the disease to the unborn child⁴⁵⁹. Thus, The Islamic Organisation for Medical Sciences held a symposium on "Procreation in the Light of Islam" in 1998 and arrived at the following rule on the issue of abortion: The foetus is alive from the beginning of pregnancy and his/her life is respected in all its stages. Also, this life should not be attacked by an abortion except for dire medical reasons, although some participants disagreed, saying that an abortion should be allowed within 40 days if there are justified reasons.⁴⁶⁰

455 Al-Mashaan, M. (2003), "Balance between medic and law", Kuwait: Dhat Alsalsasel Press, p 214.

456 News Item from: "The Independent" on Sunday', 09/05/2004. "The foreign health workers were first charged with "premeditated murder with the intention of undermining the Libyan state", an offence which carries the death penalty. The case was dismissed but a new one was filed, charging the five Bulgarian nurses and doctors, one Bulgarian and one Palestinian, with "provoking an AIDS epidemic through the use of contaminated products", another capital crime. A French AIDS expert, Professor Luc Montagnier, told the court that the infection was caused by poor hygiene. He claimed that the epidemic had probably begun in 1997, one year before the accused began working there, and that it continued after their arrests. Defense lawyers have already said that they would appeal the sentences".

457 Ittihad News Paper, Vol.13423, 15/12/2005, p 15.

458 Al-Bar, (*op.cit*), pp 93–102.

459 "Mother to Child Transmission". Available at: http://www.unaids.org/en/Issues/Affected_communities/mothertochild.asp. Accessed on: 15/12/2006.

460 Abu Zaid, (*op. cit*), p 302.

Moreover, existing medical knowledge indicates that there is no confirmed risk from raising and suckling a healthy infant by his HIV/AIDS–infected mother, thus Islamic law does not prevent an HIV/AIDS–infected mother from raising her infant.

4.6. Legislative steps taken in the Arab World to Criminalise HIV/AIDS Transmission.

The HIV/AIDS epidemic has involved a plethora of legal issues, particularly those related to the victims of the disease. For example, a number of questions have been raised regarding the inadequacy of the existing legislation in protecting members of society from carriers of the virus who might transmit it to them, whether intentionally or unintentionally. Is it possible, or desirable, for example, to force anyone to undergo forensic examinations to know whether he/she is a carrier? And is it a pre-requisite to have his/her consent beforehand? Also, is it incumbent upon the carrier to inform his general practitioner or the relevant health agency about his condition? And can the doctor disclose the information he has about the carrier, if he has it, to the spouse of that patient?⁴⁶¹

Moreover, it is submitted, the role of the Penal Code in the protection of individuals' rights is not only to ensure the protection of a healthy person from virus transmission, but rather to protect equally the rights of the virus-carrier as per the regulations in the other branches of law. Thus the criminal law punishes any violations, protects society from the risk of diseases transmission and also punishes the transmission of the HIV among people.⁴⁶²

In fact, the phenomenon of HIV/AIDS is beset by a number of legal complications, particularly in the field of criminal law as indicated in the previous chapters, such as the definitions of acts of manslaughter, assault, murder, intention and disclosure (of infection). One needs to ask, for example, to what extent the carrier of HIV is answerable for the fact that he/she failed to take the necessary precautions so as not to transmit the virus to other people. Should he/she face criminal sanctions or mere civil

461 Mamdooh, K. (1998), "Legal responses to AIDS virus transmission", Riyadh: Naif Academy, p 146.

462 Haifa, F. (2005), "The Globalisation and AIDS approach", Baghdad: Baghdad Press, p 11.

responsibility? And should he/she only be answerable for the deliberate transmission of the disease or also for acts of negligence?

Moreover, even if criminalising HIV transmission were thought not to be desirable (for example, because of the view that such a criminal provision would increase the stigma associated with the disease), there nonetheless remains the related issue of compensation of the victims: to what extent is the state ready to compensate victims of this disease?⁴⁶³ This question becomes all the more urgent when one takes into consideration how quickly this epidemic is mushrooming and the fact that life insurance companies refuse to insure anybody against this fatal danger.

As mentioned earlier, most states in the Arab Regions do not provide for special provisions regarding HIV/AIDS transmission, as Mustafa M, stated: "Because most Arab jurists believe that criminal liability for HIV transmission whether intentionally or unintentionally can be established on the basis of existing provisions".⁴⁶⁴

4.6.1. The HIV/AIDS situation in Egypt.

The Egyptian Health Minister Mohamed Tajodeen, announced that 818 of the HIV/AIDS cases were reported in Egypt in 2005⁴⁶⁵. In 2006 Doctor Naser Ramziy the under secretary in the Egyptian Health Ministry declared that the number had reached 2542 cases of HIV/AIDS⁴⁶⁶, in 2009 the number of HIV cases increased to reach 3919.⁴⁶⁷

Intentional virus transmission can be established when an HIV/AIDS patient knowingly transmits the disease through sexual intercourse with a healthy person, or where an HIV infected person mixes his infected blood with others' blood with the intention to transmit

463 Abu Allail, I. (2002), "Compensating the AIDS victims", Kuwait: University press, p 73.

464 Mustafa, (*op. cit*), p 5.

465 Available at: <http://arabic.cnn.com/2005/scitech/12/2/egypt.aids/index.html>. Accessed on: 11/9/2007.

466 Available at: <http://www.egyptiantalks.org/invb/index.php?showtopic=25461>. Accessed on: 11/9/2007. There is no data available after the year of 2006.

467 UNGAS Country Progress Report, Arab Republic of Egypt, January 2008- December 2009. P4.

Available at: http://data.unaids.org/pub/Report/2010/egypt_2010_country_progress_report_en.pdf. Accessed on: 28/4/2010.

the virus. However the issue of criminal liability in such cases is rather controversial. Some Egyptian jurists believe that such practices could not be considered a murder crime – more specifically, the crime known as *killing with poison* - because killing with poison under Egyptian Law is a ‘result crime’, which can only be established upon the victim’s death.⁴⁶⁸

The proponents of this view raise the question as to whether the HIV can be considered a ‘poisonous material’, and most jurists in Egypt believe that it could not⁴⁶⁹, and that therefore intentional transmission of the virus is not considered a murder with poison even if the provider has the intention to kill.⁴⁷⁰

It is evident that the legislator did not define the word ‘poison’. Moreover, Article (233) of the Egyptian Penal Law⁴⁷¹ does not explicitly provide that the material used in the murder should necessarily be a ‘poison’. According to this Article, murder by using poisonous materials which will cause death ‘sooner or later’ is to be construed as murder with poison regardless of how these materials are used. So, the type of poison is not specified. The same is true in Kuwait where the Criminal Law provides for a murder conviction if a poisonous material is used but without specifying the nature of the poisonous material⁴⁷².

Thus, it is difficult to determine whether the viruses of fatal diseases are to be viewed as “poisonous materials” (because poisons have a specific chemical definition), particularly because killing with poison is not like killing by any means, but rather a murder that necessitates the imposition of a more severe penalty (as a poisonous material is used)⁴⁷³. This distinguishes murder with poison from the other types of murders. However, non-accommodation of the crime of intentional HIV transmission within the law of murder

468 Al-Sagheer, (*op. cit*), p 35.

469 Therefore, if the material used by an HIV/AIDS -infected person causes death and is not poisonous, then the murder is not considered a poison killing, it is an intentional or premeditated killing. See Dr.

Mahmoud Najeeb Hussni, " Interpretation of Penal code– Private Section", 1993, p 297& Dr. Fatouh Al-Shazali, "Interpretation of Penal Code – Private Section", 1996, p 516.

470 Hussni, M. (1993), "Interpretation of penal code – Private section", Cairo: Alfekr Press, p 297.

471 Abu Roos, A. (2000a), "Egyptian Encyclopedia of Criminal Law of contagious disease control", Alexandria: Modern University Office, p 200.

472 Ghanam, M. (1997), "Criminal Investigations", Kuwait: University Press, p 179.

473 Abu A’amir, Z. (1989), "Penal Code- Special Section", Cairo: Cairo Press, p 596.

by poison simply means rejecting the intensified penalty for murder by poison, and there is no dispute among jurists over the character of intentional HIV/AIDS transmission as an intentional killing.

Abu Roos pointed that: "According to Article 234 of the Egyptian Penal Code, the intentional killing could be established when the victim dies as a result of intentional transmission of the HIV i.e. there simply needs to be a causative relation between the intentional act of the virus-carrier and the death of the victim"⁴⁷⁴. Where the infected person intends to kill but the HIV is not transmitted to the victim for reasons that have nothing to do with the intent of the virus-carrier, the offender can be charged with an attempted murder punishable under the Egyptian Penal Code.⁴⁷⁵

In the event that the virus-carrier's intention to kill is not proved, but merely his intention to cause harm to the victim (who nonetheless dies as a result of the virus), the virus-carrier will be liable "for using harmful materials causing the death of the victim". In this case, the liable party can be punished for a period ranging from 3 – 7 years as per Article 236 of the Egyptian Punishment Law, if his act is a premeditated murder, the perpetrator will be punished by imprisonment or death penalty.⁴⁷⁶

In the event that the offender intentionally acted to transmit the HIV and the virus is not transmitted for reasons out of his control, where, for instance, he intended to transmit the HIV by biting the victim and the infection was not transmitted, the offender's conduct is regarded as an attempt to transmit the virus which is not punishable by law⁴⁷⁷. However, this conduct is punishable if it falls under any other category of crimes, and in this case it could be described as injury, beating or endangering people.

In addition, the violation of the protective measures provided for in section 4 of the Egyptian Law of Contagious Diseases Control 137/1958 are punishable by the penalty

⁴⁷⁴ Abu Roos, A. (2000b), "Egyptian Encyclopedia of Criminal Law", Alexandria: Modern Press, p 322.

⁴⁷⁵ *ibid.*

⁴⁷⁶ *ibid.*

⁴⁷⁷ Mustafa, (*op. cit*), p 173.

provided for in Article 26 of the Law, according to which the violator shall be fined no less than "One" Egyptian pound and no more than "Ten" pounds or by one month imprisonment, without prejudice to a more severe penalty as required by that Law or by any other law⁴⁷⁸. The latter condition means that if the violation of the protective measures results in a criminal act, the violator will be criminally liable and therefore will be punished by the penalty provided for in the criminal law or in any other law that imposes a more severe penalty, since it is believed that the penalty provided for in the Law of Contagious Diseases Control is incompatible with the seriousness of the HIV/AIDS disease, which is fatal and which has no cure.

The above mentioned penalty is applicable to people refraining from immediately notifying the authorities about an infected person or a suspected case if that person is required to do so by law. The penalties applicable in cases of refraining from notifying the concerned authority of HIV/AIDS cases are inapplicable to an infected person or to a virus carrier, due to the fact that Egyptian Law of Contagious Diseases Control 137/1958 imposes no obligation on the virus-carrier to notify the concerned health authority of himself. Moreover, according to this valid law, the infected person is not obliged to seek medical treatment as long as no medical cure for HIV/AIDS is available. However, if medical cure is discovered, then, an infected person shall be under an obligation to seek medical treatment and shall be held liable criminally where he/she refrains from medical treatment.⁴⁷⁹

Article 12 of the Egyptian Law No.158/1950, relating to Venereal Diseases⁴⁸⁰ Control, obliges any person infected with a venereal disease to see a licensed doctor⁴⁸¹, and as Abu Roos noted that: article 13 of the same law provides for the criminal liability of those who refrain from treatment, however, the French Law which is the source of the Egyptian legislation, does not penalize HIV/AIDS infected persons in this way due to

478 Shazli, F. (2001), "Legal Aspect of AIDS-Second Edition", Alexandria: Alexandria Press, p 116.

479 Abu Roos, (2000a), *op. cit*, p 210.

480 Any of the venereal diseases transmitted by sexual intercourse which do not include AIDS disease in Egypt despite the fact that such a disease is medically similar to some venereal diseases as regards transmission means from an infected person to others.

481 Shazli, (2001), *op. cit*, p 20.

the fact that AIDS, according to French law, is a contagious disease and not a venereal disease.⁴⁸²

A related question is whether the intentional transmission of HIV can be regarded as a permanent physical disability since it causes the total collapse of the human immune system. Article 240 of the Egyptian Penal Code provides that any harm that may cause an incurable, permanent physical disability is punishable by imprisonment (from three to five years). In case of premeditation, the offender shall be punished by hard labour from 3 – 10 years.⁴⁸³

Permanent physical disability is defined as losing any organ of the body or any part of it or anything that may reduce the power of any organ or its natural resistance, and is distinguished by its eternity, which means that it is incurable.⁴⁸⁴

In the current medical context the Egyptian Legislators have taken the view that the transmission of HIV is to be regarded as a permanent physical disability as long as the human immune system loses its functional capabilities and natural resistance⁴⁸⁵. This result supports the definition of permanent physical disability as provided for in the law. Therefore, the accused can be held liable for causing an intentional physical disability or bodily harm if a permanent physical disability results.⁴⁸⁶

The HIV may be transmitted as a result of negligence or violation of the laws and regulations of protective measures. Some virus-infected patients are aware of their situation and do not take the precautionary measures required to prevent others from becoming infected. The other party may be the spouse of the infected person who is not aware of his/her circumstances. Yet another party may be the ordinary patient to whom the virus was transmitted by a doctor, or a laboratory technician, as the virus may also be transmitted by infected tools or blood.

482 *ibid.*

483 Abu Roos, (2000a), *op. cit.*, p 312.

484 *ibid.*

485 Shazli, F. (2000), "Legal Aspects of AIDS". Alexandria: Alexandria Press, p 129.

486 *ibid.*

In respect of criminal liability, The Egyptian Penal Code provisions for unintentional homicide (Manslaughter). Article 238 provides for imprisonment for no less than 6 months and a fine of no more than 200 Egyptian pounds, or one of them. If the accused has consumed drugs or alcohol, the accused shall be imprisoned for no less than one year and no more than five years and fined no less than 100 pounds and no more than 500 pounds or both penalties. Similarly, Article 15/2 of the Kuwaiti Decree Law provides for imprisonment or a fine or both for unintentional homicide. Also, it provides for imprisonment for no less than one year and a fine if the crime committed results from negligence⁴⁸⁷. These provisions could be applicable to the unintentional transmission of HIV by a virus-infected person or by a third party in the event of the victim's death.

As an example, Article 343 of the Jordanian Penal Code provides for manslaughter or injury caused unintentionally. It could be the nearest approximation to dealing with the inadvertent culprit who transmits HIV to somebody else by mistake. Article 343 stipulates: "whoever causes the death of somebody by mistake or through negligence or lack of precaution or failure to abide by rules and regulations, should be punished by a prison sentence of six months to three years".⁴⁸⁸

In Egypt, in the absence of complications after the virus transmission that may cause the victim's death shortly after infection, the virus-carrier is liable for unintentional harm. Article 244 of the Egyptian Punishment Law punishes unintentional harm by imprisonment of no more than one year and by a fine of no more than 100 pounds or both. This penalty can be more severe in the case of a serious violation by a professional, or in the case of 'causing a permanent physical disability'. Also Article 15/1 of the Kuwaiti Decree Law No.16/1960⁴⁸⁹ provides for imprisonment of no more

487 In Egypt and Kuwait, the law imposes more intense penalty if the victims are more than three as in the case of transfusion of an infected blood for a number of people. Unlike the Egyptian law, the Kuwaiti Penal Code does not require a serious violation by the professionals to be penalized. In UAE any violation by a professionals including minor mistakes, could establish criminal responsibility. We do support this provision to remind the medical professionals to take more precautionary measures to prevent the spreading of HIV.

488 Mamdooh, (*op. cit*), p 27.

489 Available at: www.gcclegalsite.com Accessed on: 1/5/2004.

than six months and a fine of no more than 500 Dinars, or both for an offender who causes “bodily harm to others”.

It can be concluded that the provisions provided for in the Egyptian Punishment Law are sufficient to bestow a criminal character upon the act of a virus-infected person who intentionally or unintentionally transmits the virus to others by any means whether through blood or sexual contact, legally and illegally. Some Egyptian scholars as mentioned such as Shazli and Al Bar believes that there is therefore no need for new provisions as regards the intentional virus transmission to others by an HIV infected person. On the other hand, other Egyptian scholars, such as Mustafa Mahmood, insist that the Egyptian penal code is insufficient and it needs to be amended by creating a new special law similar to the USA law which deals directly with HIV transmission rather than trying to bestow a criminal character upon other acts.⁴⁹⁰

The Egyptian legal authorities' cannot be applied to any punishments beyond the penal code, the Egyptian constitution establishes in article No.41, that arrest and detention shall take place only by the provisions of the law. Article No.65 explicitly states that there is neither crime nor punishment except by the provisions of the law.⁴⁹¹

4.6.2. The HIV/AIDS situation in Kuwait.

The first HIV/AIDS case in Kuwait was reported in 1984, with a total of 479 HIV positive carriers detected in the following decade⁴⁹². Most of them have been deported⁴⁹³. In the latest available published statistics, (2004), the health authorities of Kuwait have announced that the HIV positive cases have reached 900, of whom one hundred are

490 Mustafa, (*op. cit*), p 143.

491 Al-Dagdag, M. (1988), "Human rights within the Framework of the UN", Cairo: Daral-I'Imle almalayeen, p 39.

492 Al-Owaish, R. , Moussa, M. "HIV and AIDS in Kuwait: a review". The Journal of the Kuwait Medical Association, 1994, 26(1), p 3-8.

493 Al-Owaish, R. *et al.* "HIV and AIDS in Kuwait review". Second International Conference on AIDS, Saudi Arabia, November 28-30, 1994, p 23.

Kuwaiti nationals and the remaining 800 are foreigners living in Kuwait⁴⁹⁴, Uniquely, Kuwait appears to share with the world community a grave concern and a consequent determination to search for alternative strategies for HIV/AIDS prevention⁴⁹⁵. With no immediate hope of a vaccine, the need for public health policies and programmes to protect individuals from contracting the illness through ignorance has focused attention on the role of education as a powerful medium of control. The governmental efforts in this direction include extensive use of the media for disseminating HIV/AIDS-related information and the organisation of international conferences on HIV/AIDS in coordination with World Health Organisation every two years. Since 1988, Kuwait has been observing World AIDS Day every year and has also included information on HIV/AIDS and immunity in the secondary school syllabus⁴⁹⁶. Meetings and public sessions on HIV/AIDS awareness have been held; and brochures, booklets and other printed materials have been distributed to reach the masses in an all-out effort to promote awareness of HIV/AIDS prevention and control.⁴⁹⁷

In addition, in contrast to the Egyptian law, the Kuwaiti Law specifically provides for HIV transmission. Remarkably, however, to date there has not been a single prosecution under this legislation, although it is to be noted, the confidentiality with which this area of the law is treated may account for the apparent lack of cases⁴⁹⁸. The blank spaces between 1998-2004 showed in the Report on the global AIDS epidemic tables give a clear indication of how little data on this issue are forthcoming.⁴⁹⁹

Indeed, both the introduction of this legislation and its implementation are shrouded in mystery, so much so that the researcher felt compelled to embark upon a field study trip to

494 Mahesh, M. "Dismantling the wall of secrecy around AIDS", 2004. Available at: <http://www.ahramnews.net>. Accessed on: 11/5/2005.

495 Merson, M. H. "The global AIDS pandemic-lessons learned and future challenges", Proceedings of the Kuwait fourth international conference on AIDS. 21-23 March, 1994, pp 13-22.

496 *ibid*.

497 Rashed, A. *et all*, 'Knowledge, attitudes, beliefs and practices of the population in Kuwait about AIDS-a pilot study', Volume 1, Issue 2, 1995. Available at: <http://www.emro.who.int/Publications/EMHJ/0102/11.htm>. Accessed on: 12/3/2005.

498 Mamdooh, (*op. cit*), p 166.

499 No estimates have been made where sufficient data since 1998-2004 was not available. Please see: www.unaids.org/EN/Geographical+Area/by+country/Kuwait.asp. Accessed on: 25/5/2005.

Kuwait in order to ascertain precisely what the current position is in Kuwait. A report of this visit can be found in the Appendix (2).

Currently intentional HIV transmission to others is a criminal offence, punishable by imprisonment of the perpetrator who “knowingly and maliciously transmits the virus to another innocent person”, for a maximum of seven years and a fine of no more than seven thousands Kuwaiti Dinars⁵⁰⁰. However, the Kuwaiti legislation makes no provision for compensation of the victim, which would appear to be a serious omission on the part of the legislator.

A complicating factor in Kuwait is the fact that the Kuwaiti legislator attaches great significance to the direct causal link between the behaviour of the perpetrator, and the given result, (death, in the case of HIV transmission)⁵⁰¹. In the case of “a multitude of possible causes”, for example, the conditions specified by Article 157 of the Penal Code^{16/1960}⁵⁰² would be referred to in order to prove the cause and effect relationship between the perpetrator and the result. The Article also stipulates that a person can be considered to have caused the death of some body, even if his action was not the direct or the sole cause of the death, where:

“(i), the culprit caused such harm to the victim that it warranted a surgical operation or medical treatment, and if the victim died because of that, so long as the operation or the treatment were appropriately conducted in accordance with the standard medical traditions;

“(ii) the culprit caused some harm to the victim that should not have been conducive to death had the latter not failed to take the necessary medical remedies;

500 Kuwait Law No. 62 of 1992.Ministry of Justice Press. Kuwait.(7000.K.D.=15,116.UK.Pounds)

501 Nasr Allah, F. (1997), "Explaining the rules of Kuwait law, 1st edition", Kuwait: Dar al Ketab Press, p 100.

502 The complete Kuwaiti Penal Code in Arabic Available online at: www.gcclegalsite.com. Accessed on: 1/5/2004.

“(iii) the culprit forced the victim to do something that lead to his death, using violence or threatening to use it, and it turned out that the latter died because of that violence with which he was threatened;

“(iv) the victim was suffering from an ailment or an injury that would lead to death anyway, and the culprit caused that death by expediting it;

“(v) the action does not lead to death unless it is linked to an action by the victim or by some other person or persons.

In addition, Article 156 (16/1960) states: “A person should not be considered guilty of murder if the victim did not die within one year of the action resulting in the death.” Thus, if the culprit undertook a certain action with a view to killing a person, and the victim survived the attack and continued to live for a whole year after that, the perpetrator could only be accused of attempted murder, even if the victim eventually died, irrespective of the evidence of causal relationship between the action of the suspect and the death of the victim.

Another crucial issue is that of the consent of the victim, and this is addressed by Article 39 of the Kuwaiti Penal Code (16/1960), which states: “The action is not considered a crime if the victim has consented to it, where the victim is 18 years old at the time of the action, not subject to any material or non-material duress, and fully aware of the circumstances and causes of the action.” The consent should immediately precede the action or be parallel to it. Nevertheless, the consent of the victim can be brought into question, and the action could be considered a crime if it would cause death or serious harm anyway, or if the action is deemed criminal *per se*, irrespective of the effect on the victim, or if another article stipulates that this type of consent is objectionable⁵⁰³.

Another complicating factor is the seemingly unsurpassable obstacle created by the conflict between different areas of the criminal law. Article 34 of the Kuwaiti Drugs

503 Nasr Allah, (*op. cit*), p 100.

Law No.74, 1983⁵⁰⁴, for example, puts a constraint on punishment if the drug abuser comes forward with a confession about his practice “No criminal charge will be raised against a person who is a self-confessed drug addict seeking treatment”⁵⁰⁵. But if the drug addict has come forward, not to make a confession about his own drug abuse, but to lodge a complaint against another, to the effect that somebody had handed him/her a contaminated syringe causing the transmission of HIV to him/her, his complaint would not fall within Article 34 of Kuwaiti Drugs Law. One has therefore to query how realistic it is to expect drug abusers (the very individuals most at risk of becoming infected with the disease) to come forward and make such an allegation, knowing that as a result, he/she could be accused of a punishable violation, i.e. taking drugs. This is analogous to somebody buying drugs from a gang then discovering that the content is fake; would he/she start legal proceeding to claim his money from the gang? Yet the Kuwaiti Penal code does not deal with this issue even in the law which dealt with HIV. The Articles dealing with the prohibition of adultery in the Kuwaiti Penal code are Articles 195 to 197 and Egyptian Penal code⁵⁰⁶ are Article 274 to 277 according to which, Kuwaiti and Egyptian laws prohibits all types of extra-marital relations. Given the severity of the penalties, one has to query, therefore, the likelihood of an HIV-infected spouse (who has been infected due to his/her adultery) admitting as much to his partner, or attempting to bring a prosecution against the individual with whom he/she has committed adultery, and who has thereby allegedly infected him/her with the HIV. Indeed, Islamic penalty would appear to stop the victim reporting the complaint to the court.

Another particularly vulnerable group in the region are homosexuals, partly due to the stigma attached to homosexuality, but also because of the contradiction created by traditional Islamic approaches to homosexuality. The Shafiai school maintains that the homosexual should be stoned to death if he/she is married. If unmarried, he/she should be flogged and exiled. The Maliki and Hanafi schools, on the other hand, believe that he

504 Available at: www.gcclegalsite.com Accessed on: 5/8/2004.

505 Ghanam, M. (1995), "Drugs crime in the Kuwaiti Law", Kuwait: Dhat Alsalasel Press, p 32.

506 Sodomy is not listed in the Egyptian Penal code and if such case happens it will be treated as a crime against the *sharia* law which is the main sources of the law as it is stated in Article No. 2 in the Egyptian Constitution.

who commits homosexual acts should be sentenced to death. Indeed, many believe this is the appropriate punishment for those who acquire HIV through the practice of homosexuality⁵⁰⁷. Thus, there is clearly little incentive for an HIV-infected homosexual to go to the authorities.

It is worth noting that, the Kuwaiti legislation has neither included nor touched upon the unintentional transmission of HIV; the focus has been only on intentional transmission. In addition, article number 3 in law 62/1992 has stipulated that: no person shall be examined to make sure that he is HIV free without written consent and if a person refuses to be examined the doctor has no right to examine him/her, an exception in the second paragraph of the article has vested authority in the Ministry Of Health to conduct the examination of any person without his/her –consent- in case of any "suspicion".

In fact, Kuwait has dealt with this legal area by enacting law 62/1992 which fully match the constitution and eliminate any possibility of conflict with the constitution legal principle that says in Article No.31, that no individual be arrested, detained, searched or subjected to restricted movement and/or residence unless provided for by the laws. Article No.35 establishes the legal principle that there is no crime or punishment without legal provision and no punishment except for actions subsequent to the coming into effect of the relevant law provisions.⁵⁰⁸

4.7. Conclusion.

HIV/AIDS prevalence in the region varies from country to country. Although the Middle East is generally considered a low prevalence region, with a rate of around 68000 in 2006 the trend of contracting new infection is increasing⁵⁰⁹. The predominant route of transmission is through sexual relations, with a resultant rise of incidence in young people and women. This rising trend is the consequence of unprecedented behaviour

507 Al Zohaily, (*op.cit*), p 175.

508 Al-Awad, B. (1985), "Provisions restricting basic human rights", Kuwait: Kuwait University, p 157.

509 Available at: http://data.unaids.org/pub/EpiReport/2006/20061121_EPI_FS_MENA_en.pdf. Accessed on: 23/9/2007.

changes evident in the younger population in new sexual behaviour, including pre-marital sex. The situation is further complicated by certain situations in the region such as mass migrations, conflict and wars, gender inequalities, and low socioeconomic and education status. The evolving pattern of drug abuse, limited access to HIV and STD related information and means of prevention, and the tension between protective local and global culture are all adding to this dilemma.⁵¹⁰

There are various gaps in the existing response to preventing HIV/AIDS in the countries of the region. Notable among these are a lack of information and education on HIV/AIDS and STD for young people. Health services are yet to adapt to face the new emerging challenges, and there exists limited coverage and follow-up of HIV/AIDS prevention by national programmes, nongovernmental organisations, and in school and the workplace, and an absence of a systematic approach to HIV/AIDS and STD prevention, care and support in emergency and post-conflict settings.

In addition, there is a need for moves to be made in the legislative response to this problem, either by adapting current legislation (as is the case in Egypt and in most other Arab countries), or, where this is seen to be inadequate, by introducing, and indeed using, new laws as in the case of Kuwait. It is notable – although perhaps not unremarkable, given the contradiction or incongruities between such legislation and other areas of the criminal law - that in the one state where such legislation has been introduced – Kuwait – there has yet to be a prosecution.

510 Mahaini, R. , Oussama, T. (2003), "Overview on reproductive and sexual health programmes in the Eastern Mediterranean Region", in World Health Organization's Regional Office for the Eastern Mediterranean, Report of Regional Consultative Meeting, Promoting reproductive and sexual health, Beirut, Lebanon, 11 December, 2003, p 43.

Chapter Five

Attempts by the UAE to deal with the problem of HIV/AIDS

5.1. Introduction.

HIV/AIDS in the Arab region raises particular challenges, namely social stigma, silence, and fear. While in many parts of the world networks, support groups and structures have evolved to support HIV/AIDS patients, the same cannot be said of the Arab world. On the contrary, people living with HIV/AIDS are left to deal with their illness by themselves, and often face rejection, humiliation and discrimination.⁵¹¹

The HIV/AIDS picture in United Arab Emirates is bleak. The government does not publish any statistics regarding the HIV/AIDS situation, as it is believed that the UAE is considered to be one of the lowest infection rates in the world. According to the World Health Organisation report in 2003 the number believed to be HIV positive are estimated to be less than 1 in 500 people.⁵¹²

Yet, according to a statement issued on 15/5/2005 by the UAE Office of the United Nations Development Programme (UNDP) *"All Arab countries have reported increases in HIV/AIDS infections in recent years, and the number continues to rise steadily"*.⁵¹³ And in 2006 the Minister of Health, declared that in The United Arab Emirates⁵¹⁴ there are 657 AIDS cases and 191 persons had died⁵¹⁵. In 2007 the number increased to 751 cases with 195 deaths because of AIDS.⁵¹⁶

511 Available at: http://www.harpas.org/gioplw_ADIS.asp. Accessed on: 5/5/2007.

512 Available at: <http://www.middleeasthealthmag.com/jan2005/article2.htm>. Accessed on: 1/9/2006.

513 Available at: <http://www.gulfnews.com/Articles/NationNF.asp?ArticleID=165038>. Accessed on: 16/5/2005.

514 Until June, 2007, The UNAIDS Organisation did not show a static about the HIV/AIDS situation in the UAE, for more details please see:

http://www.unaids.org/en/Regions/Countries/Countries/united_arab_emirates.asp. Accessed on: 18/6/2007.

515 Abdulsamee, B. "Al Qittam: Laws to recruit HIV patents". *Ittihad news paper*, Vol 11478, 8/12/2006, p 1.

516 Available at: <http://www.alittihad.ae/details.php?id=5537&date=2009>. Accessed on: 28/2/2009.

From 1985 to 1998, the legal authorities in the United Arab Emirates deported more than 5,700 foreigners proven to have contracted HIV and the mandatory HIV/AIDS tests which implemented to cover more than 5 million people since 1985 by the UAE Health Ministry showed that some 5,729 persons were infected with HIV⁵¹⁷. The Dubai police authority claims that they are receiving an average of 40 cases a month confirmed as a HIV positive in Dubai only⁵¹⁸. Captain Hassan A, of Dubai Immigration Department said that in June 1997, 36 persons infected with HIV had actually been refused an extension of their visas and they were subjected to deportation⁵¹⁹, and in 2007 alone the number of deported people reached 627.⁵²⁰

In spite of these developments in the UAE, the Federal Penal code has not developed any specific legal clarification of how to handle the act of deliberately passing the HIV to others. It is therefore left to the existing articles of the penal code, to deal with straightforward cases of criminal violation of the laws, to cater for this novel and controversial situation.

As mentioned in the first chapter, the principal research question of this study is to investigate how far the existing UAE penal code is capable of providing adequate legal provision for the potentially increasing number of acts of transmitting HIV/AIDS to other victims, intentionally or otherwise. In this regard, we will consider here the relevance and adequacy of the existing penal code to do that. The possible incongruities that might arise when applying the existing articles of the present penal code will be carefully considered.

In surveying the statistics on the spread of HIV/AIDS within the UAE, whether the ones presented to the UNAIDS organisation or the ones reported in the media during International AIDS day, we realise that these statistics are normally shrouded in ambiguity and inaccuracy. The same figure repeatedly crops up for more than ten years

517 Mardini. A. "Gulf-health: Partnerships Across Borders Against HIV/AIDS". Available at: <http://www.aegis.com/news/ips/1997/IP971001.html>. Accessed on: 11/11/2005.

518 There are no figures available for the rest of Emirates classified each group.

519 Available at: <http://www.arabicnews.com/ansub/Daily/Day/980327/1998032747.html>. Accessed on: 27/2/2006.

520 Available at: <http://www.alittihad.ae/details.php?id=5537&date=2009>. Accessed on: 28/2/2009.

without any explanation suggesting the phenomenon of fixed figures. Perhaps this is due to an unrevealed policy of confidentiality concerning release of accurate figures in order not to jeopardise the economic boom for example especially in the tourism sector. Tacitly, the government would like to present the UAE community as a clean healthy and HIV/AIDS-free environment. On the other hand, this might be due to the possibility that the authorities, like the Ministry of Health, are not taking the whole issue of the spread of the disease seriously as the number of infected people in UAE is very low.

The researcher believes that the static figures of the spread of the disease over a prolonged period may be correctly attributed to the lack of serious studies in this area. There are no single studies reported, which are concerned with the adverse economic, social or political affects of the spread of the HIV/AIDS disease in the UAE society or neighbouring Arab societies. As Mahesh argues, because of the Arab countries secretive tendencies about these issues, HIV/AIDS has “metamorphosed into a gigantic ghoul devouring all types of community members, without exception, be them young or old, males or females, or even babies.”⁵²¹

The researcher will also endeavour to shed light on the second principal question of the research relative to how UAE secondary laws supporting the penal code and the prevention measures which could help in handling cases of HIV/AIDS transmission. These laws include the immigration and naturalisation laws; medical insurance regulations; the Special Needs Act; the Drugs Act and the Criminal Procedures Law. These work together with many other laws, which affect the victims of HIV/AIDS, as far as their protection is concerned as well as punishing those who transmit the virus to others.

The UAE penal code contains a general provision which refers the rulings on crimes liable to the punishments provided for by divine ordinance, and those liable to the payment of compensation or blood money, to Islamic jurisprudence the *Shari'a*. However the law clearly states that '*Tazeer*' crimes liable to castigation and chastisement are to be punished

521 Mahesh, M. "Dismantling the wall of secrecy around AIDS-2004". Available at: www.ahramnews.net
Accessed on: 15/7/2005.

according to the articles of the penal code. Hence, the criminality principle is applied in part within the courts of the UAE in such crimes while the doctrinal crimes '*Hudood and Qassas*' are punished according to the *Shari'a* laws.⁵²²

In this chapter, the crimes of assault against persons in the UAE criminal jurisprudence will be discussed within the many crimes included in the relevant sections of the penal code. In this regard, I will concentrate on studying the various crimes and the provisions for punishments to be levied on the perpetrators. In the discussion, the elements which make up a crime will be separately delineated and the basic elements, on which the legal existence of the crime itself materialises, as an act punishable by the law and the type of punitive act, is also very clearly stated in the articles of the law. The researcher has selected a cluster of crimes dealing with assault against persons, including murder, manslaughter and injury, in its various categories specified by the law, and which approach in some way the event of, intentionally or unintentionally, transmitting HIV to others. The selected crimes are classified and arranged in the same way as stated in the UAE penal code. In adopting this method, it is hoped that the discussion for this first section of the chapter is clear and can be easily accessed by readers and researchers.

The discussion will then proceed to discuss laws relating to the health issues that are in the frontline of protecting UAE society in the face of the spreading epidemic of HIV/AIDS and providing all the precautionary and preventive measures necessary.

The third section of this chapter will discuss other secondary laws such as the labour laws, trying to find out their relevance to the issue in question, and if these laws are adequate to provide the necessary legal support to victims.

522 Al Mansoori, K. "Note on the act number one of the penal code number three of 1987 to the United Arab Emirates" Law and Security Gazette, Vol :1, Jan 2005, p 193.

5.2. Provisions of the UAE Penal Code.

It is necessary to give here a very brief description of the UAE penal code and its different sections and organisation. The UAE penal code ⁵²³is divided into two parts, each comprising a separate volume. The first part deals with the general section, under the title general provisions, which are essentially the articles from Article 1 up to article 148. The general section states the general principles of the law concerning crimes and criminals and the principles of criminal liability. It also includes the penalties and/or punitive measures which are available. It also defines what constitutes a crime by explaining its elements; its principle basic elements; its circumstances and its divisions. It is also concerned with the legal basis upon which criminal liability is determined. It finally elucidates the legal consequences arising from crimes.⁵²⁴

The second volume of the document is concerned with the private section of the penal code. It includes the different types of crimes, describing the elements constituting each specific crime separately, and delineating the circumstances, which may give rise to that particular crime and the penalty provided by the legislator for that particular crime, which takes into account the different circumstances involved in committing the crime. The private section elucidates the distinctiveness of each crime, which categorically differentiates it from other related crimes. It investigates the material and moral elements of each crime, together with other extra elements, which may be required by the legal pattern of the crime (which may be rendered as a hypothetical foundation: such as presupposing the presence of pregnancy in a crime of abortion). The articles of this section also include the punishment designated for each crime according to circumstances and the way in which the crime is committed

523 United Arab Emirates Official Gazette, Volume 182, (3-1987), Ministry Of Justice Press. Though it is actually came into effect in 1988. However, its basic principles and regulations were decided long before that date. It was drafted some 15 years before its enforcement that is in the early stages of the emergence of federation of the emirates. At the time, there was a proposal for a penal code known as (punishment law) ready at the ministry of justice. The sources from which the proposed law drew its legislative thought or the committee that undertook the strenuous task of writing it, were not identified. It is also not known if it included an explanatory note, which, even if existed there and then, would not have any legal impact now. See Al Mansoori , K. (2005), "Note on the act number one of the penal code number three of 1987 to the United Arab Emirates, "Law and Security Gazette, Vol: 1, p 193.

524 Jehad, J. (1996), "The Federal Punishment Law: Special Section-first Edition", "Dubai: Dubai Police College Press, p 5.

and how far these circumstances affect the choice of the appropriate punishment, either by attenuating or by aggravating the severity of the punishment. This section includes the articles ⁵²⁵ from 149 to article 434. ⁵²⁶

The UAE legislator has divided the private section of the penal code into eight chapters as follows:

Chapters	Articles	Crime Types in UAE Penal Code.
Chapter One	149-233	Crimes against the security and interests of the state, crimes against the national economy; counterfeiting of money and securities, forgery and falsification of seals, marks emblems and stamps; embezzlement, damage of public property and strikes and cessation of work.
Chapter Two	234-254	Crimes against public administration, such as bribery; abuse of function and authority; trespass of officers and usurpation of offices or titles.
Chapter Three	255 -287	Crimes against the administration of justice, false testimony; perjury; refusal to testify; acts susceptible of causing influence on/or defamation to the justice; obstruction to judicial proceedings; non-disclosure of crimes; calumnious denouncement; breaking of seals and meddling with objects held in safe-keeping and escape of the accused and convicts.
Chapter Four	228 -311	Crimes causing public danger, crimes of hostile actions against transport means and public utilities crimes of fire or arson.
Chapter Five	312-326	Crimes against religious faith and rites, offense against any of the sacred things; insult and revile any of the recognized religions; openly, and in public place, breaks fasting during day-time in the holy month of Ramadan and compelling and inciting or helping other persons to commit such offenses openly.
Chapter Six	327-330	Crimes against the family, isolating or hiding a newborn baby from the person who has legitimate power over him, substituting him for another baby; or imputing him to other than his parents, refusal to abide by a self-executing judgment, rendered upon an individual compelling him to pay alimony to wife or to legal dependents, or the payment of salary of the guardian.

⁵²⁵ The articles included in this section acquire a special importance as far as the principles of legality and supremacy of the law, which attempts to safeguard human rights against the excessive abuse of power in conducting legal procedures or the issuance of verdicts. This principle states clearly that there is no charge or punishment without a specific provision and that the rule is justification and the exception is indictment on criminal transgression and punishment. Please see: Hosni, M. (1986), "Explain the punishment law, Private Section", Cairo: Dar Al Nahdah Al Arabia, p 4.

⁵²⁶ *ibid*, p 6.

Chapter Seven	331- 380	Crimes against persons: These include crimes against a man's life and his physical integrity; crimes against liberty; exposition to danger; threats; crimes against honor, such as rape and ravishment; infamous crimes and offenses against rules of decency; instigation to prostitution and debauchery and crimes pertaining to defamation, libel, slander and violation of secrets ⁵²⁷
Chapter Eight	381-434	Crimes against property, larceny; fraud; breach of trust and matters related thereto; concealment of things deriving from crimes; usury; gambling; fraud in commercial transactions; bankruptcy; damage of property and crimes against animals and breach of close.

On a different level of investigation, it is appropriate to consider the UAE Criminal Procedure Law No. 35 of 1992, because it is very closely interconnected with the penal code, as both essentially belong to the criminal law⁵²⁸. The Criminal Procedure law is a cluster of formal principles determining the steps to be undertaken in order to reveal crimes and establish evidence pertaining to the crime and the judicial competent authorities responsible for holding such trials⁵²⁹. Sadiq believed that the progress and degree of development of any society is "measured by the degree of its respect of law and the following of the law procedures, hence such states are called states of law and order".⁵³⁰ Certain penalties ensue from the act of violating the standard or established criminal procedures rules. These penalties include disciplinary; civil or punitive penalties.⁵³¹

The UAE Penal Code does not provide for the act of transmitting HIV. If a complaint is brought, the police officer in charge is in an unfortunate situation at best, contradictory,

⁵²⁷ This particular chapter is going to be discussed in lengthy detail, as it is very closely related to the basic questions of the research

⁵²⁸ Suroor, A. (1983), "Alwajeez in the Criminal Procedures", Cairo: Dar Al Nahdah Alarabiah, p 11.

⁵²⁹ Abdullsatar, F. (1986), "Explain the procedure law", Cairo: Dar Al Nahdah Alarabiah, p 1.

⁵³⁰ Sadiq, M. (1988), "Explain the procedure law", Cairo: Dar Al Nahdah Alarabiah, p 2.

⁵³¹ Article No. 32 of the UAE criminal procedures Law No. 35 of 1992 stipulates that the attorney general is entitled to request from the judicial authority to which a law enforcement officer belongs, to take the necessary action against that particular officer if the said officer has committed a default on duty or violated standard procedure regulations. He may file a case of disciplinary nature against the said officer without prejudice to the right to file a criminal case. The violation of procedures or default on duty may involve the act of detaining a person without sufficient legal justification, which necessitates bringing the culprit to disciplinary court. If the act of violation entails harm or injury to the victim, the latter has the right to file a case for compensation. Even public prosecutions are liable to be subject to legal liability in cases such as torturing an accused person or forcing confessions under duress. It is more important to know that in such cases the judicial case against such a victim of judicial maltreatment is automatically rendered null and void.

or at worst, risking infringing the provisions of article No.35 of the UAE Criminal Procedure law. This provision of the law obliges the police officer to accept all complaints reported to him, and in whatever manner, regarding crimes, and that he and his subordinates should take all the necessary measures and procedures. While the act in such case is not accounted for in the provisions of the law, yet the officer is obliged by the letter of the law of procedure to accept the denunciation and even take action. Otherwise, he and his subordinates would be legally liable and probably punished for their default. The law has not attempted to sort out this essential conflict.

The first possibility is of treating the deliberate act of transmission of HIV as premeditated murder. These factors to be analysed here are the physical element of crime, and the non-physical one (the mental element).

5.2.1. Viewing the deliberate transmission of HIV as tantamount to deliberate murder.

The physical element of premeditated murder is the criminal activity embarked upon by the culprit with a view to putting an end to somebody's life⁵³². As such, this physical aspect includes three constituents:

1. The act of assaulting somebody: This refers to any activity by the perpetrator aiming at killing somebody⁵³³. This activity can be the same as that carried out by somebody who plans and executes his/ her designs to transmit HIV to somebody else, as AIDS is a fatal disease. Consequently, the act of transmission is a form of assault on life, through blood transfusion, and the use of a contaminated syringe or of any sharp tool or sexual intercourse. The UAE penal code has identified the activity which leads to the death of somebody. Article 332⁵³⁴ starts with the definition: "whoever kills somebody with malicious intent...." therefore, any act carried out by the culprit with a view to reaching the result of killing the victim is considered as assault.⁵³⁵

532 Jehad, (*op. cit*) p 35.

533 Salamah, M. (1982), "Punishments Law: Special Section-Second Part, Assault crime", Cairo: Dar Allfekar Alarabi, p 9.

534 United Arab Emirates Official Gazette, Volume 182, (3-1987), Ministry Of Justice Press.

535 Al Dohbi, E. (1987), "Assaults and murder problems", Cairo: Ghareep Library, p 6.

2. The consequence of eventual death is the outcome of the perpetrator's behaviour⁵³⁶. In the crime of murder or manslaughter, the consequence is the end to the victim's life⁵³⁷. This consequence can also be reached through transmitting HIV to the victim. This consequence can be protracted, due to the availability of the retroviral drugs which lead the HIV to takes a long time before showing physical symptoms⁵³⁸. Nevertheless, the outcome constitutes the physical element of the crime, namely death, and as far as it is bound to materialise, it does not matter much whether it is prompt or protracted.⁵³⁹

3. Also there must be a casual relationship between the criminal act and the consequence. To establish criminal culpability in the crime of murder there ought to be a causal connection between the assault and the consequence, which is the death of the assaultee and in the same way, the death of the victim⁵⁴⁰. Similarly, the death of an AIDS patient needs to be established as having been caused by HIV, which would then testify to the malicious intent behind the activity of transmission.

However, it can be argued that HIV in itself does not kill but it renders the body helpless before other infections or tumours that may lead to the death⁵⁴¹ and the factors that neutralise the causal connection are the abnormal ones. The normal factors, on the other hand, do not disconnect the causal relationship⁵⁴². The death of the patient by cancer, for example, does not disrupt causality; as such, diseases are not abnormal factors. They do not change the fact that the HIV has attacked the immune system of the victim, thereby providing the cancer with the opportunity to kill the victim⁵⁴³. The connection can be severed if, for example, the carrier of the virus died afterwards in falling from a high place.

536 Jihad, (*op. cit*), p 47.

537 Abdulsatar, F. (1982), "Explaining the Punishments Law: General Section", Cairo: Dar Alnahdah Alarabia, p 353.

538 Murphy, S. Brook, G. (2000), "HIV Infection and AIDS: Second Edition", London: Churchill Livingstone, p 17.

539 Al Shawarbi, A. (1991), "Explanations in the crime punishments", Alexandria: Al Maref press, p 631.

540 Jihad, (*op. cit*), p 57.

541 Murphy, S. M. (*op. cit*), p 7.

542 Al Shawarbi, (*op. cit*), p 631.

543 "*Certain cancer types those are more likely to occur in people who are infected with the human immunodeficiency virus (HIV). The most common types are called "Kaposi's sarcoma" and non-Hodgkin's lymphoma. Other AIDS-related cancers include Hodgkin's disease and cancers of the lung, mouth, cervix, and digestive system*". Available at: <http://www.cancer.gov/cancerinfo/types/AIDS/>. Accessed on: 17/2/2006.

The mental aspect for the crime of premeditated murder is contingent upon malicious intent, including the elements of conceiving the idea and willing its realisation⁵⁴⁴. This element means that the offender formed the idea in his mind that the activity he intends to conduct is an assault on the body of the victim⁵⁴⁵, and it would in fact lead to his death⁵⁴⁶. Therefore, to consider the transmitter of HIV as a murderer, we need to establish that he was aware of his condition, i.e., that, he is a carrier of HIV, and that he knew that the contact he/she is having with the victim, would cause the deadly transmission of the virus. If he /she is oblivious to these facts, he/she cannot be accused of premeditated behaviour.

The researcher believes that this point could be considered one of the main obstacles to proving intention. What could provide such proof in court is the medical record and without such proving it would be very easy for the defendant's lawyer to undermine the whole case.

Moreover, it is submitted, equating the deliberate transmission of HIV with premeditated murder does not serve the objectives of the state sought by the Federal Penal Code. These laws are intended to safeguard security, safety and peace, and to counteract crime⁵⁴⁷. And the crime of murder cannot be established without the consequence, namely the death of the victim⁵⁴⁸. Yet HIV/AIDS patients could live for a number of years. The consequences can be protracted, leading to the absence of the physical element of the criminal act⁵⁴⁹. The perpetrator would, therefore, remain without punishment throughout that period. In this way, one objective of the Federal Penal Code is reduced to nothing.

The Dubai Appeal court mentioned that, the physical element of the murder is satisfied by the act of assault on human life which results in the death of the victim assaulted and the causal relationship between these two events, i.e. the assault and the resulting death. The act of assault on life is any intentional act, on the part of the perpetrator, which amounts to

544 Abu Roos, A. (undated), "Murder and assault crimes-Third Edition", Alexandria: Modern University Office, p 22.

545 Al Dohbi, (*op. cit*) p 12.

546 Aoudah, A. (1989), "The Islamic Criminal Legislation", Beirut: Alresalah Press, pp 25-37.

547 Albatrawi, A. (2005), "The main responsibility of the judicial person " Security and Law Magazine, Vol:1.1, pp 268-280.

548 Jihad, (*op. cit*), p 47.

549 Sudqi, A. (1987), "Punishment Law: Special section", Cairo :Dar Al Fekr Al Arabi, p 40.

the death of the victim under the circumstances accompanying committing the act and which is well understood and known by the perpetrator regardless to the weapon used, be it a weapon, a tool or otherwise, such as strangling. The causal relationship is satisfied between the act and the result, the death of the victim, by the fact that it is the normally expected result of such an act. The evaluation of the circumstances to be taken into consideration deciding on the seriousness of the perpetrator's action and its causal relationship with the death event is solely the responsibility of the court which is to be inferred from the facts of the case.⁵⁵⁰

The judicial system in UAE adopts the Maliki sect (Imam Malik School of thought) which is the official religious faith of the state. According to this system of jurisprudence the intentionality of the act of murder is established by the premeditated act on the part of the perpetrator, irrespective of the weapon used, be it a metal bar, a stick or whip, which are not known to be lethal weapons for that matter. Murder is established by the intentional behaviour of the perpetrator and is punishable by capital punishment according to the applied judicial system.⁵⁵¹

The UAE Appeal Court indicates that, murder is established by committing the act which eventually leads to the cause (the death of the victim) thus satisfying the element of intentionality of putting an end to a human life and the cause-effect relationship is established.⁵⁵²

On a different level of investigation, if the prosecution initiated legal action before the actual realisation of the consequence i.e. the death of the victim, the culprit could be held responsible only for the crime of attempting murder⁵⁵³. In such case, the perpetrator could not be re-prosecuted for the death of the victim, when this expected consequence is finally realised later on. This is so, due to the golden rule that a person shall not be punished twice for the same act (article 268) also article No. 20 of the Criminal Procedure law (35-1992)

550 Appeals No. 131 and No. 13 (1994). Criminal. 18/2/1994. Dubai Courts.

551 Appeals No. 64 and No. 77 (1997). Criminal. 14/6/1997. Dubai Courts.

552 Appeal No.14 (1997). Criminal. 29/3/1997. Dubai Courts.

553 Suroor, A. (1985), "Al waseet", Cairo: Al Nahdhah Press. pp 391-417.

stipulates that one reason for dropping a criminal or civil case is the death of the accused, and in this case the accused is very well known for his being a very sick person and might pass away, even before the victim.

5.2.2. Viewing the deliberate transmission of HIV to the act of assault causing death (manslaughter).

What is meant by manslaughter is the activity engaged in by the perpetrator, directed at a living person, resulted in the death of the victim⁵⁵⁴. As such, this offence consists of three elements:

Firstly, there has to be an assault on a living human being affecting the integrity of the victim's body, resulting in the latter's death, even though the perpetrator did not intend it. The UAE legislator did not identify the type of assault necessary to cause such a result. The door has been left open to include all types of acts jeopardising physical safety and integrity. Article No.336 of the UAE Penal Code 3/1987⁵⁵⁵ stipulates that: "whoever violated the physical integrity of somebody else by any method and led to death will be punished by imprisonment for not more than ten years". As such, whoever transmits HIV to somebody else would have satisfied this condition for the physical element, whatever the method of transmission.

To constitute a crime, the victim should have died because of the assault; otherwise, there is no crime⁵⁵⁶, even if such type of assault usually results in death. If death has been caused by the assault, the crime has taken place, irrespective of the duration, i.e., whether the death promptly follows the assault or whether it is protracted, i.e., coming after many years.⁵⁵⁷

554 Abu Khatwah, A. (1993), "Assaults crime", Cairo: Nahdah press. p 172.

555 United Arab Emirates Official Gazette, Volume 182, (3-1987), Ministry Of Justice Press.

556 Bahnam, R. (1986), "The crimes which are stated in the punishments encyclopedia", Cairo: Al Maaref Press. p 442.

557 Abdullsattar, F. (1982), "Explaining the punishments law: Special Section", Cairo: Al Nahdhah Al Arabiah Press, p 478.

Another condition is that there should be a connection between the assault and the consequence, the one leading to the other⁵⁵⁸. This should be the case, even if some other factors have intervened since such factors are normal under similar circumstances. The causal connection still holds good even if, for example, the victim's death was prompted by an inadvertent error by his general practitioner.⁵⁵⁹

If extraordinary factors intervene, resulting in the death of the victim, such as the deliberate neglect of his own health, the causal connection is severed⁵⁶⁰. The perpetrator would not be held responsible except for the physical assault itself, but not the consequence. i.e., the death of the victim.⁵⁶¹

With regards to the mental aspect, the perpetrator should have known that his act would cause damage to the victim⁵⁶². He should also know that such an act normally results in the transmission of HIV, irrespective of the method. If he is unaware of these facts, this condition would not be met. Again, the perpetrator should also be aware that he is a carrier, otherwise, there will be no crime.

In addition, for the assault crime to be viewed as a crime leading to death, the perpetrator should be deliberately willing it, out of his conscious and free will. It is submitted, however, it is difficult to establish the "willing" component. The willing as must apply to the assault but not the ensuing death⁵⁶³.

5.2.3. Viewing the deliberate transmission of HIV as causing physical incapacity.

Another approach concerns the possibility of equating the act of HIV transmission to the crime of deliberately assault causing physical incapacity.

558 Al Mateet, A. (1980), "The crime of fraud and others", Alexandria: Alshabaab Press, p 129.

559 Abu Khatwah, (*op. cit*), p 172.

560 Abu Amer, M. (1986), "punishment theory", Alexandria: University Press, p 121.

561 Obaid, R. (1974), "The causal connection in the criminal law", Cairo: Dar Al Fekr Al Arabi Press, p 187.

562 Bahnam, R. (1987), "The crime which caused a damage to the public interest", Alexandria: Al Maaref Press, p 425.

563 Abdullmalek, G. (1976), "The criminal encyclopedia- fifth edition", Beirut: Altorath Press, p 796.

This point will also be dealt with in the light of both the physical element and the mental element of the crime. The physical aspect is composed of three elements:

Firstly, the act of assault, meaning the act by the perpetrator leading to jeopardising the physical safety of the victim⁵⁶⁴. Article 337 of the Penal Code states: "shall be punishable by imprisonment for a period not exceeding seven years any individual who intentionally causes permanent disability to another"⁵⁶⁵. Consequently, any act involving physical harm, resulting in incapacitation, comes under this definition. Likewise, transmission of HIV could be viewed as a form of physical assault, whether it is done through blood transfusion, sexual intercourse, or any other medium. In this way the condition of physical activity is satisfied, identifying transmission as an act leading to permanent physical incapacitation.

Secondly, the condition of the consequence is also met, i.e., the result of the perpetrator's act, which is physical incapacitation⁵⁶⁶. The legislator has not specified only one type of incapacitation, but several types could be cited. Also, the legislator conceived of any lasting disfiguring as incapacitation. As such, incapacitation can be defined as losing a limb or an organ, losing part of it, or being deprived of its benefits, weakening it, losing any of the senses, or permanently weakening it. As it is known, HIV/AIDS means "*the loss of immunity*"⁵⁶⁷, and that is could be tantamount to permanent physical incapacitation.

Article 338 of the UAE penal code distinguishes between whether the act of causing permanent incapacitation was deliberate or not, on the part of the perpetrator. The article stipulates that any individual who commits "assault" on the physical integrity of another person, in any manner whatever, and who unintentionally causes permanent disability to the victim, shall be punishable by imprisonment for a period not exceeding five years. However, and in case of intentionality, the provisions of Article 337 and not 338 should be applied. The choice of which article to be applied is left to the discretion of the presiding judge, and he should take all the available evidence into consideration. The law did not provide any specific ruling in this regard.

⁵⁶⁴ *ibid*, pp 118-136.

⁵⁶⁵ United Arab Emirates Official Gazette, Volume 182, (3-1987), Ministry Of Justice Press.

⁵⁶⁶ Tharwat, J. (1989), "The Main Section", Alexandria: Al Maref Press, p 155. And see also: Othman, A. (1986), "The Explanation of the penal code", Abu Dhabi: Zayed Central Library, p 236.

⁵⁶⁷ "HIV Infection". Available at: http://www.who.int/topics/hiv_infections/en/. Accessed on: 15 /10/2007.

The connection between the act and the result; the incapacitation is a direct result of the act committed by the perpetrator⁵⁶⁸. If the result came about through other causes, the perpetrator cannot be held responsible⁵⁶⁹. In the case of HIV transmission, it has to be established that the condition of transmission actually happened, and that the condition of the victim is a direct consequence of the act undertaken by the transmitter. If the incapacitation has been caused by some other factor, the causal connection is severed⁵⁷⁰ and the transmitter might not be accused of criminal behaviour.

With regard to the mental element, the culprit must be aware that the act is addressed towards a living human being⁵⁷¹. He must also be conscious of the consequence of the act, i.e. that it jeopardises the safety of the victim and that physical incapacitation will occur.⁵⁷² Also it is necessary that, the transmitter should have been aware that he is a carrier of HIV, otherwise, no criminal responsibility could be up held. So, for example if the perpetrator engages in sexual intercourse with his wife, without knowing that he is a carrier, would be no responsibility accruing according to Article 337 of the UAE penal code.

The condition of realising the mental element aspect of the crime is that the assaulter "transmitter" should have willed his/ her act⁵⁷³. If somebody is forced by a third party to hit a certain person, resulting in incapacitation, the hitter should not be accused of premeditation⁵⁷⁴. Also the transmitter of HIV cannot be held responsible unless his free will is directed towards committing the act that is bound to transmit HIV. Otherwise, he/she is not responsible, as in the case of somebody forced to practice sexual intercourse with a party and that act results in the directed will to cause incapacity to the victim.

The carrier of the virus should be proven to have deliberately intended to cause incapacity to the victim by depriving him/her of his body's immunity, whatever method is followed

568 Tharwat, J. (1994), "The penal code :main section, crime theory". Alexandria: University All Prints Press, p 159.

569 Ibraheem, H. (1986), "Lessons in the punishments law", Cairo: Al Nahdah Press, p 297.

570 Anwar, K. (1965), "Conducting of the punishment law within the places frame", Cairo: Al Nahdah Press, p 93.

571 Tharwat, (1994), *op. cit*, p 151.

572 Najeep, M. (1987), "The assault crimes", Cairo: Dar Al Nahdhah Al Arabiah Press, pp 255-296.

573 Al Janzoori, S. (1971), "The principle of the punishment law: Main Section, Islamic Share'a", Cairo: Alsaadah Publishing Press, pp 151-155.

574 Please see Article Number (64), UAE Penal Code (3/1987).

for initiating the transmission. If no such intent is established, the person should not be held responsible of the consequence.⁵⁷⁵

The crime is not only the transmission of HIV, because it is not only a matter of losing bodily immunity. The consequence of this act can be the ultimate death of the victim because of losing bodily immunity. The responsibility should be extended to include such a consequence, and not be confined to one aspect of the crime.⁵⁷⁶

It should also be mentioned here that HIV patients or carriers are not included as persons with special needs in the latest law No.29-2006, issued by the UAE legislator on the rights of persons with special needs. The recent law concentrated on physical and mental disabilities. Hence, HIV patients are not included as part of the category of persons who need to be protected against discrimination and be given equal chances in employment.⁵⁷⁷

Let us suppose that a cure for HIV/AIDS is to be discovered sometime in the future, which is a possibility not to be ruled out altogether. The consequence of physical disability will then be severed and the whole act would be equated with any common disease treatable at any clinic or hospital. Therefore, even if HIV/AIDS is included as one of the legally recognised cases of physical disability, the legislator has to be vigilant and alert throughout, for any new developments in the medical research indicative of the possibility of a cure for the disease. In such case the legislator should write off any provisions made in the law regarding HIV/AIDS, as it would, hence, be rendered as a common curable infection and not causing permanent incapacitation, which is defined by the law as any serious mutilation which, according to every reasonable probability, will continue throughout the remainder of one's life.

575 Al Janzoori, S. (1977), "The main pillars of the punishments law", Cairo: (without publishing press), p 435.

576 Jehad, (*op. cit*), p 205.

577 For more details please see: The Federal Law Number (29/2006) "The Special Need Rights", Dubai Courts, Legal Library.

5.3. Medical and Health considerations.

The right to be healthy is considered as a basic right for all humans and the state should see to it that all the necessary measures are put in place to insure the physical and social well being of its citizens. It is necessary, at this juncture, to shed some light on the public health regulations within the UAE and to give an idea about the efforts to combat the spread of the HIV/AIDS epidemic, the health laws regulating that effort and how far these regulations are effective.

Al Mengi claiming that "it is because of the Islamic values and the cultural traditions, which have played a significant role in reducing the new infection of HIV cases"⁵⁷⁸. However, the huge number of expatriates and visitors from countries where HIV is spreading confirms the urgent need for more concentration on such a serious disease through preventive measures⁵⁷⁹. The first published number of HIV/AIDS cases was in 1988, UAE has reported 262 AIDS cases, with 22 deaths. Official health sources who reported the figures said two thirds of the cases were among expatriate workers.⁵⁸⁰

Two decades after HIV and AIDS entered the mainstream consciousness; the UAE has not made official figures for the disease public even though health officials admit it exists in the country⁵⁸¹. In 2006 the UNICEF's representative John Konji said in a meeting with the General Director of the Dubai Police "The UAE is one of eight countries in the region that "do not" have a strategy for combating the HIV/AIDS Disease"⁵⁸².

However, the United Arab Emirates has undertaken a strict blood surveillance programme to reduce the transmission of HIV through transfusions. This was imposed immediately

578 Al Menji, M. "Dhahi Khelfan call for national Strategy for AIDS prevention" Ittihad News Paper, Vol. 11244, 16/4/2006, p 3.

579 Country cooperating strategy for W.H.O and the United Arab Emirates 2005-2009: United Arab Emirates" World Health Organization, Regional Office for the Eastern Mediterranean, p 20. Available at: http://www.who.int/countryfocus/cooperation_strategy/countries/ccs_final_are_2005_en.pdf. p 20. Accessed on: 23/6/2007.

580 "Conference Discusses Growing AIDS Concern in Gulf" Reuters, 10/01/1988. Available at: <http://www.aegis.com/news/ads/1988/AD880663.html>. Accessed on: 11/11/2005.

581 Muslim, N. "The AIDS" Gulf news Paper, Vol.185644, 8/10/2005 , p 4.

582 Sultan, M. "Khalfan Calls for Working out National Strategy for combating AIDS Disease", Al Khaleej News Paper, Vol.258293, 16/4/2006, p 3.

after reporting the first infection case in 1984⁵⁸³, and in 1986, the United Arab Emirates prohibited importation of blood from abroad and, the National Committee for AIDS control was set up in addition to nine branch committees.⁵⁸⁴

Article 2/27, 4/114 in the UAE Family Law also provides for submitting a medical report prior to getting married in order to restrict the contagious and hereditary diseases, as well as, venereal diseases endangering family health⁵⁸⁵. The law did not provide for the case in which one of the spouses carries the HIV.⁵⁸⁶

In the field of drug injection, the United Arab Emirates has not had any kind of dirty needle exchange programme until recently, although the United Nations Information Service estimated that needles contaminated with HIV are responsible of 10 per cent of infections cases in the world⁵⁸⁷. It is worth mentioning here that Article No.39 of the UAE Drugs Law No.14/1995 stipulates that any individual who uses drugs/narcotics shall be punishable by confinement for a period not less than 4 years and it is possible for the court to impose an additional fine of not less than ten thousands Dirham on the perpetrator⁵⁸⁸. This leads to a very important point, with regard to HIV transmission. The victim of HIV transmission through an infected syringe will be faced with a dilemma. This person would most probably opt for not reporting the perpetrator to the law enforcement authorities for he/she would legally be held liable for drug abuse; it is a confession of breaking the law⁵⁸⁹. As Al Jondy say "If it has been demonstrated that the HIV attack came through an illegal contact, authenticated by self-confession, witnesses or evidence, he/she must be penalised to protect the society from his/her and as a form of deterrence. If the infection has been caused by use of drugs or narcotics, the victim should be indicted for taking the drugs".⁵⁹⁰

583 There is no published information available regarding this case.

584 Al Menji, M. "Dhahi Khelfan call for national Strategy for AIDS prevention" Ittihad News Paper, Vol.11244, April 16, 2006, p 3.

585 Al Samhoori, M. "Medical check-ups methods for future marriages" All Khaleej News Paper, Vol.9821, 9/4/2006, p 2.

586 "Point of view" Kol Alosrah Magazine, Vol 652, 12/4/2006, p 46.

587 Available at: <http://www.unis.unvienna.org/unis/pressrels/2003/nar824.html>. Accessed on: 27/2/2006.

588 United Arab Emirates Official Gazette, Volume 285, (14-1995), Ministry of Justice Press.

589 Rasekh, I. (1998), "The way of compacting the drugs: Second Edition", Dubai: Dubai Police College, p 97.

590 Aljondi, A. (1994), "Specific Punishments". In: Islamic view on the AIDS patient social problem conference, Kuwait, 6-8 December1993, Islamic organization press, p 175.

Thus, in addition to the lack of support programmes for victims from many sectors, the penal code could be applied ruthlessly and it may add harm to injury for the victim. It is very similar to the situation in which the victim contracts the HIV through illegitimate sexual intercourse. As the researcher mentioned in detail in chapter four, dealing with the act of adultery, punishable by stoning to death in Islamic *Shari'a* laws if the perpetrator is married or by confinement and 100 lashes if the perpetrator is a bachelor.

In 2006, The Commander in Chief of Dubai Police, inaugurated the First National Consultative meeting on working out a strategy for combating the HIV/AIDS disease in the United Arab Emirates, the meeting was organised by the Human Rights Department, of the General Directorate of Moral Guidance of Dubai Police, in cooperation and coordination with the UNICEF. Representatives from the Ministries of Interior, Health, Education, Justice and Dubai Police officers from many departments were also present.⁵⁹¹

This raises the question as to why the police should intervene in this regard and might lead to the impression, that the health authorities could be weak and incapable of taking the lead. The other interpretation is the existence of a very serious concealed security problem that has led to the intervention of the police force. This security problem may be partly attributed to the spread of drugs taking practices and prostitution or homo/heterosexuality. As mentioned earlier, there are no such provisions in the penal code or any other laws in UAE, not even a clear provision punishing medical mistakes-

-which might have caused the transmission of the HIV, on the part of the medical staff⁵⁹², to a patient seeking treatment in a medical institute. Medical mistakes differ and the harm sustained through them varies, ranging from minor injuries to serious damage to the physical integrity of the victim.⁵⁹³

591 Sultan, M. "Khalfan calls for working out national strategy for combating AIDS Disease" Al Khaleej News Paper, Vol. 258293, 16/4/2006, p 3.

592 The head of the Medical Liability Department of the UAE Ministry of Health confirmed that the ministry has investigated on 181 complaints of omission of medical duty during the last ten years. Patients raised 77 of these complaints and 104 were submitted by hospitals. Mistakes and failure to provide the asked for medical service has been proven; two cases were brought to courts of law as the appellants were not satisfied by the investigation findings. Available at: <http://www.alittihad.co.ae>. Accessed on: 14/8/2008.

593 Ashoor, A. "Ministry of health investigates five cases of medical mistakes" Emirates Today News Paper, 30/4/2007, p 4. Available at: www.emiratetoday.com. Accessed on: 8/5/2007.

The Code of Medical Ethics⁵⁹⁴, raises a very sensitive issue of whether to inform the HIV patient's spouse or sexual partner. This is cited in part number 5, paragraph 17 which clearly states that the Ministry of Health embraces the view that there are grounds for such a disclosure. These grounds are based upon the possibility that there is bound to be a serious and identifiable risk to a specific individual who, if not so informed, would be exposed to infection. Therefore, when a person is tested HIV positive, the doctor must discuss with him/her the question of informing his/her spouse or sexual partner. The Ministry Of Health believes that most such patients will agree to the disclosure in these circumstances, but where such consent is withheld, the doctor may consider it his duty to seek to ensure that any sexual partner is informed, in order to safeguard such person from infection.⁵⁹⁵

The Government healthcare insurance⁵⁹⁶ cover is implemented in respect of all citizen and expatriate employees working for Abu Dhabi-based ministries, federal and local organisations and private companies, with more than 1,000 employees. As of 1st July 2006, over one million local and expatriates have been covered by the scheme⁵⁹⁷. However, questions of an ethical nature pose themselves and in particular whether individuals should be compelled to undergo routine medical tests including (for HIV) or should the prior consent of the patient be sought before conducting the test.

Another means of combating the spread of the disease has been through the immigration laws. The Immigration Federal law No.6/1973 Concerning Entry and Residence of Aliens Law No.13/1996⁵⁹⁸, states that: "Applicants for residence in the UAE whether for employment or otherwise, shall submit the result of the medical check-ups upon applying for residence or its renewal". The law requires mandatory HIV testing for both UAE nationals and expatriates before they start work, school, before they enter university, get

594 The Ethics Committee of the Ministry of Health has drawn up a guidelines which guides to responsible professional behaviour and it's apply to all medical professionals in government and private practice.

595 "Code of Medical Ethics", (1998), United Arab Emirates, Ministry of Health, Curative Medicine - First Edition, p 43.

596 This is the first phase which took place in the capital Abu Dhabi then will be implemented in the rest of the country.

597 Available at: <http://www.uaeinteract.com/news/default.asp?ID=38>. Accessed on: 1/9/2006.

598 United Arab Emirates Official Gazette, Vol 294, (13-1996), Ministry Of Justice Press.

married, give birth and undergo surgery. Nationals who test positive for HIV are referred to the preventive medicine department for completing and receiving the medical treatment.⁵⁹⁹

5.4. Family Law.

UAE Family law does not provide for specific diseases such as HIV/AIDS, tuberculosis, or syphilis. However, such law lays down general rules and therefore such rules stipulate that any horrible and deep – rooted disease in any of the spouses, which could harm the other party, will result in their separation,⁶⁰⁰ without adding more clarification to this main rule. The burden of family planning for an HIV carrier raises many issues such as marriage, divorce, children custody. On the enactment of the UAE Family law No.28/2005 certain issues were provided for. For example Article No.27 of this law stipulates that an obligatory medical check prior to the actualisation of marriage is a condition for official authentication of the marriage contract⁶⁰¹. As is evident, this clause in the law aims at preventing the transmission of infectious diseases to healthy spouses. The law candidly indicated that if one of the two parties intending to get married is an HIV/AIDS patient, such marriage shall be prevented, to save the other party from getting the virus and forbidding the conception of infected children. The question of forcing a divorce should one of the spouses tested HIV positive while the other tested negative arises. Prevention of the spread of the virus to the healthy spouse suggests that this should be provided for in the law. Hence, it is candidly stated in the above-mentioned law, article No.14/4 that if the other spouse is infected with a contagious disease like AIDS a separation by divorce shall be enforced.⁶⁰²

Legal protection for the person to whom the virus is transmitted with associated financial burdens, is an urgent issue to be addressed. The first question here is: who is to bear the extra expenses arising from the gradual inability of the infected person to earn a decent living, leading eventually to death? The related issue of social care for the HIV/AIDS

599 Gulf news Paper, Vol.185644, 8/10/2005, p 4.

600 Mohamed, A. (1993), "Discussion" In: Islamic view on the AIDS patient social problem conference. Kuwait, 6-8 December1993, Islamic organization press, p 102.

601 Al Jondy, A. (2007), "The social debate in the UAE law", Cairo: Dar Al kottob, p 126.

602 *ibid*, p 306.

patients also occurs. Here we have to distinguish between the HIV carrier and the AIDS patient who shows all the signs and the confirmed symptoms of the disease. The carrier is expected to be able to work and earn a living while the latter needs a comprehensively intensive and sustained medical treatment. His energy and physical integrity gradually diminishes and eventually collapses. How does society deal with the carriers of the virus? Is it wise or even legal to shun those persons and deprive them of leading a normal life of a working member of the society? Simply because of his or her being a carrier of the HIV. This leads to a discussion of the relevance of labour laws to the issues raised here concerning HIV/AIDS, which will be dealt with in the following section.

5.5. The Labour Laws.

The answers for the queries mentioned at the end of the last section are to be sought in the UAE Labour Laws providing for recruitment in public employment. The following problematic issues arise:

It is required in the UAE that a pre-employment medical check-up should be conducted prior to joining any job applied for to determine whether the applicant is medically fit to undertake the duties of the sought job or otherwise. It is legitimate for both public and private sector employers to make sure that they are recruiting a person who is fit to do the required job. Confirmation of fitness is an obligatory condition for employment in the public sector. All expatriates must undergo a comprehensive medical check-up, including the HIV test prior to being granted a permit to reside in the country. Article 21/4 of the Federal Law No.21/2001 on civil service in the federal government stipulates that the applicant for a job with the federal government should be medically fit. Furthermore, article No.51, of the above-mentioned law, stipulates that if an employee is infected with a contagious disease, (including HIV/AIDS as mentioned earlier), and even where such disease is not detrimental to performance of duties; or, any employee, mixing and in regular contact with an infected individual, the medical authority concerned is obliged to inform the employer to stop that said individual from performing his/her duties. Finally,

article No.90 of the law stated as part of the reasons for the termination of employee contracts, the employee's medical unfitness for performing duties.⁶⁰³

The UAE labour law is intended essentially to cater for regulating the recruitment of expatriate labourers and it is almost devoid of any reference to recruitment of UAE citizens, other than indicating that it is a priority. This may be due to the imbalance in the population structure, and in part due to the strict procedures for issuing labour permits for the recruitment of non-national labourers. The medical fitness examination for those seeking employment and residence permits within the UAE is already mentioned as one of the obligatory undertakings of the employer. What often follows the issue of the work permit is regulated by the labour law which concerns the commencement of employment. This entails that the applicant has already passed the medical examination and fitness tests. The labour law does not mention HIV/AIDS and the potential danger of the virus being transmitted to the labourer, after arrival in the UAE; or how to deal with such contingencies.

5.6. School Health.

The developed countries give great weight to school health programmes in the belief that they play a crucial role in societal health awareness, as students represent a very high percentage of the population of any society. This is applicable to UAE society, because the student population represents about one quarter of the UAE population, as indicated by the statistics for the year 2002⁶⁰⁴, which shows, that the age group 5-20 years amounts to 900000 persons (one quarter of the UAE population).⁶⁰⁵ Hence, schools stand as a very good platform for launching health awareness campaigns, with the ultimate aim of trying to reduce the dangers of the spread of the HIV.

However, on reviewing the public school curricula, which private schools also adopt, taught to grades 1 to 12, it is pertinent to note that only one page, in the Islamic religion syllabus for Grade 9, touches briefly on the issue of AIDS as a contagious disease

603 United Arab Emirates Official Gazette, Volume 372, (21-2001), Ministry Of Justice Press.

604 No data available after 2002.

605 Al Ameer, T. "Quarter of UAE population are students" Alittihad News Paper, Vol.11172, 5/2/2006, p 7.

transmitted through illegitimate sexual intercourse ⁶⁰⁶ Syllabi dealing with scientific subjects ignore any reference to HIV/AIDS, although these syllabi cover, to a degree of relative intensity, so many other health issues.

This deficiency in coverage may lead to the false assumption on the part of the youngsters that HIV/AIDS is just related to issues of Islamic jurisprudence and the victims are, accordingly, guilty of religious contravention or have committed adultery. Such apprehension increases the negative and stigmatising mental attitude on the part of the learners. The researcher is of the view that the discussion of HIV/AIDS within the school curricula should be presented in a very simple yet clearly neutral and unbiased way, and that religious issues should be kept to a minimum. The ultimate objective is raising the awareness of the learners of the dangers involved. Hence, the methodology of presentation should keep that objective in mind by adopting the teaching and learning approaches, suitable to the age group at whom it is directed. For example, this can be achieved by introducing the learners to essential scientific facts concerning the nature and health hazards of the disease. Then the discussion goes on to describe the manner and means of transmitting the virus, how to cope with the unfortunate victims and provide badly needed psychological support instead of stigmatising the victims. In addition, it is worth noting that, there was a suggestion from the United Nations Development Program (UNDP) to the United Arab Emirates in 2002, that HIV/AIDS and STD awareness should be incorporated into the Ministry of Education's school curricula.⁶⁰⁷

⁶⁰⁶ Available in the Islamic Education to the Ninth Class, United Arab Emirates, Ministry Of Education (2006-2007), p 39.

⁶⁰⁷ "HIV/AIDS, UNDP –United Arab Emirates Country Paper", 2002. Available at: www.undp.org
Accessed on: 4/1/2006.

5.7. Conclusion.

The constitution of the UAE with its first amendment of 1996 in articles No.25 and No.26, stipulates that all individuals are equal before the law and that personal freedom is a constitutional right for every individual. Article No.27 establishes that the laws determine the "crimes" and their "penalties" and that committing an act or failure to perform an act, committed prior to the enactment of the law, "does not" constitute a punishable crime by these laws. This constitutional provision is of key importance for advocates representing potential defendants who may be charged with the act of transmitting HIV/AIDS to others. The law does not include this act, up to now, as a crime punishable by the law, hence charging such persons could be unconstitutional.

The state of the UAE is perhaps fortunate that mere luck has played a major role in reducing the number of incidents of infection. That may be ascribed to the fact that the virus was belatedly introduced into the country, after it has being identified and apprehended. This might have helped in drawing the attention of the concerned authorities to the risks involved in ignoring handling the disease and enabled these concerned health authorities to initiate the necessary precautionary measures to combat the spread of the virus, including the prohibition of importing blood specimens from abroad, in the mid-eighties. However, the Arab countries are witnessing a substantial increase in the rate of infections, because the region is geographically located in the middle of the HIV/AIDS-ridden countries, that is to say, Southeast Europe, South West Asia and the African Sahara region, the Arab region is prone to catch up, in the very near future, with these areas.⁶⁰⁸

Researchers may not be able to develop the most appropriate measures for the suitable types of prevention and consequent suggestions, without accurate data available from the authorities in UAE especially on the actual rate of the HIV spread and the detailed prevalence of the disease, amongst the population of any of the Emirates constituting the federation. Through comprehensive screening, reporting, and active surveillance, researchers could help to define the scope in general and direction line of the epidemic in

608 "The fast of infection in the Arabic Countries", Medic and Health Magazine, Vol.229, 14/8/2004, p 16.

UAE. Surveillance will provide clear and comprehensive information about the growing burden of HIV/AIDS on men, women, youth, children and on specific groups within the society. Examples of the latter are perhaps homosexuals, drugs addicts, and prostitutes. The collected information can then be used to evaluate, define and categorise the groups most affected by HIV. Such a shortage in data drives researchers to exert concerted efforts to arrive at reasonable and plausible conclusions from the data available. These involve investigating the existing laws and above all, to make up for the detrimental effect of the lack of information on the scale and impact of the epidemic on the country and on the most high risk groups, which substantially undermines and hinders any possible and suitable effective response.

It is evident that the UAE legislator provided for punishing crimes of murder, manslaughter, assault on the physical integrity of another person leading to the death of that person and intentionally or unintentionally assaulting a person causing disability. No further specifications were provided for in the penal code, such as simple or serious injurious acts, where there are many injurious acts, which do not necessarily cause permanent disability or diseases. There are also the acts causing surface or deep wounds which do not necessarily lead to permanent disability. Furthermore, the law on the rights of persons with special needs does not provide for the HIV/AIDS as a permanent disability. However, HIV/AIDS is still considered a permanent disease leading to a final result of death and not a disability or a curable disease, despite the fact that scientists and research centres the world over, are exerting tremendous efforts to discover with a cure to HIV. When such possibility is finally realised, the cure for the disease may eventually lead to its eradication altogether, rather than just keeping it at bay. To sum up this point, this researcher claims that there is a serious lack in the judicial provisions of the UAE for the intentional or unintentional transmission of the HIV to others.

The attempts to promote legislation concerned with proof or evidence to keep up with the modern age may help bridge the gap in the existing legislation, which in turn may lead to confusion on the part of law enforcement officers like the police. These attempts may involve honing the skills and knowledge of judges through professional conferences,

seminars and workshops investigating new changes in all fields of legal and legislative knowledge, and exposing them to the latest findings. Clarity of the judicial and legal provisions makes it easy for the concerned authorities to apply the law and sends an unambiguous message to the public that there are always red lines not to be crossed. This is one of the prime objectives of criminal laws. Waiting in an unprepared state of denial until the disastrous phenomenon attacks society and then looking around for hasty solutions is equally disastrous and is perhaps too late. The HIV/AIDS epidemic is already here.

The culture of voluntary check-up for HIV is not generally practiced in UAE society because of the negative societal attitude towards HIV/AIDS patients. The situation, as far as other, non-criminal laws are concerned, is also flagrantly inadequate. The dangers posed by the epidemic of HIV/AIDS on the economic social and health aspects of the society are of colossal proportions. Scientists and researchers have failed, at least up to now, to discover an effective cure for the disease, despite the considerable sums spent on laboratory experiments. Yet, the UAE legislator has not issued appropriate provisions for punishments against intentional or unintentional transmission of the virus to others. Hiding behind a vague existing legal provision is no substitute for other concerted social efforts to fight against the spread of the HIV. The ambiguous existing legislative weapons are not sufficient, in themselves to face the challenge, but must be coordinated with other efforts to redress the problem.

Chapter Six

Field Study: Views of Legal, Health and Medical Professionals and The General Public respondents in the United Arab Emirates with regard to criminalising the transmission of HIV/AIDS in the UAE.

6.1. Introduction.

The aim of this chapter is to describe the procedures followed in the collection, analysis and interpretation of the data required for this research. The chapter starts by restating the research purpose. The chapter then discusses the data analysis and results.

Finally, the chapter goes on to compare the three sample groups sample answers to the questions. For the discussion of the techniques of the procedures which were used to guide the collection, the method of data analysis, sample frame and characteristics (please see Appendix 7).

6.2. Research Purpose and Research Questions.

The questionnaires in this research were mainly used to answer some of the research questions which aimed to elicit the professional's and the community's perceptions⁶⁰⁹ of their understanding of the HIV/AIDS phenomenon and their views about the possibility of involving the Criminal law as a path that could lead to reducing the victim numbers and the spread of the disease. Questionnaires were used at this stage of the research in order to have a wider coverage of participants than what could be covered through other research methods⁶¹⁰. As Berg mention: "*Research problems direct or drive the research enterprise. How you will eventually conduct a research study depends largely upon what your research questions are*".⁶¹¹

In order to attain the objective of this study, the views of three groups from law practitioners, health staff and the public with regard to the scope and the seriousness of

609 Barakat, M. (2002), "The methodology and the research", Kuwait: Al Kalam Press, p 58.

610 Abood, A. (1989), "The research and the field work", Cairo: Al Arabic Press, p 177.

611 Berg, B. L. (2001), "Qualitative research method for the social sciences-Fourth Edition", London: Allyan and Bacon, p 25.

HIV/AIDS problem in UAE society were examined. Moreover, the study aimed to measure, based on the view of the participators in the survey, the availability and the adequacy of the preventive health regulations and laws in the UAE and to answer the first three research questions, which are:

Do the articles of the UAE Penal Code, address adequately the incidence of HIV transmission?

Do the other UAE laws have a role in limiting the spread of HIV and supporting the patients?

What can the impact of criminalising HIV transmission in the UAE be?

The current study was based initially on a quantitative research technique which is widely used in similar social studies⁶¹². Three types of questionnaires were designed to measure the feedback from respondents in three groups. The data collected through the questionnaires were aimed at the following:

1. To explore the current Criminal law and health regulations in UAE and how far these laws and regulations are appropriate to deal with the incidence of HIV/AIDS transmission whether intentionally or unintentionally.
2. To investigate the possibility and the impact of passing a law that punishes individuals who transmit HIV to others intentionally or unintentionally.

The following is a brief description of the three questionnaires:

1. The survey on “the Legal Professionals perception”, written in Arabic, and designed to collect data on the current laws and regulations to HIV transmission.
"Appendix 4"
2. The survey on “Health and Medical Professionals Perception”, written in Arabic, and designed to collect data on current policies on recording the

612 Labib, M. & Mursy, M. (1983), "The principle of the scientific research", Cairo: Alium Al Kutib, p 173.

incidence of HIV/AIDS infection and to explore the adequacy of the current health regulations. "Appendix 5"

3. The survey on "Public Perception", written in Arabic, and designed to measure the awareness level of the public on this critical issue. In addition to explore their perception on the possible impact of enacting a law that criminalises HIV transmission. "Appendix 6"

Two types of questions were included in the questionnaire; a 'closed ended' type and an 'open ended' type. Closed ended questions provide a set of fixed responses that allow the respondent to select the closest answer to his/ her perception and make the analysis of the results relatively easy⁶¹³. On the other hand, an open question allows subjects to respond freely, expressing different shades of opinion. However, the analysis of open questions is relatively harder and needs more interpretation from the researcher to reorganise the responses in more meaningful way⁶¹⁴ especially with sensitive issues like AIDS.

6.3.Instruments.

The instruments used for this study were questionnaires, developed and used to measure perceived magnitude of the HIV/AIDS problem, laws and health prevention programmes in the UAE and the potential effects of criminalising the transmission of HIV/AIDS on individuals and society. The opinions of three distinct sample groups were sought:

Law sample: The first group of participants includes people within the legal profession. This group contained four sub groups; the first subgroup included a number of police officers who were selected to be part of the questionnaire sample. The participants work in 6 police stations belonging to the police force of the capital and within the territorial boundaries of Abu Dhabi city. This group of participants represents the process of law enforcement. They are trained specially for the purpose. This special force is entrusted with the task of receiving public complaints; listening to complaints and deciding whether there are reasonable grounds for filing a charge against the accused, armed with their specialised

613 Zaidan, M. (1990), "The dictionary of the scientific research", Jeddah: Alem Al Merefah, p 39.

614 Raja, A. (1998), "The research methods in the psychological and education field", Cairo: Dar Al Noshier Press, p 385.

legal training and applying the provisions of specifically relevant articles in the penal code. The force is also entrusted with the legal procedures of reporting witnesses' testimonies, if necessary, summoning the accused for investigation and finally referring the case to the office of the public prosecutor and executing the resolutions of that office with regard to the referred cases.

The second subgroup of participants comprises the public prosecutors who are responsible for handling the case until it reaches the court of first degree and are responsible for representing the community in court.

The third sub group are the advocates/lawyers, legal professionals registered with and licensed by the Ministry of Justice, and who are entitled to appear before courts of law of different degrees within the territorial boundaries of the city of Abu Dhabi.

The fourth subgroup of participants comprises judges who are appointed to sit in the criminal courts of all three degrees of courts⁶¹⁵, within the boundaries of Abu Dhabi and to look into the cases referred to the courts by the public prosecutor.

The special groups of legal professionals mentioned above are selected in a way that reflects the standard legal procedures of enforcing the law, starting with the police then the public prosecutor, then the role played by attorneys or advocates and finally the competent courts which are entrusted with applying the provisions of the laws.

Health sample: The second category of participants is respondents operating in the field of health care such as doctors, nurses and the administrative staff in the Preventive Medicine Department in the Ministry of Health. The responsibilities of this department include combating contagious diseases; reporting cases and providing and administering available vaccination against all diseases. The department also undertakes the arduous task of medically checking the incoming expatriate workers from all over the world to make sure that they are free of the listed contagious diseases. It also provides the mandatory medical

615 First Degree=Magistrate Court, Second Degree=Appeal Court, Third Degree= High Court.

check ups for all those who seek employment with governmental bodies. The Preventive Medicine Department also runs awareness-raising campaigns.

Public sample: In order to avoid the problems involved in random sampling as mentioned in the first chapter, the researcher drew upon the expertise of the Preventive Medicine department in Abu Dhabi to help in the selection of the participants of the third category, which comprises members of the public. The Department regularly holds public lectures, workshops and seminars as part of its consciousness-raising campaign with regard to different health problems, (such as monitoring diabetes or hypertension or contagious diseases like hepatitis A/B/C) and the researcher felt confidence that participants in these events would be an appropriate resource and reflect the purposes of the research at hand since they come from different walks of life; have different interests; represent different age groups and gender and they enjoy a reasonable level of understanding of the hazards posed by the HIV/AIDS epidemic.

The questionnaires were administered in different stages to avoid repetition and to reach the largest number of possible participants. Also, the participants were free to choose the time and place to submit their completed questionnaires as they were provided with various contact numbers and individuals. This facility appeared to have been successful as a large number of participants in this category responded.

The decision not to make use of interviews in this research was made after consideration of the practical disadvantages in the UAE, especially when I compared researchers' experience. The long procedures and the bureaucracy to obtain appointments meant it could take more than six months just to receive the acceptance and refusal is common. Moreover, people tend to withhold answers in interview settings not because they do not have the answers but for confidentiality reasons. Interviewees may think that being open might harm them, believing that the researcher might use the data for purposes other than research, even though with my questionnaire I gave a covering letter asking them to keep it if they wished and seeking permission as well as stating my mission. When respondents cannot appreciate the benefits of the research or when they consider it “none of their business”, they may not provide candid answers or even refuse to take part altogether because researchers tend to be

viewed as “outside snoops” to whom the participants may feel that they owe no loyalty or honesty. Unintentionally, sometimes respondents do not provide the kind of answers which the researcher is looking for due to their misunderstanding of what is asked.

Also, another problem anticipated was related to my position in the Ministry of the Interior as a high ranking police officer it was possible that other members or the lower ranks in the police force would feel they had to say what I wanted to hear during an interview.

6.4. Data Analysis and Results.

The statistical data derived from responses to the three questionnaires as has been described above. The first administered to group one Legal Professional (Police Officers, Prosecutors, Lawyers and Judges), the second administered to group of Health Professional at the Preventive Health Department in Abu Dhabi. The Health sample covered different professions such as physicians, nurses, nutritionists, general health specialists and administration staff. Finally the third questionnaires administered to a Satterfield random sample also from the public from different sectors, age groups, and genders. The perceptions of the three samples were analysed in four sections as follow:

Section I: Law practitioners' views of the HIV/AIDS transmission and current UAE Penal Code and regulations.

Section II: Health views of the HIV/AIDS transmission and health preventive regulations.

Section III: Public views of the HIV/AIDS transmission.

Section IV: Comparison between the three groups surveys in the similar questions.

6.4.1. Sample Group One: The Legal Professional.

The selected sample consisted of 140 respondents from law related professions. The respondents were judges, prosecutors, lawyers and police officers. The questionnaire had 18 items.

The statistical analysis was based initially on; frequency and percent distribution for each response level, average scores for all responses and a graphical presentation for the average scores. Moreover, the significance of the differences in the respondents' perception in the four groups was examined through the Analysis of variance technique⁶¹⁶. In just two items (Tables 37 & 39) the Chi-squared test were used instead of the analysis of variance due to the type of the responses where Chi-squared test is more appropriate.

AIDS is a problem/ not a problem in UAE society.

'Do you think that AIDS constitutes a problem in the UAE?'

The following table shows that the majority of the respondents (71.2 per cent) believed that AIDS constitutes a problem to UAE society. On the other hand the rest of the respondents either did not believe this statement (19.4 per cent) or they did not know (9.4 per cent).

Table 7: Respondent' ratings for the AIDS problem in UAE

Problem	Frequency	Percent
Yes	99	71.2%
No	27	19.4%
I don't know	13	9.4%
Total	139	100.0%

Table 8: Respondent' ratings for the AIDS problem in the UAE by groups

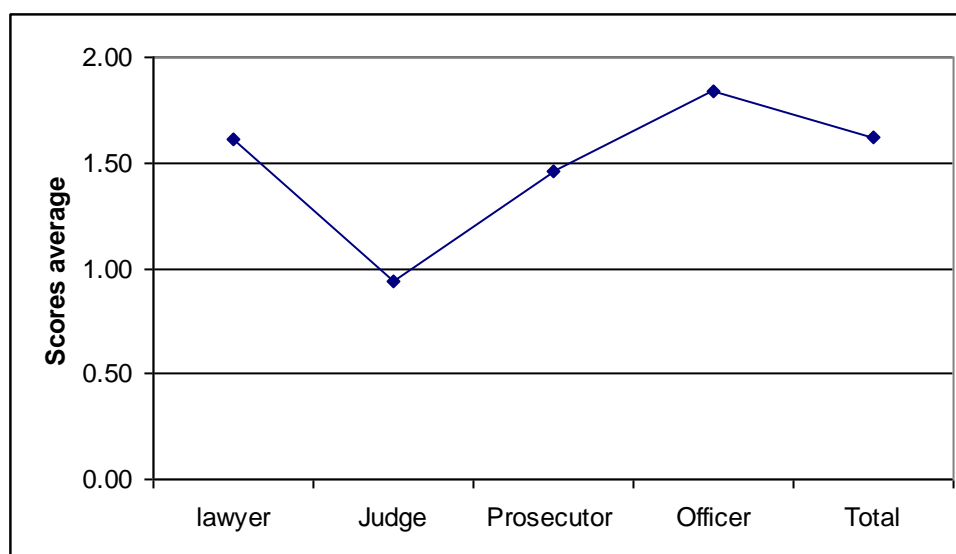
Groups	Mean	N	Std. Error of Mean	Minimum	Maximum
Lawyer	1.61	23	0.15	0	2
Judge	0.94	17	0.22	0	2
Prosecutor	1.46	26	0.14	0	2
P. Officer	1.84	73	0.04	0	2
Total	1.62	139	0.06	0	2

⁶¹⁶ The significant level used in all statistical tests was 0.05. Accordingly, there will be a significant difference among the groups if the P-value is less than the selected significance level.

The difference⁶¹⁷ in the average scores for each group reflects the diversity in the respondents' perception toward the HIV/AIDS problem in the UAE. The police officers ratings formed the highest average scores (1.84). This average indicates that police officers were more convinced that HIV/AIDS constitutes a problem in the UAE. The Judges' ratings yielded the lowest average scores (0.94) which indicated that the Judges held the opposite perception, that HIV/AIDS does not constitute a problem.

The next chart shows that the average scores for judges' ratings is very close to response level 'No'. On the other hand the average scores for the police officers are close to the response level 'yes'.

Figure 6: Scatter of the average scores: for the perception of AIDS problem in the UAE by groups



The magnitude of the AIDS problem.

In your opinion, what is the scope of the problem?

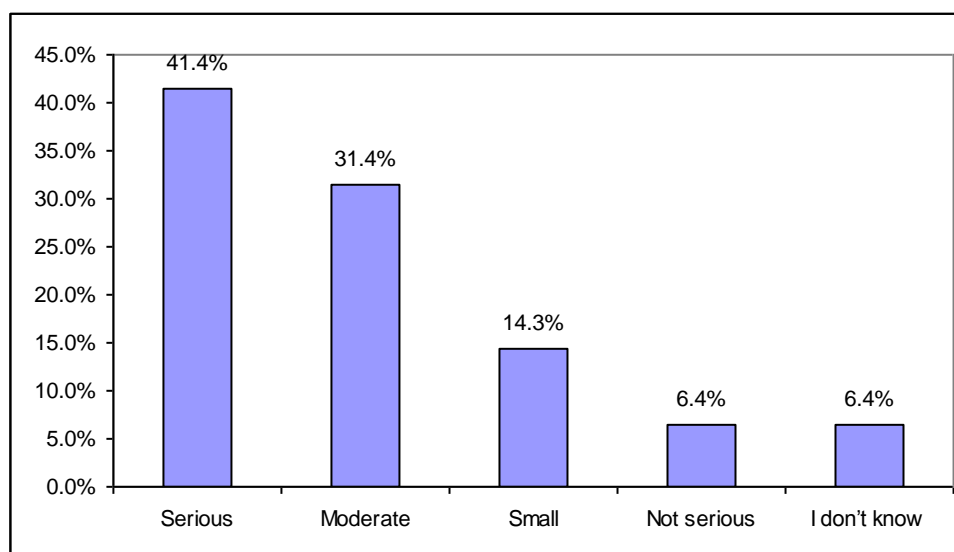
It is clear from the next table that most of the respondents (87.1 per cent)⁶¹⁸ considered HIV/AIDS as a problem a part. Whereas 41.4 per cent of the respondents considered it a serious problem, 31.4 per cent considered it as a moderate problem and just 14.3 per cent regarded it as a minor problem.

617 ANOVA results: P-value = 0.000, which indicates that there is a significant difference among the four groups.

618 Cumulative percent for the levels 'Serious', 'Moderate' and 'Small'.

Table 9: Respondents' ratings for the magnitude of the AIDS problem

Magnitude	Frequency	Percent
Serious	58	41.4%
Moderate	44	31.4%
Small	20	14.3%
Not serious	9	6.4%
I don't know	9	6.4%
Total	140	100%

Figure 7: Respondent's ratings for the magnitude of the AIDS problem

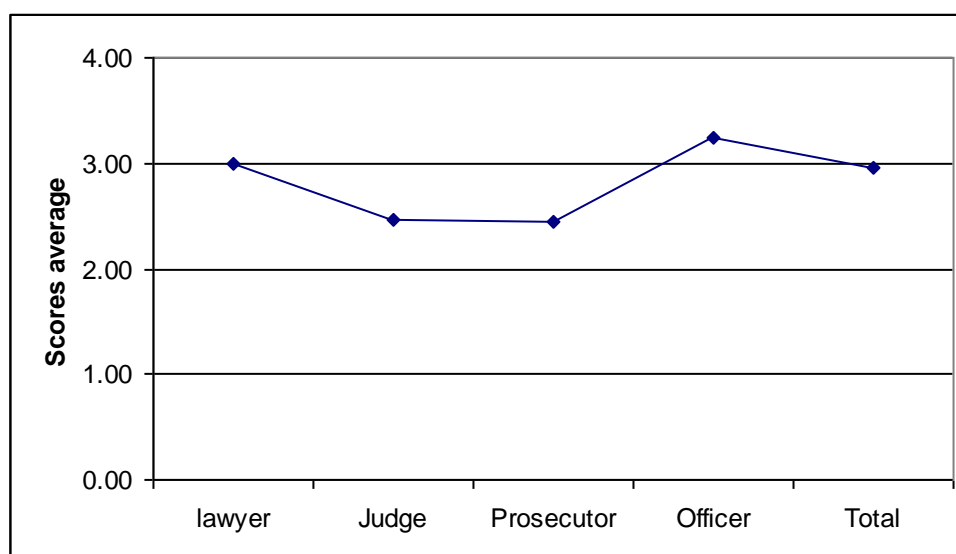
The following and the previous table displays the average scores for the respondents' ratings for the magnitude of the HIV/AIDS problem in UAE. The averages scores for the four groups ranged from 2.44 to 3.23.

Table 10: Average scores for the magnitude of the AIDS problem by group

Groups	Mean	N	Std. Error of Mean	Min.	Max.
Lawyer	3.00	23	0.28	0	4
Judge	2.47	17	0.40	0	4
Prosecutor	2.44	27	0.26	0	4
P.Officer	3.23	73	0.09	0	4
Total	2.95	140	0.10	0	4

The following scatter diagram depicts how the average scores were distributed around the moderate level. Clearly, lawyers and police officers respondents held a similar perception that the size of the HIV/AIDS problem in UAE is moderate. However, the judges and prosecutors seem to believe it is a small problem in the country. The ANOVA analysis⁶¹⁹ shows that there is a significant difference in the four ratings for the magnitude of the HIV/AIDS problem in the UAE.

Figure 8: Scatter of the average scores for the magnitude of the ADIS problem by group



Expansion of the Problem.

Do you believe that AIDS is on the increase in the UAE?

The majority of the respondents (77.1 per cent) were agreed that HIV/AIDS is on increase in the UAE. However, around 12 percent of them did not and 10.7 per cent did not know.

Table 11: Respondents' ratings for the AIDS expansion in the UAE

On increase?	Frequency	Percent
Yes	44	31.4%
To some extent	64	45.7%
No	17	12.1%
I don't know	15	10.7%
Total	140	100.0%

⁶¹⁹ ANOVA result: P-value = 0.007 which indicates there is a significant difference in the means among the four groups.

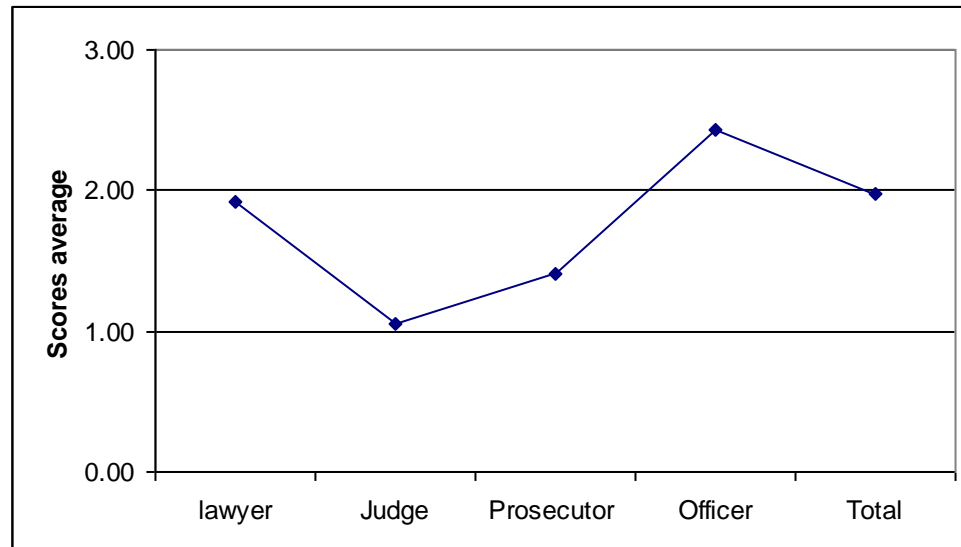
The next table shows the comparison in the respondents' ratings for the growth of the problem in the UAE. The overall average scores for all respondents indicated that the HIV/AIDS problem is to some extent getting worse in the UAE. The average scores for each group reflected the diversity⁶²⁰ in the respondents' perception. While the police officers believed the HIV/AIDS problem is on the increase in the UAE, the lawyers thought it is not greatly increasing. On the other hand the judges and prosecutors believed it is not increasing.

Table 12: Average scores for the AIDS expansion in the UAE society by group

Groups	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.91	23	0.21	0	3
Judge	1.06	17	0.25	0	3
Prosecutor	1.41	27	0.19	0	3
P.Officer	2.42	73	0.06	0	3
Total	1.98	140	0.08	0	3

The next diagram reflects clearly the difference in the respondents' perception toward the expansion of the HIV/AIDS problem in the UAE.

Figure 9: Scatter of the average scores for AIDS expansion in the UAE by group



⁶²⁰ ANOVA result: P-Value = 0.000, which indicates that there is a significant difference in the means of the four groups.

Society awareness of the AIDS Problem.

Do you believe that UAE society is aware of the seriousness of AIDS?

It is clear from the following table that UAE society is aware absolutely (20.1 per cent) or to some extent (53.2 per cent) of the seriousness of the HIV/AIDS problem. Based on the findings, 26.6 per cent of the respondents thought that UAE society is not aware of the seriousness of the problem.

Table 13: Respondent's ratings for the awareness of UAE society of the seriousness of AIDS

Awareness	Frequency	Percent
Yes	28	20.1%
To some extent	74	53.2%
No	37	26.6%
Total	139	100.0%

The overall average (1.94) indicates that there is a common perception among the respondents that the UAE society is aware to some extent of the seriousness of the HIV/AIDS problem. The scores averages for each group of the respondents affirm this perception. Clearly, almost all police officers, prosecutors, lawyers and judge held the same belief with very slight differences.⁶²¹

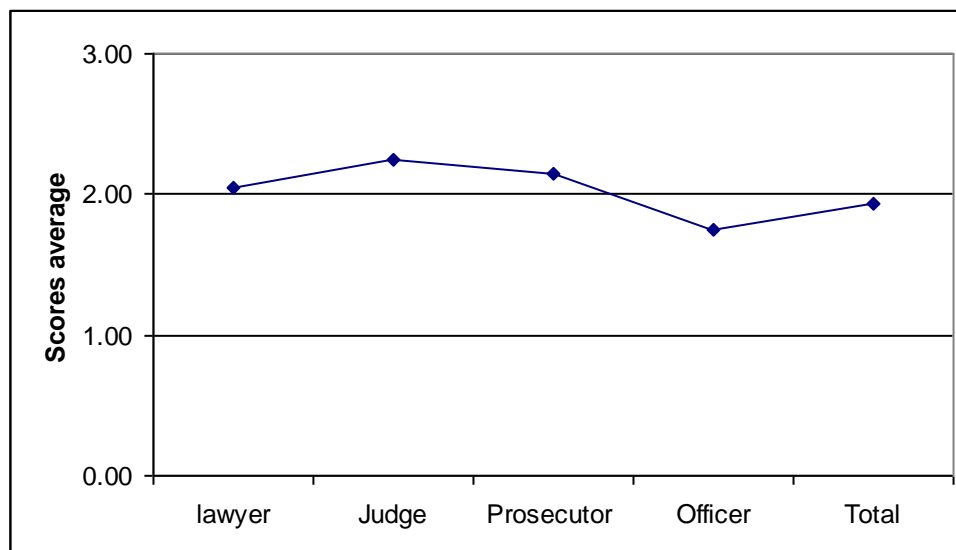
Table 14: Average scores for the awareness of UAE society of the seriousness of the AIDS problem by group

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	2.04	23	0.16	1	3
Judge	2.25	16	0.21	1	3
Prosecutor	2.15	27	0.16	1	3
P. Officer	1.75	73	0.06	1	3
Total	1.94	139	0.06		

⁶²¹ ANOVA result: P-value is 0.007 which indicates that there is a significant difference in the average scores among the four groups.

The next scatter diagram shows how the respondents' scores for all groups were distributed mostly around the level 2 "to some extent".

Figure 10: Scatter for the average scores for the awareness of UAE society of the seriousness of the AIDS problem by group



Sufficiency of the preventive health and law regulations.

In your opinion, are the preventive health regulations and laws in the UAE satisfactory to combat AIDS?

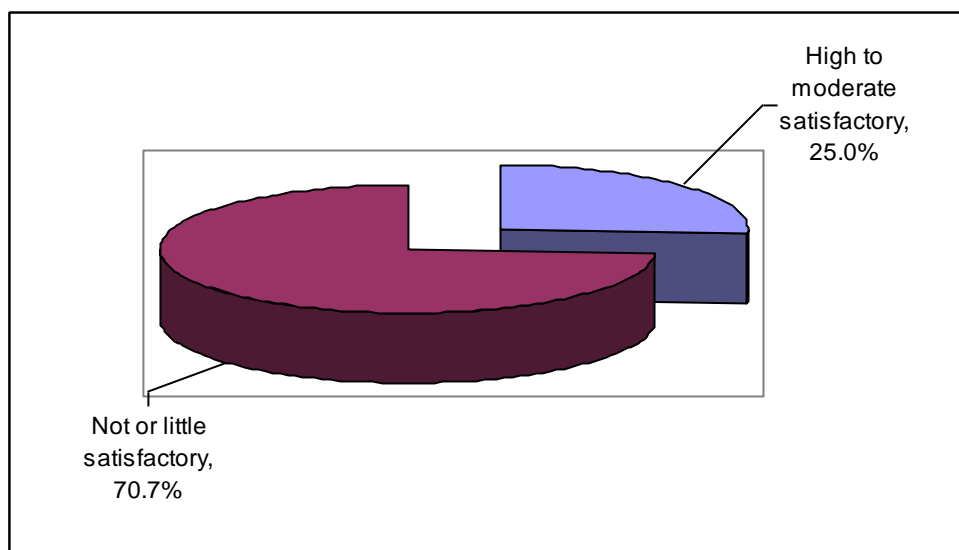
Based on the respondents' ratings presented in the following table, the preventive health regulations and laws are viewed as not satisfactory (55.7 per cent), though, 25 per cent of the respondents believed that the regulations were either very satisfactory or moderately so.

Table 15: Respondents' ratings for the sufficiency of the preventive health regulations and laws

Satisfaction level	Frequency	Percent
Very satisfactory	12	8.6%
Moderate	23	16.4%
Little satisfactory	21	15.0%
Not satisfactory	78	55.7%
I don't know	6	4.3%
Total	140	100.0%

The next chart compares two main scales of the satisfaction toward health and law regulations and it shows that the majority of the respondent ratings (70.7%) clarified that the regulations were either not little, or s satisfactory.

Chart 1: Respondents' ratings for the sufficiency of the preventive health regulations and laws



The following table lists the average scores for the respondents' ratings for the sufficiency of the current health and law regulations by groups. The averages ranged from 1.14 to 2.35. This range shows that there is a significant difference⁶²² in the perception among the four groups. Clearly the lawyers, judges and prosecutors held a very close perception that the current regulations were barely satisfactory to moderately satisfactory. On the other hand the police officers believed that the current regulations were not sufficient.

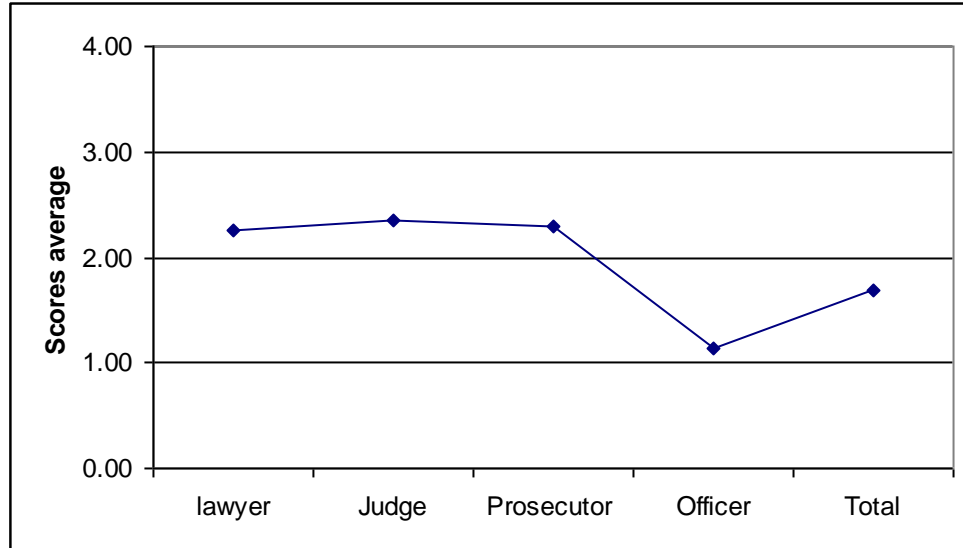
Table 16: Average scores for the sufficiency of the current health and law regulations

Group	Mean	N	Std. Error of Mean	Min	max
Lawyer	2.26	23	0.28	0	4
Judge	2.35	17	0.31	0	4
Prosecutor	2.30	27	0.23	0	4
P.Officer	1.14	73	0.04	0	4
Total	1.69	140	0.09	0	4

⁶²² ANOVA result: P-value is 0.000 which indicates there is a significant difference in the average scores for the four groups.

The next scatter diagram shows that the respondents' ratings were distributed on average around the line '2 barely satisfactory'. Obviously, the officers' perception was unlike other groups' perception.

Figure 11: Scatter for the average scorers for the sufficiency of the current health and law regulations



Suitability of the current penalties.

In your opinion, are the current penalties stipulated in the UAE penal code suitable for punishing those who intentionally or unintentionally transmit AIDS to others?

The next table shows that the majority of the respondents (84.3 per cent) believed that the penalty in the UAE for punishing those who transmit HIV to others are not suitable.

Table 17: Respondents' rating for the current penalty suitability

Suitability	Frequency	Percent
Yes	14	10.0%
No	118	84.3%
I don't know	8	5.7%
Total	140	100.0%

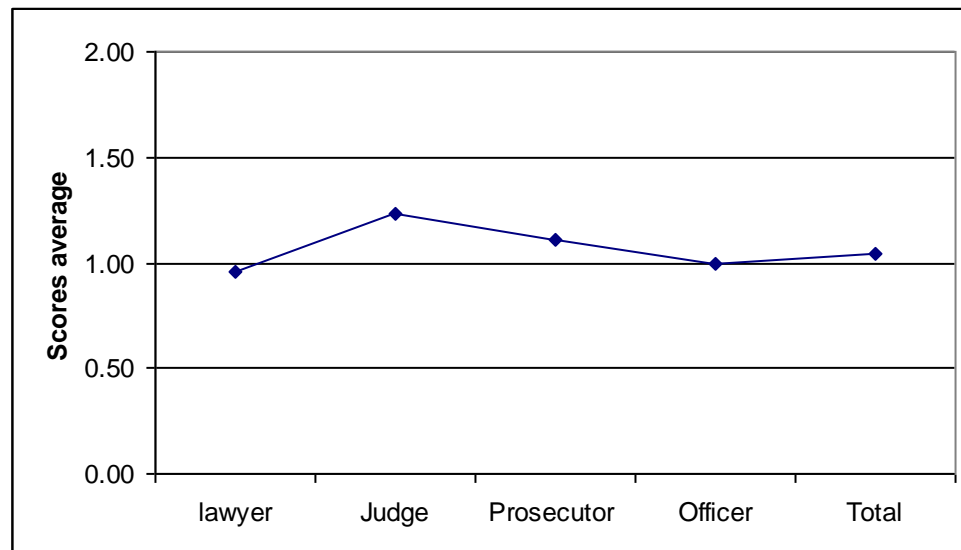
The overall average scores (1.04) shows that the respondents believed that the current punishments were not suitable. Obviously, there is a general consensus⁶²³ among the four sub groups regarding the appropriateness of the present punishments.

Table 18: Average scores for the present punishments suitability

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	0.96	23	0.12	0	2
Judge	1.24	17	0.16	0	2
Prosecutor	1.11	27	0.10	0	2
P. Officer	1.00	73	0.00	0	2
Total	1.04	140	0.03	0	2

The following scatter diagram shows how the average scores for all respondents were scattered closely around level '1' which reflects the unsuitableness of the current punishments for those who transmit the HIV to others intentionally or unintentionally.

Figure 12: Scatter of the averages scores for the current penalties suitability



⁶²³ ANOVA result: P- value is 0.078 which indicates there is no significant difference in the average scores for the four groups.

Availability of legal article for *intentional* HIV transmission.

From the current penal code, is there any legal Article appropriate for intentional AIDS disease transmission to others?

Based on the majority of the respondents' ratings (65.7 per cent) there is no legal Article that suits the intentional act of HIV transmission to others. However around 24 per cent declared that there are a few legal articles that could be suitable in this area.

Table 19: Respondents' ratings for the availability of legal Article for intentional HIV transmission

Availability	Frequency	Percent
Yes	33	23.6%
No	92	65.7%
I don't know	15	10.7%
Total	140	100.0%

The next table presents a comparison of the respondents' average scores among the four sub groups. Obviously, all respondents⁶²⁴ believed that there is no legal Article suitable for intentional HIV transmission to others.

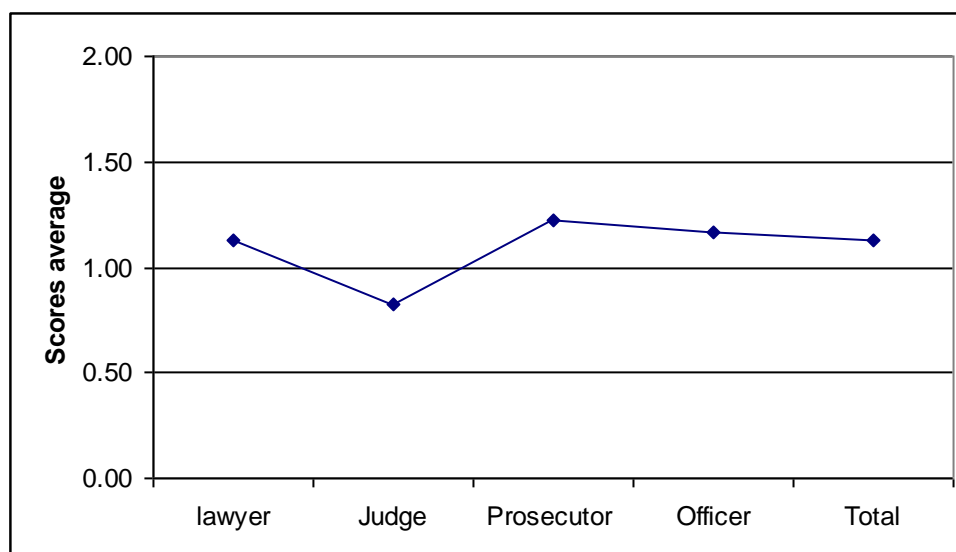
Table 20: Average scores for the availability of legal Article for intentional HIV transmission by groups

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.13	23	0.13	0	2
Judge	0.82	17	0.18	0	2
Prosecutor	1.22	27	0.15	0	2
Officer	1.16	73	0.04	0	2
Total	1.13	140	0.05	0	2

The next scatter diagram reflects the general consensus among the four sub groups of the respondents that there are no legal Articles suitable for intentional HIV transmission.

⁶²⁴ ANOVA result: P-value is 0.120 which indicates there is no significant difference in the average scores for the four groups.

Figure 13: Scatter for the average scores for the availability of legal Article for intentional HIV transmission classified by groups



The average scores presented in table (13) shows that the lowest scores belonged to the judges. The reason behind this low rating could be attributed to the fact that more than third of the judges stated that they did not know whether a legal Article that deals with the act of intentional transmission of HIV to others is available.

Table 21: Respondents' ratings for the availability of a legal Article for intentional HIV transmission by group

Response	Yes		No		I don't know	
Group	Frequency	Percent	Frequency	Percent	Frequency	Percent
Lawyer	6	26.1%	14	60.9%	3	13.0%
Judge	3	17.6%	8	47.1%	6	35.3%
Prosecutor	12	44.4%	9	33.3%	6	22.2%
P. Officer	12	16.4%	61	83.6%		0.0%
Total	33	23.6%	92	65.7%	15	10.7%

Suitableness of penalty to the committed act of *intentional* HIV transmission.

If Yes: Do you think the penalty is suitable for the committed acts?

Out of the 33 respondents who stated that there is a legal article that could be compatible with intentional transmission, seventeen respondents declared that this penalty is either suitable (27.3 per cent) or suitable but to some extent (24.2 per cent). On the other hand around half of the respondent stated that this penalty is not suitable.

Table 22: Respondents' ratings for the suitability of the penalty to the intentional HIV transmission act

Responses	Frequency	Percent
Yes	9	27.3%
To some extent	8	24.2%
No	16	48.5%
Total	33	100.0%

The average scores for the four sub groups ranged from '1 No' to '2.33 to some extent'. This diversity in the responses⁶²⁵ shows that there is a difference in the perception within each group. The lawyers, judges and prosecutors had almost similar views that the current penalties are to some extent suitable or compatible with the committed act of intentional transmission HIV.

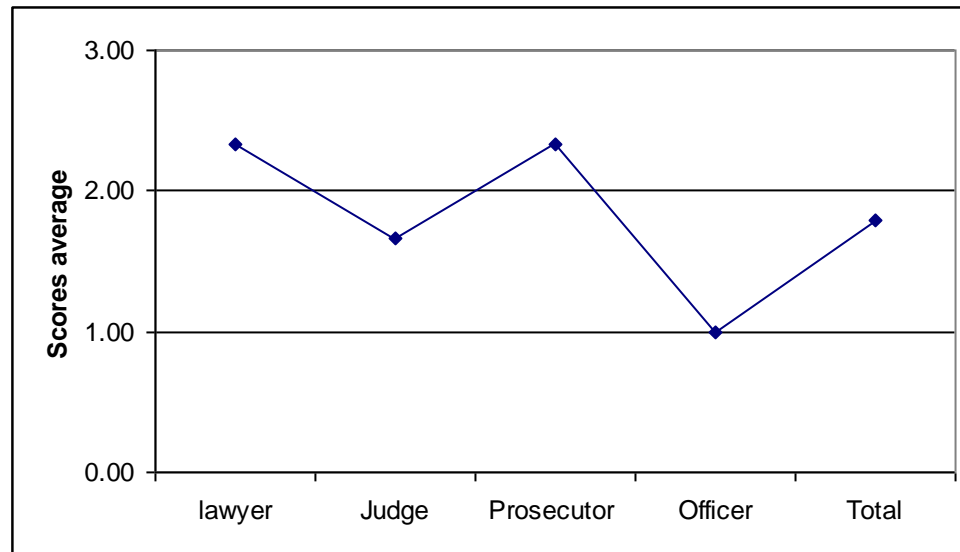
Table 23: Average scores for the suitability of the penalty to intentional HIV transmission by group.

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	2.33	6	0.33	1	3
Judge	1.67	3	0.33	1	3
Prosecutor	2.33	12	0.22	1	3
P. Officer	1.00	12	0.00	1	3
Total	1.79	33	0.15	1	3

The following chart shows that the average scores for lawyers, judges and prosecutors were almost circulated around line '2 to some extent' while the scores for the police officers were located exactly on line '1 which mean No'.

625 ANOVA result: P- value is 0.000 which indicates there is a significant difference in the average scores for the four groups

Figure 14: Scatters for average scores, for suitable of the penalties for intentional HIV transmission by group



Availability of legal article for unintentional AIDS transmission.

From the current penal code, is there any legal Article appropriate for unintentional AIDS disease transmission to others?

The majority of the respondents (72.1 per cent) stated that there is no legal article that is compatible with the transmission of HIV unintentionally. On the other hand, 12.9 per cent of the respondents had no idea about such a legal Article.

Table 24: Respondents' ratings for the availability of legal Article for unintentional HIV transmission

Responses	Frequency	Percent
Yes	21	15.0%
No	101	72.1%
I don't know	18	12.9%
Total	140	100.0%

The overall average scores (1.02) reveal that there is a common belief among all respondents from law domain that there is no legal Article dealing with the unintentional HIV transmission to others. Moreover, the average scores⁶²⁶ for each group in the Legal

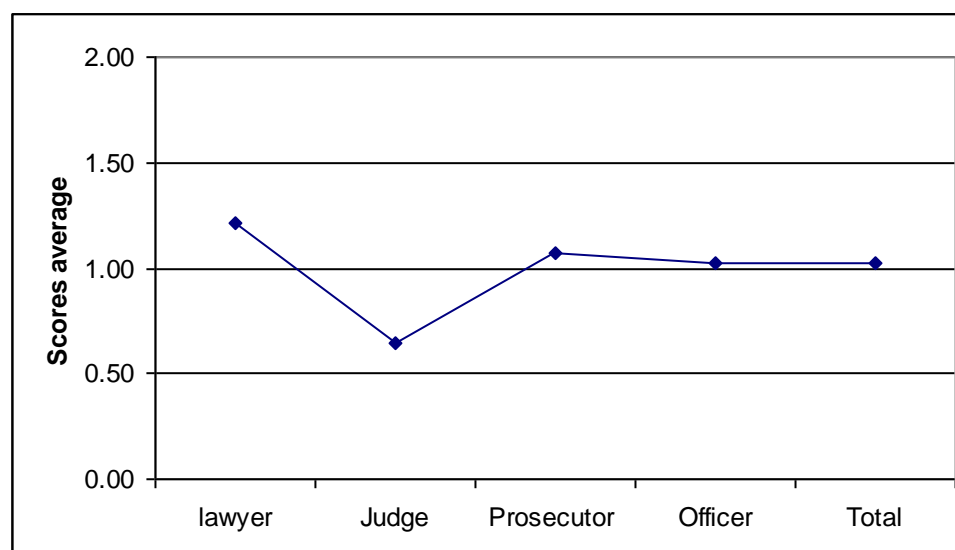
⁶²⁶ ANOVA result: P-value is 0.007 which indicates there is a significant difference in the average scores for the four groups.

Professional group convey the same view regardless of the fact that there is a slight difference among them, especially for Judges where their perception was not definite.

Table 25: Average scores for the availability of legal Article for unintentional HIV transmission by group

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.22	23	0.13	0	2
Judge	0.65	17	0.17	0	2
Prosecutor	1.07	27	0.16	0	2
P. Officer	1.03	73	0.02	0	2
Total	1.02	140	0.04	0	2

Figure 15: Scatter for Average scores for the perception of the availability of a legal Article for unintentional HIV transmission by group



The average scores presented in the table above shows that the lowest scores were belong to the judges. The reason behind this low rating could be attributed to the fact that about 47 per cent of the judges stated that they did not know whether a legal article is available currently that deals with the act of unintentional transmission of HIV to others⁶²⁷.

⁶²⁷ Please see next table.

Table 26: Respondents' ratings for the availability of a legal Article for unintentional HIV transmission by group

Responses	Yes		No		I don't know	
Group	Frequency	Percent	Frequency	Percent	Frequency	Percent
Lawyer	7	30.4%	14	60.9%	2	8.7%
Judge	2	11.8%	7	41.2%	8	47.1%
Prosecutor	10	37.0%	9	33.3%	8	29.6%
P. Officer	2	2.7%	71	97.3%	0	0.0%
Total	21	15.0%	101	72.1%	18	12.9%

Availability of a legal article for *intentional and unintentional* HIV transmission (Question 9 and Question 11)

The respondents were asked to list the legal instruments that are available and deal with the act of HIV transmission address intentionally or unintentionally. Table below lists the number of legal Articles that address HIV transmission.

Table 27: List of legal Articles that deal with HIV transmission

Legal article	Intentional Transmission	Unintentional Transmission
	No. of respondents (n=33) ⁶²⁸	No. of respondents (n=21) ⁶²⁹
156	1	-
332	10	-
333	1	-
336	4	2
337	1	-
338	1	1
339	2	5
341	1	-
342	2	7
343	-	4
348	15	2
Total	38	21 ⁶³⁰

⁶²⁸ Number of respondents who stated in item No.9 that there is a legal article complies with the act of intentional transmission. Some of the respondents listed more than one article.

⁶²⁹ Number of respondents who stated in item No.11 that there is a legal article complies with the act of unintentional transmission.

⁶³⁰ Please see appendix (9) for the legal article definitions.

Suitability of the penalty to the act of unintentional AIDS transmission.

If Yes *"Do you think the penalty is suitable for the committed act?"*

Out of the 21 respondents who believed that there is a legal penalty that is suitable for unintentional transmission, 16 of them considered this penalty as positively suitable (28.6 per cent) or it is suitable but only to some extent (47.6 per cent).

Table 28: Respondents' ratings for the suitability of the penalty for unintentional HIV transmission

Response	Frequency	Percent
Yes	6	28.6%
To some extent	10	47.6%
No	5	23.8%
Total	21	100.0%

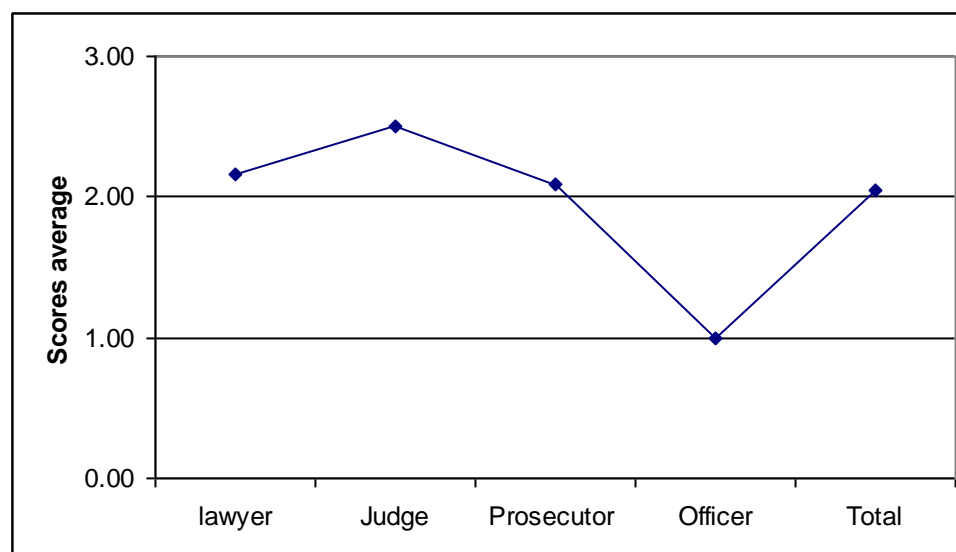
As is clear from the next table, the overall average score (2.05) reflects the general perception among the law respondents that the current penalty is moderately suitable for the unintentional HIV transmission. This perception pervade⁶³¹ among the first three sub groups; lawyers, judges and prosecutors. On the other hand the police officers held the opposite view, where they believed that this penalty is not suitable for such an offence.

Table 29: Average scores for the suitability of the penalty for unintentional HIV transmission by group

Groups	Mean	N	Std. Error of Mean	Min	Max
Lawyer	2.17	6	0.31	1	3
Judge	2.50	2	0.50	1	3
Prosecutor	2.09	11	0.21	1	3
Police .Officers	1.00	2	0.00	1	3
Total	2.05	21	0.16	1	3

631 ANOVA result: P- value is 0.174 which indicates there is no significant difference in the average scores for the four groups.

Figure 16: Scatter for the average scores for the suitability of the penalty to the unintentional HIV transmission by group



The above scatter diagram shows clearly how the Police officers' average scores differ from other respondents' scores and the positioned exactly on line '1 which mean No'.

Enact a law / do not enact a law.

Do you think an AIDS specific law is required for AIDS transmission?

Interestingly, the majority of the respondents (90.7 per cent) stated that there is a vital need to enact a law that punishes transmission of HIV. The minority (6.4 per cent) were against this notion.

Table 30: Respondents' ratings for the need to enact a law that punishes HIV transmission

Response	Frequency	Percent
Yes	127	90.7%
No	9	6.4%
I don't know	4	2.9%
Total	140	100.0%

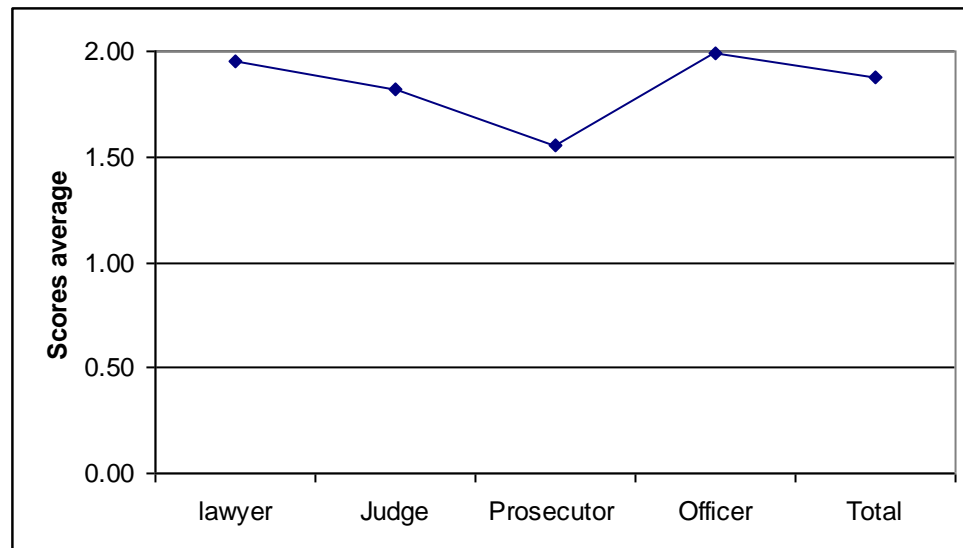
The average scores⁶³² for each group presented in the following table indicate that the lawyers (1.96), judges (1.82) and police officers (1.99) had a unified perception that there is a vital need in the UAE to enact such a law. While, the prosecutors (1.56) were less convinced about this need.

Table 31: Average scores for the need to enact an AIDS-specific law by groups

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.96	23	0.04	0	2
Judge	1.82	17	0.13	0	2
Prosecutor	1.56	27	0.13	0	2
P.Officers	1.99	73	0.01	0	2
Total	1.88	140	0.03	0	2

The following scatter diagram shows that the prosecutor's average score is slightly far from how the averages scores of other respondents.

Figure 17: Scatter for the average scores for the need to enact an AIDS specific law



⁶³² ANOVA result: P-value is 0.000 which indicates there is a significant difference in the average scores for the four groups.

Intentional transmission should be punishable / not a punishable

Do you believe that intentional transmission of AIDS should be a punishable act?

A very high per cent of the respondents (93.6 per cent) support the view that the intentional transmission of HIV should be punishable.

Table 32: Respondents' ratings for considering Intentional HIV transmission a punishable act

Response	Frequency	Percent
Yes	131	93.6%
No	8	5.7%
I don't know	1	0.7%
Total	140	100.0%

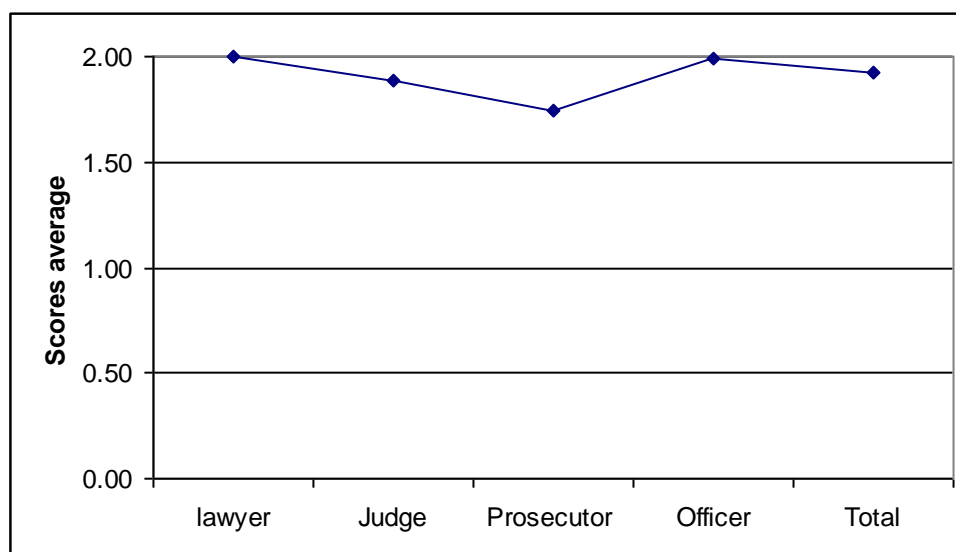
Based on the averages scores for each group, there is a general agreement that the intentional transmission of HIV should be a punishable act regardless of the fact that there is a slight difference⁶³³ in the average scores for each group especially for the prosecutors where their ratings were slightly lower than the others.

Table 33: Average scores for considering intentionally HIV transmission a punishable act

Group	Mean	N	Std. Error Of Mean	Min	Max
Lawyer	2.00	23	0.00	0	2
Judge	1.88	17	0.08	0	2
Prosecutor	1.74	27	0.10	0	2
P.Officer	1.99	73	0.01	0	2
Total	1.93	140	0.02	0	2

The next chart shows how the average scores for the four sub groups in the main group of the Legal Professionals are scattered very close to level 2. This scatter reflects the general consensus among the four sub groups about the necessity of making HIV transmission a punishable act.

⁶³³ ANOVA result: P-value is 0.001 which indicates there is a significant difference in the average scores for the four groups

Figure 18: Scatter for average scores for considering intentional HIV transmission a punishable act

Unintentional transmission should punishable / not a punishable.

Do you believe that unintentional transmission of AIDS should be a punishable act?

The majority of the respondents (75 per cent) supported the view that unintentional transmission of HIV should be punishable. However, around 22 per cent of the respondents were against this view.

Table 34: Respondents' ratings for considering unintentional HIV transmission a punishable act

Response	Frequency	Percent
Yes	105	75.0%
No	31	22.1%
I don't know	4	2.9%
Total	140	100.0%

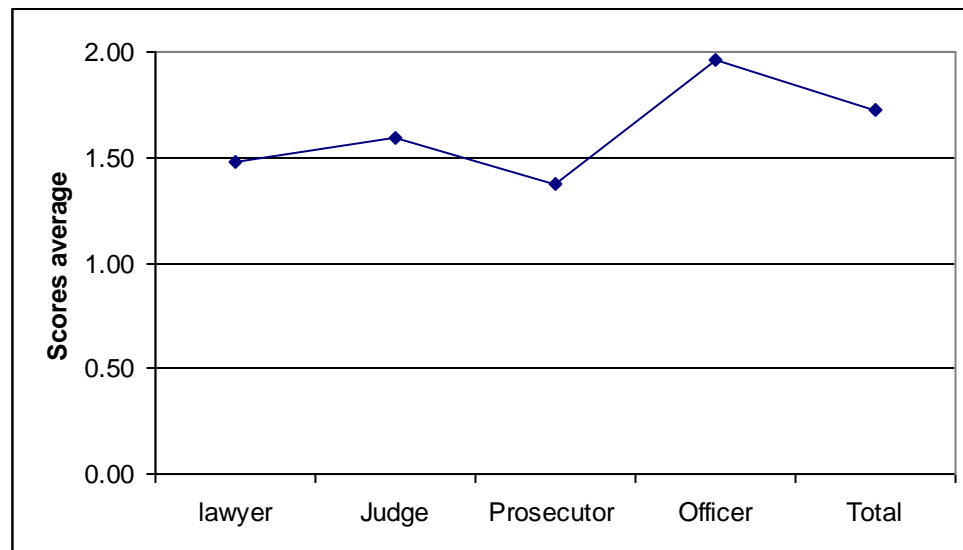
Obviously, there is no consensus⁶³⁴ among the four groups on the necessity of making unintentional transmission of HIV to others a punishable act. Whereas the police officers (1.96) entirely agreed on this issue, the perception of other groups ranged between the need and no need for making such action punishable.

⁶³⁴ ANOVA result: P-value is 0.000 which indicates there is a significant difference in the average scores for the four groups.

Table 35: Average scores for considering unintentional HIV transmission a punishable act

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.48	23	0.12	0	2
Judge	1.59	17	0.12	0	2
Prosecutor	1.37	27	0.13	0	2
P.Officer	1.96	73	0.02	0	2
Total	1.72	140	0.04	0	2

The next chart depicts how the averages scores for the lawyers, judges and prosecutors fluctuated around line 1.5 while the police officers score is very close to level 2.

Figure 19: Scatter for considering intentional HIV transmission a punishable act

According to the type the responses in the next two items percentage distribution was preferred to instead of average scores. Accordingly, the chi-square test for the qualitative data was used to examine the significance of the differences among the four groups.

Individuals who transmit HIV should be punished / not punished

In your opinion, should those who transmit this disease to others be, punished?

The Respondent's ratings for this item reveal that the majority of them (86.2 per cent) support the view that those who transmit HIV should be punished from the first time they

are convicted of HIV transmission while 5.8 per cent called for punishment from the second offence. Very few of them (8 per cent) called for no punishment.

Table 36: Punishment for the transmission of HIV to others

Responses	Frequency	Percent
First time	119	86.2%
Second time	8	5.8%
No punishment	11	8.0%
Total	138	100.0%

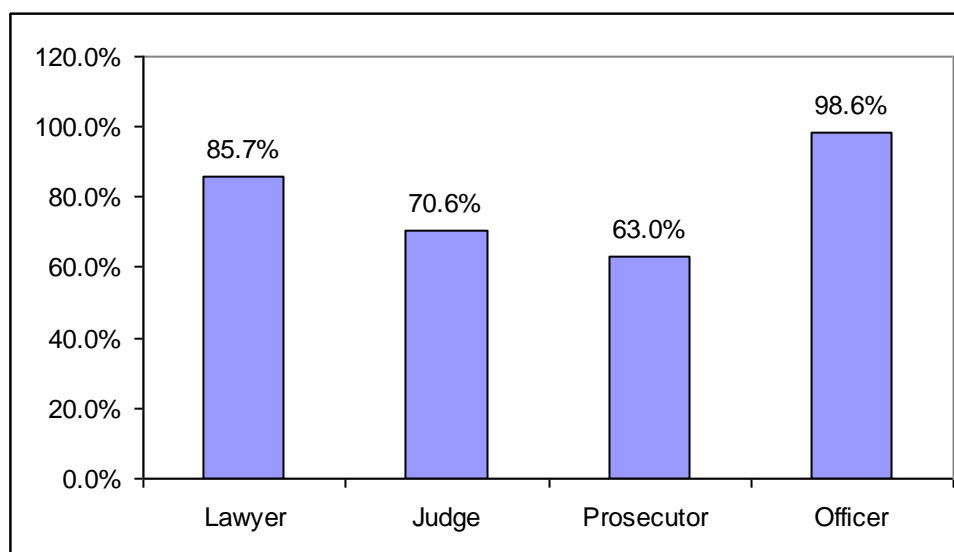
The next table shows the respondents' ratings for each group for the punishment of those who transmit HIV to others.

Table 37: Respondents ratings for the punishment for transmission of HIV to others by groups

Responses	Lawyer	Judge	Prosecutor	Officer	Total
From the first time	18	12	17	72	119
	85.7%	70.6%	63.0%	98.6%	86.2%
From the second time	1	3	4	-	8
	4.8%	17.6%	14.8%	0.0%	5.8%
No punishment at all	2	2	6	1	11
	9.5%	11.8%	22.2%	1.4%	8.0%
Total	21	17	27	73	138
	15.2%	12.3%	19.6%	52.9%	100.0%

The majority from each group believed that there should be punishment from the first time. On the other hand very few of the respondents agreed on the punishment from the second time. However, some respondents from (the judges and prosecutors) believe it should be from the second time. These differences were statistically significant according to the Chi-square analysis.⁶³⁵

⁶³⁵ Chi-square statistic is 26.896 and the associated P-value with six degrees of freedom is 0.000 which indicates there is a significant difference in the per centages.

Chart 2: Respondents' agreement rate on the punishment from the first time

The above chart shows that high percentages from each group believed that the punishment should be from the first time. The police officers entirely believed that the punishment should be from the first time (98.6 per cent) while the response ratings for judges (70.6 per cent) and prosecutors (63 per cent) were slightly less.

Reasonable compensation for AIDS infected people

What is the HIV infected person compensated for in case his lack of knowledge?

The majority of the respondents (88.6 per cent) believed that there should be compensation for a person who is infected without his knowledge. Other respondents (11.4 per cent) believed that there is no need for any type of compensation.

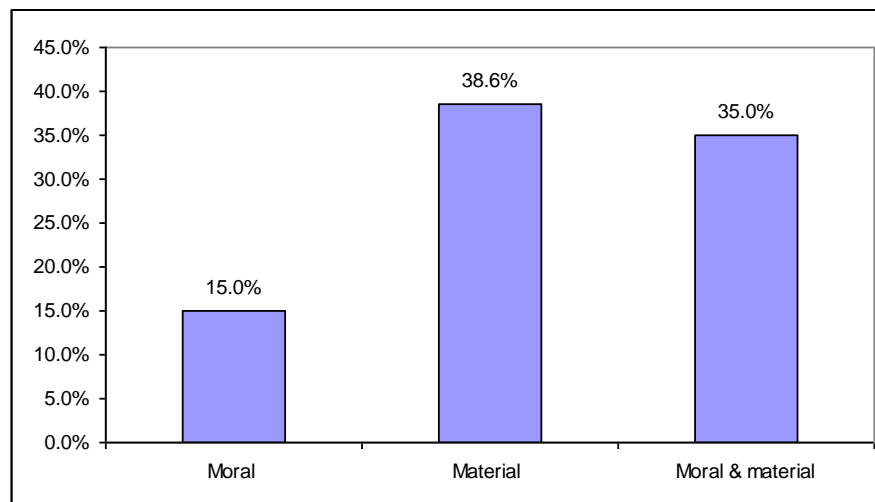
Table 38: Respondents' ratings for the reasonable compensation for a person who is infected without his knowledge

Compensation	Frequency	Percent
No compensation	16	11.4%
For Moral harm	21	15.0%
For Material harm	54	38.6%
Moral & material harm	49	35.0%
Total	140	100.0%

The following chart depicts the distribution ratings for the type of harm covered by compensation where, 15 per cent of the respondents called for moral harm compensation

(38.6 per cent) called for material harm compensation and 35 per cent of them believed that infected people should receive compensations for both harms.

Chart 3: Respondents' ratings for reasonable compensation for a person who is infected without his knowledge



The next table shows the respondents' ratings for each sample group for the type of harm compensation for those infected with HIV. In accordance with these ratings the lawyers (52.2 per cent and the judges 52.9 per cent) have the same belief that the compensation should cover the material harm. The Chi square test⁶³⁶ shows that there is a significant difference in the respondents' ratings on the type of harm the compensation would cover for those who infected with HIV.

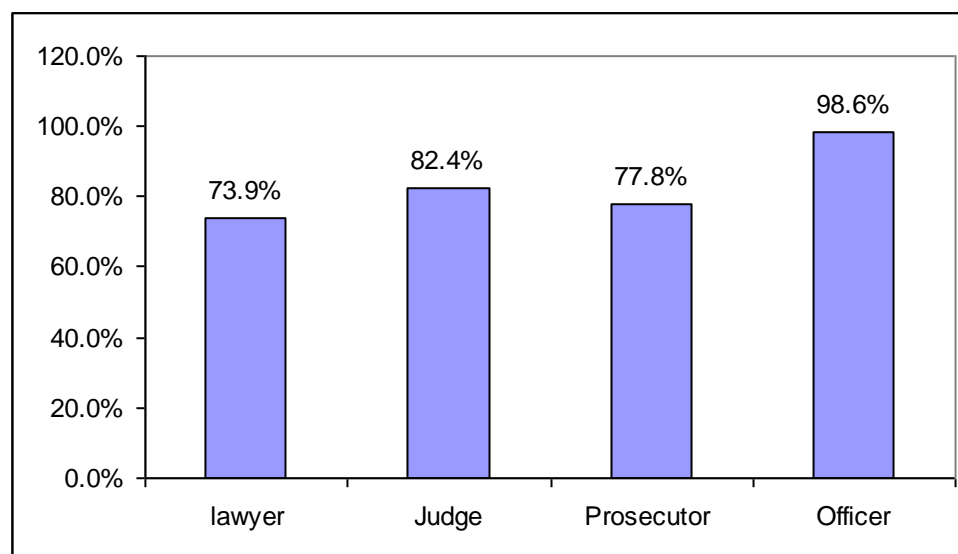
Table 39: Respondents' ratings for the compensation for a person who is infected with HIV by group.

Compensation	Lawyer	Judge	Prosecutor	Officer	Total
For material harm	12	9	11	22	54
	52.2%	52.9%	40.7%	30.1%	38.6%
For moral harm	2	3	6	10	21
	8.7%	17.6%	22.2%	13.7%	15.0%
Moral & material	3	2	4	40	49
	13%	12%	15%	55%	35%
No compensation	6	3	6	1	16
	26%	18%	22%	1%	11%
Total	23	17	27	73	140

⁶³⁶ Chi square statistic is 36.323 and the associated P- value with nine degrees of freedom is 0.000

The next figure shows the percentage of respondents from each group who believed that the infected people should be compensated. Clearly, the police officers were more convinced with the necessity of compensation.

Chart 4: Respondents' ratings for the suitable compensation for a person who is infected with HIV/AIDS classified by group



Impact of criminalising the HIV/AIDS transmission on number of infected people

Do you think that criminalising the AIDS transmission among people would contribute to reducing the number of infected people?

Around 89 per cent of the respondents thought that criminalising HIV/AIDS transmission would reduce "positively" or "to some extent" the number of infected people. However, the minority (10.7 per cent) were against this perception and believed that such action has no positive effect on the number of infected people.

Table 40: Respondent' ratings for the impact of criminalising HIV/AIDS transmission on the number of infected people

Response	Frequency	Percent
Yes	97	69.3%
To some extent	28	20.0%
No	15	10.7%
Total	140	100.0%

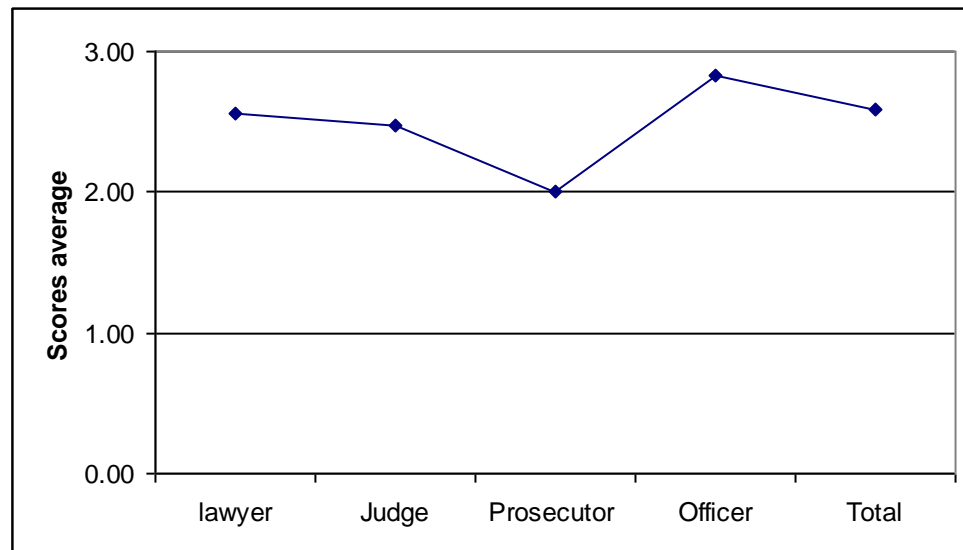
Based on the findings in the following table, all the respondents from the four sub groups believed that criminalising HIV/AIDS transmission would reduce to some extent the number of infected people. Clearly, the police officers were more optimistic regarding this positive impact where the average score for their ratings was 2.82. The average scores show a slight but significant difference⁶³⁷ among the four groups.

Table 41: Average score for the impact of criminalising HIV/ AIDS transmission on number of infected people by group

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	2.57	23	0.14	1	3
Judge	2.47	17	0.21	1	3
Prosecutor	2.00	27	0.15	1	3
P.Officer	2.84	73	0.05	1	3
Total	2.59	140	0.06	1	3

The next chart clarifies that the average scores for the four groups of the respondents were distributed between the positive to moderate possible impact on the number of infected people due to criminalising HIV/AIDS transmission.

Figure 20: Scatter for average score for the impact of criminalising HIV/ AIDS transmission on the number of infected people by group



⁶³⁷ ANOVA result: P-value is 0.000 which indicates there is a significant difference in the average scores for the four groups.

Impact of criminalising HIV/AIDS transmission on people willing to report their health condition to authorities.

Do you think that if the legislator criminalised AIDS transmission both intentionally or unintentionally this would prevent or stop people from reporting their health conditions in case of infection to the competent authorities?

A significant per cent of the respondents (58.6 per cent) expected 'definitely' or to some extent that criminalising HIV/AIDS transmission would prevent people from reporting their health conditions to the authorities. On the other hand the perception of around 41 per cent of the respondents contradicts this view.

Table 42: Respondents' ratings for the impact of criminalising HIV/AIDS transmission on the people willing to report their health conditions to the authorities

Response	Frequency	Percent
Yes	29	20.7%
To some extent	53	37.9%
No	58	41.4%
Total	140	100.0%

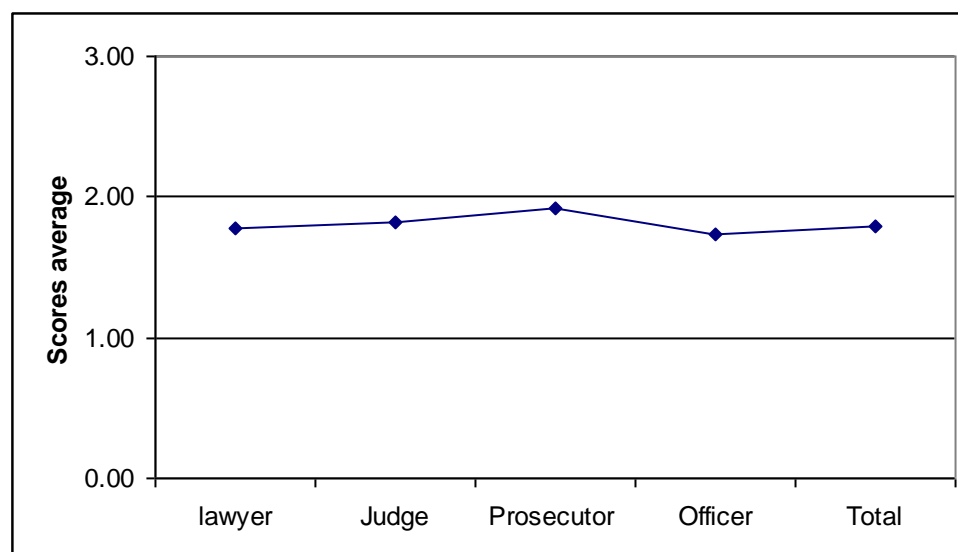
The overall scores' average (1.79) for all respondents in the four groups reveals that the respondents believe that criminalising HIV/AIDS transmission would prevent people from reporting their health condition to the authorities to some extent. Clearly there is no large difference⁶³⁸ in this perception among the four groups where all the average scores are very close to level 2 "to some extent".

Table 43: Average scores for the impact of criminalising HIV/AIDS transmission on the people willing to report their health conditions to authorities

Group	Mean	N	Std. Error of Mean	Min	Max
Lawyer	1.78	23	0.14	1	3
Judge	1.82	17	0.20	1	3
Prosecutor	1.93	27	0.18	1	3
P.Officer	1.74	73	0.09	1	3
Total	1.79	140	0.06	1	3

⁶³⁸ ANOVA result: P-value is 0.756 which indicates there is no significant difference in the average scores for the four groups.

Figure 21: scatter for the average scores for the impact of criminalising HIV/AIDS transmission on the people willing to report their health conditions to authorities



The previous chart affirmed the above mentioned findings, where the average scores distributed almost very close to line '2' which indicates that all groups agreed that criminalising HIV/AIDS transmission would prevent or stop people from reporting their health conditions to the authorities.

Impact of criminalising HIV/AIDS transmission in the UAE

What do you think the impact would be of criminalising the transmission of AIDS in the United Arab Emirates? "Open ended Question".

The next table presents the respondents' perception of the possible impact of enacting a law criminalising HIV transmission in the UAE. Clearly, the most expected impact is positive. The impact that is given by most of the respondents is that criminalising the act might reduce the disease; where 55.7 per cent of the respondents held this belief. Moreover, this positive impact was stated by the majority of each group.

Other possible impacts from about half of the sample is that criminalising HIV transmission would increase awareness in the society and would make the law clearer (51.4 per cent). Moreover, about 70 per cent of the police officers believed that such law would prevent HIV transmission.

Table 44: The possible impact of enacting a law criminalising HIV transmission in the UAE.

	Respondents	73		23		17		27		140	
No.	The Impact of Criminalising HIV/AIDS transmission.	Police officers	%	Lawyers	%	Judges	%	Prosecutors	%	Total	%
1	Will prevent or stop people who transmit the disease.	51	69.9	7	30.4	7	41.2	6	22.2	71	50.7
2	Increase awareness in society.	48	65.8	6	26.1	9	52.9	9	33.3	72	51.4
3	Would reduce the incidence of the disease.	47	64.4	8	34.8	11	64.7	12	44.4	78	55.7
4	Will make the law clearer.	45	61.6	10	43.5	6	35.3	11	40.7	72	51.4
5	Positive impact in general.	39	53.4	5	21.7	5	29.4	5	18.5	54	38.6
6	Use other alternatives before enacting a criminalising law for instance increase the awareness campaigns.	19	26.0	4	17.4	0	0.0	3	11.1	26	18.6
7	Will activate other organisations and groups.	8	11.0	4	17.4	0	0.0	0	0.0	12	8.6
8	Negative impact on the society.	3	4.1	2	8.7	5	29.4	5	18.5	15	10.7
9	Against the criminalising act absolutely.	1	1.4	1	4.3	0	0.0	2	7.4	4	2.9
10	Will not have an impact on number of infected people.	0	0.0	1	4.3	0	0.0	4	14.8	5	3.6
11	No answers.	12	16.4	5	21.7	3	17.6	3	11.1	23	16.4

6.4.2. Sample Group Two: The views of the Medical Professional.

The selected sample consisted of 83 different health specialists in the Preventive Medicine Department in the Ministry Of Health. The questionnaire included eighteen questions in addition to three general questions about the respondents' gender, profession and years of service.

AIDS a problem / not a problem.

Do you think that HIV/ AIDS constitute a problem in the UAE?

Around half of the respondents from the health domain believed that HIV/AIDS does not constitute a problem in the UAE. On the other hand just three respondents (3.6 per cent) had no certain view about the HIV/AIDS problem.

Table 45: Respondents' ratings for the HIV/AIDS problem

Problem	Frequency	Percent
Yes	39	47.0%
No	41	49.4%
I don't know	3	3.6%
Total	83	100.0%

The magnitude of the AIDS problem

In your opinion, what is the scope of the problem?

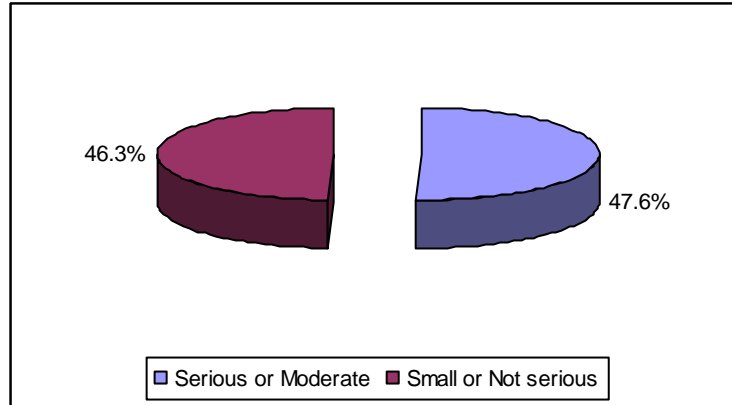
The respondents' ratings for the magnitude of the HIV/AIDS problem are presented in the next table. Obviously, the respondents' ratings were distributed among all the scales since, approximately 47.5 per cent of the respondents believed that the scale of the problem ranged from serious to moderate. On the other hand, about 46 per cent of the respondents considered the HIV/ AIDS problem to be 'small' or 'not serious'.

Table 46: Respondents' ratings for the magnitude of the HIV/AIDS problem

Magnitude of the problem	Frequency	Percent
Serious	22	26.8%
Moderate	17	20.7%
Small	16	19.5%
Not serious	22	26.8%
I don't know	5	6.1%
Total	82	100.0%

The next chart shows that the respondents' ratings were distributed equally between 'serious' or 'moderate' and 'small' to 'not serious'.

Chart 5: Respondents' ratings for the magnitude of the HIV/AIDS problem



Expansion of the HIV/AIDS problem in UAE.

Do you believe that HV/AIDS is on the increase in the UAE?

As becomes clear from the respondents' rating in the next table, 50 per cent of the respondents believed that the problem is on the increase. On the other hand, 19.5 per cent held the opposite view, namely that HIV/AIDS is not on the increase in the UAE.

Table 47: Respondents' ratings for the growth of the HIV/AIDS problem in the UAE

Expanded	Frequency	Percent
Yes	25	30.5%
To some extent	16	19.5%
No	35	42.7%
I don't know	6	7.3%
Total	82	100.0%

Society's awareness about the seriousness of the HIV/AIDS disease.

Do you believe that UAE society is aware of the seriousness of HIV/AIDS?

The respondents from the health field believed that UAE society is aware (28 per cent) or is to some extent (36.6 per cent) aware about the seriousness of the HIV/AIDS problem. However, over a third of the respondents thought that the society is not aware at all about this critical problem.

Table 48: Respondents' ratings for the UAE society awareness of the seriousness of the AIDS

Awareness	Frequency	Percent
Yes	23	28.0%
To some extent	30	36.6%
No	29	35.4%
Total	82	100.0%

The common means for HIV/AIDS transmission

In your opinion how is HIV transmitted in UAE?

Most of the respondents (57.3 per cent) in the health field believed that most common means that HIV is transmitted in the UAE is through sexual relationships. Other respondents (29.3 per cent) had the perception that drug abuse is the usual way for transmission of HIV. However, 7.3 per cent of the respondents believed that there were others that HIV is usually transmitted: These other possible ways are through blood transfusions, dentistry and through barber-shops or tattoo parlours.

Table 49: Respondents' ratings for the common means of HIV transmission in the UAE.

Response	Frequency	Percent
Sexual intercourse	47	57.3%
Blood transfusion	5	6.1%
Drug abuse	24	29.3%
Others	6	7.3%
Total	82	100.0%

Availability of supportive social or psychological programme.

Are there any supportive social or psychological programmes for persons infected with HIV/AIDS in the UAE?

A significant proportion (57.8 per cent) of the respondents believed that there are no social or psychological programmes for HIV/AIDS patients. On the other hand a small percentage (12 per cent) of the respondents had the perception that there are such programmes. On the other hand around, 30 per cent were not sure.

Table 50: Respondents' ratings for the availability of supportive programmes

Response	Frequency	Percent
Yes	10	12.0%
No	48	57.8%
I don't know	25	30.1%
Total	83	100.0%

Existence of unified records in the hospitals.

Do you have a unified record that includes information about the people infected with HIV/AIDS in the country?

The next table shows the medical respondents' ratings for the hospital records about people infected with HIV/AIDS. The majority of the respondents either stated that there are no records (43.4 per cent) or that they have no idea about this issue (39.8 per cent).

Table 51: Respondents' ratings for unified records about people infected with HIV/AIDS

Response	Frequency	Percent
Yes	14	16.9%
No	36	43.4%
I don't know	33	39.8%
Total	83	100.0%

Patients records are shared and linked.

If Yes: *"Are the records shared between all hospitals?"*

Among the 14 respondents who stated in the previous item that there are records for HIV/AIDS patients, just four of them agreed that these records are shared all the hospitals in the country.

Table 52: Respondents' ratings for records accessibility among the hospitals

Response	Frequency	Percent
Yes	4	30.8%
No	6	46.2%
I don't know	3	23.1%
Total	13	100.0%

Positive / negative impact of the unified records.

Do you think that the existence of such records will stop people from undergoing early voluntary check ups to detect the possibility of infections?

Nearly half of the respondents (47.5 per cent) from the medical sample believed that the existence of records that contained information about patients would stop people from going through early check ups for HIV/AIDS. On the other hand, a large proportion of the respondents (40.2 per cent) held the opposite view, with around 12 percent not sure about the impact of such records.

Table 53: Respondents' ratings on the negative impact of records on voluntary check ups

Response	Frequency	Percent
Yes	17	20.7%
May be	22	26.8%
No	33	40.2%
I don't know	10	12.2%
Total	82	100.0%

State of preventive health regulations and laws.

In your opinion, are the preventive health regulations and laws in the UAE satisfactory to combat HIV/AIDS?

The next table shows the respondents' opinion on the preventive health regulations and laws in the UAE. The ratings are distributed almost equally between the positive levels, very satisfactory (14.5 per cent) and moderate (28.9 per cent) and the negative levels- partially satisfactory (13.3 per cent) and not satisfactory (31.3 per cent).

Table 54: Respondents' ratings of health regulations and laws in UAE

Responses	Frequency	Percent
Very satisfactory	12	14.5%
Moderately satisfactory	24	28.9%
Partially satisfactory	11	13.3%
Not satisfactory	26	31.3%
I don't know	10	12.0%
Total	83	100.0%

As is clear from the following figure, the respondents' ratings distributed almost equally between the positive level on the health regulations and laws "satisfactory" and the negative level on the health regulations and laws are not "satisfactory".

Chart 6: Respondents ratings for the satisfactory of health regulations and laws in UAE



Impact of criminal law on outbreak of HIV/AIDS.

Do you believe that the criminal law should be applied to prevent the outbreak of AIDS disease?

"Enacting a criminal law against those who transmit HIV/AIDS to others would reduce the occurrence of AIDS disease". The respondents' ratings on this statement were distributed equally between those who support this idea (38.6 per cent) and those who are oppose it (39.8 per cent). However, a significant proportion, 21.7 per cent of the respondents did not have a certain view on this issue.

Table 55: Respondents' ratings on the positive impact of enacting a criminal law for HIV/AIDS transmission

Responses	Frequency	Percent
Yes	32	38.6%
No	33	39.8%
I don't know	18	21.7%
Total	83	100.0%

Necessity of a law criminalising the HIV/AIDS transmission.

Do you believe that we require a law that expressly criminalises the transmission of HIV?

The following table presents the respondents' views on the need for a law that criminalises HIV/AIDS transmission. The respondents' ratings revealed that around half of the respondents (51.8%) believe that there is no need for such a law. The other

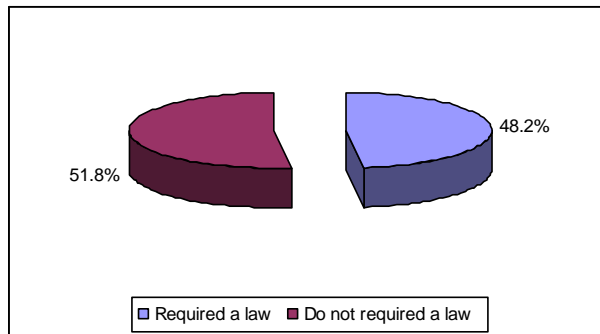
respondents stated either that the law should be only for intentional transmission (21.7 per cent) or for both intentional and unintentional transmission (26.5 per cent).

Table 56: The respondents' ratings for enacting a law that criminalises HIV/AIDS transmission.

Law for criminalising AIDS transmission	Frequency	Percent
Intentional transmission	18	21.7%
Intentional and unintentional transmission	22	26.5%
Not required	43	51.8%
Total	83	100.0%

The next chart indicates that the respondents' perception regarding enacting a law criminalising HIV/AIDS transmission is almost equally divided between the supporters for the law (48.2 per cent) and the opponents (51.8 per cent).

Chart 7: The respondents' ratings for enact a law that criminalise HIV/AIDS transmission.



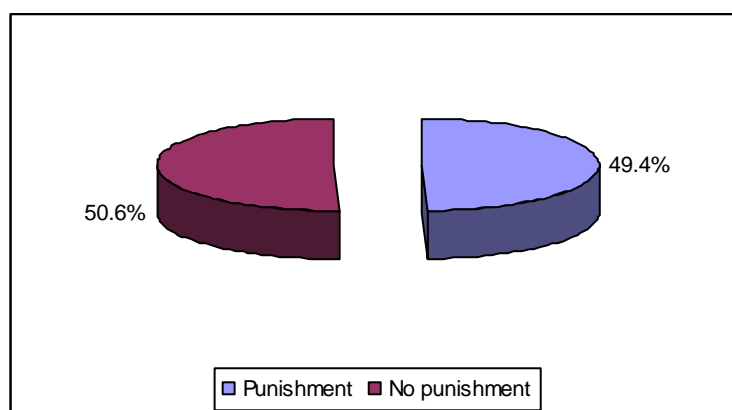
AIDS transmission should be punishable.

In your opinion, do you believe that we have to punish the persons who transmit the HIV?

Around half (50.6%) of the respondents were opposed to punishment for those who transmit HIV to others while the other half of the respondents stated that the punishment should occur from the first offence (34.9%) or from the second offence (14.5 per cent).

Table 57: Respondents' rating for punishment for HIV/AIDS transmission

Response	Frequency	Percent
First time	29	34.9%
Second time	12	14.5%
No punishment	42	50.6%
Total	83	100.0%

Chart 8: Respondents' rating for punishment for HIV/AIDS transmission

The negative impact of criminalising HIV/AIDS transmission.

Do you think that if the legislator criminalised the transmission of HIV both intentionally or unintentionally this would prevent or stop people from reporting their health conditions?

A significant percentage of the respondents stated that criminalising HIV/AIDS transmission would prevent or stop people from reporting their health conditions to the authorities, either definitely (39.8 per cent) or to some degree (26.5 per cent).

Table 58: Respondents' ratings for the impact of criminalising HIV/AIDS transmission

Responses	Frequency	Percent
Yes	33	39.8%
To some extent	22	26.5%
No	28	33.7%
Total	83	100.0%

The positive impact of criminalising HIV/AIDS transmission.

Do you believe that criminalising the transmission of HIV by considering the act as a crime would contribute to reducing the number of infected people?

Another possible impact of criminalising HIV/AIDS transmission is reducing the number of infected people. The overwhelming majority of the respondents (72.3 per cent) stated that criminalising HIV/AIDS transmission would reduce the number of infected people either positively or to some extent. On the other hand, around 28 per cent of the respondents held the opposite view.

Table 59: Respondents' ratings for the impact of criminalising HIV/AIDS transmission on the number of infected people

Responses	Frequency	Percent
Yes	16	19.3%
To some extent	44	53.0%
No	23	27.7%
Total	83	100.0%

The suitable confinement of person accused of HIV/AIDS transmission.

In your opinion, what is the suitable place for a person charged with infecting another with HIV to serve his/her sentence if HIV transmission has become a crime punishable by law?

As presented in the following table, around half (51.8 per cent) of the health respondents believed that a hospital is the most suitable place of detention for a person accused with infecting other with HIV. The most popular place was jail (27.7 per cent). On the other hand (20.5 per cent) suggested an alternative places.

Table 60: The suitable places for the detention of persons accused of HIV transmission

Places	Frequency	Percent
Hospital	43	51.8%
Jail	23	27.7%
An alternative places	17	20.5%
Total	83	100.0%

"Alternative places" included an isolated centre which could provide such offender with social, religious and awareness programme. Other suggested places were rehabilitation centres, health and social centres, and their own home.

Impact of criminalising HIV/AIDS transmission in the UAE.

What do you think the impact would be of criminalising the transmission of HIV/AIDS in the United Arab Emirates? "Open ended Question"

The next table presents the respondents' perception of the possible impact of enacting a law criminalising HIV/AIDS transmission in the UAE society. Clearly, the most expected impacts are positive. The impact that is cited most frequently by the respondents is that criminalisation act might increase the social stigma; 71 per cent of the respondents held this belief.

About 46 per cent of the respondents were opposed the idea of criminalisation: a significant proportion (66 per cent) of the respondents believed that it would be better to use other alternatives before enacting a law criminalising HIV/AIDS transmission. Such an alternative would be an increased awareness campaign.

Table 61: Respondents' perception of the impact of criminalising HIV/AIDS in the UAE

#	the Impact of Criminalising HIV/AIDS transmission	Frequency	Percent
1	Negative impact on the society as it could be considered a social stigma.	59	71%
2	Use other alternatives before enacting such a law, for instance increase awareness campaigns.	55	66%
3	Against the criminalising act absolutely.	38	46%
4	Will increase awareness in the society.	28	34%
5	Will not have an impact on decreasing the number of infected people.	19	23%
6	Positive impact on HIV/AIDS patients.	14	17%
7	Would reduce the spread of the disease.	7	8%
8	Will deter the people who try to transmit the disease.	7	8%
9	Will activate other organisation and groups.	5	6%
10	Will clarify the legal position.	2	1.6%
11	No answers.	14	17%

6.4.3. Sample Group Three: The views of the General Public.

The selected sample consisted of 303 respondents from different sectors of the public. The questionnaire consisted of twelve questions in addition to three general questions regarding the respondents' gender, profession and years of service.

AIDS is a problem/ not a problem in the UAE.

Do you think that AIDS constitutes a problem in the UAE?

The following table shows that a significant proportion (55.8 per cent) of the public respondents believed that HIV/AIDS represents a problem in the UAE. On the other hand, around 24 per cent of the public respondents had the opposite perception.

Table 62: Respondent' ratings for the HIV/AIDS problem in the UAE

Problem	Frequency	Percent
Yes	168	55.8%
No	72	23.9%
I don't know	61	20.3%
Total	301 ⁶³⁹	100.0%

⁶³⁹ The total does not add up to 303 because of some missing responses.

The magnitude of the HIV/AIDS problem.

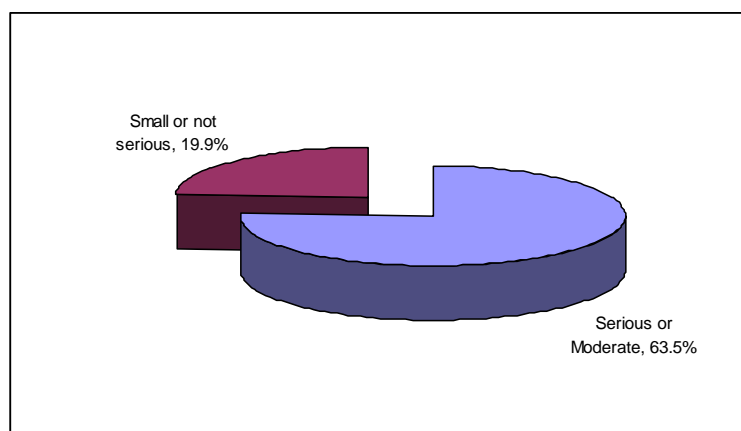
In your opinion, what is the scope of the problem?

The findings in the following table indicate that about 45 per cent of the respondents were rated HIV/AIDS as a serious problem, 18.6 per cent rated it as a moderate problem while just 10 per cent considered it a minor problem. On the other hand just 10 per cent of the public respondents believed that HIV/AIDS is not a problem in the UAE at all.

Table 63: Respondents' ratings for the magnitude of the AIDS problem

The magnitude	Frequency	Percent
Serious	135	44.9%
Moderate	56	18.6%
Small	30	10.0%
Not serious	30	10.0%
I don't know	50	16.6%
Total	301	100.0%

Chart 9: Respondents' ratings for the magnitude of the AIDS problem



The above chart compares between the respondents' ratings for the magnitude of the problem. It is clear that the majority of the respondents considered it as a significant problem while around 20 per cent of them considered it as a minor or insignificant problem in the UAE.

Growth of the Problem.

Do you believe that AIDS is on the increase in the UAE?

It is clear from the following table that around 23 per cent and 35 per cent of the public respondents thought that the HIV/AIDS problem is growing 'significantly' or 'to some

extent' respectively in the UAE. On the other hand, approximately 14 per cent of the respondents held the opposite view and 28 per cent did not express a view.

Table 64: Respondents' ratings for the HIV/AIDS expansion in the UAE society

Expanded	Frequency	Percent
Yes	69	22.9%
To some extent	105	34.9%
No	43	14.3%
I don't know	84	27.9%
Total	301	100.0%

Experience with HIV/AIDS infected individuals.

Do you know someone who has AIDS?

The majority of the public respondents (71.6 per cent) declared that they did not know an individual who was infected with HIV/AIDS. Interestingly, 17.2 per cent were not willing to answer this question.

Table 65: Respondents' ratings for their experience with HIV/AIDS infected individuals

Responses	Frequency	Percent
Yes	34	11.2%
No	217	71.6%
I prefer not to answer	52	17.2%
Total	303	100.0%

Societal awareness of the HIV/AIDS Problem.

Do you believe that the UAE society is aware of the seriousness of AIDS?

It is clear from the next table that 29.4 per cent and 50.5 per cent of the general public respondents believed that UAE society is either 'aware' or 'moderately' aware of seriousness of this problem. However, 50.5 per cent of the respondents thought that UAE society is not aware of the seriousness of the problem.

Table 66: Respondents' ratings for the awareness of UAE society of the seriousness of HIV/AIDS

Awareness	Frequency	Percent
Yes	89	29.4%
No	153	50.5%
I don't know	61	20.1%
Total	303	100.0%

A cross tabulation between the two previous items, 8 and 9, was performed and the results presented in the next table. The idea behind this cross tabulation is to identify whether knowing an infected person had an impact on the perception toward society's awareness of the HIV/AIDS problem. The Chi-square independence test⁶⁴⁰ shows that there is a significant association between the different levels of each item.

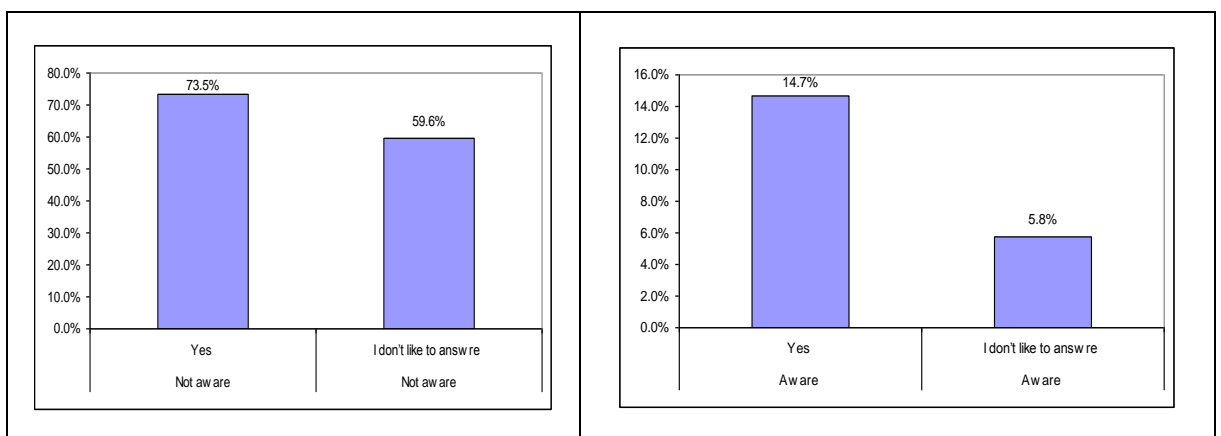
Thus, it is clear from the next table, that a significant percentage (73.5 per cent) of the respondents who knew somebody infected with HIV believed that there is no awareness of the seriousness of this problem and around 59 per cent from those who did not like to answer this question believed as well that there is no awareness in UAE society.

Table 67: Cross tabulation between the awareness levels and experience with infected persons

Experience	Awareness			
	Yes		No	
Yes	5	14.7%	25	73.5%
No	81	37.3%	97	44.7%
I prefer not to answer	3	5.8%	31	59.6%
Total	89	29.4%	153	50.5%

The next two charts clearly show that knowing somebody infected with AIDS changed the perception negatively toward the level of awareness.

Chart 10: Comparison between the perception of those who know infected person and the awareness level



⁶⁴⁰ Chi-square statistic is 30.003 and the associated P-value with 4 degrees of freedom is 0.000

HIV/AIDS patients live a stable life / not a stable life.

Do you think an infected person in UAE society is able to live a stable social life?

The next table shows that around 60 per cent of the public respondents believed that an HIV/AIDS patient is not usually able to have a normal and stable life. On the other hand, around 13 per cent of them had a contrary view and thought that an HIV/AIDS infected person could have a stable life.

Table 68: Respondents' ratings for the ability of HIV/AIDS patients to live a stable life

Responses	Frequency	Percent
Yes	39	12.9%
No	181	59.9%
I don't know	82	27.2%
Total	302	100.0%

Sufficiency of preventive laws and procedures.

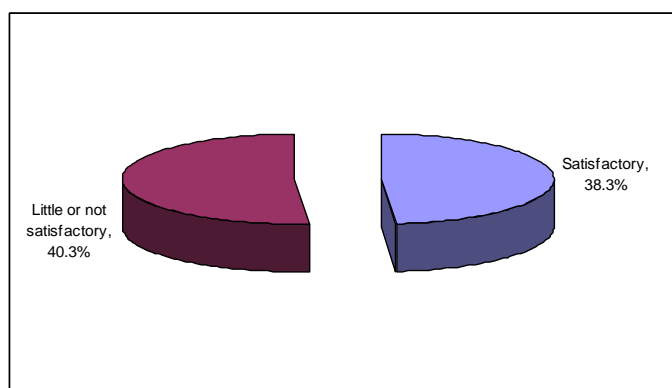
In your opinion, are the procedure and preventive laws in UAE sufficient to fight AIDS disease?

As presented in the next table, the public ratings were distributed almost equally among all response levels. This diversity reflects unclear perceptions regarding the preventive health procedures and laws.

Table 69: Perceptions of the preventive laws and procedures'

Satisfactory	Frequency	Percent
Very satisfactory	40	13.2%
Moderately satisfactory	76	25.1%
Fairly satisfactory	50	16.5%
Not satisfactory	72	23.8%
I don't know	65	21.5%
Total	303	100.0%

In order to facilitate the comparison between the five levels of the response in this item; 'very satisfactory' and 'moderate' levels were merged into one group and 'fairly satisfactory' and 'not satisfactory' were merged into another group. The results presented in the next chart suggested that there is no significant difference in the respondents' ratings regarding the state of the current preventive laws and procedures.

Chart 11: Respondents ratings for the current preventive laws and procedures

Law should interfere / should not interfere.

In your opinion, do you think that Criminal law should intervene to address AIDS problem?

The majority of the public respondents (70 per cent) believed that legal intervention is essential. On the other hand just, 15.2 per cent of the respondents disagreed.

Table 70: Public respondents' ratings for the necessity of legal intervention

Interfere	Frequency	Percent
Yes	212	70.0%
No	46	15.2%
I don't know	45	14.9%
Total	303	100.0%

Impact of Criminalising HIV/AIDS transmission on number of infected people

Do you think that criminalising the AIDS transmission would contribute to reducing the number of infected people?

A significant percentage (69.6 per cent) of the general public respondents believed that criminalising HIV/AIDS transmission would reduce the number of infected people. However, around 14 per cent of the respondents believed that criminalising HIV/AIDS transmission would have only a moderate impact on reducing the number of infected people, and around 16 per cent were not convinced about the positive impact of such action.

Table 71: Respondents, ratings for the impact of criminalising HIV/AIDS transmission

Responses	Frequency	Percent
Yes	211	69.6%
To some extent	43	14.2%
No	49	16.2%
Total	303	100.0%

Enact a law / do not enact a law.

Do you think there is a need to enact a law that punishes offenders transmit the AIDS?

Whereas 44.7 per cent of the respondents believed that a law should be enacted to punish those who transmit the HIV intentionally or unintentionally, 39.4 per cent believe this law should be enacted just for intentional transmission. On the other hand, around 16 per cent believed that there is no need for any such law.

Table 72: Respondents' ratings for the need to enact a law that punishes the transmission of HIV

Enacting law for:	Frequency	Percent
Intentional transmission.	119	39.4%
Intentional and unintentional transmission.	135	44.7%
Not required.	48	15.9%
Total.	302	100.0%

The suitable place of detention for a person convicted of HIV transmission.

In your opinion, what is the suitable place of detention for a person charged with infecting another with AIDS to serve his/her sentence if AIDS transmission becomes a crime punishable by law?

As is clear from the next table, the respondents' ratings were distributed among the three response levels for this item. Whereas 43.3 per cent of the public respondents believed that a hospital is the best place for the sentence, 26.5 per cent believed that jail is the most suitable place for them. On the other hand, around 30 per cent suggested other places.

Table 73: Respondents' ratings for the suitable place of detention for a person convicted of HIV transmission.

Place	Frequency	Percent
Hospital	129	43.3%
Jail	79	26.5%
Other place	90	30.2%
Total	298	100.0%

The respondents suggested other or different places they thought were more appropriate for the offender. The alternatives were merged in one group as presented in the following table.

Table 74: Suggested alternative places of detention for a person convicted of HIV transmission

Places	Frequency	percent
Health and social centres.	30	10%
Isolation from social life.	13	4%
Special places in jail or hospital.	9	3%
Rehabilitation centre.	7	2%
Home / normal life.	8	1%
Normal life but not at home.	4	1%
Health care and punishment centre.	3	1%
Total.	70	23%

Many of the public respondents believed that the accused should be provided with religious, awareness and educational sessions that help him / her to rehabilitate and live a normal life. Few of the respondents suggested a capital punishment for those who convicted of HIV transmission.

Impact of criminalising HIV/AIDS transmission in the UAE.

What do you think the impact would be of criminalising the transmission of AIDS in the UAE? **"Open- ended Question"**

The next table presents the respondents, feedback on the possible impact of enacting a law criminalising HIV transmission in the UAE. Clearly, the most expected effects are positive. The impact that cited most frequently by the respondents is that criminalisation act might reduce the prevalence of the disease; where 55 per cent of the respondents held this belief.

Other possible impacts included negative ones cited by about half of the sample, namely that criminalising HIV transmission could increase family conflict (49 per cent) and also (49 per cent) that would increase the feeling of social stigma among infected people and their families.

Table 75: Public feedback on possible impacts of criminalising HIV transmission

#	Possible impacts.	frequency	Percent (n=303)
1	Reduce the spread of the disease.	168	55%
2	Increase family conflict.	148	49%
3	Negative impact on society as it could be considered a social stigma.	147	49%
4	Increase awareness in the society.	122	40%
5	Decrease drug abuse and prostitution.	112	37%
6	Deter HIV transmission.	63	21%
7	Reduce unmarried rate.	56	18%
8	Increase the suffering of the infected people.	53	17%
9	Against criminalisation totally.	39	13%
10	Reduce the government cost for HIV/ AIDS treatment.	38	13%
11	Increase the infected people as a reaction of revenge.	33	11%
12	Interfere with freedom or privacy.	19	6%
13	Positive impact on infected people.	15	5%
14	Have no impact on decreasing number of infected people.	11	4%
15	Protect prostitutes and drug addicts from infection.	10	3%
16	Against the human rights in general.	7	2%
17	No answers.	19	6%

Best way to educate the society about HIV/AIDS.

What is the best way to educate the society about AIDS? "Open- ended Question"

A significant proportion (77.2 per cent) of the respondents believed that the media could play a major role in spreading and increasing the awareness in society about the dramatic consequences of HIV infection. The religious leaders, schools and educational centres could also play a significant role in educating society about the HIV/AIDS problem. Table below lists several ways suggested by the public that could be helpful in increasing awareness in the society.

Table 76: Best way to educate society about HIV/AIDS

#	Responses	Frequency	Percent (n=303)
1	Media.	234	77.2%
2	Increase the role of the religious leaders in awareness.	199	65.7%
3	Schools and educational centres.	198	65.3%
4	Transparency in publishing the statistics about HIV/AIDS.	168	55.4%
5	Family education.	165	54.5%
6	Early marriage.	125	41.3%
7	Update the immigration laws and control the borders.	117	38.6%
8	Giving more power to the police.	88	29.0%
9	Institute specialised rehabilitation centres for the infected people.	75	24.8%
10	Fight drug abuse and prostitution.	73	24.1%
11	Guidance and awareness for the travellers.	58	19.1%
12	Increase the role of the Ministry of Health.	56	18.5%
13	Consider the experience of developed countries (Legal Approaches).	55	18.2%
14	Support current victims.	46	15.2%
15	Develop the school curriculums.	37	12.2%
16	Special awareness programme for and about prostitutes.	28	9.2%
17	Provide work opportunities for ex addicts and prostitutes.	23	7.6%
18	Fight the HIV/AIDS as developed countries (Non Legal Approaches).	18	5.9%
19	Special awareness programmes for drug addicts.	14	4.6%
20	Involve the politicians in the awareness programmes.	8	2.6%
21	Permit infected persons to get married with other infected persons.	6	2.0%
22	No response.	7	2.3%

6.4.4. Comparison between the three groups surveys for the similar questions.

This part of the analysis aims to explore the level of agreement among all respondents from the three selected samples (Legal Professionals, Health Professionals and the General Public) on the items that were included in the three questionnaires.

1. Do you think that AIDS constitutes a problem in the UAE?

The feedback of the entire respondents in the three samples regarding the HIV/AIDS problem to the UAE society is presented in the following table. More than half of the respondents (58.5 per cent) believed that HIV/AIDS is a problem in the UAE society. On the other hand, 26.8 per cent of them disagree that AIDS is not a problem in the UAE and 14.7 percent of the entire respondents declared no certain perception about it.

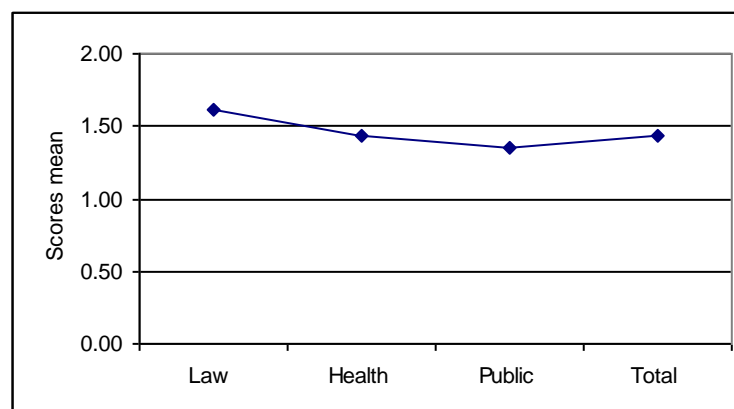
Table 77: Respondents' ratings for the seriousness of HIV/AIDS problem in the UAE

Level	Frequency	Percent
Yes	306	58.5%
No	140	26.8%
I don't know	77	14.7%
Total	523	100.0%

The Law Professionals sample ratings formed the highest average scores (1.62). This average indicates that law professionals were more convinced than the others as to the seriousness of the problem at the UAE. The General Public respondents' ratings yielded the lowest average scores (1.36) which indicated that the public were less convinced about the seriousness of the problem.

Table 78: Respondent' ratings for HIV/AIDS problem in the UAE by samples

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Law	1.62	139	0.06	0	2
Health	1.43	83	0.06	0	2
Public	1.36	301	0.05	0	2
Total	1.44	523	0.03	0	2

Figure 22: Respondent's ratings for the HIV/AIDS problem in the UAE by samples

The above scatter diagram shows that there is a general consensus that HIV/AIDS constitutes a moderate problem in the UAE, regardless of the fact the ANOVA analysis showed a significant difference⁶⁴¹ in the respondents' scores.

⁶⁴¹ ANOVA results: P-value = 0.002, which indicates that there is a significant difference among the four groups.

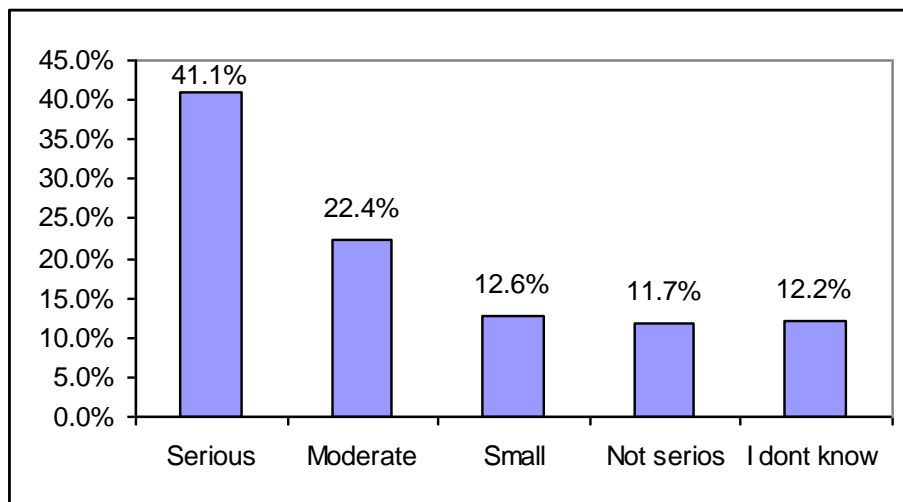
2. In your opinion, what is the scope of the problem?

Respondents' ratings for this item were distributed mostly on the 'serious' and 'moderate' levels. In a percentage figure, 63.5 per cent of the entire respondents believed that HIV/AIDS is a serious or moderate problem. In addition, 24.3 per cent of them considered it as either small or not a serious problem.

Table 79: Respondents' ratings for the magnitude of the HIV/AIDS problem

Magnitude	Frequency	Percent
Serious	215	41.1%
Moderate	117	22.4%
Small	66	12.6%
Not serious	61	11.7%
I don't know	64	12.2%
Total	523	100.0%

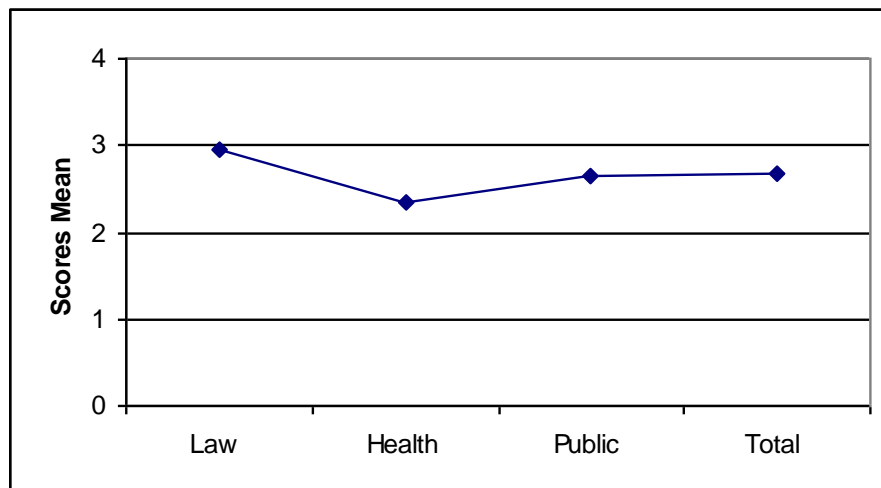
Chart 12: Respondents' ratings for the magnitude of the HIV/AIDS problem



As is clear from the following table the average scores for the three samples are close to the 'moderate' level. The highest score (2.95) is for the Legal Professionals sample group. The next highest average score is for the General Public sample group. It is clear that the respondents from the Health Professionals sample were less concerned about the magnitude of HIV/AIDS.

Table 80: Average scores for the magnitude of the HIV/AIDS problem by sample

Sample	Mean ⁶⁴²	N	Std. Error of Mean	Minimum	Maximum
Law	2.95	140	0.10	0	4
Health	2.35	82	0.14	0	4
Public	2.65	301	0.09	0	4
Total	2.68	523	0.06	0	4

Figure 23: Scatter for the average scores for the magnitude of the HIV/AIDS problem classified by sample

The above scatter diagram shows that the scores were distributed slightly below the moderate level except for these of the "Legal sample" where they are very close to 'moderate'.

3. Do you believe that AIDS is on the increase in the UAE?

Among the entire samples, 61.8 per cent of the respondents believed that HIV/AIDS is increasing in the UAE. However, around 18 per cent of the respondents disagree and around 20 per cent were not sure.

⁶⁴² F statistic is 4.84 and the associated P-value 0.008

Table 81: Respondents' ratings for the growth of HIV/AIDS in the UAE

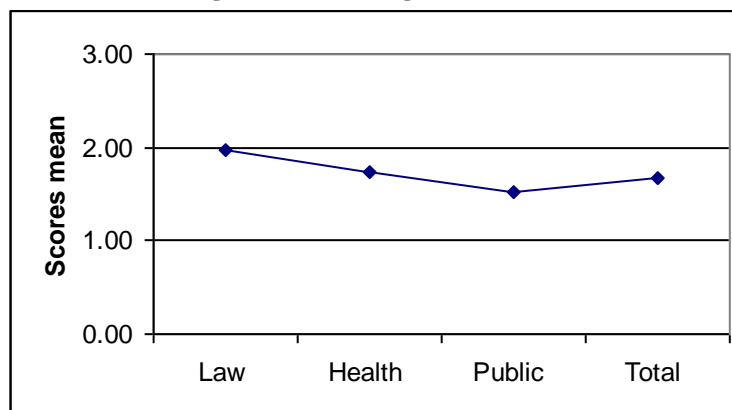
Response	Frequency	Percent
Yes	138	26.4%
To some extent	185	35.4%
No	95	18.2%
I don't know	105	20.1%
Total	523	100.0%

The next table shows the comparison in the respondents' ratings for the growth of the HIV/AIDS problem in the UAE. The overall average scores for the three samples indicated that the HIV/AIDS problem is to some extent on the increase in UAE society. The average scores for each sample reflected the diversity⁶⁴³ in the respondents' perception. While the "Legal sampled" respondents believed that the HIV/AIDS problem is on increase in the UAE, the public thought it is not greatly increasing.

Table 82: Average scores for the growth of HIV/AIDS in the UAE by sample

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Law	1.98	140	0.08	0	3
Health	1.73	82	0.11	0	3
Public	1.53	301	0.06	0	3
Total	1.68	523	0.05	0	3

The next scatter diagram shows that the scores were distributed below the level '2' (to some extent) for the respondents from both Health and General Public samples. However, the score for "Law sample" is relatively higher than the others' scores.

Figure 24: Scatter of the average scores for the growth of HIV/AIDS in the UAE by sample

643 ANOVA result: P-Value = 0.000, which indicates that there is a significant difference in the means of the four groups.

4. Do you believe that the UAE society is aware of the seriousness of AIDS?

The majority of the respondents (75.7 per cent) believed that UAE society is aware of the seriousness of the HIV/AIDS problem. Around 27 per cent of the respondents had a clear perception while the others stated that UAE society is to some extent aware of this critical problem.

Table 83: Respondents' ratings of the awareness of UAE society of the seriousness of HIV/AIDS

Response	Frequency	percent
Yes	140	26.7%
To some extent	257	49.0%
No	127	24.2%
Total	524	100.0%

The overall average scores (2.02) indicates that there is a common perception among all respondents that UAE society is aware to some extent of the seriousness of the HIV/AIDS problem. The scores' averages for each sample of the respondents affirmed this perception. Almost all respondents held the same belief with very slight differences⁶⁴⁴.

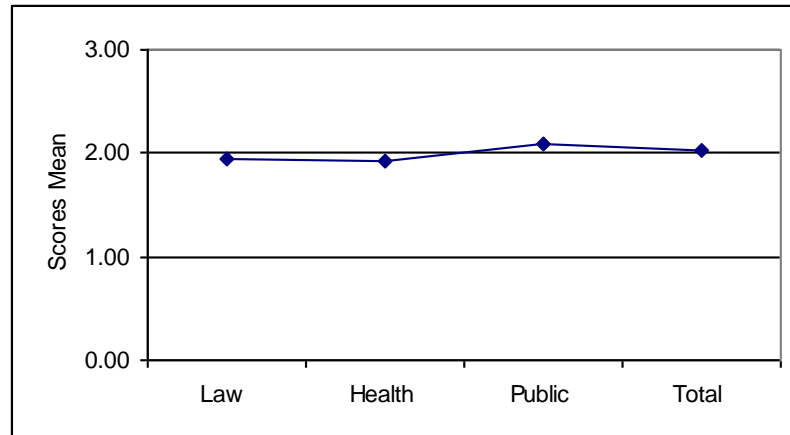
Table 84: Average scores for the awareness of UAE society of the seriousness of the HIV/AIDS problem by sample

Sample	Mean.	N	Std. Error of Mean	Minimum	Maximum
Law	1.94	139	0.06	1	3
Health	1.93	82	0.09	1	3
Public	2.09	303	0.04	1	3
Total	2.02	524	0.03	1	3

The following chart shows that all three samples agreed that there is a moderate level of awareness in UAE society about this critical problem.

⁶⁴⁴ ANOVA result: P-value is 0.04 which indicates that there is no significant difference in the average scores among the four groups.

Figure 25: Scatter of the average scores for the awareness of UAE society of the seriousness of the HIV/AIDS problem by sample

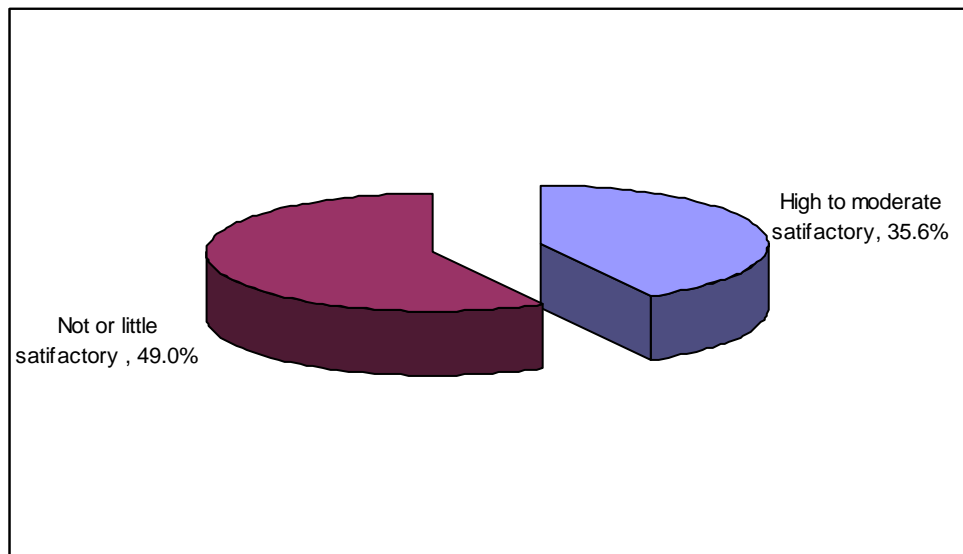


5. *In your opinion, are the preventive health regulations and laws in the UAE satisfactory to combat AIDS?*

The following table shows that 35.6 per cent of the respondents believed that the preventive health regulations and laws are either very satisfactory or moderately so. On the other hand, around 49 per cent hold the contrary view and considered the health regulations and laws are either fairly or not at all satisfactory.

Table 85: Respondents' ratings on the preventive health regulations and laws

Satisfactory	Frequency	percent
Very satisfactory	64	12.2%
Moderately satisfactory	123	23.4%
Partially satisfactory	82	15.6%
Not satisfactory	176	33.5%
I don't know	81	15.4%
Total	526	100.0%

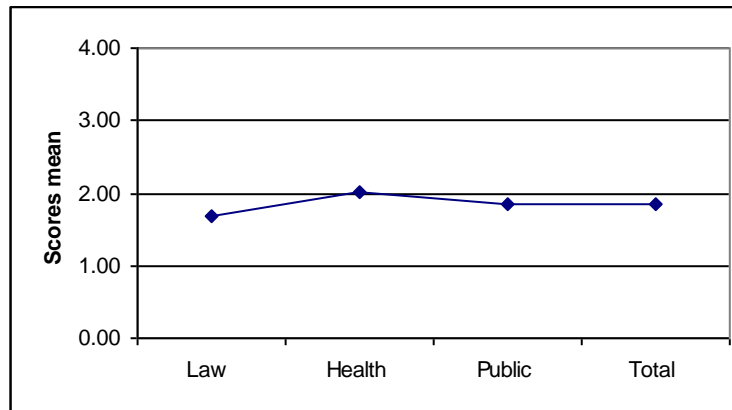
Chart 13: Respondents' ratings of the preventive health regulations and laws

The following table lists the average scores of respondents' ratings the current health and law regulations. The averages ranged from 1.69 to 2.02. This range indicates that there is a general perception among the respondents in the three samples that the preventive health regulations and laws are not satisfactory. The ANOVA⁶⁴⁵ test showed insignificant difference in the average scores among the three samples.

Table 86: Average scores for the perceptions of the current health and law regulations

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Law	1.69	140	0.09	0	4
Health	2.02	83	0.14	0	4
Public	1.85	303	0.08	0	4
Total	1.83	526	0.06	0	4

⁶⁴⁵ ANOVA result: P-value is .169 which indicates there is no significant difference in the average scores for the four groups.

Figure 26: Scatter for the average scores for perception of the current health and law regulations

The above scatter diagram shows that the respondents' scores were distributed very close to line '2' that is "fairly satisfactory".

6. In your opinion, should those who transmit this disease to others be punished?⁶⁴⁶

The majority of the entire respondents (76 per cent) agreed that there should be a punishment for those who transmit HIV while just 24 per cent believed that there should be no punishment at all.

Table 87: Punishment for the transmission of HIV/AIDS to others

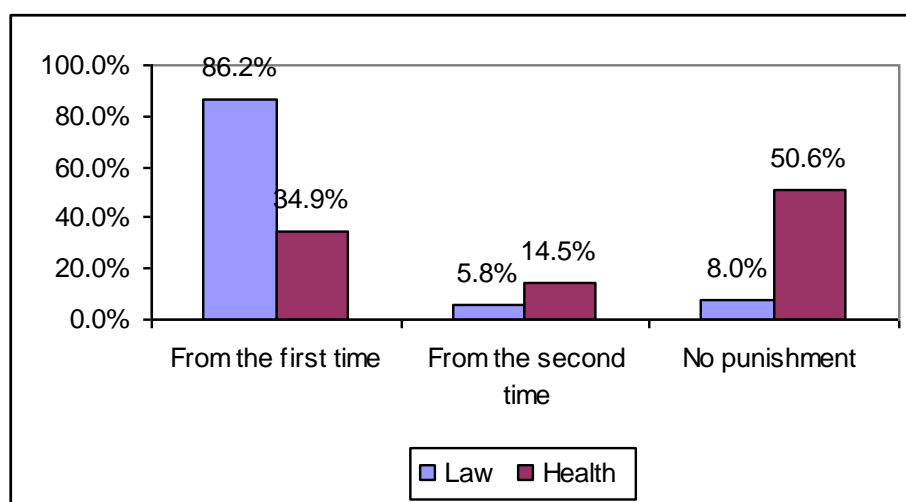
Responses	Frequency	Percent
From the first offence	148	67.0%
From the second offence	20	9.0%
No punishment at all	53	24.0%
Total	221	100.0%

The overwhelming majority of the Legal Professionals respondents (86.2 per cent) were in favour of punishment act. Interestingly, the health respondents' ratings were distributed almost equally between those who support punishment (49.4 per cent) and those who do not (50.6 per cent). However, the Chi square test shows that there is a significant difference between the two ratings.

⁶⁴⁶ This item was included only in the questionnaire for the law and health samples. Due to the type of the responses, the Chi square test was used to examine the significant difference between the two samples instead of ANOVA test.

Table 88: Respondents' ratings for punishment for transmission of HIV/AIDS by sample

Punishment	Law		Health	
	Frequency	Percent	Frequency	Percent
From the first time	119	86.2%	29	34.9%
From the second time	8	5.8%	12	14.5%
No punishment at all	11	8.0%	42	50.6%
Total	138	100.0%	83	100.0%

Chart 14: Respondents' ratings for the punishment for transmission of HIV/AIDS to others classified by sample

7. *Do you think that criminalising the AIDS transmission would contribute to reducing the number of infected people?*

Respondents' ratings for this item show that the majority (83.5 per cent) expected that criminalising HIV/AIDS transmission would have a positive impact on the number of infected people. However, some of the respondents (16.5 per cent) thought criminalising act would not contribute to reducing the number of infected people.

Table 89: Respondent' ratings for the impact of criminalising the HIV/AIDS transmission on the number of infected people

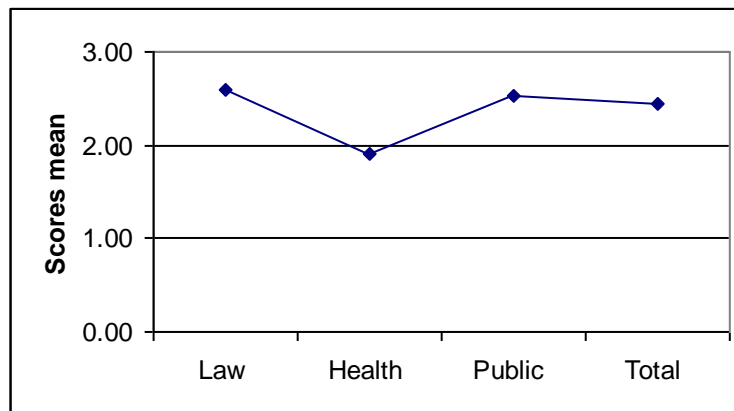
Response	Frequency	percent
Yes	324	61.6%
To some extent	115	21.9%
No	87	16.5%
Total	525	100.0%

Based on the average scores presented in the following table, there was a consensus between the law and general public respondents. The average scores for both samples are close to level 3, which reflects their agreement that criminalising HIV/AIDS transmission would reduce to some extent the number of infected people, regardless the fact that ANOVA test⁶⁴⁷ shows a significant difference in the average scores between the two samples.

Table 90: Average score for the impact of criminalising HIV/AIDS transmission on the number of infected people by sample

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Law	2.59	140	0.06	1	3
Health	1.92	83	0.08	1	3
Public	2.53	303	0.04	1	3
Total	2.45	526	0.03	1	3

Figure 27: Scatter for average score for the impact of criminalising HIV/AIDS transmission on the number of infected people by sample



The above chart shows that the scores for the respondents from the law and General public samples were very close to each other, while the scores for the Health Professionals respondents is significantly differed from the other ratings.

647 ANOVA result: P- value is .000 which indicates there is a significant difference in the average scores for the four groups

8. *Do you think that if the legislator criminalised the HIV/AIDS transmission both intentionally or unintentionally would prevent or stop people from reporting their health conditions?*⁶⁴⁸

The majority of the respondents believed that criminalising HIV/AIDS transmission would prevent people from reporting their health condition to the competent authorities either completely (27.8 per cent) or to some extent (33.6 per cent). On the other hand, 38.6 per cent of the respondents disagreed.

Table 91: Respondents' ratings for the impact of criminalising HIV/AIDS transmission on people's willingness to report their health conditions to authorities

	Frequency	Percent
Yes	62	27.8%
To some extent	75	33.6%
No	86	38.6%
Total	223	100.0%

Based on the findings of the average scores, there was no high difference in the average scores between the two samples. It seems that both law and health respondents agreed⁶⁴⁹ that criminalising HIV/AIDS transmission would stop infected people from reporting their health conditions to the authorities.

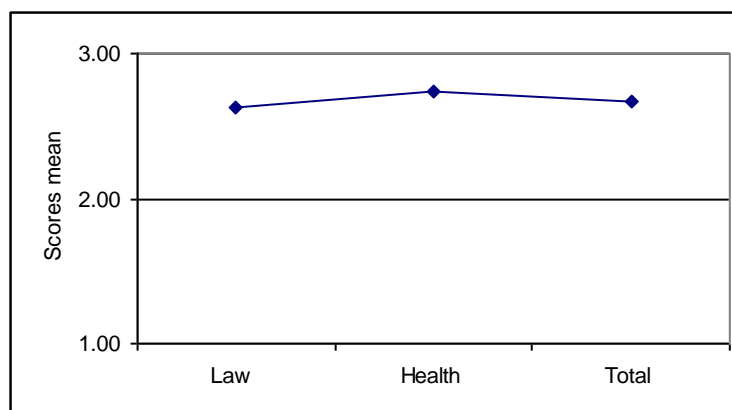
Table 92: Average scores for the impact of criminalising HIV/AIDS transmission on the people's willingness to report their health conditions to authorities

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Law	2.62	140	0.04	1	3
Health	2.73	83	0.05	1	3
Total	2.66	223	0.03	1	3

⁶⁴⁸ This item included only in the questionnaire for the law and health samples.

⁶⁴⁹ ANOVA result: P- value is 0.84 which indicates there is no significant difference in the average scores for the four groups

Figure 28: scatter for the average scores for the impact of criminalising HIV/AIDS transmission on the people's willingness to report their health conditions to authorities



The above diagram shows that the respondents' scores in both samples are very close to each others, which reflects the insignificant difference in their perception.

9. *Do you believe that the criminal law should be applied to prevent the out break of AIDS disease?*

"Enacting a criminal law against those who transmit HIV to others would reduce the occurrence of HIV/AIDS". Around 63 per cent agreed with this statement while 20.5 per cent did not. Moreover, 16.3 per cent of the respondents from the three samples did not have a certain view on this issue.

Table 93: Respondents ratings for the positive impact of enacting a criminal law for HIV/AIDS transmission

Response	Frequency	Percent
Yes	244	63.2%
No	79	20.5%
I don't know	63	16.3%
Total	386	100.0%

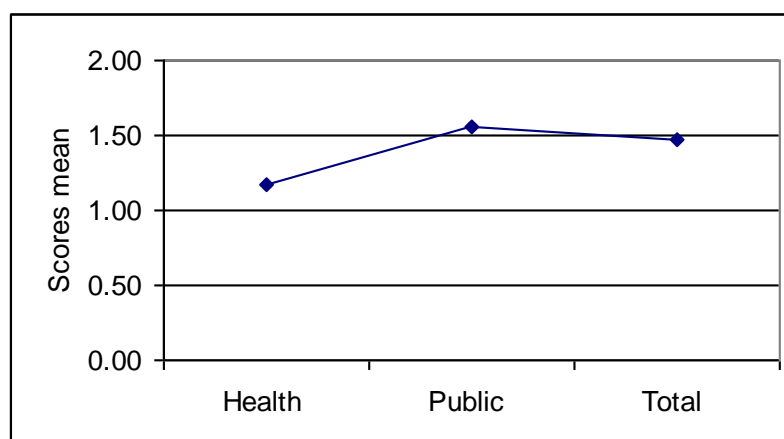
The next table presents a comparison of the scores between the health and public samples. Clearly, the respondents from the health sample were not convinced that enacting a law that criminalising HIV/AIDS transmission would have a positive impact on the occurrence of HIV/AIDS disease. On the other hand, the average scores for the

General public respondents (1.55) convey a slightly different perception. The ANOVA test⁶⁵⁰ showed a significant difference in the average scores of the two samples.

Table 94: Average scores for the positive impact of enacting a criminal law on the occurrence of HIV/AIDS

Sample	Mean	N	Std. Error of Mean	Minimum	Maximum
Health	1.17	83	0.08	0	2
Public	1.55	303	0.04	0	2
Total	1.47	386	0.04	0	2

Figure 29: Scatter for the scores for the positive impact of enacting a criminal law on the occurrence of HIV/AIDS disease by sample



The above scatter diagram depicts the difference in the respondents' perception between health and public samples.

10. Do you believe that we require a law that expressly criminalising the transmission of HIV?⁶⁵¹

As is clear from the following table, the majority of the respondents called for a law criminalising transmission of HIV, either for intentional transmission (35.6 per cent) or for both intentional and unintentional transmission (40.8 per cent). On the other hand, 23.6 per cent of the respondents did not believe that there is a need for any law that criminalises HIV transmission.

650 ANOVA result: P- value is .000 which indicates there is a significant difference in the average scores for the four groups

651 This item included only in the questionnaire for the health and public samples. And due to the type of responses Chi squared test were used to examine the significant difference between the two samples.

Table 95: The respondents' ratings for enacting a law that criminalises HIV/AIDS transmission.

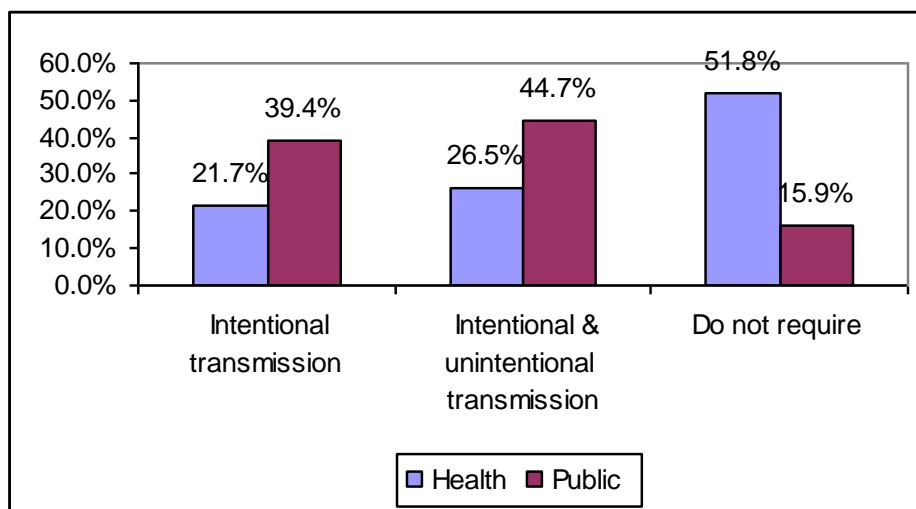
Law for criminalising HIV transmission	Frequency	Percent
Intentional transmission	137	35.6%
Intentional and unintentional transmission	157	40.8%
Not required	91	23.6%
Total	385	100.0%

The comparison between the health sample and general public perception shows that there is a significant difference⁶⁵² between the two samples, whereas about 52 per cent of the health respondents were in favour of this law, the general public respondents (around 20 per cent) did not have the same perception.

Table 96: The respondents' ratings for enacting a law that criminalises HIV/AIDS transmission by sample

Law for criminalising HIV transmission	Health		Public	
Intentional transmission	18	21.7%	119	39.4%
Intentional & unintentional transmission	22	26.5%	135	44.7%
Not required	43	51.8%	48	15.9%
Total	83	100.0%	302	100.0%

Based on the findings of the respondents' ratings, the health respondents (84.1) believed that enacting a law for criminalising HIV/AIDS transmission is necessary for both types of transmission, intentional and unintentional.

Chart 15: The respondents' ratings for enacting a law that criminalises HIV/AIDS transmission by sample

652 Chi-square statistic is 46.566 and the associated P- value with two degrees of freedom is 0.000.

It is order from the above chart, that more than half (51.8 per cent) of the respondents from the health sample were not convinced that there is a need for passing a law that criminalises HIV transmission.

11. In your opinion, what is the suitable place for a person charged with infecting another with HIV to serve his/her sentence if HIV transmission has become a crime punishable by law?

A significant per cent (45.1 per cent) of the entire respondents rated a hospital as the most suitable place for a person accused for infecting another person with HIV to serve his sentence. Other respondents (28.1 per cent) believed that prison is the most suitable place.

Table 97: The most suitable mode of detention for an offender confected of transmission of HIV

Place	Frequency	Percent
Hospital	172	45.1%
Jail	102	26.8%
Other place	107	28.1%
Total	381	100.0%

Table 98: Respondents' ratings for the most suitable place of detention of those convicted of HIV transmission by sample

Place	Health		Public	
Hospital	43	51.8%	129	43.3%
Jail	23	27.7%	79	26.5%
Other place	17	20.5%	90	30.2%
Total	83	100.0%	298	100.0%

As clear from the above table, there is no remarkable difference⁶⁵³ between the ratings in the two samples on the best places for those who charged for transmission HIV to others.

⁶⁵³ Chi-square statistic is 3.26 and the associated P- value with 2 degrees of freedom is 0.196

Chapter Seven

Discussion of the study findings

In this chapter, I will attempt to discuss the results obtained from the questionnaire presented in the previous chapter. The discussion will focus on providing answers to the four main research questions, in connection with previous analysis provided on the UAE penal code's suitability for addressing the issue of HIV transmission. The discussion will also investigate the attempts to protect healthy people and cater for the needs of infected individuals. Furthermore, the discussion will present the experiences of other countries which might be useful in suggesting ways of combating the disease unavailable in the UAE. Finally, by analyzing the main opinions presented by the three categories of participants, the discussion will also try to consider the pros and cons of the effects that might ensue from introducing specific provisions in the criminal law on the transmission of the virus.

The current study found out that the HIV/AIDS does exist, to some extent, in the UAE according to the published announcements by Ministry Of Health. However, the respondents' perceptions varied from one sample to another in terms of the perception of the seriousness of the problem. Whereas the public and the law respondents believed that this problem on average is moderate, the health respondents rated this problem as small. The variations in the perceptions could be attributed to the level of awareness in the public or number of cases heard about or dealt with in the medical centres or the courts or the police centres, all this would have an influence on the perception of the respondents.

Respondent # 8 from the first group (the third subgroup/Prosecutor) and respondent # 12 from the third group stated that "due to lack of information about the scope of the problem in the UAE especially from mass media and the competent authorities, it would be difficult for them to comment on the problem and the status thereof in the UAE"

Interestingly, inconsistency in the perceptions regarding the seriousness of the problem was evident among the law sample. The judges and prosecutors were more conservative

when they rated this problem as small and many of them stated that they couldn't rate this problem, while the lawyers and police officers held almost the same perception i.e. that the problem was moderate.

About a third of all respondents believed that the HIV/AIDS problem was on the increase in the UAE. The law and health respondents believed that it had grown to some extent. However, the public believed that it was not expanding seriously. Within the law sample however there was no consensus on the perception: While the lawyers and police officers believed that the problem was moderately increasing, the prosecutors and the judges believed that this problem was under control. Respondents # 13,25,27 from the second group asserted that there was a rapid increase in the HIV cases received by them and that cases of women outnumbered that of men and especially among married women infected by their husbands' and that these cases did only appeared in the last five years.

The study found that the UAE society was, to some extent, aware of the seriousness of the HIV/AIDS problem. All respondents in the three samples agreed with this statement. Regarding awareness, the third group (public) had a different view from the other groups and more than half of the group members stated that the society in the UAE was unaware of the scope of the problem while 29 per cent stated that the community was aware of the problem. Respondent # 3, 9, 28, 35 and 41 from the same group mentioned that if the society was aware of the problem, the disease could have been eliminated in the UAE.

Concerning the current UAE penal code, 10 per cent of the first group (law) stated that the penal code was appropriate to deal with the issue, while 84 per cent expressed the view that the law was in no way suitable in this regard. This falls in line with the conclusion we arrived at in chapter five above. It is stated there that none of the provision in the UAE criminal law concerning crimes punishable by the law provides for the event of transmitting the virus to other persons.

The remainder of the first category (5.7 per cent) responded that they do not know if the UAE criminal law is competent to punish those who transmit the virus. Such a response might not be convincing as the entire category is made up of persons who are

professionals in this area. However, they might not have researched the provisions thoroughly, or analysed the various provisions in a way that would answer the question. Regarding intentional transmission 23.6 per cent from the same group stated that the law was adequate and 65.7 per cent stated that it was inadequate. However, 47.1 per cent of the judges stated that there is no suitable Article in the current penal code to deal with the matter, while surprisingly, 35.3 per cent had bravely expressed their lack of knowledge in this regard.

Most of the responses follow the same pattern: 60 per cent of the lawyers, 33.3 per cent of the public prosecutors and 83 per cent of police officers responded negatively, i.e. the criminal law is not competent to handle the transmission of the virus. On the other hand, those who say that the law does provide for transmission are as follows: 26.1 per cent of the lawyers, 17.6 per cent of the judiciary, and 44 pr cent of the public prosecutors who state that it is possible to identify an article providing for punishing culprits for intentional transmission of HIV. Only 16.4 per cent of police officers responded affirmatively. It is quite significant that none of the respondents chose the option "I do not know" and this might be attributed to the nature of the military profession, which does not allow for grey areas in decision-making. In other words, a police officer in charge of a police station either accepts a claim for criminal action or refuses to do so, depending on his understanding of the provisions of the criminal law. The subsequent question asked of those who responded positively, (23.6 per cent of the total participants), was whether they could identify a suitable article for punishing the act of transmission. Half of the respondents believed that the provisions for punishment are not suitable for the crime.

Articles No. 337 and 339 might be cited here as the most appropriate, but on closer scrutiny, it proves to be quite unsuitable for this application. Respondents # 5 and 8 (Judges), mention that Articles 337 and 339 can not be used in the case of HIV transmission because these Articles are designed to punish harm which causes 'incapacitation' of the victim or curable diseases whereas HIV and AIDS causes death.

With regard to unintentional transmission, 15% of the first group believed there is a suitable Article in the Penal Code that could incriminate the action while 72% disagreed. With regards to judges 11% pointed to the existence of suitable Articles in

the UAE Penal Code while 41% did not. However, 47% of the judges, in addition to a third of the public prosecutors, expressed their lack of knowledge. Meanwhile, 37% of the public prosecutors expressed the view that there were Articles that deal with such incidence, while 23% of the public prosecutors held the opposing view. The police officers had the highest score as 97 per cent said there was no such Article available.

Though there are a small percentage of respondents in the first category who positively asserted that the UAE penal code could cater for the event of intentional HIV transmission, it creates the impression that there is a somewhat deliberate attempt to make the UAE criminal law account for the event. The researcher believes that this sounds like trying to insert an elephant into a bottle. This is so because those respondents had forgotten an important point that there must be a legal article in the penal code to punish the act or there will be no crime. The law does not directly provide for such a hypothetical event and the issue involved is far more complicated than merely approaching the law in a way that might identify an article that could be remotely applicable. The second most common article that came to the minds of those respondents is No.332 (Intentional murder) of the penal code. Ten of the respondents stated that it can provide for such an offence. The contradiction is made crystal clear when we realise that 15 respondents picked another article whose punishment is imprisonment for not more than one year or the payment of a fine. The punishments proposed by the selected articles were satisfactory to only 28.6 per cent of respondents while almost half of the respondents (47.6 per cent) believed that the proposed punishments are fairly satisfactory. The remainder of the respondents in this category believed that the provided punishments are not appropriate.

More than 72 per cent of the respondents confirmed that no article is available in the law that might apply to the case of unintentional transmission of HIV. Only 15 per cent claimed the opposite, though they differed on which of the articles would be more applicable as well as on the suitability of the punishment for the grave consequences of the offence. This reiterates the differences mentioned earlier concerning the event of intentional transmission. One supreme court judge claimed that "on the superficial level, one feels that the UAE criminal court is competent to cover all incidences of acts against human beings; yet with a deeper scrutiny, it is revealed that the law is very much defective in this area. Any culprit accused of committing the act of HIV

transmission will be acquitted from the very first court session. The reason is that the act itself does not constitute a crime punishable by the law".

The findings from the second category (Health group) may be attributed to the nature of their work. The members of this category of respondents are generally expected to deal with such cases as patients who need urgent medical care rather than criminals who are ought to be punished. This type of perception could be clearly compared to the WHO perspective on the issue, discussed in chapter two of this study, as the organisation prefers to leave the issue of criminalisation as a very last resort. However, respondent # 31 from the second group noted that, laws such as going through a the red traffic light were well known but people still violated this law, which means that law is in not the decisive factor to prevent crime.

Most of the respondents in all groups believed that those who transmitted HIV to others should be punished. Two thirds of them believed that the punishment should be issued from the first time they perpetrated such an unacceptable act.

In the event of criminalising HIV/AIDS transmission, approximately half of the respondents 51.8 per cent from health and 43.3 per cent public respondents believed that the hospital was the most suitable place for those who were punished for HIV transmission to serve their sentence. However, a quarter of the respondents believed that prison was the most suitable place. Many of the respondents suggested an isolated place for those who were charged with HIV transmission and that they should be provided with social, religious and awareness programmes. Other suggested places included rehabilitation centres, health and social centres, or letting them stay at their own homes in order to allow them lead a normal life.

Four per cent of the respondents with regard to the questions concerning " Other places" suggested that the infected persons who are subject to or under any sort of punishment should be allowed to lead a normal life but not in their habitual domicile or homes. The idea is to transfer such patients to other cities and be provided with suitable accommodation by the authorities. Such punishment is in harmony with certain provisions within the Islamic Sharia law where it is decreed that unmarried adulterers should be exiled from their natural home for one year in addition to the punishment of flogging. The respondents did not ask for the flogging but called for the punishment of exile in a way that takes into account the patient's medical needs which in a way inflicts

a sort of mild psychological punishment rather than subjecting the patients to traumas of physical confinement.

The majority of the respondents believed that there should be compensation for a person who was HIV infected without his/her knowledge. This compensation could be covered the material, moral harm or both. On reaching this point in our discussion – compensation - we are squarely outside the domain of criminal law as the issue of compensation falls within the competence of civil laws provisions as there is no medical compensations law in United Arab Emirates. However the issue is raised at this juncture since whatever case is brought before a court of justice, a comprehensive legal perception of the case necessarily integrates all areas of the law in the declaration of a verdict, and which may include compensation for harm or injuries inflicted upon a victim. Yet the tenets of civil law do not lend themselves easily to account for the issue of compensation in the case of the transmission of HIV. The disease affects the immune system in the infected person, which is intangible compared to limbs. Hence, the difficulty arises in relation to how to measure the rate of compensation for the deficiency of immunity and whether the infected immune system will remain constantly deficient at a fixed rate and finally what the position would be if in the future scientists were to come up with a cure for the disease.

The second question of the research involved the role of other laws and whether they have any role to play in reducing the rate of the spread of the disease and how effective these laws might be in safeguarding the rights of the infected individuals in the UAE.

In Chapter five of this study we have discussed many laws which are somehow related to the issue of HIV/AIDS and which may positively or negatively affect the victims of HIV/AIDS. The discussion also involved the role of these laws in protecting healthy persons. In the questionnaire health laws and procedures were emphasized in particular as the most important among the group of other laws. The results were as follows:

Approximately one third of the respondents believed that current preventive health regulations and laws to combat HIV transmission were satisfactory or moderately so. But the police officers believed that these regulations were not satisfactory. On average, the respondents believed that these regulations and laws did little to combat HIV/AIDS transmission. More than 55 per cent of the first group expressed their dissatisfaction with the health procedure and regulations, 31% of the second group also expressed their

dissatisfaction while 14 per cent of the group were fully satisfied and the rest of the group expressed medium to little satisfaction with the health measures. Moreover, 23 per cent of the third group were dissatisfied with these measures while 30 per cent of the group was totally satisfied. About half of the health respondents believed that there were no social or psychological programmes provided for HIV infected people.

The services provided for the patients could be limited merely to dispensing medicines and conducting lab investigations. The treatment does not involve any sustained programmes caring for the social and psychological welfare of the patients. The social stigma issue is the cause of real traumas for HIV/AIDS victims, and so programmes - where held - must be held in complete secrecy. The only reference to such badly-needed programmes is made in passing in conferences by UAE participants announcing that the medical authorities provide complete and sustained medical care and consultation to the victims. However, such claims could be difficult to be verified in practice. There are specific places to go to or specific bodies known to be responsible for providing the claimed sustained and comprehensive care. It is left for the patient to find out the secret whereabouts of these bodies and the venues for these programmes. 30.1 per cent of the respondents in this group of health professionals say that they do not know of any such programmes. The negative answer might be attributed to one of two possible reasons. The first is that they really do not know because of the confidential nature of these programmes or because they are not allowed to disclose such information.

Also, the majority of the respondents from the same sector either stated that there were no unified records or they had no idea about such records and it seemed that there were no shared or linked records infected people in UAE hospitals⁶⁵⁴.

There are two types of hospitals in the UAE, public and private, which provide medical services to the public with total independence. With such complete lack of connection between the working hospitals within the state, it would be very difficult to report and account for all cases of HIV infection within the state, which in itself is an administrative flaw that may leave the door wide open for an unharnessed spread of the disease as it is difficult to accurately account for all cases of HIV infection without a

654 The Ministry of Health did not provide any information to the researcher regarding to the HIV patient records.

unified approach - and register. On the other hand, the presence of a unified and publicly available register of reporting might drive some of those infected to seek treatment and counseling outside the boundaries of the state in order to avoid being discriminated against or known by their relatives and friends or even family members.

The above observation is made on the light of the responses of the third category of respondents (Public group) in answer to the question about whether the UAE society is aware of the threats and hazards involved in the spread of HIV. 29.4 per cent admitted that UAE society is fully aware of the threats involved, while the remainder responded by either a straightforward "No", or that they do not know about the society awareness.

In relation to the role played by the other laws, in safeguarding all concerned parties, 59.9 per cent of the participants from the third category answered that the HIV/AIDS patients cannot lead a normal and stable life while only 12.9 per cent disagreed. They suggested that the role to be played by these other laws is significant in regulating their lives and without which the possibility of leading a stable life would not be possible. Moreover, about half of the health respondents (Second group) believed that the unified and linked records that contained information about AIDS-infected people would stop people from having early check ups for HIV.

The role of the other laws is made clear with regard to the last question put to the third category of respondents. It emerged that 38.6 per cent of the participants would like to see the immigration laws amended and tighter border controls. They also wanted more powers to be given to the police force to combat drugs and prostitution in order to protect potential victims. 15.2 per cent of the respondents demanded that a support service be established for victims as well as allowing intermarriage amongst AIDS patients. The above finding supports the suggestion offered in chapter five regarding the lack of consistency between the existing laws where it is evident that each particular law was issued to handle a particular situation without taking heed of the likely negative consequences on other aspects of the society.

We have already mentioned the flaws in immigration law which stated that those seeking employment in UAE are asked to undertake an HIV test on arrival - and not before entering the country. In such a case the infected person is deprived automatically

of being employed in addition to immediate expulsion. Such consequences may be harsh on prospective labourers from poor Asian countries seeking low-paid jobs. Such persons could seek illegal employment and end up working in illegal activities such as prostitution or drug dealing.

Family laws are no better than immigration laws. The existing law deprives infected individuals of basic rights like the freedom to get married, even to fellow- infected persons. The natural needs of sexual consummation for those persons could only be satisfied outside a legal marriage. Evidently, the possibilities for spreading the disease are made greater in this way. Other secondary laws such as the educational laws also do not offer solutions. Taking the HIV test is a mandatory condition for employment in educational institutions. Understandably, a positive result disqualifies applicants but without providing any other alternative. In short, HIV infected individuals cannot lead a normal life. They are deprived of marriage, education or employment, by the letter of the law. Secondary laws do not provide alternative solutions. The only choice left for the infected individual is to remain locked behind closed doors, shunned by others awaiting final relief by death.

The third research question, in chapter five of this study, regards the impact of criminalising the transmission of HIV. The findings depended, to a very large extent, on the responses offered by the participants in the questionnaire; this was so, significantly, because of the complete absence of research or studies within this field. The responses were very varied and covered various legal and social aspects. Studying the provided tables, we can reach the following conclusions:

Criminalising HIV transmission could have a positive or negative impact on the society. The survey found out that criminalising HIV/AIDS transmission could contribute, to some extent, to reducing the number of infected people. This positive impact was stated by a significant proportion of the respondents, especially the police officers who were more optimistic. However, the health respondents were less convinced by this positive impact of criminalising HIV/AIDS transmission.

The majority of respondents in the first category stated that rendering the act of transmission a criminal offence will have a significantly positive effect on restricting the

spread of the disease. 50.7 per cent said that it would help stop HIV transmission. 55.7 per cent emphasised that such provisions would help in harnessing the spread of the disease. 51.4 per cent said that such a law would be very clear about the acts involving transmission of the virus. The recurrence of figures above 50 per cent within the first category of participants shows clearly that they are very convinced by the positive effect of considering the act of transmission as a criminal act punishable by the law. Only 10.7 per cent of the respondents showed some hesitation and fear that regarding the act of transmission as a criminal act punishable by the law may have very negative effect on the spread of the disease while only 2.9 per cent declared their complete rejection of the proposal altogether.

The difference in the percentage of respondents with regard to the suggestion of the introduction of legal provisions criminalising the act is significantly high. This may be attributed to the legal nature of work undertaken by the members of this category of respondents. They have concluded that the existing law does not cater for the act of transmitting the virus and that criminalising the act would play a significant role in safeguarding the community as well as clarifying the legal procedures. Most probably the participants in this category were very much concerned with their own professional interests and the nature of work they are engaged in, disregarding, in the process, the potential negative effects on the society at large of considering transmission as a criminal act.

On scrutiny of the responses of this first category, what becomes most evident is that other laws, such as health regulations, were never mentioned or even considered. The respondents addressed themselves directly to the task and emphasized their support to amend the penal code rendering the transmission of the virus as a criminal act. Their readiness to embrace a policy of criminalisation might be attributable to the fact that it was quite a novel idea to the respondents.

The responses of the first category were restricted to the two domains of the provisions of the penal code and its effect on the spread of the disease. The opposing view was evident in the responses of the second category of respondents, who mainly belonged to professionals within the medical services arena. None of the respondents in the second category supported the idea that rendering the event of transmitting the virus a criminal

act would help in clarifying the legal provisions and status, although 8% supported the idea that criminalisation may help in reducing the spread of the disease. 71% of the respondents claimed that it may have very severe negative influences on the society and 66% suggested resorting to alternative solutions such as consciousness-raising campaigns, instead of amending the existing criminal law. 46% of the respondents in this category rejected the idea of amending the criminal law altogether. It is clear that the approach by the members of this category is mainly to reject the involvement of the criminal law. It is also significant that they did not suggest any alternative changes in the health regulations or laws as a measure for restricting the spread of the disease, even though the issue at stake is the spread of a lethal disease. The above brings to mind the initiative of the Dubai Police Force in collaboration with UNICEF mentioned earlier, in which the absence of any role assigned to health or medical authorities was conspicuous. Also, the clear disparity in attitude between the legal and the medical professional categories creates the impression that amending the criminal law to render HIV transmission a criminal act is not welcome amongst a good number of members of the two professional categories. It calls for further scrutiny of opinions and attitudes before reaching a conclusive statement about the issues at stake.

A largest percentage of the second category of respondents emphasised the social stigmatisation effect, which constitutes a very significant concern in the whole study. UAE society still operates a tribal system of values with very strong bonds between members of the society. Hence, social stigma is a significant issue - the psychological damage may in fact be greater than the disease itself. The secrecy with which the issue is shrouded, for example, concerning the statistics of the victims, increases the sense of estrangement.

The third category, representing the voice of society, showed a very different attitude from the first two categories. They took a sort of middle position. Their responses to the research questions were balanced, not tilting towards any of the two ends of the spectrum. 55 respondents said that criminalising transmission may help redress the spread of the disease yet 49 of the respondents expressed strong concerns that such an amendment of the criminal law might eventually lead to the increases in family problems emanating from the phenomenon. The same number of respondents said that the stigmatisation effect coupled with criminalisation may have a very negative effect

on the efforts to combat the spread of the disease. This opinion is not very different from that expressed by the second category concerning the issue of social stigmatisation. 40 respondents from the third category stated that criminalisation might increase social awareness of the magnitude of the problem. It is quite evident from the results obtained from this category that the respondents were evenly split into two groups: the first is in favour of criminalisation, the other against, while both groups have recognised the negative effect of amending the penal code to provide for criminalisation the act of transmission of HIV.

The members of the public category were very much aware of the means by which the disease spreads. This is made clear by the fact that 37 per cent of them claim that the criminalising act might help reduce drug taking and prostitution. The respondents in the other two categories did not raise this issue. Another significant social aspect raised by the members of this category related to the issue of unmarried women. As mentioned earlier, it is not legal to engage in sexual practices outside wedlock. Accordingly, the members of this group put forward the issue of facilitating marriage for HIV/AIDS patients.

Another expected positive impact of criminalising HIV transmission was that it would moderately reduce the spread of HIV in the society. Two thirds of the respondents believed in this statement. However, the health professionals were less convinced than the public and law respondents about this positive impact.

Most of the respondents (61%) believed that criminalising the act might reduce the spread of the disease, increase awareness in society, make the law clearer and deter those who transmit HIV to others. Despite these expected positive outcomes, most of the respondents suggested launching awareness campaigns before passing such a law. A majority (63 per cent) from the three groups suggested the involvement of criminal law.

Only (27 per cent) from all groups disclosed their concern about the possible negative impact of criminalising HIV transmission which might end up deterring people from reporting their health condition to the competent authorities. This could be attributed to the nature of UAE society and it might agitate the feeling of social stigma. Moreover, it

would scare people from reporting if they were infected as they would be afraid to be suspected or accused of any act in the future.

All three groups of respondents stressed the importance of consciousness-raising campaigns in order to make people aware of the dire threats and dangers involved and of how to avoid contracting the disease. This also involves bringing the ways and means by which victims can be reintegrated within the society to the awareness of the public. The importance of consciousness-raising campaigns is emphasised by almost all concerned bodies the world over. However, it is very important to consider social, cultural, economic and religious variations between different countries carefully before engaging in such campaigns. It would be quite unacceptable in a Muslim country like the UAE to discuss the issue of safe sexual intercourse outside lawful relations as a measure against the spread of the disease, where the only acceptable sexual intercourse is in wedlock. Prospective Emirati couples have to take the mandatory HIV test before getting married. When consciousness-raising campaigns engage in explaining safe sexual intercourse in these general terms, it might be viewed as encouraging sexual promiscuity and adultery which is a crime punished by death for married individuals. In a similar vein, it could be seen as tantamount to encouraging drug-taking, if the campaigners advocated safe usage of fresh syringes.

The fourth research question sought to explore the efforts and achievements of other countries with regard to laws that regulate the relationship between the victims and their surrounding environment. It also sought to envisage ways of protecting healthy individuals. The goal was to find out how the UAE might benefit from other countries' experiences. It is evident that many international and local organisations have been set up throughout the world. These organisations either are specialised, or concerned with the issue of organising the lives of the HIV/AIDS patients in general, and their relationship with the healthy individuals in particular. Their declared goal is to bring about a situation whereby patients could lead a decent life protected by the existing laws within these societies. Such protection is actually provided by internationally binding agreements and treaties entered into by various countries.

The UN and its affiliated organisations do not appear to have a very clear position, on the issue of the criminalisation of the act of transmission of the virus. The reason behind

this stance appeals to be the apprehension that some states may use such legislative measures as a pretext for violating human rights. The UN position is simply to urge member states to observe human rights when deciding to impose restrictive legislative measures and ensure equal rights and opportunities for all offenders as far as treatment and trial procedures are concerned.

Yet, many of the UN member states have not endorsed the UN conventions which attempt to provide support to the victims and ensure fair trials to offenders. This issue is very relevant in the UAE as human rights organisations have accused Arabic and Islamic countries of falling short of applying the internationally acceptable standards of human rights protection.

The researcher also looked further afield: experiences from developed countries, particularly the UK and the USA, were investigated as examples of countries which had adopted specific and clearly defined strategies in dealing with the phenomenal spread of the HIV/AIDS disease. The UK situation before and after using existing laws to punish the deliberate or reckless transmission of the virus was examined. The legislator in England and Wales has not passed any HIV/AIDS law, and the heated debate and urgent demands to enact such laws are reported. The research went on to account for the most important cases arising from the use of existing legislation and finally a depiction of the laws and regulations stipulated by the UK government and other non-governmental agencies to cater for the economic, social and psychological needs of the victims was given.

The researcher looked into the available UK statistics to come to the conclusion that the decision on the part of the UK judiciary to deem the act of transmitting the virus a crime punishable by the law did not help in curbing the spread of the disease. On the contrary, the number of fresh victims was in the increase. On the other hand, it might have increased more if they had not acted. However, the researcher is of the opinion that the legislation might have helped in raising the consciousness by exposing cases dealing with such events in the media, which may compel whoever contemplates the idea of transmitting the virus to others to think twice before taking the risk.

This might actually have helped reducing the number of freshly infected individuals, which is not reflected accurately in the available statistics. England has successfully

managed to establish a solidly founded network to protect those infected and facilitate decent living conditions for them. This could only be achieved by various legislation and administrative procedures put in place by the British Government. The steps included providing social care, a right to work and the right to be educated. Together, these measures helped in integrating the infected individuals within the society. The bodies engaged in providing this protective umbrella are specialised organisations providing the necessary care, coupled with sustained consciousness-raising campaigns supporting the governmental efforts in that regard. In some cases these organisations stood firm in defending the rights of the victims and provided media coverage discussing all related issues, and which was extended beyond the British territories.

Transparency of information and periodical publishing of statistics played a significant role in reducing the spread of the disease. It also helped in making it possible for concerned bodies to conduct necessary studies and a specialised focused research. These studies have come out with quite significant proposals contributing to the efforts exerted by governmental authorities, organisations and individuals of various healths, medical social and legal interests. In general, it helped shed light on the phenomenon.

There was remarkable scientific activity before England and Wales took the step of criminalising the transmission of the virus. It was very important to investigate all the possible implications before passing the legislation, providing a scientific frame of reference for the concerned bodies implementing the provisions.

By drawing comparisons between the situation in the UAE and other societies, like that of the USA, it is possible to learn from their experiences. Each American state has adopted legislation it feels appropriate, and while some American states have passed legislation that deem the transmission (intentional or otherwise) of the virus a criminal act punishable by the state laws, other states are still contemplating that idea. However, most of the states have already instituted regulations for victim support in areas related to health care, labour laws, immigration and education.

The situation in the USA is not that different from that in UK. The American legislator has passed regulations and laws organising the lives of the victims and their relationship to others, despite the huge size of the country and its population compared to the UAE.

The Americans have succeeded in establishing a very solid system accounting for every aspect of the problem. This might be due to their advanced technological and scientific expertise. It might also be attributed to the fact that the very first incidents of infection and the emergence of the disease took place in America, in addition to the large number of infected persons relative to the large population.

Various social groups and bodies insisted on criminalising the act of transmitting the virus, which succeeded in creating a general tendency in favour of arriving at legislative solutions to the problem. Many individual US states actually introduced legislation concerned with the issue of transmitting the virus to others, specifying all the related judicial procedures and bringing such cases before courts of justice, including confidentiality of test information and voluntary test taking.

The USA managed to pass this legislation after doing its 'homework' thoroughly. In relation to this point, the researcher has realised that the Emirati legislation suffers from a major flaw that acts as a hurdle to the attempt to criminalise the act of transmitting HIV, namely that certain protective procedural measures have to be passed prior to even considering passing a law to criminalise HIV transmission. In fact, it is easy to pass such a law but before doing that, the procedural mechanisms need to be in place.

The state of Kuwait held a legal symposium under the title of "An Islamic view of AIDS and related social problems" during the period from 6 to 8 December 1993. That symposium was one of those, in which all the sessions were entirely dedicated to the attempt to work out solutions or principles, in tandem with Islamic jurisprudence accounting for the act of intentional transmission of HIV to others. The participants who came from all over the Islamic world and specialised in various disciplines reached the resolutions which were mentioned by Abu Zaid and Al Sagheer in Chapter Three.

The discussion went on to examine the Egyptian situation. The choice of Egypt is pertinent, as Egypt is well known for the quality of research on legal issues by Egyptian scholars and legal professionals. Most Arab countries actually depend on law references published in Egypt and Egyptian expertise in general. Opinions were varied amongst Egyptian legal professionals with regard to the issue of criminal liability of those who intentionally transmit the HIV to others. One opinion was for treating the event as a

case of manslaughter and physical injury crimes punishable by the provisions of the existing penal code. Another group maintained that it falls within the realm of 'transmitting contagious diseases'. A third group was of the opinion that special provisions should be introduced to provide specifically for transmitting the virus, irrespective of the means of transmission ⁶⁵⁵. However, and by referring to the Egyptian Penal Code, it appears that no provisions, whatsoever, were included in the code to provide for the event of transmitting the virus to others. ⁶⁵⁶

The Egyptian governmental authorities have exerted tremendous efforts to curb the spread of the disease such as including it within a special list of chronic diseases. Yet, the situation in Egypt is not very much better than the UAE as there is a conspicuous lack of complementary legal provisions regarding victims, rehabilitation and health care programmes. In addition to that and just like the situation in UAE, Egypt has not witnessed any legal developments. The researcher noted that even though the Egyptians have engaged in a heated discussions, as to the incrimination of the act of transmitting the virus, which was evidenced by many research papers, presented to symposiums and workshops, as well as extensive published material, they have stopped short of reaching conclusive resolutions on the issue of incriminating the act of transmitting the virus by relating it for example, to the basic judicial principles in Islamic *Shari'a*, concerning lifting the harm befalling humans.

To avoid complex debate, most Egyptian legal experts have been satisfied by resorting to the existing penal code and perceiving the act as falling within the provisions made for the crime of manslaughter. They claim that there is no need for new provisions. Yet none of them appears to notice the improbability of such a claim as the victim, in most cases would be still alive, or the perpetrator died before the victim.

The Kuwaiti experience, it is submitted could be a point of departure from the stalemate situation. The state of Kuwait has issued a law that deems the act of transmitting the HIV a crime punishable by law. It is evident that the social, economic and cultural similarities between the state of Kuwait and the UAE could provide a platform for

655 Al Shazeli, F. (1994), "The rule of law on the protections and spreading of AIDS Virus", Cairo: The Egyptian Medical and Law Council, p 71.

656 Al Baher, M. (1998), "The Legislation and the Responsibility of Transmission the AIDS Virus", The Arabic 21 Journal of Security Study (27), Naif Academy, Saudi Arabia, p 161.

incorporating the Kuwaiti example into the legal system of the UAE. The Kuwaiti resolution also managed to overcome the dilemma of the legal contradiction arising from the incrimination of act without the availability of a text in the enforced laws. Unfortunately, for unknown reasons the Kuwaiti law issued in 1992 has completely ignored the unintentional, whether reckless or accidental, act of transmitting the HIV and the punishment for such an act is not referred to in the original penal code.

Many questions arise here. Firstly, was there an urgency to issue such laws at that particular time, when the disease was not very widespread according to official statistics and did not represent any real threat to public health? For a logical understanding of the issue, we need to consider the date of this controversial Kuwaiti law: It was 1992, two years after the Iraqi attempt to appropriate and annex the state of Kuwait, a period which witnessed massive damage to the civil and military infrastructure until liberation by the allied forces in 1992. The researcher believes that the proposal of these special laws was suggested by the Kuwaiti Ministry of Health (as confirmed by Mr. Rashid Al-A'weish, the director of AIDS combating programmeme⁶⁵⁷) some time before 1990 and the Iraqi invasion has delayed the consideration of the proposal up to 1992. It appears that the law was issued in haste for political reasons after the threats of the Iraqi regime to resort to biological warfare such as anthrax after their defeat and being driven out of Kuwaiti territories. So it was issued for the purpose of promoting awareness amongst the population and deterrence of terrorist attacks on Kuwaiti soil. Finally, the law was passed by the Kuwaiti Parliament, but as stated above never applied, according to the available published judicial records and the lack of resources clarifying the situation.

We can conclude that the difference between the number of HIV/AIDS cases which were announced by the Ministry of Health in 1994 and in 2004 showed increasing numbers of HIV cases, also, from the point of view of the three respondent groups, the scope of the problem in the UAE is on the rise. Thus, according to the findings of the research from the last two chapters it could be concluded that the UAE has been severely affected by the global growth of the HIV/AIDS phenomena.

This study was the first of its kind in the UAE. Through the analysis of available information, and the collection of the views of specialists in the field, it aimed to

⁶⁵⁷ During the meeting which took place in 2005 , please see Appendix (2),Mr Al-Aweish thankfully support the researcher during his visit to State of Kuwait.

investigate the present situation within the UAE, in that it aimed to measure the potential capability of the penal code and other secondary laws related to the disease to cope with the threat posed by HIV/AIDS. It also attempted to investigate the effects that might ensue from criminalising the act of transmitting HIV, and to highlight the respondents' suggestions for the best prevention methods and remedial policy.

One key concern voiced by many respondents was the lack of information about the problem and its scope in the UAE. Moreover, the researcher experienced a real difficulty in finding or accessing statistical data held by the competent authorities. Thus, the researcher would strongly recommend that the policy makers in the Ministry of Health and the Ministry of Justice should establish a permanent body as a link between all prevention departments in the UAE and should also liaise with other authorities in the field. Its responsibility would be to establish HIV prevention strategy and policies and to facilitate information sharing and active cooperation between the organs which might represent all sectors. In addition, amendments could be made to the jurisdictional system and UAE Procedural Law vesting more powers in the enforcement officers in the Emirates with regard to HIV infection, rather than deporting infected people. The authorities should look at the causes and the source of the infection, and try to follow the chain and identify possible victims who may not have the least knowledge of their status to stop the spread of the virus.

One of the cited reasons for the increase in HIV infection was the increasing number of illegal immigrants entering the country, especially from poor countries, who exploited the weak points in the sea and land borders and brought in the disease (as we have seen in (chapter 5). The solution here is to opt for better border controls – as recommended by responses in the third group throughout the questionnaires.

The current penal code of the UAE was viewed by many as in need of modification (for example, 84.3 per cent of the first group felt it is not adequate). This could mean a new policy is needed by following the development in other countries and not waiting until we might face the same problems. However, as we have seen, this approach is generally underused by the judiciary. It was therefore proposed that the Ministry of Interior, Ministry of Justice and Ministry of Health should actively encourage the proper implementation of a pro-active policy particularly when it was supported by all three sample groups.

Another gap that emerged in the UAE's prevention programmes was the lack of rehabilitation facilities, or indeed an overall treatment plan in the UAE. The current treatment offered at a hospital run by the government, generally tends to be medication only; while counselling and psychotherapy may or may not be practiced and are generally not known by public. Clearly, if an effective prevention strategy was planned in the UAE, this would need to include a far broader range of treatment techniques and facilities, possibly drawing on the more successful methods used in other countries (such as the UK and USA), and, most importantly, an overall strategy would need to be developed by the Ministry of Health rather than just focussing on the safety of the blood transfusions and the presentation of a few same posters repeated on the World AIDS Day every year.

As part of the debate regarding any future plans the researcher would like to draw attention to the potential impact of criminalising the transmission of HIV /AIDS in the UAE. Certain key points need to be considered:

Firstly, in regard to the criminalisation of unintentional medical mistake, the current approach in these cases could be through the civil, not the criminal law, whereby judges evaluate the harm done to the complainant and decide upon the suitable civil punishment (usually monetary compensation). If the legislator decides to create a new Article for the civil law stating the amount of compensation according to the harm caused by HIV transmission, this could mean that other areas of the law (such as family law) would have to follow suit and amend their provision. For instance, currently any transmission of HIV/AIDS by spouses within lawful relations can be addressed under family law - which leads merely to divorce or separation - as the act of transmission is not punished (it is not crime according to family law and there is consequently no compensation to the spouses). Ultimately, in the event of any such amendments, the criminal law will also have to be amended in order to avoid any contradiction.

Secondly, where the transmission occurred through rape, the penal code already has adequate provisions for punishment of offenders: the maximum penalty is the death penalty. If the UAE legislator plans to add a new legal article to the penal code providing for the criminalisation of the transmission of HIV whether intentionally or

otherwise, this may create a number of problems. Individuals (victims) may be reluctant to come forward and make complaints as they may, by implication, be complicit in another crime, such as drug abuse, adultery, sodomy, or prostitution. In fact, this may provide an explanation as to why to date there have been no prosecutions in Kuwait under their AIDS specific legislation. In such a case, the legislation would be rendered useless and ineffective.

The criminal law could do more harm than good from the victim's perspective. It must not be forgotten that in the UAE there are deep-rooted prejudices and those who have contracted a contagious disease by committing what is viewed as a sin and they will be stigmatised and risk becoming social outcasts. The problem is particularly acute in view of the fact that there are no programmes or laws to support or protect HIV/AIDS victims from discrimination.

Furthermore, the researcher believes that the approach of the UK could be more appropriate for the UAE, namely, adding the term "biological harm" rather than "assault or harm" to the provisions under articles 337 or 339 in the UAE penal code. This amendment to the code would be applicable to a variety of modes of transmission, such as intentional medical harm, intentional or unintentional transmission between spouses, from mother to foetus and injection of another with a contaminated syringe, and could further be expanded to include other incurable diseases, not just HIV/AIDS.

By following the UK approach, the law will be compatible with the existing UAE constitution as there is a defined crime and clearly known punishment. It will give the legal authorities the power to become involved and protect the community; it will help to raise public awareness; and it will protect women from contracting this disease when they have to obey their husband who refused to inform his spouse about his conditions. Finally, any amendments would need to be compatible with the UN recommendations and should avoid targeting high risk groups, while at the same time making proper provision both for victims and the punishment of perpetrators.

Chapter Eight

Conclusion

8.1. Introduction:

The advent of the HIV threat represents an unparalleled phase in human history: human existence was never threatened in the past, present or in future times as it is by the threat of HIV⁶⁵⁸. It represents a daily reality for millions of people and its threat is no longer restricted to a particular category of people or geographical location.

Millions of people have been infected, many of whom have perished as a result, million others are still suffering from exposure to the disease and millions go about not knowing that they are infected. Those who do know are often scared to admit this, because of the social stigmatisation and the potential loss of employment, as well as believing that they contracted the virus through what some see as socially and (particularly in the Arab world) religiously abominable behaviour.⁶⁵⁹

The rapid spread of the disease alerted governments to the need to establish measures to protect individuals against contracting the disease, which eventually led many countries around the world to pass legislation criminalising the transmission of HIV to other persons.⁶⁶⁰

The UAE is amongst the countries that reports HIV/AIDS cases and has set up a number of measures to curb its spread⁶⁶¹. The legal profession in the country has witnessed tremendous developments in the form of research and studies discussing different types of crimes stipulated by the UAE legislator. However, the criminal and legal liability for the act of transmitting the virus to others is not directly provided for in the body of UAE laws. The fact that no research was to date conducted in this area within the UAE prompted the researcher to undertake the task - by accessing the

658 Musbah, A. (2005), "AIDS between frighten and the reality", Cairo: Al Andulles Publisher, p 22.

659 Naseraldeen, Z. (2004), "The Stigma in the Arab world", Khartoum: Aliz Press, p 67.

660 Available at: http://news.bbc.co.uk/1/hi/arabic/business/newsid_6672000/6672615.stm. Accessed on: 27/7/2008.

661 Statement to the UAE Health Minister, UAE called for more global effort to fight AIDS, Ittihad News Paper, No.10616, 12/6/2008, p 6.

available data and resources - of investigating the legal situation with regard to the question of criminalising the transmission of HIV/AIDS in the United Arab Emirates.

The research presented in this study has highlighted a number of issues that need to be carefully considered before criminalising the transmission of HIV. The research questions as identified in chapter one have been addressed. Those questions were to investigate the extent to which the UAE penal code is equipped to provide for the event of intentional or unintentional transmission of HIV. It also attempts to find out whether the secondary laws, presently in force within the UAE, could be readily applicable to the attempts to combat the spread of the disease, improve the living conditions of those infected and protect healthy individuals from inadvertently contracting the disease. The study also purports to consider the experiences of other countries in this regard and identify the obstacles they have faced and consider what the UAE can learn from their experiences.

Also the research studies the effect of criminalising the act of transmitting HIV/AIDS within the UAE. This has been carried out, first, through an introduction to the study exploring a global and historical background of HIV/AIDS then the problem of HIV/AIDS in the world. The introduction focused briefly on HIV/AIDS in UAE, the need of criminalising the transmission of HIV and the purpose of the study which define the four research questions. Then the significance, limitation, the plan of the study have been described to give the reader a clear view of the research design and the methodology which will be followed to achieve the purpose of the research.

This chapter links the study's purpose and objectives to its major findings. In addition, a number of recommendations are based on empirical findings. Some suggestions are given for possible future research in this area and conducting future strategy plans.

8.2. The main research finding.

The study has revealed that the specialised agencies and organisations responsible for monitoring the spread of HIV/AIDS are mainly interested in protecting communities from contracting the virus through coordination between different countries following a designated and agreed plan. However, for the purpose of this study, asking for the

opinion of these agencies or organisations with regard to the question of criminalisation of the act of transmitting the virus, was beside the point, as they enjoy no legislative powers; nonetheless their views are no doubt of interest to the legislators on certain points.

Many developed countries, including UK and USA, have made the act of intentional or unintentional transmitting the HIV a crime punishable by the law. It is true that laws and legal procedures differ from one country to another, but these countries have succeeded in putting in place an integrated system of laws and legal procedures. This system facilitates protecting and organising the living conditions of the victims. It involves them in the process of rebuilding their shattered lives, in addition to protecting others from the hazards of contracting the disease. The UAE differs in terms of its criminal law system, other secondary laws, legal and administrative procedures and societal and religious beliefs from developed countries like UK, yet there are many facets of these advanced experiences which could be adapted beneficially to the Emirati situation. This could only be done successfully if these foreign experiences are subjected to research and study to verify what befits the specific features of a society like the UAE, namely governed by the Islamic faith.

HIV/AIDS knows no boundaries, borders, gender, age, colour or religion. It is not limited to any social status or personal qualities. This research also deals with the Islamic jurisprudence and referring to the verses from the Quran and the *Sunna* (say and act of the Prophet). Naturally, we do not expect to come up with straightforward provisions, as HIV/AIDS is a new development in human history. However, many Quran verses and Prophet Mohamed sayings have clearly prohibited harming other people and threatened perpetrators by punishment in the hereafter. The prohibition took the form of encouraging Muslims to take the necessary precautions by not harming others; preserving themselves and avoiding succumbing to peril.

The study also clarified the punishment laid down by Islamic *Sharia'* for those who commit adultery outside marriage as well as drug taking, since both are among the most recurrent and common means of contracting the disease. However, it will be seen that this punishment is in contradiction with the policy of criminalising the act of transmitting the virus in that the victim is considered as much a culprit as the person who transmits the virus. Since both are considered criminals according to Islamic

Sharia law the victim is likely to be deprived of many legal rights usually afforded to victims.

The study revealed that in Egypt, a number of legal professionals and scientists are inclined to press a motion to criminalise the act of intentional or unintentional transmission of the virus under the provisions of the Egyptian penal code, while others contend that there is no need for the legislator to play this role. The issue is not yet settled. In Kuwait, the legislator passed a law criminalising intentional transmission of HIV. The law came into force in 1992 but it has yet to be used in a single case. There are no relevant studies to verify the merits or disadvantages of the law.

The study highlights the role played by the health authorities within the UAE which exert great efforts in combating the spread of HIV/AIDS through consciousness-raising campaigns; providing medicines for the victims; forbidding the import of contaminated blood and enforcing mandatory HIV tests for the new job seeking arrivals into the country. However, it is very difficult for one authority to shoulder the whole burden and a concerted effort by the various concerned authorities is badly needed, as evident from the experiences of the developed countries. That is why the study started by examining the current penal code to reach a conclusion whether it is suitable to deal with the event of the deliberate, or otherwise, transmission of the virus, whether it between individuals or through the agency of public or private health providers. The researcher focused in Chapter seven in the UAE Penal code which deals with many types of crimes such as murder, manslaughter and harm caused physical incapacity. The survey then went further to look into other relevant laws, which in the UAE provide for organising people's lives and have a great bearing on areas of prevention of the spread of the disease and catering for the well-being of the victims. The experience of other countries, which have exerted some effort in this area, was scrutinised.

This study has adopted the descriptive method of analysis in very broad terms. It focused basically on comprehensively reviewing the penal code in the UAE and studied the other relevant laws from one very specific point, that is, with regard to their effect on the possibility of setting up an empirical foundation which may eventually help future researchers and research in amending the laws where necessary.

The researcher also referred to some of the punitive provisions adopted by the UAE judicial authorities in dealing with infringements of the preventive health regulations for contagious diseases, but which do not include the spread of the HIV. The latter would also necessitate the enforcement of principles of liability. Liability in this case could be handled within existing law or through new HIV/AIDS specific provisions which might be disciplinary, civil or criminal.

A questionnaire was administered to three Satterfield categories of respondents: those working within the legal profession; the health service providers responsible for the task of preventive medicine; and finally a representative sample of the general public. The questions attempted to find out the respondents point of views on the possibility of considering the act of HIV transmission as a criminal act and the effects of such a choice on the society

Then the study went to analyse the data collected via the questionnaire and presenting the study finding, research instrument has provided clear insights into the UAE situation. The three categories of respondents (Legal Professionals and Health Professionals and the General Public) have given different opinions with regard to the legislative measures of curbing the spread of the HIV/AIDS. The data collected has indicated the devastating lack of relevant information on the part of informants about the situation within the UAE. Legal professionals clearly support the issuance of restrictive legislative measures stipulating that the act of transmission of the virus is a criminal act punishable by the law. The medical professionals indicate certain precautionary reservations as to the expected moral, ethical and psychological repercussions of the introduction of these legislative measures. However, judges in particular are very much divided in this regard as far as the classification of possible cases.

As a result, the researcher must answer the research questions by concluding that the Penal Code in the United Arab Emirates, especially chapter seven which concerns crimes against persons, fails to address the problem of the incidence of both intentional and unintentional transmission of HIV/AIDS. It could not be regarded as an act of either murder or manslaughter because the consequence, which is the victim's death, is not ascertained. It is also could not be included amongst the crimes that cause permanent

incapacitation or curable disease, infection by HIV leads to death. The questionnaire data of the legal professionals, especially many judges, confirm that the current Penal Code does not deal with this incidence and that it needs to be amended.

The existing secondary laws in the UAE do not help in socialising the lives of infected persons, many of which stand as an obstacle and constitute a hurdle to be overcome by the infected person in order to lead a stable life. These laws also operate independently and do not complement each other since many of them deprive the infected persons of their normal human rights.

Four examples were drawn from different countries that have dealt with the problem by passing suitable legislation. In addition, certain case law, which acquired the status of legal precedent amending the existing laws in the countries concerned, like the UK, is also examined. The UAE could benefit from these experiences, when designing plans and strategies for combating the spread of HIV/AIDS. This, notwithstanding, could only take place within the framework of the U.N. rules concerning human rights and does not negate the possibility of criminalising the transmission of HIV/AIDS. It could only be permissible if the legislation to be issued were compatible with what is acceptable within the Islamic legal framework, which informs the laws of the UAE. Only under such conditions, it would be possible for the UAE to pass criminal legislation of intentional or unintentional transmission of the virus to others.

The questionnaires show many different views of the respondents, but which fall into three main attitudes. The legal professionals were of the view that criminalisation should be generally adopted. The health professionals were generally opposed to criminalisation and suggested alternative systems, focusing on consciousness-raising without resorting to legislation, instead leaving the task of combating the disease to the health professionals. The third group (that represents public opinion) was somewhat neutral. They were of the opinion that all concerned bodies should work in an integrated way towards finding solutions to the problem. Some of the respondents belonging to this group supported the idea that passing criminal legislation would have a very positive effect, while others were categorically opposed to the idea.

The study also surveyed the literature on the issue of criminalisation of the transmission of the virus by local legislators in different countries. Many researchers have emphasised in their work the necessity of passing legislation that is appropriate to their environment as means of protecting society. Other researchers were of the opinion that criminalisation could have very diverse effects on many people including violation of basic human rights, encroaching upon personal privacy of individuals and magnifying the social stigmatisation that befalls victims. A third group of researchers claimed that the existing criminal laws are capable of handling the act of transmission of HIV without the need for issuing new legislation. The study concluded that the third opinion cannot be adopted in the UAE, as it is contradictory to the provisions of the UAE constitution. Hence, the study opted for the questionnaire as a research instrument to investigate the different attitudes within UAE society to assess which, if any, of the three attitudes prevalent in the literature is suitable for adoption within the UAE. The findings of the questionnaire are presented in a table which explains in detail the expectations that may rise if this act is criminalised. The study presented various points of view suggested by the respondents. Though there were some differences in the degree of importance conferred by the respondents in each category to the issue at stake, their account of the various possible effects of the act of criminalisation covered most of what researchers have discussed in the literature and which are warned against by governmental or non-governmental organisations around the world.

8.3. Recommendations.

- 1) The future UAE national strategy for combating the spread of HIV/AIDS should involve the necessary measures to protect public health, human rights and public freedoms.
 - 2) The legal strategy of the state should translate into various arrangements, taking into full consideration all the political, social, economical and psychological ramifications.
 - 3) The consciousness-raising programmes suggested to be part of the future national strategy should specifically target high-risk groups such as drug addicts and brothel workers.
 - 4) Changing individual behavioural patterns is another component of the strategy.
 - 5) The consciousness-raising component of the strategy should cover when infection occurs, the risks involved in contracting the virus and how to cope with victims.
 - 6) The legislator has to find ways to improve and organise the lives of virus carriers in a way that eliminates the possibility of transmitting the virus to others while respecting the human rights of the patients.
 - 7) The legislator has to stipulate the necessary regulatory legislation protecting the right of such individuals to work and lead a normal life.
 - 8) The establishment of non-governmental organisations is required to offer support to HIV victims.
 - 9) There needs to be continues review and consideration of the latest developments in the strategies, legislation and policies adopted by developed nations in their efforts.
- Finally, the study also suggests that great prominence should be given to scientific research focusing on the economic, social and religious effects of the spread of the disease on UAE society, which would contribute to a body of detailed studies to be conducted in the future.

Bibliography

Abd Alkarem, A. (not dated), "Al-Hudood Doctrinal Punishments in Islam", Kuwait: Dar Al-Fikr Al-Arabi.

Abdullah, D. (2004), "Human rights protection and the International mechanisms", Beirut: Centre of the Arabic Unity Study.

Abdullmalek, G. (1976), "The criminal encyclopedia- Fifth Edition", Beirut: Altorath Press.

Abdullsatar, F. (1982), "Explaining The Punishments Law: General Section", Cairo: Dar Alnahdah Alarabiah.

Abdullsatar, F. (1986), "Explain the procedure law", Cairo: Dar Al Nahdah Alarabiah.

Abi, Dawood. (1992), "Awon Al Mabood explained by Sunnan Abi Dawood", Istanbul: Dar Sahnoon Press.

Abood, A. (1989), "The research and the field work", Cairo: Al Arabic Press.

Abu A'amir, Z. (1989), "Penal Code: A special section", Cairo: Cairo Press.

Abu Allail, I. (2002), "Compensating the AIDS victims", Kuwait: University press.

Abu Amer, M. (1986), "punishment theory", Alexandria: University Press.

Abu Khatwah, A. (1993), "Assaults crime", Cairo: Nahdah press.

Abu Roos, A. (2000), "Egyptian Encyclopedia of Criminal Law", Alexandria: Modern Press.

Abu Roos, A. (2000a), "Egyptian Encyclopedia of Criminal Law of contagious disease control", Alexandria: Modern University Office.

Abu Roos, A. (undated), "Murder and assault crimes-Third Edition", Alexandria: Modern University Office.

Abu Shama, A. (1999), "Defining The New Crime Phenomena", Riyadh: Nayef Academy of Security Studies.

Abu Zaid, M. (1999), "Legal Problems Resulting From AIDS", Kuwait: Kuwait University Press.

Abdullatif, H. (2004), "The research procedure", Dubai: Dar Al Kalem Press.

Abdullsattar, F. (1982), "Explaining the punishments law: Special Section", Cairo: Al Nahdhah Al Arabiah Press.

- Adas, A. (1992), "The main part in the research", Amman: Al Forkan Press.
- Adler, M. (1993), "The ABC of AIDS", London: BMA Publishers.
- Ahmed, A. (2007), "Criminal liability in Islamic jurisprudence and criminal laws", Cairo: New University House.
- Ahmed, S. (2006), "Islamic Sharia and Law", Khartoum: Izzah Press.
- Akhdar, A. (1982), "The penal system and its principles", Riyadh: Institute for administration and studies.
- Al Ani, M. (1998), "Jurisdiction of transactions in Islamic Shari'a" Amman: Dar al-Maseriah.
- Al Awadi, M. (1989), "Human Rights in criminal law suits", Beirut: Nofal Publications.
- Al Baher, M. (1998), "The Legal Responsibility of Transmission The AIDS Virus", Riyadh: Naif Academy.
- Al Dohbi, E. (1987), "Assaults and murder problems", Cairo: Ghareep Library.
- Al Fatlawi, S. (2007), "Human Rights", Amman: Dar Al Thaqafah.
- Al Hafedh, A. (2001), "Almenat Alkobra", Riyadh: Al Rasheed Library.
- Al Janzoori, S. (1971), "The principle of the punishment law: Main Section, Islamic Share'a ", Cairo: Alsaadah Publishing Press.
- Al Janzoori, S. (1977), "The main pillars of the punishments law", Cairo: (without publishing press).
- Al Jondy, A. (2007), "The social debate in the UAE law", Cairo: Dar Al kottob.
- Al Mateet, A. (1980), "The crime of fraud and others", Alexandria: Alshabaab Press.
- Al Mutwakil, A. (2004), "Islam and human rights", Beirut: Arab Unity studies centre.
- Al Ramli, M. (1999), "Nihayat Al-Muhtaj", Riyadh: Islamic Library.
- Al Sabooni, M. (2002), "Al Foqh Al Sheriy Al moyser", Beirut: Modern Library.
- Al Sabooni, M. (2002), "Fiqqeh Al moamelat", Beirut: Al-Maktaba al-A'sryiaa
- Al Sadiq, S. (1987), "The civilian human rights in the Arabic constitutions-first edition", Cairo: Ahram Press.
- Al Shawarbi, A. (1991), "Explanations in the crime punishments", Alexandria: Al Maref press.

Al Shazeli, F. (1994), "The rule of law on the protections and spreading of AIDS Virus", Cairo: The Egyptian Medical and Law Council.

Al Shorany, A. (undated), "Kashf Al Ghomah-Part Two", Beirut: Scientific Library.

Ashworth, A. (1999), "Principle of Criminal Law-Third Edition", Oxford: Oxford University Press.

Ashworth, A. (2003), "Principle of Criminal Law-Fourth Edition", Oxford: Oxford University Press.

Al Thubatti, S. (1995), "AIDS and Islamic rules", Saudi Arabia: Ibn hazri Printing Press.

Al-Awad, B. (1985), "Provisions restricting basic human rights", Kuwait: Kuwait University.

Al-Bar, A. (2002), "Infection through Medical and Islamic Perspectives", Cairo: Al-Ihram Press.

Al-Bar, M., Safi, A. (2001), "AIDS", Syria: Alsham Press.

Al-Dagdag, M. (1988), "Human rights within the Framework of the UN", Cairo: Daral-Ilmle almalayeen.

Alfilaly, M. (2004), "Analysis view in the human rights throw the treaties", Beirut: The Arabic Union Study Centre.

Ali, A. (2000), "The research and the scientific method", Alexandria: Alexandria Press.

Allen, M. (2001), "Text Book on Criminal Law", London: Black Stone Press Limited

Allen, M. (2007), "Text Book on Criminal Law", Oxford: Oxford University Press

Al-Khalaf, A. (2005), "Crimes and Punishments in Islamic Jurisprudence", Yemen: Abbad's center for studies and publication.

Al-Mahali, M. (1994), "Sharh Al-Mihtaj", Cairo: Albaby Press.

Al-Mashaan, M. (2003), "Balance between medic and law", Kuwait: Dhat Alsalsel press.

Al-Nawawi, M. (1972), "Rowdat Al-Talibeen", Damascus: Islamic Press & Publishing.

Al-Sagheer, J. (1995), "The Criminal Law and AIDS", Cairo: Al-Nahda Publisher.

Al Saleh, A. (2006), "The new diseases and it is effect on the community", Sana'a: Al Forqan Library.

Al-Sarkhasi, S. (1982), "Al-Mabsoot", Cairo: Al-Sada Press.

- Al-Sayoti, A. (1982), "Ambiguous issues", Cairo: Dar Al Kittab.
- Anwar, K. (1965), "Conducting of the punishment law within the places frame", Cairo: Al Nahdah Press.
- Aoudah, A. (1989), "The Islamic Criminal Legislation", Beirut: Al Resalah Press.
- Awad, M. (1994), "The validity of the Hudood and Qisas and Diyah crimes in the federal penal code", Dubai: Dubai Police College.
- Babbie, E. (1990), "Survey research methods-Second Edition", California: Wadsworth Publishing Company.
- Baggaley, R. (2001), "The impact of Voluntary Counselling and Testing: A global review of the benefits and challenges", Geneva: UNAIDS Press.
- Bahnam, R. (1986), "The crime which stated in the punishments encyclopedia", Cairo: Al Maaref Press.
- Bahnam, R. (1987), "The crime which caused a damage to the public interest", Alexandria: Al Maaref Press.
- Baidas, E. (1986), "AIDS the epidemic disease: The causes and the preventive", Beirut: Dar Alofoq Aljadeedaah.
- Barakat, L. (1998), "The way of the methodology", Cairo: Al Nahdah Press.
- Barakat, M. (2002), "The methodology and the research", Kuwait: Al Kalam Press.
- Basheer, A. (1992), "Human Rights Law", Cairo: Al Jalaa Library.
- Basioni, I. (1986), "How to understand the research", Cairo: Al Maref Press.
- Basioni, M., Al Dagag, M. (1989), "Human Rights", Beirut: Dar Al Elm Imalayeem Press.
- Berg, B. L. (2001), "Qualitative research method for the social sciences-Fourth Edition", London: Allyan and Bacon.
- Blaxter, L. Hughes, C. *et al*, (2001), "How to research-Second Edition", Philadelphia: Open University Press.
- Bradford, N. (1995), "Men's health matters, The complete A-Z of male health", London: Vermilion.
- Buckingham, A. Saunders, P. (2004), "The survey methods work book, from design to analysis", Cornwall: MPG Books Ltd.
- Clarkson, C. M. V. (2005), "Understanding Criminal Law-Fourth Edition", London: Sweet & Maxwell.

- Eldredge, D. (2000), "Ending the war on Drugs: A solution for America", New York: Bridge Works Publishing.
- Elliot, C. & Quinn, F. (2004), "Criminal Law- Fifth Edition", London: Pearson Education Limited.
- Elliot, R. (2002), "Criminal Law, Public Health and HIV Transmission: A policy Option Paper", Geneva: UN publisher.
- Fayeq, M. (2004a), "The human rights", Beirut: Arabic Union Study Centre.
- Fayeq, M. (2004b), "The human rights between the privacy and the globalization ", Beirut: Arabic Union Study Centre.
- Fernandez, H. (1998), "Heroin", Minnesota: Hazelden Press.
- Fielding, J. Gilbert, N. (2000), "Understanding social statistics", London: Sage Publications.
- Ghanam, M. (1995), "Drugs crime in the Kuwaiti Law", Kuwait: Dhat Alsalasel Press.
- Ghanam, M. (1997), "Criminal Investigations", Kuwait: University Press.
- Haboush, T. (1999), "Rehabilitation and Prevention against the New Style of Crime", Cairo: Modern Library.
- Haifa, F. (2005), "The Globalisation and AIDS approach", Baghdad: Baghdad Press.
- Hanbal, A. (1995), "Al Mesnad of Imam Ahmed Ben Hanbal", Cairo: Dar Al Hadeeth.
- Hassanain, E. (1983) "Murder crimes between Shariah and law", Riyadh: Riyadh Press and Distributions.
- Hosni, M. (1986), "Explain the punishment law, Private Section", Cairo: Dar Al Nahdah Al Arabia.
- Hussni, M. (1993), "Interpretation of penal code – Private Section", Cairo: Alfekr Press.
- Huxley-Binns, R. (2009), "Criminal Law", Oxford: Oxford University Press.
- Ibn Abdeen, M. (1995), "AL-Dur AL Mukhtar", Halab: ALHalaby Press.
- Ibn Aljozi, M. (2000), "Al-Bukhari Al-Jamie Al-Saheeh", Cairo: Dar AlHadeeth Press.
- Ibn Majeh, M. (1995), "Sunnan Ibn Majeh-Part Three", Beirut: Dar Alkoteb Al Elmiah
- Ibn Majeh, M. (1997), "Al-Sunan", Syria: Al Tazzirah Press.
- Ibraheem, H. (1986), "Lessons in the punishments law", Cairo: Al Nahdah Press.

Ibn Taymiah, A. (1983), "Majmoo Al Fatawi- Part 19", Damascus: Dar Olom Alquran Press.

Jehad, J. (1996), "Federal Penal Code: Special Section-First Edition", Dubai: Dubai Police College.

Jonsen, A., Stryker, J. (1993), "The social impact of AIDS in the United States", Washington D.C: National Academy Press.

Jupp, V. *et al*, (2006), "Doing criminological research", London: Sage Publications.

Kaladari, A. (2003), "Criminal procedure", Dubai: Albayan Press.

Kamal, R. (2002), "The story of AIDS", Cairo: Al-akhbar Press.

Kamal, R. (2008), "Islam and diseases", Nouakchott: The Capital Press.

Keller, A. (2005), "Statistics for Management and Economics-7th Edition", N.Y: Thomson.

Kenneth, D. B. (1987), "Methods of Social Research", New York: Free Press.

Kent, R. (2001), "Data construction and data analysis for survey research", London: Antony Rowe Ltd.

Labib, M. & Mursy, M. (1983), "The principle of the scientific research", Cairo: Alum Al Kutib.

Mamdooh, K. (1998), "Legal responses to AIDS virus transmission", Riyadh: Naif Academy.

Martin, J. & Storey, T. (2007), "Unlocking Criminal Law-Second Edition", London: Hooder Education.

Molan, M. (2008), "Cases and materials on criminal law –Fourth Edition", London: Routledge.Cavendish.

Morris, E. *et al* (1996), "Drug war politics: The price of denial", Los Angeles: University of California Press.

Mosa, F. & Mustafa, A. (2005), "The principle of the Educational research", Amman: Al Aqsa Press.

Muijs, D. (2004), "Doing quantitative research in education with SPSS", London: Sage Publication.

Murphy, S. Brook, G. (2000), "HIV Infection and AIDS: Second Edition", London: Churchill Livingstone.

Murphy, S. M. *et al*. (2000), "HIV Infection and AIDS", London: Harcourt Publishers.

- Musbah, A. (2005), "AIDS between frighten and reality", Cairo: Al Andulles Publisher.
- Mustafa, M. (1999), "Criminal Protection of blood", Alexandria: Alexandria Press.
- Najeep, M. (1987), "The assault crimes", Cairo: Dar Al Nahdhah Al Arabiah Press.
- Naseraldeen, Z. (2004), "The Stigma in the Arab world", Khartoum: Aliz Press.
- Naser Allah, F. (1997), "Explaining the rules of Kuwait law, First Edition", Kuwait: Dar al Ketab Press.
- Obaid, R. (1974), "The causal connection in the criminal law", Cairo: Dar Al Fekr Al Arabi Press.
- Omairah, I. (1997), "The guidance of the statics", Cairo: Al Maaref Press.
- Ormerod, D. (2008), "Smith and Hogan Criminal Law-12th Edition", London: Oxford University Press.
- Othman, A. (1986), "The Explanation of the penal code", Abu Dhabi: Zayed Library.
- Preece, R. (1994), "Starting research", London: Biddles Ltd.
- Raja, A. (1998), "The research methods in the psychological and education field", Cairo: Dar Al Nosher Press.
- Rasekh, I. (1998), "The way of compacting the drugs: Second Edition", Dubai: Dubai Police College.
- Ratzan, S. (1993), "AIDS: Effective Health communication for the 90s", USA: Taylor and Francis press.
- Sabour, S. (2006), "AIDS", Cairo: Aharam Publishing House.
- Sadiq, M. (1988), "Explain the procedure law", Cairo: Dar Al Nahdah Alarabiah.
- Salamah, M. (1982), "Punishments Law: Special Section-Second Part, Assault crime", Cairo: Dar Allfekar Alarabi.
- Shazli, F. (2000), "Legal Aspects of AIDS". Alexandria: Alexandria Press.
- Shazli, F. (2001), "Legal Aspect of AIDS-Second Edition", Alexandria: Alexandria Press.
- Sudqi, A. (1987), "Punishment Law: Special Section", Cairo: Dar Al Fekr Al Arabi.
- Suroor, A. (1983), "Alwajeez in the Criminal Procedures", Cairo: Dar Al Nahdah. Alarabiah.
- Suroor, A. (1985), "Al waseet", Cairo: Al Nahdhah Press.

Tharwat, J. (1989), "The Main Section", Alexandria: Al Maref Press.

Tharwat, J. (1994), "The penal code: main section, crime theory", Alexandria: University All Prints Press.

Weait, M. (2007), "Intimacy and Responsibility: The Criminalisation of HIV Transmission", London: Routledge.

Zaidan, M. (1990), "The dictionary of the scientific research", Jeddah: Alem Al Merefah.

Al Baher, M. (1998), "The legislation responsibility of transmission the AIDS virus", 21 The Arabic Journal of Security Study (27), Riyadh: Naif Academy.

Al Baher, M. (1999), "Legal liability for AIDS transmission", 207 Arab Journal For Security Studies & Training, Riyadh: Nayef Academy.

Al Mansoori, K. (2005), "Note on the act number one of the penal code number three of 1987 to the United Arab Emirates", Law and Security Gazette (1).

Albatrawi, A. (2005), "The main responsibility of the judicial person", 1 Security and Law Magazine (1).

Al-Owaish, R., Moussa, M. (1994), "HIV and AIDS in Kuwait: a review", 26 The Journal of the Kuwait Medical Association (1).

Arsfa, M. (1999), "Compensation of the Victims of AIDS", 207 Journal of Security & Life, Riyadh: Nayef Academy.

Bartschi, K. J. (1995), "Legislative responses to HIV/AIDS in Africa", 11 Connecticut Journal of International Law (169).

Bayer, R. *et al.* (1986), "AIDS, the public context of an epidemic", 64 The Milbank Quarterly (1).

Black, L. (1991), "Criminalizing HIV Transmission: New Jersey Assembly Bill 966", 15 Seton Hall Legislative Journal (171).

Burris, S. (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: Article: Law and the social risk of health care: Lessons from HIV testing", 61 Albany Law Review (831).

Carol, L. *et al.* (2004), "Toward Rational Criminal HIV Exposure Law", 32 Journal of Law, Medicine & Ethics (327).

Clarkson, C. M. V. (2009), "Attempt: The Conduct Requirement", 29 oxford journal of legal studies (25).

Closen, M. L. (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: article: The decade of supreme court avoidance of AIDS:

Denial of certiorari in HIV-AIDS cases and its adverse effects on human rights", 61 Albany Law Review (897).

Colella, U. (1993), "Balancing confidentiality and liberal discovery: A Unified approach to discovery disputes over HIV information", 26 Journal of Health Law (11).

Cooper, J. (1996), "The Politics of Pediatric AIDS", 3 Cardozo Women's Law Journal (53).

Csete, J. & Seshu, M. S. (2004), "Still underground: searching for progress in realizing the human rights of women in prostitution", 9 Canadian HIV/AIDS Legal Network, IV/AIDS Policy & Law Review (3).

Dawkins, K. & Briggs, M. (2005), "Review: Criminal Law", 3 New Zealand Law Review (393).

Dolmo, B. C. (2001), "Examining Global Access to Essential Pharmaceuticals in the Face of Patent Protection Rights: The South African Example", 7 Buffalo Human Rights Law Review (137).

Driver, J. C. (2002), "African AIDS Crisis: Implications from the rise of managed care in South Africa", 30 The Georgia Journal of International and Comparative Law (305).

Dwyer, J. M. (1993), "Legislating AIDS away: The limited role of legal persuasion in minimizing the spread of the Human Immunodeficiency Virus", 9 Journal of Contemporary Health Law & Policy (167).

Earle, M. (1998), "HIV and reform of the law", 148 New Law Journal (6841).

Elgendy, I. (2002), "The mode of AIDS Transmission", 22 Security Research Journal, Riyadh: King Fahad Security College.

Fidler, D. P. (1998), "Microbialpolitik: Infectious Diseases and International Relations", 14 American University International Law Review (1).

Fitzpatrick, J. & Bennett, W. M. (1995), "Symposium on immigration policy: A lion in the path? The influence of international law on the immigration policy of the United State", 70 Washington Law Review (589).

Flood, C. M. & Williams, A. (2004), "Global health and wellness: A response to international health threats: A tale of Toronto: national and international lesson in public health governance from the SARS crisis", 12 Michigan State Journal of International Law (229).

Forrest, M. (2000), "Using the Power of the World Health Organization: The International Health Regulations and The Future of International Health Law", 33 Columbia Journal of Law and Social Problems (153).

Gostin, L. O. *et al* (1998), "Symposium on health care policy: what lessons have we learned from the AIDS pandemic: article: "The names debate": The case for national HIV reporting in the United State", 61 Albany Law Review (679).

Gostin, L. O. (2003), "The global reach of HIV/AIDS: science, politics, economics, and research", 17 Emory International Law Review(1).

Harris, K. (1993), "Death at First Bite: A Mens Rea Approach in Determining Criminal Liability for Intentional HIV Transmission", 35 Arizona Law Review (237).

Heth, J. (1993), "Dangerous Liaisons: Criminalizing Conduct Related to HIV Transmission", 29 Williamette Law Review (843).

Kouwen, W.V. & Bruinenberg, K. (2006) "Supreme Court of the Netherlands, Criminal Division (Hoge Raad der Nederlanden, Strafkamer): HIV Transmission: Criminalisation", 70 Journal of Criminal Law (485).

Jiang, P. (2002), "Fighting the AIDS epidemic: China's options under the WTO TRIPS agreement", 13 Albany Law Journal of Science & Technology (223).

Laurie, G. T. (1991), "AIDS and Criminal Liability Under Scots Law", 36 Journal of the Law Society of Scotland (8).

Lisa, K. *et al* (2004), "Criminal Law and procedure, part six, particular crimes and offences, chapter 68, sex offenses and related crimes", 68 Illinois Jurisprudence (8).

Macfarlane, M. (1989), "Equal Opportunities: Protecting The Rights of AIDS-Linked Children in The Classroom", 14 American Journal of Law & Medicine (337).

Mahendra, B. (2006), "The law of homicide-expert reform?", 156 New Law Journal (320).

Munor, V. E. (2007), "On responsible relationships and irresponsible sex — criminalising the reckless transmission of HIV R v Dica and R v Konzani", Child and Family Law Quarterly (112).

McGuire, A. L. (1999), "AIDS as a weapon: criminal prosecution of HIV exposure", 36 Houston Law Review (1787).

Miller, R. (2002), "Validity and propriety under circumstances, of court-ordered HIV testing", 5 American Law Reports(87).

Monk, D. (2000), "Sex, education and children rights: Recent local and global perspectives", 1 Education Law Journal.

Murphy, S. D. (2001), "Contemporary Practice of the United States Relating to International Law", 95 American Journal of International Law (132).

Nelson, L. (1987), "Current development: International travel restrictions and the AIDS epidemic", 81 American Journal of International Law (230).

Norhcraft, D. M. (2004), "Book Review: A Nation scared: Children. Sex, and the denial of humanity: a review essay on Judith Levine's harmful to minors: The Perils of Protecting Children from sex", 2 American University Journal of Gender, Social Policy & the Law(483).

Okezie, J. (1998), "The presumption of guilt and compulsory HIV testing of accused sex offender: A case study of state ex rel .J.G., N. S., and J.T.", 6 The American University Journal of Gender & law(557).

Ormerod, D. (2001), "Criminalizing HIV Transmission-still No Effective Solution", 30 Common Law world Review(2).

Paula, A. (2003), "The over –criminalization of social and economic conduct", 27 Champion(28).

Pearl, D. & Pearl, S. (1989), "Medicine-AIDS an overview of the legal implications", 86 Law Society Gazette(28).

Qureshi, S. N. (1995), "Global ostracism of HIV-positive aliens: International restrictions barring HIV-positive aliens", 19 The Maryland Journal of International Law & Trade(81).

Rafael, R. (1995), "Criminal law: Attempted felony murder, an improbable legal fiction meets its demise", 69 The Florida Bar Journal(63).

Obaid, R. (1958), "The condition of the search", General Security Magazine(2).

Reeder, p. (1996), "AIDS Infect the Canadian Legal Community: Canada's Inconsistent Application of Common Law Criminalizing Carriers", 18 Loyola of Los Angeles International & Comparative Law Review (401).

Renquin, M. (2003), "U.N. Report: AIDS 2002, Barcelona", 19 New York Law School Journal of Human Rights (869).

"Retrial order for Dica case", (2004), 154, New law Journal (7127).

Ruby, R. (1999), "Apprehending the weapon within: the case for criminalizing the intentional transmission of HIV", 36 American Criminal Law Review (313).

Rustom, H. (2003), "The Right of Health and Its Protection by the Federal Legislations of the UAE", 1 Dubai Security & Law Journal.

Schulman, E. L. (1996), "Sleeping with the enemy: Compating the sexual spread of HIV-AIDS through a heightened legal duty", 29 John Marshall Law Review (957).

Somerville, M. A. & Wilson, S. (1998), "Crossing Boundaries: Travel, Immigration, Human Rights and AIDS", 43 McGill Law Journal (781).

Spectar, J. M. (2003), "The olde order crumbleth: HIV-Pestilence as a security issue & new thinking about core concepts in international affairs", 13 Indiana International & Comparative Law Review(481).

Spencer, J. (2004), "Retrial for reckless infection", 154 New Law Journal (7129).

Thompson, A. (2005), "The Immigration HIV Exclusion: An Ineffective Means for Promoting Public Health in a Global Age", 5 Houston Journal of Health Law and Policy (145).

Thornton, B. S. (1995), "The new international jurisprudence on the right to privacy: A head-on Collision with *Bowers v. Hardwick*", 58 Albany Law Review (725).

Wampler, D. (1998), "Felonious Assault by the HIV-AIDS Infected", 54 Journal of the Missouri Bar (31).

Warburton, D. (2004), "A Critical Review of English Law In Respect of Criminalising Blameworthy By HIV+Individuals", 68 Journal of Criminal Law (1).

Weait, M. (2004), "Dica: knowledge, consent and the transmission of HIV", 154 New Law Journal (7130).

Wesley, A. & Cann, J. (2004), "Symposium: Corporate & legal implications of re-pricing medicines in developing nations: Article: On the relationship between intellectual property rights and the needs of less-developed countries for access to pharmaceuticals "creating a legal duty to supply under a theory of progressive global constitutionalism", 25 University of Pennsylvania Journal of International Economic Law (755).

Willman, S. (2004), "A healthy approach to human rights?", 155 New Law Journal (7173).

Yamin, A. E. (2003), "Not just a tragedy: access to medications as a right under international law", 21 Boston University International Law Journal (325).

Zemring, F. E. & Hawkins, G. (1987-1988), "Murder, the model code and the multiple agendas of reform", 19 Rutgers Law Journal (773).

"HIV/AIDS and Human Rights International Guidelines", Third International Consultation on HIV/AIDS and Human Rights, (2002), Geneva: United Nations Publication.

"Intervention efforts retreat as criminal laws advance", AIDS Policy and Law: HIV Policy; Vol.18, No.19, October 10, 2003.

"n Education", AIDS Policy and Law, Vol.17, No.10, May 24, 2002.

Aljondi, A. (1994), "Specific Punishments". In: Islamic view on the AIDS patient social problem conference. Kuwait: 6-8 December 1993, Islamic Organization Press.

Al-Owaish, R. *et al.* "HIV and AIDS in Kuwait review". Second International Conference on AIDS, Saudi Arabia, November 28-30, 1994.

Al zohaily, W. (1993), "Criminal responsibility", In: Islamic view on the AIDS patient social problem conference. Kuwait: 6-8 December 1993, Islamic Organization Press.

Code of Medical Ethics", (1998), United Arab Emirates, Ministry Of Health, Curative Medicine, First Edition.

European Centre for the Epidemiological Monitoring of AIDS. HIV/AIDS Surveillance in Europe. Mid-year report 2003. Saint-Maurice: Institut de Veille Sanitaire, 2002. No.68.

Kuwait Fifth International Conference on AIDS: United Against AIDS, (1997), Kuwait: Ministry of Health Press.

Kuwait Fourth International Conference on AIDS: AIDS, The Challenge", (1994) Kuwait: Ministry of Health Press.

Kuwait Law No. 62 of 1992. Ministry of Justice Press. Kuwait.

Mahaini, R. , Oussama, T. (2003), "Overview on reproductive and sexual health programmes in the Eastern Mediterranean Region', in World Health Organization's Regional Office for the Eastern Mediterranean, Report of Regional Consultative Meeting, Promoting reproductive and sexual health, Beirut, Lebanon, 11 December 2003.

Merson, M. H. "The global AIDS pandemic-lessons learned and future challenges", Proceedings of the Kuwait fourth international conference on AIDS. 21-23 March 1994.

Mohamed, A. (1993), "Discussion". In: Islamic view on the AIDS patient social problem conference. Kuwait: 6-8 December1993, Islamic Organization Press.

The Federal Law Number (29/2006), "The Special Need Rights", Dubai Courts, Legal Library.

UNAIDS Organization: Report on the global HIV/AIDS epidemic, July 2002.

United Arab Emirates Official Gazette, Volume 182, (3-1987), Ministry Of Justice Press.

United Arab Emirates Official Gazette, Volume 285, (14-1995), Ministry of Justice Press.

United Arab Emirates Official Gazette, Vol 294, (13-1996), Ministry Of Justice Press.

United Arab Emirates Official Gazette, Volume 372, (21-2001), Ministry Of Justice Press.

United Arab Emirates Official Gazette, Volume 439, (28-2005), Ministry Of Justice Press.

"Britain, bogus asylum seekers, and why enough is enough", Daily Mail (London), November 29, 2002.

AIDS and the strategic fight", Medical Journal, Alkhaleej News Paper, Sharjah Issue No:299 (2004).

Al Ameer, T. "Quarter of UAE population are students" Alittihad News Paper, Vol.11172, 5/2/2006.

Abdulsamee, B. "Al Qittam: Laws to recruit HIV patents" Ittihad news paper, Vol 11478, 8/12/2006.

Al Khaleej News Paper, Vol.9821, 9/4/2006.

Al Khaleej News Paper, Vol.258293, 16/4/2006.

Al-Ahram News Paper, Vol 6185, 11/2/1985.

Asharq Al-Awsat Newspaper, Vol 26, No:93277, 11/6/2003.

Asharq Al Awsat News Paper, Vol 26 No 9327, 11/6/2004.

Boseley, S. (2005), "Doctors urge free HIV drugs for all", The Guardian (London) – Final Edition, Guardian Home Pages, March 8, 2005.

Boseley. S. (2002), "Drive to end US curb on HIV visitors", The Guardian (London), Guardian Home Pages, March 5, 2002.

Bruxelles, S. (2005), "Woman who knew she had HIV is jailed for infecting boyfriend", The Times, 19/07/ 2005.

Chrisafis, A. "Man guilty of infecting two women with HIV", The Guardian – Final Edition, October 15, 2003 Guardian Home.

Congress moves to reduce HIV/AIDS transmission in prison", AIDS Policy and Law Legislation; Vol.17, No.12, July 8, 2002.

Daily Mail (London) ED 1ST; August 5, 2003.

Emirates Today News Paper, 30/4/2007.

Foster, C. (2003), "The questions to ask a husband (or wife) before sex", Time Newspapers, October 21, 2003.

Gostin, L. (1988), "The fact of life-including AIDS –The official thinking internationally", The Guardian, June 22, 1988.

Gulf news Paper, Vol.185644, 8/10/2005.

HIV/AIDS" Medical Journal, Alkhaleej News Paper, Sharjah, Issue No:235 (2004).

Ittihad News Paper, Vol.12211, 15/4/2003.

Ittihad News Paper, Vol.13423, 15/12/2005.

Ittihad News Paper, Vol.11244, 16/4/2006.

Kol Alosrah Magazine, Vol 652, 12/4/2006.

Marsh, B. (2003), "Crackdown on health tourists is unworkable", Daily Mail, July 30, 2003.

McKee, M. (1992), "HIV Bill Would Criminalize Sex; Tough fight expected over legislation punishing failure to disclose HIV status to partners", The Record, February 12, 1992.

Medic and Health Magazine, Vol.229, 14/8/2004.

Medical Journal, Alkhaleej News Paper, Sharjah Issue No.299, (2004).

Scott, K. " HIV man jailed for knowingly infecting lover: Five-year sentence will deter openness about virus and discourage testing, say support groups", The Guardian (London) March 17, 2001, Guardian Home Pages.

Stokes, P. (2004), "10 years' jail for gay HIV asylum seeker who infected women", The Daily Telegraph, May 15, 2004.

Sultan, N. "Dhahi Khelfan call for national strategy to compact AIDS", Khaleej News Paper, Issue Number:258293, 16/4/2006.

Taylor, S. (2005), "Medical experts are not surprised at increasing infection rates; Second opinion", Birmingham Post, December 1, 2005.

Western Daily press, August 10, 2004.

"7th meeting of the Reference Group on HIV and human rights". Available at: http://www.unaids.org/en/Issues/Impact_HIV/20070216_Ref_group_HIV_HR.asp

"Action against AIDS in the work place". Available at: http://www.data.unaids.org/Publications/.../jc0876-partnershipmenu_global_en.pdf

"A global overview of the AIDS epidemic", Report on the global AIDS epidemic, 2004. Available at: http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_03_en.htm#Figure1.

"AIDS Education' Has Failed: HIV Infections Are On The Rise Again". Available at: <http://www.traditionalvalues.org/modules.php?sid=28>.

"Criminalisation of HIV Transmission" NAT Policy updates, November 2004. Available at: <http://www.nat.org.uk/documents/Criminalisation%20NOV%202004.doc>.

"Criminalization of HIV exposure: current Canadian law", Canadian HIV/AIDS Legal Network, 2008, p 2. Available at:
<http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=847>.

"China, UAE making big progress in ensuring safe blood donation". Available at:
<http://www.who.int/mediacentre/news/releases/2008/pr18/en/index.html>.

"Estimated number of people living with HIV globally". Available at:
http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf.

"FNC to consider law against HIV discrimination". Available at:
<http://www.thenational.ae/article/20081025/NATIONAL/848024663/1010>.

"HIV in Prisons and Jails, 1999", U.S. Department of Justice Bureau of Justice Statistics. Available at: <http://www.ojp.usdoj.gov/bjs/abstract/hivpj99.htm>

"Situation Analysis and Action plan on HIV/AIDS in Central, Eastern Europe and Central Asia in the context of EU Enlargement". Available at: http://www.integration-projects.org/keydocs/Draft_ActionPlanHIVcee.doc

"UK HIV Cases among top in Europe". Available at:
<http://news.bbc.co.uk/1/hi/health/7108922.stm>

"Number of people living with HIV in the UK is now over 58,000", Health Protection Agency, Press Release, 24 November 2005. Available at:
http://www.hpa.org.uk/hpa/news/articles/press_releases/2005/051124_hiv_sti.htm

"UNAIDS 2004 Report on the global AIDS epidemic". Available at:
http://www.unaids.org/EN/Geographical+Area/By+Region/north_america.asp

"UNAIDS: AIDS epidemic update, December 2003; UNAIDS: AIDS Epidemic Update, December 2002". Available at: www.unaids.org

"UNAIDS: Report on the global HIV/AIDS epidemic, July 2002". Available at:
www.unaids.org

"UN issues grim AIDS warning". Available at:
<http://english.aljazeera.net/NR/exeres/31D27A04-7841-4AEF-BD07-3F9385A234B6.htm>

All party Parliamentary Group on AIDS: The UK, HIV and Human Rights: recommendations for the next five years, July 2001, London. Available at:
<http://www.appg-AIDS.org.uk>

Al-Owaish, R. , Mohamed, A. (1995), "Knowledge, attitudes, beliefs and practices of the population in Kuwait about AIDS-a pilot study". Available at:
<http://www.emro.who.int/Publications/EMHJ/0102/11.htm>

Elliott, R. (2002), "Criminal Law, Public Health and HIV Transmission: A Policy Options Paper". Available at: http://data.unaids.org/Publications/IRC-pub02/JC733-CriminalLaw_en.pdf?preview=true

Global summary of the AIDS epidemic, December 2006. Available at: http://data.unaids.org/pub/EpiReport/2006/02-Global_Summary_2006_EpiUpdate_eng.pdf

Mahesh, M. "Dismantling the wall of secrecy around AIDS-2004". Available at: www.ahramnews.net

Mardini .A. "Gulf-health: Partnerships Across Borders Against HIV/AIDS". Available at: <http://www.aegis.com/news/ips/1997/IP971001.html>

Rashed, A. *et all*, 'Knowledge, attitudes, beliefs and practices of the population in Kuwait about AIDS—a pilot study', Volume 1, Issue 2, 1995. Available at: <http://www.emro.who.int/Publications/EMHJ/0102/11.htm>

Richardson, L. (1998), "Wave of Laws Aimed at People With H.I.V.", CDC HIV/STD/TB Prevention News Update Friday, September, 5, 1998. Available at: <http://www.cdc.npin.org/PrevNews/1998/sep98/update092598.txt>

Shuaib, J. "Is it under control?". Available at: http://www.alkhaleej.ae/articles/show_article.cfm?val=248022

Strickland, C. (2001), "Why Parliament should create HIV specific offence". Available at: <http://webjcli.net.ac.uk/2001/issue2/strickland2.html>

Strode, A. & Grant, K. B. (2001), "The Role of Stigma and Discrimination in Increasing the Vulnerability of Children and Youth Infected with and Affected by HIV/AIDS, save the children". Available at: <http://www.eldis.org/static/DOC15342.htm>

The World Health Report 2004 'Changing History', published May 11, 2004. Available at: <http://www.who.com>.

Wadud, A. 'Vulnerabilities: HIV and AIDS'. Available at: www.muslimwakeup.com/mainarchive/000100.html

<http://www2.ohchr.org/english/bodies/hrcouncil/>

http://www.europa-eu-un.org/articles/en/article_1008_en.htm

<http://www.emro.who.int/AIDS>

<http://arabic.cnn.com/2005/scitech/12/2/egypt.aids/index.html>

<http://archive.gao.gov/d44t15/148846.pdf>

<http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>

http://data.unaids.org/Media/Press-releases03/PRFUNDING_22June05en.pdf?preview=true

http://data.unaids.org/Media/Press-Releases02/PRGlobalreport200406Jul04_en.pdf?preview=true

http://data.unaids.org/pub/BaseDocument/2006/070216_hhr_3_criminalization.pdf?preview=true

http://data.unaids.org/pub/BaseDocument/2007/070216_HHR_2_UniversalAccessCivilSociety.pdf

http://data.unaids.org/pub/EpiReport/2006/10-Middle_East_and_North_Africa_2006_EpiUpdate_eng.pdf

http://data.unaids.org/pub/EpiReport/2006/20061121_EPI_FS_MENA_en.pdf

http://data.unaids.org/pub/EpiReport/2006/20061121_epi_fs_nawce_en.pdf

http://data.unaids.org/pub/EPISlides/2007/071119_epi_pressrelease_en.pdf

http://data.unaids.org/pub/EPISlides/2007/2007_epiupdate_en.pdf

http://data.unaids.org/pub/Presentation/2002/20020927_wac_presentation_en.ppt#274,1
 .World AIDS Day, 1 December: a primary vehicle for AIDS awareness

http://data.unaids.org/pub/Speech/2006/20060531_SP_Piot_HLM_en.pdf

<http://english.aljazeera.net/NR/exeres/316B96A9-6278-486B-94F5-821010DFBCEB.htm>

<http://english.aljazeera.net/NR/exeres/31D27A04-7841-4AEF-BD07-3F9385A234B6.htm>

<http://english.aljazeera.net/NR/exeres/32F7F196-F68E-4747-9161-D2C7806DB432.htm>

<http://hrw.org/english/docs/2006/08/09/canada13944.htm>.

http://www.nat.org.uk/documents/UNGASS_REPORT.doc

<http://news.bbc.co.uk/1/hi/uk/3191312.stm> .

http://news.bbc.co.uk/hi/isdem/sci_tech/newsid_3254000/3254132.stm

http://search.unaids.org/Html.aspx?p=%2fcgi-bin%2fMsmGo.exe%3fgrab_id%3d0%26page_id%3d4441%26query%3dblood%2520trans%26PV%3d1.

<http://www.aegis.com/news/ads/1988/AD880663.html>

<http://www.AIDSmap.com/news/newsdisplay2.asp?newsId=2711>

http://www.alkhaleej.ae/articles/print_friendly.cfm?var=225934

http://www.alkhaleej.ae/articles/show_article.cfm?val=277971

http://www.alkhaleej.co.ae/articcles/print_friendly.cfm?var=283132

<http://www.arabhumanrights.org/cbased/ga/hr-declaration48e.html>

<http://www.arabhumanrights.org/en/ratification/index.asp?id=1>.

<http://www.arabicnews.com/ansub/Daily/Day/980327/1998032747.html>

<http://www.avert.org/aidsfaqs.htm>

<http://www.avert.org/AIDSfaqs.htm#q1>

<http://www.avert.org/aidsnews.htm> .

<http://www.avert.org/criminal-transmission.htm>

<http://www.avert.org/usastaty.htm>

<http://www.avert.org/worldstats.htm>

http://www.bbc.co.uk/radio1/onelife/health/sex/hiv_aids1.shtml

http://www.bbc.co.uk/radio1/onelife/health/sex/hiv_uk.shtml

<http://www.cancer.gov/cancerinfo/types/AIDS/>

<http://www.cdc.gov/hiv/graphics/images/1178/1178-1.htm>

<http://www.cdc.gov/hiv/stats/hasrlink.htm>

<http://www.crescentlife.com>

<http://www.dfes.gov.uk/sreguidance/sexeducation.pdf>

<http://www.egyptiantalks.org/invb/index.php?showtopic=25461>

http://www.factjo.com/news_ar/newsdetails.aspx?id=1962

<http://www.fao.org/docrep/meeting/006/y9066a/y9066a.htm>

<http://www.gcclegalsite.com>

http://www.guardian.co.uk/uk_news/story/0,3604,1217343,00.html

<http://www.gulfnews.com/articles/news.asp>

<http://www.gulf-news.com/Articles/RegionNF.asp?ArticleID=189900>

http://www.harpas.org/gioplw_ADIS.asp

<http://www.health.state.ny.us/diseases/aids/workgroups/aac/docs/needleexchangeprograms.pdf>

http://www.hmcourts-service.gov.uk/judgmentsfiles/j3177/r-v-feston_konzani.htm

http://www.hpa.org.uk/hpa/news/articles/press_releases

<http://www.hrw.org/english/docs/2006/01/18/uae12233.htm>

<http://www.ips.org/>

<http://www.islamonline.net/Arabic/news/2001-12/10/Article19.shtml>

http://www.keele.ac.uk/research/lpj/Law_HIV-AIDSPROJECT/WHOCrimconsultation_latest.pdf

<http://www.keralamonitor.com/aidsarabs.html>

<http://www.law.com/jsp/article.jsp?id=1036630464088>

<http://www.middleeasthealthmag.com/jan2005/article2.htm>

<http://www.nat.org.uk/>

<http://www.nat.org.uk/document/331>

http://www.nat.org.uk/documents/UNGASS_REPORT.doc

<http://www.ohchr.org/english/issues/children/rapporteur/hiv.htm>

<http://www.state.gov/g/drl/rls/hrrpt/2002/18291.htm>

<http://www.statehealthfacts.org/comparetable.jsp?ind=569&cat=11>

<http://www.tht.org.uk/informationresources/factsandstatistics/uk/>

<http://www.uaeinteract.com/news/default.asp?ID=38>

http://www.ucdmc.ucdavis.edu/news/syringe_exchange.html

http://www.unaids.org/bangkok2004/GAR2004_html/GAR2004_03_en.htm#Figure1

<http://www.unaids.org/EN/Geographical+Area/by+country/Kuwait.asp>

http://www.unaids.org/en/Issues/Affected_communities/mothertochild.asp

http://www.unaids.org/en/Regions_Countries/Countries/united_arab_emirates.asp

<http://www.undp.org>

<http://www.unfpa.org/hiv/2002update/1a.htm>

http://www.unicef.org/arabic/media/24327_33891.html?q=printme

<http://www.unis.unvienna.org/unis/en/news/2004/news20041210.html>

<http://www.unis.unvienna.org/unis/en/news/2005/29November2005.html>

<http://www.unis.unvienna.org/unis/pressrels/2003/nar824.html>

<http://www.who.int/about/en/>

http://www.who.int/countryfocus/cooperation_strategy/countries/ccs_final_are_2005_en.pdf

http://www.who.int/topics/hiv_infections/en/

<http://www.who.int/whr/2004/en/report04>

<http://www.unfpa.org/hiv/2002update.htm>

Appendix (1)

HIV/AIDS Transmission punishments in the USA.

Criminalises HIV Transmission?	Statute and Type of Crime	Statute and Type of Crime
	Criminalises HIV Transmission?	
United States	<i>28 States YES</i>	
Alabama	<i>Yes</i>	ALA Code § 22-11A-21 (Class C misdemeanour)
Alaska	<i>No</i>	
Arizona	<i>No</i>	
Arkansas	<i>Yes</i>	Ark. Code Ann. § 5-14-123 (Class A felony)/ Ark. Code Ann. § 20-15-903 (Class A misdemeanour)
California	<i>Yes</i>	Cal. Health & Safe. Code § 120291 (Felony punishable by imprisonment for 3,5 or 8 years)/ Cal. Health & Safe. Code § 120290 (Misdemeanor) / Cal. Health & Safe. Code § 1621.5 (Felony punishable by imprisonment for 2, 4 or 6 years)/ Cal. Pen. Code § 12022.85 (3 year sentencing enhancement)
Colorado	<i>Yes</i>	Colo. Rev. Stat. § 18-7-201.7 (Class 5 felony) / Colo. Rev. Stat. § 18-7-205.7 (Class 6 felony)
Connecticut	<i>No</i>	
Delaware	<i>No</i>	
District of Columbia	<i>No</i>	
Florida	<i>Yes</i>	Fla. Stat. Ann. § 384.24 / Fla. Stat. Ann. § 381.0041 (11)(b) (3 rd Degree Felony)
Georgia	<i>Yes</i>	Ga. Code Ann. § 16-5-60I (Felony punishable by imprisonment for not more than 10 years) / Ga. Code Ann. § 16-5-60(d) (Felony punishable by imprisonment for not less

		than 5 and not more than 20 years)
Hawaii	<i>No</i>	
Idaho	<i>Yes</i>	Idaho Code § 39-608 (Felony punishable by imprisonment for a period not to exceed 15 years or by fine not in excess of \$5,000 or by both)
Illinois	<i>Yes</i>	Ill. Comp. Stat. 5/12-16.2 (Class 2 felony)
Indiana	<i>Yes</i>	Ind. Code Ann. § 35-42-1-7 (Class C felony for committing the act; Class A felony if the act results in transmission of HIV) / Ind. Code Ann. § 35-42-2-6I (Class D felony for committing the act; Class C felony if the defendant knew or recklessly failed to know that the bodily fluid or waste was infected with Hepatitis B, HIV or TB; Class B felony if the person knew or recklessly failed to know that the fluid or waste was infected with Hepatitis B or TB and the offense results in transmission; Class A felony if the person knew or recklessly failed to know that the bodily fluid or waste was infected with HIV and the offense resulted in transmission) / Ind. Code Ann. § 35-42-2-6(d) (Class D felony if they person knew or recklessly failed to know that the blood, semen, urine or fecal waste was infected with Hepatitis B, HIV or TB; Class C felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with Hepatitis B or TB and the act results in transmission; Class B

		felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV and transmission resulted.
Iowa	<i>Yes</i>	Iowa Code § 709 C (Class B felony)
Kansas	<i>No</i>	
Kentucky	<i>Yes</i>	Ky. Rev. Stat. § 529.090 (Class D felony) / Ky. Rev. Stat. § 311.990 (Class D felony)
Louisiana	<i>Yes</i>	La. Rev. Stat. § 43.5 (Fined not more than \$5,000 or imprisoned for not more than 11 years or both; if the victim is a police officer acting in the line of duty then the fine increases by \$1,000)
Maine	<i>No</i>	
Maryland	<i>Yes</i>	Md. Code Ann. Health-General § 18-601 (Fine of \$2,500 or imprisonment not exceeding 3 years or both)
Massachusetts	<i>No</i>	
Michigan	<i>Yes</i>	Mich. Comp. Laws § 333.5210 (Felony)
Minnesota	<i>No</i>	
Mississippi	<i>No</i>	
Missouri	<i>Yes</i>	Mo. Rev. Stat § 191.677 (Class B felony; Class A felony if transmission occurs)
Montana	<i>Yes</i>	Mont. Code Ann. § 50-18-112 (Misdemeanor)
Nebraska	<i>No</i>	
Nevada	<i>Yes</i>	Nev. Rev. Stat. § 201.205 (Category B felony punishable by imprisonment for not less than 2 years and not more than 10 years or by a fine of not more than \$10,000 or both) / Nev. Rev. Stat § 201.358 (Category B felony punishable by imprisonment for not less than 2 years and not more

		than 10 years or by a fine of not more than \$10,000 or both)
New Hampshire	<i>No</i>	
New Jersey	<i>Yes</i>	N.J. Stat. § 2C:34-5 (3 rd degree crime)
New Mexico	<i>No</i>	
New York	<i>Yes</i>	NY Public Health Law § 2307 (Misdemeanor)
North Carolina	<i>No</i>	
North Dakota	<i>Yes</i>	N.D. Cent. Code § 12-1-20-17 (Class A felony)
Ohio	<i>Yes</i>	Ohio Rev. Code Ann. § 2927.13 (Fourth Degree felony)
Oklahoma	<i>Yes</i>	Okla. Stat. § 1192.1 (Felony punishable by imprisonment for not more than 5 years) / Okla. Stat. § 1031 (Felony punishable by imprisonment for not more than 5 years) / Okla. Stat. § 1-519 (Felony)
Oregon	<i>No</i>	
Pennsylvania	<i>Yes</i>	18 Pa. Cons. Stat. § 2703 (2 nd degree felony) / 18 Pa. Cons. Stat. § 2704 (Penalty shall be the same for murder in the 2 nd degree) / 18 Pa. Cons. Stat. § 5902(a) (Felony of the 3 rd degree) / 18 Pa. Cons. Stat. § 5902(b) (Felony of the 3 rd degree) / 18 Pa. Cons. Stat. § 5902(e) (Felony of the 3 rd degree)
Rhode Island	<i>No</i>	
South Carolina	<i>Yes</i>	S.C. Code Ann. § 44-29-145 (Felony punishable by fine of not more than \$5,000 or imprisonment for not more than 10 years)
South Dakota	<i>Yes</i>	S.D. Codified Laws § 22-18-31 (Class 3 felony)
Tennessee	<i>Yes</i>	Tenn. Code Ann. § 39-13-109 (Class C felony) / Tenn. Code Ann. § 68-10-107 (Class C misdemeanour)
Texas	<i>No</i>	

Utah	<i>Yes</i>	Utah Code Ann § 76-10-1309 (Felony of the third degree)
Vermont	<i>No</i>	
Virginia	<i>Yes</i>	Va. Code Ann. § 18.2-67, 4:1(A) (Class 6 felony) / Va. Code Ann. § 18.2-67, 4:1(B) (Class 1 misdemeanor) / Va. Code Ann. § 32.1-289.2 (Class 6 felony)
Washington	<i>No</i>	
West Virginia	<i>No</i>	
Wisconsin	<i>No</i>	
Wyoming	<i>No</i>	

Appendix (2)

Report of my research trip to Kuwait in November 2004

In view of the fact that Kuwait is the only country in the Arab world that has passed a law prohibiting the deliberate transmission of HIV/AIDS to other innocent people, I have decided to include that information in my research programme. I have ultimately laid hands on the text of this law, together with the explicatory memorandum in a book written by Dr. Mamdooh Khaleel Al Bahar. However, the literature dealing with this subject in the UAE makes no mention of the Kuwaiti law. I have also scanned the various texts, using traditional as well as electronic methods, without finding any elaboration on the Kuwaiti legislation regarding HIV/AIDS transmission. I have not come across any scrutiny of the law: its origin, motive, effects, advantages, disadvantages or any criticism levelled at it. It has not been possible to discern the consequences of the law: has the number of victims decreased, or has the law contributed in any way to a change of trend? I decided, therefore, to visit Kuwait.

I sat an Initial plan in places where I have to see ,for example news paper publishers , universities, Parliament, Police stations, Public Prosecution Department, Courts, Lawyers Offices, Health Ministry and Libraries.

I arrived at Kuwait Airport on the evening of 27/11/2004, after securing accommodation, I started with the largest and most famous libraries and publishing stores in the capital of State of Kuwait (Kuwait city) but found nothing relevant.

Next day I visited two news papers publishers and the Book Fair in Kuwait city I could find nothing new, alas, apart from the familiar titles that I had already gone through in the UAE.

The following day I headed for the corner reserves for the library of the Ministry of Justice at the exhibition. They told me that not much attention is given to keeping or archiving any material related to legislation. They are only interested in implementing the law that has been passed, if there is any complaint or indictment. They advised me,

however, to go to the Fatwa (counsel) and Legislation office attached to the Council of Ministers, which also had a wing at the books fair. I went to this section and they furnished me with their bibliography; it was also devoid of any treatment of the law in question.

Early next day I called at the office of the lawyers Al Swaidi where I met Mr. Hussian Hamto, an advocate. He promptly engaged in a series of telephone conversations to inquire whether any relevant legal case had been opened since the issuing of the AIDS law. No cases had come to the notice of any of the legal offices agencies and police stations that he contacted.

In the evening I went back to the Book Fair to double-check. I accidentally bumped into one of the Attorney General's high executives Mr. K Al Eenizi. I was introduced to him by one of the publishers whose acquaintance I had cultivated in the hotel. I showed him a script of the law and asked about his experience with it. He informed me that no case had so far been registered following this law, not had he heard of any similar case in Kuwait in his entire legal career. Yet, he showed keen interest in my study and promised to be forthcoming with whatever helps that I might need in future.

On the following day I made my way to the Central Library of the University of Kuwait. After 'digging' all day long, I came up with nothing related to my topic except for the law itself of which I already have a copy.

I spent the evening probing the bookshops and galleries on the streets of Kuwait city, to no avail. I also visited a number of lawyers' offices, making the same queries, with no positive results.

Finally, I was advised to contact a certain advocates' firm called Al Yaqoob .When I went there I was amazed by the large number of clients in the waiting room and was told that an appointment can take more than a week and may cost a great deal of money.

I managed to convince the secretary to expedite my interview with the owner of the firm, Dr. Badr Al yaqoob, the lawyer. I was ushered into his office and I explained my dilemma to Dr. Al Yaqoob. He was extremely courteous and cooperative. He arranged

for me to come to his office the following morning, at 9-30am prompt. (I was informed by his secretary that Dr. Al Yaqoob is an ex-minister of information, currently a member of parliament and a professor and head of section of the faculty of law in the University of Kuwait).

At 9-30 am the following day I found Dr. Al Yaqoob waiting for me, together with a number of academics. After briefing them about my project, they were keen to help. We immediately started a painstaking search in the libraries and relevant resources of the university. There was nothing relevant to my thesis, and they arrived at the conclusion that nobody had written about this topic perhaps because the law was still new.

From there I went to the Ministry of Health, heading directly towards the Minister (Dr. Mohamed Jar Allah) after an arrangement by Yaqoop. In spite of his tight schedule, I was allowed to see him for a few moments. I told the minister that I was searching for anything related to the anti-AIDS law. He arranged for me to see Mr. Ali Al Saif, Assistant under Secretary of the Ministry. From there I was directed to Mr. Rashid Al Owaish, a senior executive who is a member of the prestigious commission for combating AIDS. Mr. AlOwaishi gave me thankfully two hours of his time, discussing issues related to AIDS in the Gulf region. He acknowledged the way I was trying to relate the various sectors of medicine, economics, law and society. This would appear to be the first research of its kind in the Arab world. Nothing tangible came out of this last endeavour except for the routine writing about the war on HIV/AIDS and the raising of the awareness of society members. When I asked about the philosophy behind the anti-AIDS legislation, he maintained that it was introduced as a means for protecting society, and not because of any current problem but rather for a possible future problem in this regard. I was told that in Kuwait expatriates would not be allowed into the country unless they present an HIV/AIDS free certificate from their countries of origin. Any cases discovered among the foreign residents would be followed by immediate deportation and the Kuwaiti citizen will be transfers to the government hospitals.

I spent five futile days in Kuwait, apart from the theoretical discussions I engaged in here and there. Although the anti HIV/AIDS law was issued in 1992, no writers have so far delved into the reasons for issuing it in the first place. It is to be noted that 1992 witnessed the culmination of the process of liberation from the Iraqi invasion of 2

August 1990. The introduction of the law under those circumstances raises some questions. Was the law already in the offing before the invasion, then expedited immediately after the liberation? Did the destruction, marauding, fires and chaos of the war have anything to do with the disappearance of data and literature related to the law? If the HIV/AIDS epidemic did not constitute a problem for Kuwait, in view of the lack of research related to the issue, why bother to formulate and issue the law in 1992 at all? A plethora of questions for which there is no discernible answer, as far as I could see.

Appendix (3)

The Questionnaire Cover Sheet

Dear Participant,

This questionnaire is the practical part of my Dphil study in England in the field of the impact of criminalising the transmission of HIV/AIDS in the United Arab Emirates.

There is no right and wrong answer, you only have to choose one of the appropriate answers for you, in addition you will find an open-ended question which you can answer it to reflect your real opinion towards the information that you feel it will help through your personal experience.

Your completion of this questionnaire in a few moments will provide me with a great help to obtain successful conclusion.

All information will be confidential and used only for research purposes.

Thank you for your cooperation.

Yours Sincerely,

Mohamed Al Dhaheri

University of Sussex

Appendix (4) Questionnaire Group (A)

استبيان Questionnaire

(١) لطفاً أذكر تخصصك الوظيفي ؟

Please specify your position?

.....

(٢) كم سنة قضيت في هذا التخصص ؟

How many years have you held this position?

.....

(٣) هل تعتقد بأن مرض الإيدز مشكله يعاني منها مجتمع الإمارات ؟

Do you think that AIDS constitutes a problem in the UAE ?

نعم Yes

☐

لا NO

☐

I don't know لا ادري

☐

(٤) برأيك ما حجم هذه المشكله ؟

In your opinion ,what is the scope of the problem?

ظاهره خطيره Serious

☐

متوسطة الخطوره Moderate

☐

قليلة الخطوره Small

☐

ليست خطيره Not serious

☐

I don't know لا أدري

☐

(٥) هل مرض الإيدز في إزدیاد في مجتمع دولة الإمارات ؟

Do you belive that AIDS is on the increase in the UAE society?

نعم Yes

☐

إلى حد ما To some extent

☐

لا No

☐

I don't know لا أدري

☐

(٦) هل ترى أن مجتمع الإمارات واعي بخطورة مرض الإيدز ؟

Do you believe that UAE society is aware of the seriousness of AIDS?

Yes نعم

☐

To some extent إلى حد ما

☐

No لا

☐

(٧) برأيك هل الاجراءات والقوانين الصحية الوقائية في الامارات كافية لمحاربة مرض الايدز؟

In your opinion, are the preventive health regulations and laws in the UAE satisfactory to combat AIDS?

Very satisfactory كافيه جدا

☐

Moderately متوسطه

☐

Fairly satisfactory قليلة الكفايه

☐

Not satisfactory لا تكفي

☐

I don't know لا أدري

☐

(٨) برأيك هل العقوبات الحاليه المنصوص عليها في قانون العقوبات الإماراتي مناسبه لعقاب الأشخاص الذين ينقلون مرض الإيدز للآخرين سواء عمدا أو غير عمدا ؟

In your opinion ,are the current penalties stipulated in the UAE Penal Code suitable for punishing those who intentionally or unintentionally transmit AIDS to others?

Yes نعم

☐

NO لا

☐

I don't know لا أدري

☐

(٩) من واقع القانون الحالي هل توجد ماده قانونيه قد تتناسب لواقعه نقل مرض الإيدز للآخرين عمدا ؟

From the current penal code, is there any legal Article appropriat for intentional AIDS disease transmission to others ?

Yes. Please state نعم . رجاء أنكرها

☐

.....

No.(don't answer the next question) لا لا تجب على السؤال

☐

التالي

I don't know .(don't answer the next question) لا أدري لا تجب

☐

على السؤال التالي

(١٠) هل ترى بأن تلك العقوبة الواردة تتناسب مع الفعل المرتكب ؟

Do you think the penalty is suitable for the committed acts?

Yes نعم .

☐

To some extent إلى حد ما

☐

No لا.

☐

(١١) من واقع القانون الحالي هل توجد ماده قانونيه قد تتناسب لواقعه نقل مرض الإيدز الغير عمدي للآخرين ؟

From the current penal code, is there any legal Article appropriate for unintentional AIDS disease transmission to others?

Yes.Please state..... نعم . رجاء أذكرها

☐

No .(don't answer the next question) لا لا تجب على السؤال التالي

☐

I don't know.(don't answer the next question) لا أدري لا تجب

☐

على السؤال التالي

(١٢) هل ترى بأن تلك العقوبة الواردة تتناسب مع الفعل المرتكب ؟

Do you think the penalty is suitable for the committed act?

Yes نعم .

☐

To some extent إلى حد ما

☐

No لا

☐

(١٣) هل ترى بأننا بحاجة لقانون يعاقب من ينقل مرض الإيدز للآخرين ؟

Do you think an AIDS specific law is required for AIDS transmission ?

Yes نعم

☐

لا No

☐

لا أدري don't know

☐

هل تعتقد بأن النقل العمدى لمرض الإيدز بين الأشخاص فعل يجب عقابه ؟

(١٤)

Do you believe that intentional transmission of AIDS should be a punishable act ?

نعم Yes .

☐

لا No

☐

لا أدري I don't know

☐

هل تعتقد بأن النقل الغير عمدى لمرض الإيدز بين الأشخاص فعل يجب عقابه ؟

(١٥)

Do you believe that unintentional transmission of AIDS should be a punishable act?

نعم Yes

☐

لا No

☐

لا أدري I don't know

☐

برأيك هل يجب عقاب الأشخاص الذين يقومون بنقل هذا المرض للآخرين ؟

(١٦)

In your opinion, should those who transmit this disease to others be punished?

من أول مره يصيب شخص آخر From the frist offence

☐

من ثاني مره From the second offence

☐

لا يعاقب مطلقا Not punished

☐

ماذا يجب أن يغطي التعويض للشخص الذي يصاب بمرض الإيدز دون علمه

(١٧)

ومعرفته ؟

What is the HIV infected person compensated for in case of his lack knowledge?

Material harm Compensation تعويض عن الضرر المادي

☐

Moral harm Compeneation تعويض الضرر المعنوي

☐

Material and moral harm المادي والمعنوي

☐

لا يعوض

Not compensated

☐

(١٨) هل تعتقد بأن تجريم نقل مرض الإيدز بين الأشخاص قد يساهم في تقليل عدد الإصابات ؟

Do you think that criminalising the AIDS transmission would contribute to reducing the number of infected people?

نعم

Yes

☐

إلى حد ما To some extent

☐

لا

No

☐

(١٩) هل تعتقد بأنه في حالة قيام المشرع بتجريم نقل مرض الإيدز بين الأشخاص سواء كان عمداً أو غير عمداً قد يمنع الأشخاص من إبلاغ الجهات المختصة عند إصابتهم بمرض الإيدز ؟

Do you think that if the legislator criminalised AIDS transmission both intentionally and unintentionally this would prevent or stop people from reporting their health conditions in case of infection to the competent authorities?

نعم

Yes

☐

إلى حد ما To some extent

☐

لا

No

☐

(٢٠) ماذا تعتقد سيكون الأثر في حالة تجريم نقل مرض الإيدز في دولة الإمارات ؟

What do you think the impact would be of criminalising the transmission of AIDS in the United Arab Emirates?

.....

Appendix (5) Questionnaire Group (B)

استبيان Questionnaire

(١) الاسم (اختياري) ؟

Name (optional)

.....

(٢) الجنس ؟

Gender

Male ذكر

☐

Female أنثى

☐

(٣) لطفا أذكر تخصصك الوظيفي ؟

Please specify your position?

.....

(٤) كم سنة قضيت في هذا التخصص ؟

How many years have been held this position?

.....

(٥) هل تعتقد بأن مرض الإيدز مشكله يعاني منها مجتمع الإمارات ؟

Do you think that HIV/ AIDS constitutes a problem in the UAE ?

Yes نعم

☐

No لا

☐

I don't know لا ادري

☐

(٦) برأيك ما حجم هذه المشكله؟

In your opinion ,what is the scope of the problem ?

Serious ظاهره خطيره

☐

Moderate متوسطه الخطوره

☐

Small قليله الخطوره

☐

Not serious ليست خطيره

☐

I don't know لا ادري

☐

(٧) هل مرض الإيدز في إزدیاد في مجتمع دولة الإمارات ؟

Do you believe that HIV/AIDS is on the increase in the UAE?

- | | | |
|-----------|----------------|--------------------------|
| نعم . | Yes | <input type="checkbox"/> |
| إلى حد ما | To some extent | <input type="checkbox"/> |
| لا | No | <input type="checkbox"/> |
| لا أدري | I don't know | <input type="checkbox"/> |

(٨) هل ترى أن مجتمع الإمارات واعي بخطورة مرض الإيدز ؟

Do you believe that UAE society is aware of the seriousness of HIV/AIDS?

- | | | |
|-----------|----------------|--------------------------|
| نعم . | Yes | <input type="checkbox"/> |
| إلى حد ما | To some extent | <input type="checkbox"/> |
| لا | No | <input type="checkbox"/> |

(٩) برأيك ما هي أكثر الطرق التي ينتقل بها مرض الإيدز في دولة الإمارات ؟

In your opinion how is HIV transmitted in UAE?

- | | | |
|------------------|----------------------------|--------------------------|
| العلاقات الجنسية | Sexual relations | <input type="checkbox"/> |
| نقل الدم الملوّث | Blood transfusion | <input type="checkbox"/> |
| تعاطي المخدرات | Drug abuse | <input type="checkbox"/> |
| أخرى أذكرها | Other. Please specify..... | <input type="checkbox"/> |

(١٠) هل توجد برامج إجتماعية أو نفسية لدعم المصابين بمرض الإيدز في الإمارات ؟

Are there any supportive social or psychological programmes for persons infected with HIV/AIDS in the UAE?

- | | | |
|--------------------|--------------------------|--------------------------|
| نعم . أذكرها | Yes. Please specify..... | <input type="checkbox"/> |
| لا | No | <input type="checkbox"/> |
| لا أدري | I don't know | <input type="checkbox"/> |

(١١) هل يوجد لدينا سجل موحد يضم بيانات المصابين بمرض الإيدز في الدولة ؟

Do you have a unified record that includes information about the people infected with HIV/AIDS in the country?

نعم Yes ☐
لا . (Please skip the next question) لا . لا تجب على ☐

السؤال التالي لطفا

I don't know.(Please skip the next question) لا أدري . لا تجب على ☐

السؤال التالي لطفا

(١٢) برأيك هل هذه السجلات مرتبطة وموصولة مع جميع المستشفيات ؟

Are the records shared between all hospitals?

نعم Yes ☐
لا No ☐
لا أدري don't know ☐

(١٣) هل تعتقد بأن هذه السجلات قد تحجم الأشخاص من التقدم بإجراء فحوصات إختيارية للتأكد من إمكانية إصابتهم بمرض الإيدز ؟

Do you think that the existence of such records will stop people from undergoing early voluntary check ups to detect the possibility of infection?

نعم Yes ☐
ربما Maybe ☐
لا No ☐
لا أدري I don't know ☐

(١٤) برأيك هل الاجراءات والقوانين الصحية الوقائية في الامارات كافية لمحاربة مرض الايدز ؟

In your opinion, are the preventive health regulations and laws in the UAE satisfactory to combat HIV/AIDS?

كافية Satisfactory ☐
متوسطه Moderately ☐
قليلة الكفاية Fairly satisfactory ☐
لا تكفي Not satisfactory ☐
لا أدري I don't know ☐

(١٥) هل ترى بأن القانون الجنائي يجب أن يتدخل لمواجهة مرض الإيدز ؟

Do you believe that the criminal law should be applied to prevent the out break of AIDS disease?

نعم Yes ☐

لا No ☐

I don't know لا أدري ☐

(١٦) هل ترى بأننا بحاجة لقانون واضح مختص بتجريم نقل مرض الإيدز للآخرين ؟

Do you believe that we require a law that expressly criminalises the transmission of HIV ?

لنقل العدوي فقط For the Intentional transmission ☐

لنقل العدوي For the Intentional and Unintentional transmission ☐

وغير العدوي أيضا

لا نحتاج لذلك مطلقا Do not require any of them ☐

(١٧) برأيك هل يجب عقاب الأشخاص الذين يقومون بنقل مرض الإيدز للآخرين ؟

In your opinion, do you believe that we have to punish the persons who transmit HIV to others?

من أول مره From the first time ☐

من المره الثانيه From the second time ☐

لا يعاقب مطلقا Not punished ☐

(١٨) هل تعتقد بأنه في حاله قيام المشرع بتجريم نقل مرض الإيدز بين الأشخاص سواء كان عمدا أو غير عمدا قد يمنع الأشخاص من إبلاغ الجهات المختصة عند إصابتهم بمرض الإيدز ؟

Do you think that if the legislator criminalised the transmission of HIV both intentionally or unintentionally this would prevent or stop people from reporting their health conditions?

نعم Yes ☐

إلى حد ما To some extent ☐

لا No ☐

(١٩) هل تعتقد بأن تجريم نقل مرض الإيدز للآخرين وجعل الفعل جريماً يعاقب عليها القانون قد يساهم في تقليل عدد الإصابات ؟

Do you believe that criminalising the transmission of HIV by considering the act as a crime would contribute to reducing the number of infected people?

نعم	Yes	<input type="checkbox"/>
لا	No	<input type="checkbox"/>
I don't know	لا أدري	<input type="checkbox"/>

(٢٠) أين برأيك المكان المناسب للشخص المحكوم عليه بأصابه شخص آخر بمرض الإيدز ليقضي به عقوبته في حالة أصبح إصابه الآخرين بمرض الإيدز جريماً يعاقب عليها القانون ؟

In your opinion, what is the suitable place for a person charged with infecting another with HIV to serve his/her sentence if HIV transmission has become a crime punishable by law?

Hospital	المستشفى	<input type="checkbox"/>
Prison	السجن	<input type="checkbox"/>
Another places ,please specify.....	مكان آخر أذكرها لطفاً	<input type="checkbox"/>

(٢١) ماذا تعتقد سيكون الأثر في حالة تجريم نقل مرض الإيدز للآخرين وأصبح هذا الفعل جريماً يعاقب عليها القانون في دولة الإمارات ؟

What do you think the impact would be of criminalising the transmission of HIV/AIDS in the United Arab Emirates?

.....

Appendix (6) Questionnaire Groub I

<p style="text-align: center;"><u>استبيان</u> Questionnaire</p>

(١) الاسم (اختياري) ؟

Name (optional)

.....

(٢) الجنس ؟

Gender

Male ذكر

☐

Female أنثى

☐

(٣) لطفا أذكر تخصصك الوظيفي ؟

Please specify your position?

.....

(٤) كم سنة قضيت في هذا التخصص ؟

How many years have you held this position ?

.....

(٥) هل تعتقد بأن مرض الإيدز مشكله يعاني منها مجتمع الإمارات ؟

Do you think that AIDS constitutes a problem in the UAE ?

Yes نعم

☐

No لا

☐

I don't know لا ادري

☐

(٦) برأيك ما حجم هذه المشكله؟

In your opinion ,what is the scope of the problem

Serious ظاهره خطيره

☐

- Moderate متوسطة الخطوره ☐
- Small قليلة الخطوره ☐
- Not serious ليست خطيره ☐
- I don't know لا أدري ☐

(٧) هل مرض الإيدز في إزدیاد في مجتمع دولة الإمارات ؟

Do you believe that AIDS is on the increase in the UAE?

- Yes نعم . ☐
- To some extent إلى حد ما ☐
- No لا ☐
- I don't know لا أدري ☐

(٨) هل تعرف شخصا مصاب بمرض الإيدز ؟

Do you know somebody who has AIDS?

- Yes نعم . ☐
- No لا ☐
- I don't wish to answer لا أرغب بالإجابة ☐

(٩) هل تعتقد بأن مجتمعنا على درجه كافيه من الوعي بمرض الإيدز ؟

Do you believe that UAE society is aware of the seriousness of AIDS

- Yes نعم . ☐
- No لا ☐
- I don't know لا أدري ☐

(١٠) هل تعتقد بأن الشخص المصاب بمرض الإيدز في مجتمع الإمارات قادر على أن يعيش حياه اجتماعيه مستقره ؟

Do you think an infected person in UAE society is able to live a stable social life?

نعم Yes

☐

لا No

☐

I don't know لا أدري

☐

(١١) برأيك هل الاجراءات والقوانين الصحيه الوقائيه في الامارات كافيه لمحاربة مرض الايدز ؟

In your opinion, are the procedures and preventive laws in UAE sufficient to fight the disease?

كافيه جدا Very satisfactory

☐

متوسطه Moderately

☐

قليله الكفايه Fairly satisfactory

☐

لا تكفي Not satisfactory

☐

I don't know لا أدري

☐

(١٢) هل ترى بأن القانون الجنائي يجب أن يتدخل لمواجهة مرض الإيدز ؟

In your opinion, do you think that the Criminal law should intervene to address the AIDS problem?

نعم Yes

☐

لا No

☐

I don't know لا أدري

☐

(١٣) هل تعتقد بأن تجريم نقل مرض الإيدز بين الأشخاص وجعل الفعل جريمه يعاقب عليها القانون قد يساهم في تقليل عدد الإصابات ؟

Do you think that criminalising AIDS transmission would contribute to reducing the number of infected people?

نعم Yes

☐

لا No

☐

I don't know لا أدري

☐

هل ترى بأننا بحاجة لقانون يختص بتجريم نقل مرض الإيدز للآخرين ؟

(١٤)

Do you think there is a need to enact a law that punishes offenders transmit the AIDS ?

Intentional transmission للنقل العمدى فقط

☐

Intentional and unintentional transmission للنقل العمدى و غير

☐

العمدى أيضا

Do not require for any of them لا نحتاج لذلك مطلقا

☐

أين برأيك المكان المناسب للشخص المحكوم عليه بأصابه شخص آخر بمرض الإيدز ليقتضى به عقوبته في حالة أصبح إصابه الآخرين بمرض الإيدز جريمه يعاقب عليها القانون ؟

(١٥)

In your opinion, what is the suitable place of detention for a person charged with infecting another with AIDS to serve his/her sentence if AIDS transmission becomes a crime punishable by law?

Hospital المستشفى

☐

Prison السجن

☐

Another place .Please specefy.... مكان آخر أذكرها لطفا

☐

ماذا تعتقد سيكون الأثر في حاله قيام المشرع بتجريم نقل مرض الإيدز بين

(١٦)

الأشخاص سواء كان عمدا أو غير عمدا واصبح هذا الفعل جريمه يعاقب عليها القانون ؟

What do you think the impact would be of criminalising the transmission of AIDS in the UAE?

.....

.....

برأيك ما هي أفضل الطرق لتوعية المجتمع بمرض الإيدز ؟

(١٧)

What is the best way to educate society about AIDS?

.....

.....

Appendix (7)

Sample Frame.

"Sampling may, in fact, still be preferable where contacting every person would be feasible, but nevertheless difficult, slow or too expensive. Attempts to contact every individual may, in any event, not be totally successful, and the researcher may end up with an incomplete census.....Researching a small sample carefully may, in fact, result in greater accuracy than either a very large sample or a complete census".⁶⁶²

The distribution of the questionnaires covered The Abu Dhabi Emirate. The total number of distributed copies was 345, 102 and 150 to the public, health and law samples respectively. The copies with incomplete, unreliable and late responses were excluded from the study. The numbers of copies that are considered by the study were presented in table.

Procedures.

The following procedure was observed:

Letters were issued from the General Department of Abu Dhabi police, Ministry of Interior, the Minister of Justice, the Minister of Health and six police stations.⁶⁶³

Translating the Questionnaire.

Before the questionnaire was piloted, it was translated into the mother tongue of the intended respondents, i.e. Arabic. After translation it became necessary to amend the original English version slightly to make it agree with the Arabic version. Two private legal translators of English Language in Abu Dhabi were asked to read the Arabic version of the questionnaire to check its linguistic accuracy and clarity. Their suggestions were considered and the necessary amendments made before piloting the questionnaire. Moreover, two police officers specialising in the criminal interrogation

⁶⁶² Kent, (*op. cit*), p 139.

⁶⁶³ The protocol and the regulation of these Ministries require any researcher who wants to distribute questionnaires or to conduct meetings with their employees to have prior permission from the relevant Minister. Therefore, the Minister of Interior sent these letters requesting cooperation with the researcher and to allowing him to meet the target group during the work hours. The letters were issued before the pilot study to check the measurements to ensure the reliability, validity and consistency of the results.

section in Abu Dhabi police headquarter and two lawyers registered in the criminal court in the capital of UAE (Abu Dhabi), also made comments which were considered.

Then it was necessary to present it to a senior prosecutor in Public Prosecution Department Abu Dhabi Court and to incorporate a suggestion from a professor in the Sharia and Law Faculty in UAE University. The prosecutor was invited to read the questionnaire and to comment on its clarity, to check the content to ensure the language used would be suitable as it would be distributed to judges and the police officers as well as members of the public as mentioned above.

The Pilot Study.

Useful measurement involves two considerations; reliability and validity of the measurement. Reliability is the quality of consistent measurement⁶⁶⁴. For a measurement to be reliable means repeating a process should provide the same consistent results⁶⁶⁵, while validity identifies whether an item in a questionnaire measures what it supposed to measure or describe.⁶⁶⁶

Examining the reliability and validity of an instrument should come at the stage of designing questions and piloting the instrument⁶⁶⁷. Therefore, after the three questionnaires had been designed under the supervision of my supervisors in England, it was necessary to test them before starting the actual field work.

The questionnaires were tested in small groups from each sample in order to guarantee that the items were properly stated and easily understood by the group respondents. The aim of this piloting was to improve the quality of the questionnaires by enhancing clarity and removing any unclear issues⁶⁶⁸. During the pilot study, the researcher was able to check and test the questionnaires before their final, formal circulation and examine the appropriateness of the sampling, the measures used, the language and procedures. An Arabic version of the questionnaires was designed and disseminated

664 Mosa, F. & Mustafa, A. (2005), "The principle of the Educational research", Amman: Al Aqsa Press, p 42.

665 Barakat, L. (1998), "The Way of the methodology", Cairo: Al Nahdah Press, p 123.

666 Omairah, I. (1997), "The guidance of the statics", Cairo: Al Maaref Press, p 173.

667 Adas, A. (1992), "The main part in the research", Amman: Al Forkan Press, p 116

668 Ali, A. (2000), "The research and the scientific method", Alexandria: Alexandria Press, p 23.

under the supervision of an expert in the field⁶⁶⁹ before the pilot study commenced.

The questionnaire was also piloted to determine how long it would require for the respondents to complete it. There is no doubt that there is an inverse relationship between the length of the questionnaire and the percentage of the feed back quantities⁶⁷⁰. Thus, because they were to be completed during the working day, I tried to make the questionnaire as short as possible in order that it would not take more than 20 minutes to complete.

Furthermore, the questionnaire was piloted to ensure that it covered all aspects required to answer the research questions⁶⁷¹. Only after piloting did I realize that there were some items which were trivial or did not provide enough information. For instance, the name and gender in the first group became an unnecessary variable because police officers, prosecutors and judges queried if this question was necessary as there are no females working in this field.⁶⁷²

Another example of changes made as a result of piloting was the word "HIV" when translated into Arabic it does not give a clear meaning to the first and third groups and needed to be changed to "AIDS" which is clearer.

It took the participants from 15 to 20 minutes to complete the questionnaire and all the points raised during this process in relation to ambiguity and comprehensiveness were noted and used later to amend the questionnaire.

The necessary adjustments and amendments to the Arabic questionnaires were made based on the recommendations received from the pilot study which was conducted between the 28th February and the 29th March 2006.

669 Dr. Anwar Osman, Al Jazeera University, Linguistic College and Dr. Mustafa Adam, Sharjah Police Academy, Linguistic College.

670 Adas, (*op. cit*), p 116.

671 Basioni, I. (1986), "How to understand the research", Cairo: Al Maref Press, p 93.

672 In September 2007, UAE government authorised to two female to join the Ministry of Justice and work in the prosecution department.

Table 99: The reliability coefficients for each form is presented in the following table

Form	Sample	No of Respondents	Reliability coefficient
1	Public	20	0.72
2	Health	13	0.75
3	Law	16	0.60

These three values indicate that the three questionnaires were relatively reliable.

A covering letter was attached to each copy of the questionnaire (please see Appendix 3), explaining the purpose of the questionnaire and the research as a whole, and assuring the respondents that the answers they would provide would be wholly confidential and it would not be used for any purpose other than research. Hence, the final versions were prepared and administered to the three sample groups over a period of eight weeks (1/5/2006-1/7/2006).

The main problems encountered were the lengthy bureaucratic procedures involved in obtaining permission to begin the distribution of the questionnaires and also the delay in obtaining responses from respondents. As noted, it is a requirement that each Ministry or Department sends an official letter seeking permission on behalf on the researcher to the relevant authority; this involved meeting the heads of the various departments in person and explaining the aims of the study. Moreover, the delays in receiving responses also meant that the completion of study was delayed and additional expenses incurred by the researcher by travelling throughout the UAE to gather the response-feedback. Another problem encountered was in the analysis of the open-ended questions; because of the huge amount of information contained on each, careful categorisation of the comments and data had to be made in order to obtain useful and accurate results.

Methods of Data Analysis.

It was hoped that the statistical analysis would help to create a more realistic assessment⁶⁷³ of the perceived prevalence of the HIV/AIDS problem and the feedback of the respondents on the impact of criminalising HIV/AIDS transmission to others. Data were presented in both graphs and tables. In addition Analysis of Variance and Chi Squared tests were implemented to explore the differences among the three samples;

673 Abullatif, H. (2004), "The research procedure", Dubai: Dar Al Kalem Press, p 171.

public, health and law in terms of the main items in the questionnaires that measure the extent of the AIDS problem, current preventive health regulations and laws and the possibility of passing a law criminalising HIV/AIDS transmission. The current study has used the statistical software SPSS 11.5 for Windows, to group and analyse the data that were collected through the three questionnaires.

Analysis of variance (ANOVA) and Chi squared tests were used to examine the significant difference in the respondents' ratings. The P-values which resulted from the tests were compared with a significance level '0.05'. The conclusion in both ANOVA and Chi squared analyses were: there is a significant difference in the respondents' perception if the P-value is less than the pre-set significance level. The theoretical part of the ANOVA and Chi Squared is presented in the next two sections.

Single – Factor Analysis of Variance.

The ANOVA technique allows statistics practitioners to compare two or more populations' means⁶⁷⁴. The analysis of variance technique determines whether differences exist between population means for any problem when the objective is to compare two or more population means⁶⁷⁵, the suitable hypothesis to be tested is:

$H_0 : \mu_1 = \mu_2 = \dots = \mu_k$, this hypothesis named as the null hypothesis which calls for no difference in the population means and k stands for number of underlying populations or groups. The analysis of variance determines whether there is enough statistical evidence to show that the null hypothesis is false. Consequently, the alternative hypothesis will always specify the following: H_1 : At least two means differ .

In the current study the response variable stands for the average scores for the respondents' ratings for each item (question) in the questionnaire. The criterion by which the populations were classified is called factor. Each population is called a factor level. All responses were classified into three groups; the law, health and public. For the sample law the responses were classified into four levels; lawyers, judges, prosecutors and police officers.

674 Keller, A. (2005), "Statistics for Management and Economics, 7th edition", N.Y: Thomson, p 492-499.

675 Fielding, J. & Gilbert, N. (2000), "Understanding social statistics", London: Sage Publications, p111.

Total number of Questionnaires considered by the current study

Sample	Number of copies Distributed	Number of copies Considered	Responses rate
Public	345	303	88%
Health ⁶⁷⁶	102	83	81%
Legal	150	140	93%
Total	597	526	88%

The law sample includes four groups of the respondents from lawyers, judges, prosecutors and police officers. The sample distribution is presented in the following table:

Total number of Questionnaires considered by the current study in the law sample

Group	Number of copies Distributed	Number of copies Considered	Responses rate
Lawyers ⁶⁷⁷	28	23	82%
Judges ⁶⁷⁸	21	17	81%
Prosecutors ⁶⁷⁹	30	27	90%
Police officers ⁶⁸⁰	79	73	92%
Total	158	140	89%

676 The copies were distributed to 102 (50%) workers at Preventive Health department in Abu Dhabi.

677 The copies were distributed to 28 (50%) registered lawyers in Abu Dhabi courts.

678 The copies were distributed to 21 (50%) of judges who are working in Magistrate court, Appeal courts and the High courts in Abu Dhabi.

679 The copies were distributed to 30 (50%) of prosecutors who are working in the Ministry Of Justice , Abu Dhabi Public Prosecution Department.

680 The copies were distributed to 79 (100%) of Police officers who are working in the Investigation and the Interrogation departments in Al Asma Police Headquarter in Abu Dhabi.

Sample characteristics:

In order to select a representative and appropriate sample, the sample covered different demographic characteristics. The details are presented as follow for both groups:

Characteristics of Public Sample:***Gender distribution:***

The public sample was about 44 per cent males and 56 per cent females.

Public sample by respondents' gender

Gender	Frequency	Percentage
Male	133	43.9%
Female	170	56.1%
Total	303	100.0%

Years of services distribution:

The respondents had different years of service in their jobs. About 46 per cent of them had experience from one to five years.

Public sample by respondents' years of service

Years	Frequency	Percentage
1 – 5	132	46.2%
6 – 9	54	18.9%
10 – 14	39	13.6%
14 – 19	32	11.2%
20 and more	29	10.1%
Total	286	100.0%

Job Distribution:

In order to collect a reliable feedback that covered as much as possible a wide range of the public perception, the sample included respondents from different areas as is clear from next table.

Public sample by respondent work area/job

Work area / Job	Frequency	Percentage
Preacher	3	1.0%
Imam	17	5.6%
Custom and Military	19	6.3%
Parents	31	10.2%
Health care	48	15.8%
Journalism and Media	60	19.8%
Education field	62	20.5%
Others	63	20.8%
Total	303	100.0%

Characteristics of Health Sample:***Gender distribution:***

Table below shows that the gender was distributed equally between males and females.

Health sample by respondents' gender

Gender	Frequency	Percentage
Male	41	49.4%
Female	42	50.6%
Total	83	100.0%

Years of Service Distribution:**Health sample by respondents' years of services**

Years	Frequency	Percentage
1-5	17	20.5%
6-9	25	30.1%
10-14	15	18.1%
15-19	16	19.3%
20 and more	10	12.0%
Total	83	100.0%

Job Distribution:**Health sample by respondent work area/job**

Job	Frequency	Percentage
Doctor	64	77.1%
Nurse	13	15.7%
Others	6	7.2%
Total	83	100.0%

Characteristics of Law Professional Sample:

Job Distribution:

Table below shows that almost half of the respondents within the law sample were police officers and the rest were 12.1% judges, 19.3% prosecutors and 16.4% lawyers.

Law sample by respondent work area/job

Job	Frequency	Percentage
Judge	17	12.1%
Prosecutor	27	19.3%
Lawyer	23	16.4%
Police Officer	73	52.1%
Total	140	100.0%

Years of Service Distribution:

The respondents in law sample had different years of experience ranging from 1 year to more than 20 years of service in law.

Law sample by respondents' years of services

Years	Frequency	Percentage
1-5	20	14.3%
6-9	38	27.1%
10-14	30	21.4%
15-19	26	18.6%
20 and more	26	18.6%
Total	140	100.0%

Appendix (8)

United Arab Emirates Penal code (1987)

Article 156.

Shall be punishable by life imprisonment any individual who is commissioned to negotiate with a foreign government or an international organisation concerning any of the state's affairs, and who performs his task against the interest of the State.

Article 332.

Any Individual who intentionally kills a human creature shall be punished with life or temporary imprisonment. The sentence shall be death if the killing is committed with deliberate design or premeditated purpose, if it is accompanied by another crime or attached thereto, if the victim is an ascendant of the offender, a public officer or any person to whom a public service is assigned and he is killed during the performance of his functions or duties or due to or on the occasion of such performance; or if the crime is committed with the use of any poisonous substance or explosives.

Article 333.

Premeditation is the deliberate determination distinctly formed in the mind against any individual and the thorough preparation of the means of execution of the act before the commission of the crime.

Deliberate design is to lie in bait for an individual in one or several concealed places, during a certain period of time, long or short, in order to be able to kill said individual or to attack him unexpectedly with the use of violence.

Article 336.

Shall be punishable by imprisonment for a period not exceeding ten years any individual who, with no intent to commit manslaughter, commits assault on the physical integrity of another person, in any manner whatever and causes the death of the victim. Where any of the circumstances specified in the second paragraph of Article (332) is fulfilled, this shall be considered a circumstance of aggravation.

Shall also be considered an aggravating circumstance, the commissioned of the act by the offender who is in a state of drunkenness or narcotisation, without prejudice to the provisions of article (60 and 61)

Article 337.

Shall be punishable by imprisonment for a period not exceeding seven years any individual who intentionally causes "permanent disability" to another.

Where any of the circumstances specified in the second Paragraph of article (332) is fulfilled, this shall be considered a circumstance of aggravation.

There is permanent disability if the "injury" has caused the cutting of, severance or amputation of a limb or any part thereof, or has rendered the use of it totally or partially lost, or if it has permanently caused total or partial loss of any sense.

Shall be considered as good as disability any serious mutilation which, according to every reasonable probability, will continue throughout the reminder of one's life.

Article 338.

Shall be punishable by imprisonment for a period not exceeding five years any individual who "commits assault" on the physical integrity of another person, in any manner whatever, and who unintentionally causes "permanent disability" to the victim; and for a period not exceeding ten years if any of the circumstances specified in the second Paragraph of Article (332) is fulfilled, or if the offender committed the act in a state of drunkenness or narcotisation.

Article 339.

Shall be punishable by confinement and by fine any individual who "commits assault" on the physical integrity of another person and causes him disease or disability to carry on his personal activities for more than twenty days.

The punishment shall be confinement for a period not exceeding one year and a fine not exceeding ten thousand Dirhams if the results of the "assault" are not as serious as is described in the preceding paragraph.

And where abortion results from "an assault" on a pregnant woman, this shall be considered a circumstance of aggravation.

Article 341.

In the event where the act of "assault" provided for in Articles (336, 337, 338, 339) and in the second Paragraph of the preceding Article is committed with the use of "weapons", "stick" or any other instrument, by "one or more persons" within a band of five individuals at least who have agreed to "assault and harm", the sentence shall be confinement and a fine to be inflicted upon each of them, without prejudice to the severer punishment which shall be inflicted upon each offender who participated in the "assault", or to any other punishment prescribed by the law.

And where the crimes provided for in the preceding Articles are committed, during the war, against wounded and injured even from the enemy, this shall be considered a circumstance of aggravation.

Article 342.

Shall be punishable by confinement and by fine or by one of these two penalties any individual who, by his fault, causes the death of another person.

The punishment shall be confinement for a minimum period of one year and a fine if the crime was committed as a result of the offender's failure to perform the duties imposed on him by the principles of his function, profession, craft, or if the offender was, at the moment of commission of crime, in a state of drunkenness or narcotisation, or if he refrained, at that moment, from helping the victim or asking for the victim's help, in spite of the fact that he was capable of doing so.

The punishment shall be confinement for a minimum period of two years and maximum of five years and a fine if the act has caused the death of more than three persons. And if one other circumstance from amongst those stated in the preceding Paragraph is fulfilled, the penalty shall be confinement for a minimum period of three years and a maximum of seven years and a fine.

Article 343.

Shall be punishable by confinement for a period not exceeding one year and by a fine not exceeding ten thousand Dirhams or by one of these two penalties any individual who, by his fault, causes "injury" to the physical integrity of another person. The punishment shall be confinement for a period not exceeding two years and a fine or one of these two penalties if "permanent disability" has resulted from the crime, if the crime was committed as a result of the offender's failure to perform the duties imposed on him by the principles of his function profession, craft, or if the offender was, at the moment of commission of crime, in a state of drunkenness or narcotisation, or if he refrained, at that moment, from helping the victim or asking for the victim's help in spite of the fact that he was capable of doing so.

The punishment shall be confinement and a fine if the act has "injured" the physical integrity of more than three persons. And if one other circumstance from amongst those stated in the preceding Paragraph is fulfilled, the penalty shall be confinement for a minimum period of six months and a maximum of five years and a fine.

Article 348.

Shall be punishable by confinement and by fine or by one of these two penalties any individual who intentionally commits an act "susceptible to expose" people's life, health, safety or liberty to danger.

The penalty shall be confinement if any "damage" whatever has resulted from such act, without prejudice to any severer punishment prescribed by the law.