



Treatment Action Group

Background

1. TAG is an independent organization focusing on science-based activism to ensure the rights of people living with HIV (PLHIV), people affected by tuberculosis (TB), and hepatitis C virus (HCV). TAG co-facilitates the platform www.TBonline.info (TBonline).
2. In 2014, TBonline registered an unusually high number of users commenting on an article detailing the TB-related immigration practices of the United Arab Emirates (UAE), including mandatory chest X-ray to screen for lung scars; evidence of any such scars lead to deportation.
3. For this submission, TAG reviewed the original TBonline comments, fielded expatriate online forum threads, and conducted Skype or email interviews with migrants affected by the UAE immigration law.
4. According to the Universal Declaration of Human Rights (UDHR), the UAE has a commitment to respect, protect, and fulfill the Right to Nondiscrimination (Art. 2), Right to Privacy (Art. 12), Right to Health as part of the right to an adequate standard of living (Art. 25), and Right to Science (Art. 27.2).
5. The Arab Charter on Human Rights (ACHR) Articles 3 and 42 establish non-discrimination including based on “national origin [...]”, and Right to Science, respectively.

Prior Universal Periodic Review (UPR) Recommendations

6. Despite several recommendations under the 2008 and 2013 UPR cycles (e.g. 128.7; 128.10; 128.11;), the UAE has not acceded to the International Covenant on Economic, Social, and Cultural Rights (ICESCR); nor the International Covenant on Civil and Political Rights (ICCPR), neglecting the UAE’s intention to align national laws with international human rights obligations as per the UAE-supported recommendation 128.156 of the 2013 UPR.
7. This weakens the ability of national health institutions to work towards the UAE-supported recommendation 128.163 (2013 UPR) to “continue to intensify its efforts to consolidate the progress achieved in the area of health.”
8. It also hinders the UAE’s ability to provide holistic protection of migrant workers (e.g. 2013 recommendations 128.51; 128.52; 128.53). As a country heavily reliant on migrant labor, UAE must address migrants’ rights as part of any national legislation.

UAE Law and Policies on Communicable Diseases

9. UN reporting in 2013 and 2016 states over 90 percent of UAE workforce are migrants, who largely originate from countries with a high TB burden, e.g., India,

Pakistan, and Bangladesh. The UAE's reliance on migrant labor elevates migrant health policy from a singular issue to one representative of public health policy for the country as a whole.

10. According to the World Health Organization (WHO), TB incidence in the UAE fell from 12 in 100,000 people in 2000 to 2 in 100,000 people in 2016.¹
11. UAE policy on communicable diseases followed Federal Law No. 27/1981. Cabinet Decree No. 7/2008 established that migrants seeking employment, i.e. residence permit, must undergo mandatory medical exams to detect infectious diseases including HIV/AIDS, TB, and hepatitis. Federal Law No. 14/2014 intended to prevent reversal of the low TB prevalence in the UAE.
12. Implementation meant that migrants found to be living with HIV were declared medically unfit to work and immediately deported.
13. Migrants suspected to have previously carried the TB-causing bacterium i.e. migrants with prior latent TB infection (LTBI); migrants currently with LTBI; migrants with active TB; and migrants with evidence of prior TB (e.g., as indicated by lung scars on X-ray of the type that can remain even after successful treatment) applying for residence permits were also declared unfit and forcibly deported.
14. In January 2016, Decree No. 5/2016 amended the existing regulations: migrants seeking annual renewal of their residence permit equally have to undergo medical exams.
15. Unlike first-time migrants, migrants seeking renewal with LTBI or active TB are now subject to treatment inside the UAE. They are issued a temporary visa and medical certificate; residence permit renewal is contingent on successful completion of treatment.
16. First-time applicants considered medically unfit due to a communicable disease, e.g. TB, may still enter the UAE, provided they have first-degree family members in the UAE; are foreign students attending university; are considered leading investors; or part of the diplomatic corps.²
17. The UAE health authorities expressed the policy change aimed at easing migrants' fear of deportation, which can make migrants avoid medical care for potential TB symptoms, thus posing a challenge for public health.³
18. TB is a reportable disease, i.e. doctors who encounter patients with potential TB symptoms have to report these patients to health authorities for follow up.⁴
19. TAG recognizes the UAE's need for control of communicable diseases to maintain excellent public health for the benefit of all people. While the endeavor is in line with the objective of the Sustainable Development Goals and WHO End TB Strategy, the UAE's current practices of migrant screening, deportation, and treatment are not.

20. The current legislation violates migrants' Right to Health and the Right to Science. It violates migrants' Right to Privacy and Right to Information. The implementation does not correspond with WHO *Ethics Guidance for the Implementation of the End TB Strategy* (TB Ethics Guidance), nor the treatment and diagnosis guidelines of the End TB Strategy.
21. The UAE has the financial resources to commit to an exemplary national TB program as part of the progressive realization of the Right to Health and Right to Science. The UAE has already shown its willingness to update existing policies on communicable diseases to advance public health and must address these deviations from international best practices for legislation to have its intended effect.

Experience of Migrants

22. First-time migrants may enter the UAE on tourist visas and proceed to search for employment, accepting personal debt. TAG documented two cases in which fear of the medical exam lead migrants to stay in the UAE illegally: one repeatedly entered short-term employment and one paid a bribe to avoid medical examination. Both avoided medical care in the UAE.
23. In other documented cases, migrants working e.g. in the financial and medical sectors secure employment ahead of their travel, meaning employers assume the financial burden associated with travel, medical fitness exams, and related expenses.
24. In all cases documented, the employer is responsible for facilitating the medical examination and visa process. Companies employ Human Resource Officers (HRO) that shepherd employees, who do not speak the local language, through the process.
25. The medical exam occurs after migrants have taken up employment, in some cases after several months.
26. In all cases documented by TAG, people deported as "medically unfit" were issued with a lifetime ban to re-enter the UAE, regardless of whether their lung scars were TB related or not.

Violations of Right to Health & Right to Science

27. TAG expresses grave concern about the UAE's neglect for their commitments under the Right to Science, an area where the UAE with its financial resources has the opportunity to become a global leader. As it stands, the UAE's health and immigration policies pertaining to TB and other infectious diseases do not reflect the current state of the science. An equally discriminatory ban lacking scientific

basis for migrants living with HIV also exists; the UAE lacks appropriate legislation on non-discrimination.⁵

28. Of foremost concern, the UAE's TB screening mechanism relies on a diagnostic algorithm that does not account for the limitations of currently available TB diagnostics. One of the global challenges to TB elimination is the need for further research to produce more reliable, accurate diagnostic tools.
29. Research for this submission confirmed that the UAE uses chest radiography (X-ray) to screen migrants for lung scars. According to WHO guidelines, this method is recommended as follow up to a positive tuberculin skin test (TST) or interferon-gamma release assay (IGRA) test to rule out active TB before treating LTBI, or to screen individuals in need of further confirmatory, bacteriologically-based tests for active TB.
30. TB is not the only reason X-rays may show lung scars. The Union *Management of Tuberculosis – A Guide to the Essentials of Good Practice* (2010) states, "Abnormalities identified on a chest radiograph may be due to tuberculosis or to a variety of other conditions and the pattern on the radiograph is not specific for tuberculosis. Some individuals who have previously had tuberculosis that is now healed (and therefore does not require treatment) may have a chest radiograph that resembles tuberculosis requiring treatment."
31. Though TST, IGRA, and sputum tests are used in follow up procedures, even when these tests reveal no latent or active TB, first-time migrants with any kind of lung scar are still deported, based on the suspicion that they may have previously had TB. There is no medical reason to justify deportation of migrants previously treated for TB.
32. There is no scientific basis for excluding first-time migrants with lung scars, as opposed to migrants renewing their visa; nor is there any medical reason to allow first-time visa applicants from exempt categories vis-à-vis those of the non-exempt categories.
33. There is no scientific basis for excluding migrants with LTBI from residing and working in the UAE. According to WHO *Guidelines on the Management of Latent Tuberculosis Infection* (2015), "Latent tuberculosis infection (LTBI) is defined as a state of persistent immune response to stimulation by *Mycobacterium tuberculosis* antigens without evidence of clinically manifested active TB [...]. The vast majority of infected persons have no signs or symptoms of TB disease and are not infectious [...]. Thus, "Testing and treatment of LTBI should adhere to strict human rights and the highest ethical considerations. For example, positive test results or status of treatment for LTBI should not affect a person's immigration status or delay the ability to immigrate."
34. Currently available tests for LTBI used in the UAE and other countries i.e., TST and IGRA cannot predict which individuals with LTBI are likely to have their latent infection progress to active disease in the future.

35. Serial testing using TST and IGRA—as done in the annual medical fitness tests required of migrant laborers in the UAE—can sometimes produce discordant results, which are difficult to clinically interpret.
36. In addition, TSTs can appear positive in reaction to previous immunization with the BCG TB vaccine. Most migrants to the UAE come from countries in which BCG vaccination is given at birth. The use of TST to screen this population for TB could lead to migrants being denied residency on the basis of false positive results stemming from TST cross-reactivity to BCG.
37. The WHO TB Ethics Guidance (2017) attests that, “Current diagnostic tests have poor predictive value for identifying individuals who will develop active disease.” And concludes that the purpose of LTBI or active TB screening “should always be done with the intention to provide appropriate medical care, and never to exclude or preclude entry. Since LTBI does not present an immediate risk, but merely a potential future risk to individuals and others, excluding or deferring immigrants on the basis of LTBI is particularly disproportionate to the actual present risk of population-level harm and thus all the more unjustified and unethical.”
38. Similarly, the most effective public health intervention for active TB is to offer patients access to treatment.
39. The WHO TB Ethics Guidance (2017) states, “Governments have an ethical obligation to provide universal access to TB care according to international standards, [...]. This is grounded in their duty to promote the common good and to fulfill the human right to health.”
40. The existing health insurance requirement for inbound migrants and treatment options available in the UAE mitigate any perceived risk of migrants from countries with high prevalence of TB.
41. TAG is concerned about the 2016 statements of UAE Ministry of Health officials following issuance of Decree No. 5/2016 that point towards the declared intent of mandatory treatment in hospital isolation for active TB, in particular keeping a patient in isolation even when they are no longer infectious. Similarly, the intent to inform employers of a migrant patient’s treatment plan and non-adherence, which would also result in deportation.⁶
42. TAG’s research indicates mandatory treatment under hospital isolation may have been implemented since 2016; migrants may be detained while awaiting diagnosis; when treatment is initiated, migrants may be deported once sputum-negative but before completing full course of treatment for active TB.
43. In opposition to the stated intent of the UAE communicable disease policy, i.e. to eliminate TB in the UAE, several practices highlighted through TAG’s research in fact pose adverse risk and run counter to WHO TB Ethics Guidance on proportionality. Not providing counseling or treatment to migrants in need of or under evaluation for LTBI or active TB neglects an important entry point for



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treatment of a vulnerable population. In addition, delaying treatment undercuts the ability of the UAE national TB program to quickly and effectively reduce the chance of TB transmission. This is the case where migrants have already been employed for months before they access the required medical examinations.

Violations of Right to Privacy and Right to Information

44. TAG's research shows that even prior to 2016, UAE health authorities routinely violated migrants' Right to Privacy. The violation is cemented in the practice whereby employers are directly notified about the medical unfit status and the reason for the diagnosis.
45. Disclosing the health status of migrants without their consent increases their risk of experiencing stigma and discrimination.
46. TAG is very concerned about research findings that indicate persistent practice to withhold full medical information from migrants. As above, the direct health authority-employer communication channel essentially cuts migrants out of the chain of information concerning their own health.
47. In addition, when the UAE deports migrants suspected of LTBI or active TB without providing them with full information about their situation, it hinders migrants' ability to quickly and effectively link to treatment.
48. These policies undermine a migrant person's autonomy and rob them of their ability to make informed decisions about their health in a timely manner.
49. According to international experience, the amount of information patients receive is linked to their successful adherence, i.e. patients with little information or autonomy to make decisions about their treatment are less likely to adhere to the prescribed treatment regimen.

Recommendations

50. The UAE's 2016 policy change to provide TB treatment for expatriate residents discovered to have active TB during visa renewal screening shows that the UAE understands the science behind TB. The current practices though reinforce unethical and discriminatory behavior against the vulnerable migrant population with questionable benefit to public health.
51. Based on the global state of TB research, End TB Strategy, and WHO guidelines on TB treatment, diagnosis, and ethics, TAG makes the following recommendations to the UAE:
 - A. Accede to ICESCR and ICCPR to strengthen the national TB program's ability to embrace effective human rights-based policies, including based on Right to Health and Right to Science.

- B. Join the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- C. Protect migrants' Right to Information and never delay diagnosis or withhold any medical information. Migrants must be able to directly receive comprehensive information and counseling on their health status. Migrants must have access to and be provided with copies of all results from the medical exams they undergo in the UAE.
- D. The UAE's medical examination must protect migrants' Right to Privacy and must end the practice of directly informing migrants' employers while cutting migrants out of the flow of information regarding their own health. End the practice whereby only representatives of a migrant's employer may receive medical exam results.
- E. Discontinue to use the appearance of lung scars on chest X-rays as grounds for deportation and lifetime ban from seeking employment in the UAE.
- F. Any actual TB diagnosis must not result in changes to a migrants' immigration status.
- G. The UAE should establish a clear appeals mechanism to dispute medical exams proclaiming migrants as "unfit" and allow for redress.
- H. The UAE must not require isolation as a routine part of migrant TB treatment. Isolation should only be used as a last resort.
- I. The UAE should allow migrants who have started TB treatment in their country of residence to enter the UAE upon smear-negative test status and reliably link them to care, since active TB is rapidly rendered non-infectious, usually in less than two weeks of appropriate treatment.
- J. Migrants from countries with high TB burdens should be screened for LTBI and offered preventive treatment alongside high-quality counseling that enables free and informed consent. There must be no compulsory treatment of LTBI; migrants should be allowed to continue to work even if they refuse LTBI treatment.

ENDNOTES:

¹ World Health Organization. Global tuberculosis report 2016. Geneva: World Health Organization; 2016. Available from: http://www.who.int/tb/publications/global_report/en/.

² See for example, United Arab Emirates Ministry of Cabinet Affairs and the Future. Dubai ruler issues cabinet decree to amending expatriates' medical examination system. Available from: <https://uaecabinet.ae/en/details/news/dubai-ruler-issues-cabinet-decree-to-amending-expatriates-medical-examination-system>; and Zain A. People with old tuberculosis scars can get UAE visa. Khaleej Times. 26 February 2016. Available from: <http://www.khaleejtimes.com/nation/shaikh-mohammed-amends-medical-exam-system-for-expats>; and Bell J. UAE Cabinet decision clarifies rules



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on tuberculosis detention. The National. 3 March 2016. Available from:

<http://www.thenational.ae/uae-cabinet-decision-clarifies-rules-on-tuberculosis-deportation>.

³ <http://www.msn.com/en-ae/news/uae/couples-seek-clarification-over-uae-tb-law-change/ar-AAkZu1c?li=AAaWeYc>.

⁴ Interview with Amanda (pseudonym), Europe, by Treatment Action Group via Skype, 18 June 2017.

⁵ United States Bureau of Democracy, Human Rights, and Labor. Country report on human rights practices for 2016: United Arab Emirates. Washington, D.C. : U.S. Department of State; 2016.

Available from:

<https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dclid=265524#wrapper>.

⁶ Chaudhary S. Free tuberculosis treatment for UAE residents and relatives. Gulf News. 22 March 2016. Available from: <http://gulfnews.com/news/uae/health/free-tuberculosis-treatment-for-uae-residents-and-relatives-1.1695575>.