

Legal Aid for
People Living with HIV
in Viet Nam



This paper has been developed by UNAIDS Viet Nam to provide information about legal aid services for PLHIV and related vulnerable groups. It is hoped that the information contained in it will be useful for the Drafting Committee that is currently working to amend Viet Nam's Law on Legal Aid. In addition, it is hoped that it will be of value to members of the Viet Nam National Assembly, and other relevant stakeholders, in their consideration of this amended law.

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1. Introduction



Respect for the human rights of people living with HIV (PLHIV) has long been recognised as a critical part of an effective national response to the HIV epidemic. Embedding strong human rights protection in HIV policies and programs is necessary not only to do justice to the individuals and communities affected by HIV, but also to improve public health outcomes. A rights-based approach to the HIV epidemic builds resilient communities, reduces HIV-related stigma and discrimination and promotes an environment in which HIV prevention, treatment and care initiatives can have maximum impact.

If respect for the rights of people affected by HIV is to have meaning, these rights must be legally recognised and enforceable. PLHIV need to be confident that legal remedies will be available to them for rights violations they experience. However, supportive laws that uphold the rights of PLHIV will be of little utility if PLHIV do not have access to legal advice and representation to enable them to enforce these laws. It is for this reason that access to legal services for PLHIV and affected communities is so important.

There have been many examples around the world, including in Viet Nam, of projects to promote awareness among PLHIV of their legal rights and provide them with legal assistance to enforce their rights. These legal services have largely been donor-funded as part of a range of HIV and AIDS programs. However, as the global response to the HIV epidemic evolves, attention is increasingly turning to ways in which HIV programming can be sustained long-term as part of other mainstream services. This is especially important when countries such as Viet Nam attain middle income country status and donor funding declines. It is therefore important to consider ways in which government legal aid programs may be able to contribute to ongoing legal service provision for PLHIV.

The proposed amendment of Viet Nam's Law on Legal Aid to include PLHIV as legal aid beneficiaries represents a new and innovative approach to HIV legal service delivery. There is considerable potential for this initiative to establish an effective and sustainable model for legal services for PLHIV in Viet Nam, building on the global experience to date with access to legal services by PLHIV. This paper aims to assist this process by summarising key learnings about the most effective approaches for providing legal services to PLHIV. It highlights particular issues and challenges involved in incorporating legal services for PLHIV into Viet Nam's legal aid program, and makes recommendations for how these legal aid services could be structured and managed in order to best support Viet Nam's national response to HIV.

2. Executive Summary

Legal services for PLHIV are an important element of an effective national response to the HIV epidemic. Providing access to legal services upholds the rights of PLHIV and helps to counter HIV-related stigma and discrimination. By doing so, it supports and strengthens HIV prevention, treatment and care.

There is now a significant body of experience from many different countries to guide the development and operation of effective legal services for PLHIV. In this regard, the following considerations are important:

- Ensuring that HIV legal services are designed to fit the particular local circumstances of the HIV epidemic and cover the full range of legal needs of PLHIV;
- Establishing effective partnerships between PLHIV, organisations working with PLHIV and legal service providers;
- Identifying the most appropriate model for delivering legal services for PLHIV (e.g. through existing NGOs or using government lawyers, as a stand-alone HIV legal clinic or integrated with other legal services);
- Ensuring legal services for PLHIV are client-centred, non-discriminatory and respect the privacy of PLHIV;
- Including training for legal service providers and other relevant sectors (e.g. health care, judiciary, police) on HIV and HIV-related legal issues;
- Incorporating community legal education for PLHIV and building the capacity of the legal service to engage in HIV advocacy and law reform work; and
- Systematic monitoring and evaluation of the legal service to ensure maximum quality and effectiveness.

Including PLHIV as legal aid beneficiaries in Viet Nam would contribute significantly to an effective rights-based response to the HIV epidemic. It offers the prospect of long-term, sustainable legal assistance for PLHIV that could result in real and tangible progress in countering HIV-related stigma and discrimination in Viet Nam. This would, in turn, strengthen the impact of other HIV policies and programs.

The following recommendations are made to assist Viet Nam in considering how best to extend the benefit of its legal aid services to PLHIV.

Recommendation 1:

PLHIV should be included as beneficiaries of legal aid in Viet Nam. They should be eligible to receive legal aid on the basis of their own declaration that they have HIV without the need to provide documentary proof of HIV infection.

Recommendation 2:

All PLHIV should be eligible for legal aid without having to satisfy any additional requirements to establish financial need.



Recommendation 3:

Legal aid for PLHIV should cover all areas of law, including, criminal, civil and administrative matters.

Recommendation 4:

In determining how best to deliver legal aid services to PLHIV in Viet Nam, consideration should be given to a legal aid model that:

- *Draws on existing experience and expertise in Viet Nam in servicing the legal needs of PLHIV;*
- *In appropriate cases, allows NGOs to receive legal aid funding to provide legal services to PLHIV;*
- *Supports a small number of stand-alone HIV legal services as part of a larger network of other legal aid service providers.*

Recommendation 5:

Legal aid services for PLHIV in Viet Nam should be established and managed in partnership with networks of PLHIV or other NGOs working with PLHIV and their communities.

Recommendation 6:

To ensure that legal aid services for PLHIV in Viet Nam have maximum impact and effectiveness, and are of a high quality, these services should incorporate:

- *Training for legal aid service providers on HIV and HIV-related legal issues;*
- *Strong confidentiality protection for PLHIV built into legal aid policies and procedures;*
- *Community legal education for PLHIV and their communities so they are aware of their legal rights and the availability of legal aid services;*
- *Procedures for monitoring and documenting rights violations against PLHIV so this information can be used to advocate for appropriate changes to HIV law and policy in Viet Nam;*
- *Systems for monitoring and evaluating the quality and effectiveness of the legal services provided to PLHIV.*

3. Why are legal services for PLHIV in Viet Nam important?

The experience of the HIV epidemic worldwide has been shaped by intense stigmatisation of PLHIV and of the groups of people most affected by HIV (notably people who inject drugs, sex workers, men who have sex with men and transgender communities). Discrimination against PLHIV and these groups has been widespread. Providing access to legal services for these people not only provides a remedy for the rights abuses they experience as individuals, but also creates an environment in which other measures to prevent the spread of HIV and to provide treatment, care and support for those affected are most likely to have impact. In this way, and as discussed further below, legal services for PLHIV are essential to ensuring good public health and development outcomes.¹

3.1. A rights-based approach to the HIV epidemic

The need for a rights-based approach to the HIV epidemic has long been recognised, both because respect for individual rights is of intrinsic value and because a rights-based approach results in a stronger and more effective response to the epidemic. In 2011, in the Political Declaration on HIV and AIDS, United Nations Member States, including Viet Nam, affirmed that:

“... the full realization of all human rights and fundamental freedoms for all is an essential element in the global response to the HIV epidemic, including in the areas of prevention, treatment, care and support ...”²

The 2011 Political Declaration also noted that addressing stigma and discrimination against people living with, presumed to be living with or affected by HIV, including their families, is a critical element in combating the global HIV epidemic, and that national policies and legislation must be strengthened in order to address such stigma and discrimination. Significantly, the Political Declaration highlighted specifically the importance of supporting national human rights learning campaigns, legal literacy and legal services.³

In 2012, the United Nations also adopted *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.⁴ These Principles and Guidelines, which are discussed in more detail in section 4.10 below, recognise the responsibility of all states to ensure there is an accessible, effective and sustainable legal aid system, and to provide sufficient resources to support the system.

¹ International Development Law Organization (IDLO) and United Nations Joint Programme on HIV/AIDS (UNAIDS), *Toolkit: Scaling Up HIV-Related Legal Services*, 2009, p10 (hereafter referred to as “Toolkit”).

² United Nations General Assembly, *Political Declaration on HIV and AIDS: Intensifying Our Efforts to Eliminate HIV and AIDS*, 10 June 2011, A/RES/65/277, p7 (hereafter referred to as “UN Political Declaration on HIV and AIDS”).

³ UN Political Declaration on HIV and AIDS, p13.

⁴ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, April 2012, E/CN.15/2012/L.14/Rev.1 (hereafter referred to as the “UN Legal Aid Principles and Guidelines”).



At the heart of a rights-based approach to the HIV epidemic is the recognition that the people most vulnerable to HIV are those who, by reason of social or economic disadvantage, are unable to protect themselves and others from HIV infection and its consequences. The key to an effective public health response is to make communities stronger and more resilient in the face of the HIV epidemic, enabling all individuals to exercise control over the factors that expose them to the risk of HIV infection and creating an environment in which PLHIV receive treatment, care and support. This will only happen if the rights and needs of each person are acknowledged and upheld. Laws and policies that fail to respect these rights – for example, by discriminating against PLHIV, breaching their privacy or criminalising behaviour that places individuals at risk of HIV infection – are likely to result in a weaker and less effective national response to HIV.⁵

Viet Nam's *Law on HIV/AIDS Prevention and Control 2006* recognises a set of rights and obligations of PLHIV⁶, and also prohibits stigma and discrimination against PLHIV.⁷ However, it has been noted that the mechanisms for enforcing this law remain relatively weak, and the existence of the law alone does not provide adequate protection for the rights of PLHIV.⁸ It is therefore evident that ensuring access to legal services for PLHIV, enabling them to enforce their rights in practice, is a necessary element of an effective rights-based response to HIV in Viet Nam. In this context, access to legal services is an essential bridge between the protections recognised by the law and the practical realisation of these legal rights.

3.2. Countering stigma and discrimination

Stigma and discrimination against PLHIV and affected groups compound the harm already experienced as a result of HIV and AIDS, and obstruct an effective public health response. This is because:

- Stigma and discrimination against people vulnerable to HIV make them less likely to acknowledge the risks and less likely to seek the testing and the care and treatment they need to live full and productive lives;
- They drive the epidemic underground, making it more difficult to reach people at risk of HIV infection, increase their awareness and understanding of HIV, and provide them with the knowledge and means to reduce transmission;
- They increase the marginalisation and isolation of those at risk of HIV infection, intensifying their powerlessness and their resulting vulnerability to HIV.

⁵ See, for example, United Nations Office of the High Commissioner for Human Rights and UNAIDS, *International Guidelines on HIV/AIDS and Human Rights*, 2006; Inter-Parliamentary Union, UNAIDS and UNDP, *Taking Action against HIV: Handbook for Parliamentarians*, no 15, 2007; UNAIDS, *Guidance Note on Human Rights and the Law*, 2014.

⁶ *Law on HIV/AIDS Prevention and Control*, 2006, Socialist Republic of Viet Nam, article 4.

⁷ *Law on HIV/AIDS Prevention and Control*, 2006, article 8

⁸ Phan Huong, *Legal and Policy Framework and Good Practices of Access to Justice for People living with HIV in relation to Stigma and Discrimination*, report prepared for UNAIDS Viet Nam, February 2016, pp16-17.

The stigma experienced by PLHIV in Viet Nam has been well documented as a result of Stigma Index surveys undertaken by the Viet Nam National Network of People Living with HIV (VNP+).⁹ The results of the 2014 survey indicated that although there had been some decrease in the level of stigma and discrimination experienced by PLHIV since the previous survey in 2011, the extent of stigma and discrimination against PLHIV in Viet Nam remains a concern. For example, 60.1% of PLHIV reported not having been able to discuss their treatment with a health care worker, 48.8% reported having lost their job or a job opportunity in the previous 12 months in circumstances where their employer knew of their HIV status, 23.3% had been the subject of stigmatising gossip, and 2.8% of women living with HIV had been physically assaulted.¹⁰

In relation to rights violations and access to legal services, 11.2% of respondents reported violations of their rights as a PLHIV in the past 12 months. The figures were higher for female sex workers (16.6%), people who inject drugs (15.5%) and women generally (13.1%). The most common rights violations reported were discrimination and breach of privacy. Of particular significance and concern was the fact that only 6% of PLHIV who reported a rights violation had sought legal redress. The main reasons given for this were that they had been advised by someone else not to take action or had no confidence that any legal action would be successful.¹¹

The results of the 2014 HIV Stigma Index survey demonstrate the extent of stigma and discrimination experienced by PLHIV in Viet Nam and the unmet need for HIV-related legal services to counter this stigma and discrimination. Supporting PLHIV to enforce their rights as recognised under Vietnamese law would both provide a much-needed remedy for PLHIV in individual cases and establish a body of legal precedent to make clear to the broader community that stigma and discrimination against PLHIV in Viet Nam is unlawful.

⁹ For the most recent of these surveys, see Viet Nam Network of People Living with HIV, Stigma Index 2014, ACP+/VNP+, 2014 (hereafter referred to as "HIV Stigma Index 2014").

¹⁰ HIV Stigma Index 2014, pp12-14

¹¹ HIV Stigma Index 2014, pp33-35.

3.3. An essential part of strengthening HIV prevention, treatment and care

In October 2014, Viet Nam was the first country in Asia to commit to the “90-90-90” targets which aim to have 90% of people with HIV knowing their status, 90% of people who know they have HIV on treatment, and 90% of those on treatment having an undetectable viral load.¹² These are ambitious targets that require significant scaling up of HIV testing and treatment in Viet Nam. They will only be achievable if barriers to HIV testing and treatment are removed, central among them fear of discrimination and other adverse consequences associated with an HIV diagnosis.

The 2014 HIV Stigma Index survey illustrated how high levels of stigma and discrimination stand in the way of Viet Nam’s HIV testing and treatment targets, with 29.7% of all male respondents reporting that they took an HIV test only after they were already experiencing HIV-related symptoms. Among recently diagnosed PLHIV, 63.7% had not disclosed their status to their spouse or sexual partner, an increase from 38% of those interviewed in 2011. Self-stigmatisation by PLHIV continued to be a problem, and was thought to result in PLHIV making potentially harmful decisions, including avoiding seeking health care.¹³

As long as there is fear of discrimination, stigma, loss of privacy and other rights abuses associated with an HIV diagnosis, efforts to scale up testing and treatment in Viet Nam face significant challenges. While many factors go to make up a supportive environment that encourages people to acknowledge the risk of HIV infection and undergo testing voluntarily, strong protection for the rights of PLHIV is at its heart. To achieve this, a supportive legal framework is of central importance, including access to legal services. By enabling PLHIV to enforce their legal rights, providing practical remedies for unlawful stigma and discrimination and other rights violations, legal services for PLHIV contribute directly to better public health outcomes.

¹² <http://www.unaids.org/en/resources/presscentre/featurestories/2014/october/20141027vietnamtargets>

¹³ HIV Stigma Index 2014, pp14-15.

4. Effective provision of legal services to PLHIV: the international experience

Many countries across the world have recognised that providing legal services for PLHIV and vulnerable groups is an important part of an effective national response to the HIV epidemic. As a result, there is now a significant accumulated body of experience with legal services for PLHIV and emerging learning about what ingredients are necessary for effective service provision. The key considerations are summarised below.

4.1. Understanding the local pattern and context of the HIV epidemic

In order to achieve maximum impact, legal services for PLHIV need to be designed to fit the local pattern and context of the HIV epidemic. Part of the planning process for HIV-related legal services should be a situation analysis and needs assessment involving the participation of PLHIV. Relevant factors to take into account include:¹⁴

- What is the pattern of HIV infection in the local community? Is it concentrated in particular groups?
- What are the factors that make people particularly vulnerable to HIV within their communities?
- What kinds of legal problems do PLHIV face, e.g. lack of access to health care, employment discrimination, breach of privacy?
- Do the local laws provide remedies for these legal problems?
- What services currently exist to provide legal advice and representation for PLHIV?
- What are the barriers for PLHIV to access legal services? e.g. lack of awareness of legal rights, cost, fear of disclosing HIV status.

Understanding these factors enables legal services to be targeted at the groups most in need or at the kinds of rights violations that are most pervasive. It also identifies what kind of legal expertise might be most useful and what challenges exist to providing access to legal services to PLHIV in practice.

4.2. The need for effective partnerships

A key lesson from efforts to date to establish legal services for PLHIV is the need to establish effective partnerships between legal service providers and PLHIV and affected communities. This ensures that legal services reach the people and communities who need them and that there is a well-functioning referral network to increase access to available services. It is also a critical element for building trust between PLHIV and legal service providers.

¹⁴ Toolkit, p27



There are many ways in which partnership or coordination of this kind can be achieved. In Ukraine, for example, a legal service has been established within “Time to Live” which is a community-based organisation for PLHIV in the Mykolayiv region. The legal service is one of a range of services the organisation provides to PLHIV, including information, advocacy, care and support.¹⁵ In the State of Tamil Nadu in India, legal aid clinics for PLHIV have been established alongside HIV treatment centres, which ensures that PLHIV are aware of the availability of legal services and have ready physical access to the clinics.¹⁶ In other countries, networks have been set up to bring together lawyers, PLHIV and community-based organisations working with PLHIV and affected groups. These networks operate as a referral path for PLHIV needing legal advice and assistance.¹⁷

The important issue in this regard is to ensure that legal service providers are effectively “linked in” to PLHIV and their communities. Through these connections, the service providers understand the needs and concerns of PLHIV and build expertise in the legal issues that are most pressing for PLHIV. From the perspective of PLHIV, they have a known source of legal assistance and can have confidence that the legal assistance provided will be based on some knowledge and understanding of their circumstances.

4.3. Different models for HIV-related legal services

Legal services for PLHIV can be provided in a range of different ways, depending on the local circumstances and other available resources. Among the different models for the provision of HIV-related legal services are:

- Stand-alone HIV specific legal services;
- HIV legal services integrated into the Government’s legal aid agency;
- HIV legal services integrated into a community-based organisation for PLHIV or affected groups;
- HIV legal services provided through community outreach;
- HIV legal services integrated into a human rights organisation;
- HIV legal services provided by private sector lawyers on a pro bono basis;
- HIV legal services provided by a University Law School.¹⁸

¹⁵ International Development Law Organization (IDLO) and United Nations Joint Programme on HIV/AIDS (UNAIDS), *Scaling Up HIV-Related Legal Services – Report of Case Studies: Ukraine, Kenya and India*, 2010, p7.

¹⁶ For further information about this service, see section 5.1 below.

¹⁷ See, for example, the Botswana Network on Ethics, Law and HIV/AIDS (BONELA), www.bonela.org; Uganda Network on Law, Ethics and HIV/AIDS (UGANET), <http://uganet.org/site/>;

¹⁸ Toolkit, pp21-26.

The decision as to which model is most appropriate will depend upon the local context, including factors such as whether there are existing legal services organisations with the capacity, resources and expertise to expand their work to include HIV legal services, what funding is available for HIV legal services (e.g. government legal aid, donor funding), and whether there are private sector lawyers willing and able to provide HIV legal services on a pro bono basis. In all cases, the quality and sustainability of the services provided need to be considered, as well as the capacity to scale up. The fact that previous legal services for PLHIV in Viet Nam have struggled to continue once donor funding came to an end demonstrates the critical importance of long-term sustainability.¹⁹

4.4. Client-centred and non-discriminatory services

Seeking legal advice and assistance can be a challenging process for PLHIV, who may already be highly vulnerable due to their HIV status and the associated stigma. They will need to disclose their HIV status to the legal service provider who is likely to be a stranger, and may also need to discuss personal experiences that are extremely sensitive and sometimes quite upsetting.

It is therefore particularly important that legal service providers interact with PLHIV in ways that are respectful, non-judgmental and non-discriminatory. Lawyers who are not sensitive to these issues will not be appropriate service providers in this context and will not be able to establish constructive relationships with PLHIV as their clients. For HIV legal services to be effective, they must also be client-centred, in that the individual needs and concerns of the client must be paramount. The client's right to make his or her own decision about the case should be respected at all times.²⁰

This has implications for the kind of legal service that will be appropriate for PLHIV. It emphasises the need to nurture and support a team of legal service providers who understand the particular sensitivities around acting for PLHIV and whose interaction with PLHIV will not be clouded by personal opinions or judgments that are critical of PLHIV or of behaviours associated with HIV infection, such as injecting drug use, male to male sex and sex work. Clear protocols and codes of conduct for the operation of the service need to be established to ensure that the interaction between legal service providers and clients is appropriate.

¹⁹ Two such projects are the CARE "Supporting Luật Pháp" project and the USAID Health Policy Initiative legal assistance project.

²⁰ Toolkit, p18

4.5. Confidentiality

As noted above, the 2014 HIV Stigma Index survey indicated that breach of privacy was one of the rights violations most frequently reported by PLHIV in Viet Nam, with 62.1% of those complaining of rights violations reporting having suffered a breach of privacy.²¹ Moreover, a number of PLHIV reported that they were scared to take legal action in response to rights violations generally, presumably because of a fear of adverse consequences including loss of privacy.²²

These survey results demonstrate the importance of having rigorous protocols governing client confidentiality within legal services for PLHIV, so that the use of the service does not compound the vulnerability PLHIV already feel about adverse consequences should their HIV status become more broadly known. PLHIV need to have complete trust that their legal service provider will respect their confidentiality and will only disclose personal information about them with their consent.

Legal service providers also need to be sensitive to matters that might inadvertently trigger PLHIV concerns about loss of confidentiality and thereby be a barrier to accessing legal services. For example, the location of an HIV legal service in a place where PLHIV can easily be seen entering and leaving the premises could mean that PLHIV will choose not to use the service rather than taking the risk that their privacy will be threatened.

4.6. Raising awareness of PLHIV about their legal rights

A consistent focus of many HIV legal services is the need to improve the legal literacy of PLHIV so they are aware of their legal rights and of the fact there may be a legal remedy for the problems they are experiencing. Lack of awareness of the law and the legal system will otherwise be a significant barrier to access to legal services by PLHIV. This has also been specifically identified as a problem in Viet Nam.²³ Accordingly, for HIV legal services to be effective, they must be combined with active measures to reach out to PLHIV and affected groups and provide them with accurate and practical information about the law and their legal rights. This important awareness-raising component should be integrated into the design of all HIV legal services.

²¹ HIV Stigma Index 2014, p34

²² HIV Stigma Index 2014, p36

²³ *Legal Services for PLHIV and Key Populations: An Assessment of the Current Situation and Recommendation for the Future* (Viet Nam), September 2012, pp40-41. See also CARE Project Evaluation Report, *Supporting the Law by Understanding HIV and Training in the Practice of Human Rights Advocacy for PLHIV (Supporting Luật Pháp)* Project, April 2011, pp27-9.

4.7. Training and education of legal service providers and other relevant sectors

The provision of high quality legal services to PLHIV requires knowledge, understanding and expertise that many legal service providers will not already possess. This will be the case particularly if services are being provided by private lawyers, for example, who have little or no experience in legal issues relevant for PLHIV, such as discrimination complaints. However, even lawyers who already work in the human rights area may lack particular knowledge necessary to represent PLHIV effectively, such as knowledge about available treatments and disease progression or about particular laws that apply to HIV and AIDS.

This points to the need for the design of HIV legal services to make provision for training of legal service providers. In addition to training on relevant laws and legislation, the training should include:

- An introduction to the experience of living with HIV and the human rights issues faced by PLHIV and affected groups, presented by a PLHIV;
- The scientific facts around HIV, including the means of transmission and prevention, treatments and illness progression;
- A description of the local context of the HIV epidemic, including social drivers of the epidemic, key populations and gender factors;
- Why a rights-based approach to HIV is important.²⁴

Consideration should also be given to extending training to workers from other sectors relevant to legal and human rights issues associated with the HIV epidemic, including police, judges, court officials, journalists and health care workers.²⁵

4.8. Advocacy and law reform

In addition to providing legal remedies for PLHIV, HIV legal services can have a powerful impact on advocacy and law reform around HIV. By gathering and documenting rights abuses experienced by PLHIV, the legal service can highlight injustices in attitudes and practices within the local community and can produce case studies to demonstrate the harmful consequences of these attitudes and practices for PLHIV. It can identify and support test cases to establish a precedent for the legal rights of PLHIV in certain areas, such as access to health care. Where the law does not provide an adequate remedy, the legal service can use the information it has gathered from PLHIV to support lobbying for law reform.

²⁴ Toolkit, p33

²⁵ Toolkit, p32

The Botswana Network on Ethics, Law and HIV/AIDS (BONELA) is a good example of how a legal service can contribute effectively to advocacy and law reform. The legal aid branch of BONELA's Human Rights Monitoring unit focuses on using litigation strategically to address human rights violations and to support policy review. They assist with the management and legal referral of HIV-related rights violations, and in turn use them as evidence to advocate for legislative review and policy change.²⁶ The Lawyers Collective HIV/AIDS Unit in India also has a strong advocacy focus in the legal assistance it provides to PLHIV, including taking test cases to court to bring about policy change.²⁷

The potential for HIV legal services to feed into HIV advocacy and law reform efforts needs to be borne in mind when designing the service. Systematic documentation of the experiences of PLHIV is desirable, highlighting the need for legal and policy change where necessary. The potential for effective advocacy by the legal service is likely to be greater where there is a specialised HIV legal service, since the service's large HIV caseload will enable it to accumulate a body of evidence and monitor trends in rights violations.

4.9. Monitoring and evaluation

Best practice in all areas of service provision requires that the service be systematically monitored and evaluated. HIV legal services are no exception. Among the reasons for monitoring and evaluating HIV legal services are to learn from past experience in order to improve the quality and coverage of services, to ensure accountability to the communities served by the services, to monitor the progress of national scale-up of HIV legal services, and to provide evidence to support increased service provision.²⁸

Effective monitoring and evaluation needs to be built into the design of HIV legal services from the outset. This is particularly important where a new delivery model for HIV legal services is proposed, as is currently the case in Viet Nam.

4.10. Special considerations for government legal aid services

In addition to learning acquired around the provision of legal services for PLHIV, there is also international guidance on the principles that should govern the provision of government legal aid services generally. In 2012, the United Nations adopted *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*.²⁹ While these Principles and Guidelines are directed specifically to legal aid in criminal law matters, they also provide useful guidance on principles that should underpin other legal aid services.

²⁶ www.bonela.org, see section on "Human Rights Monitoring."

²⁷ <http://www.lawyerscollective.org/hivaids-unit>. See also Toolkit, p30. In Thailand, the Justice Fund Act passed in 2015 to provide legal aid for poor people also extends legal assistance to people who have experienced human rights violations. While this legislation is not HIV-specific, it recognises the importance of supporting legal remedies for human rights breaches.

²⁸ Toolkit, p36

²⁹ UN Legal Aid Principles and Guidelines, note 4 above.

The Principles and Guidelines note that legal aid is “a foundation for the enjoyment of other rights” and outline the elements that are required for “an effective and sustainable national legal aid system.”³⁰ The concept of legal aid is interpreted broadly to include legal education, access to legal information and other services, such as alternative dispute resolution. Among the principles recommended for the operation of legal aid services are the following:

- States should consider the provision of legal aid as their responsibility, should ensure there is an accessible, effective and sustainable legal aid system, and should provide sufficient resources to support the system.
- Legal aid providers should be able to carry out their work effectively, freely and independently. They should be able to perform their professional functions without hindrance, including meeting with clients confidentially.
- States should ensure legal aid providers possess education, training, skills and experience commensurate with the nature of their work. There should be appropriate legal aid training programs and accreditation of legal aid providers.
- There should be an active policy of incorporating a gender perspective into policies, laws and practices relating to legal aid to ensure gender equality and equal and fair access to justice.
- States should promote coordination between justice agencies and other services such as health, social services and victim support.
- States should recognise and support the role played by paralegals in providing legal aid services in appropriate cases, including through the provision of paralegal training and accreditation.
- Legal aid services should be tracked, monitored and evaluated. Good practices should be shared and cooperation and collaboration encouraged.

The UN Principles and Guidelines also encourage partnerships between government and non-State legal aid service providers. They recommend a diversification of legal aid service providers through collaboration with law societies, bar associations, university law clinics and NGOs. This approach to legal aid service provision can assist in increasing the reach, quality and impact of legal aid services and facilitating access to legal aid in all communities.³¹

It has been argued that a diversified model – also described as a “holistic” approach to legal aid – may achieve the best outcomes, particularly when financial, human and technical legal aid resources are limited.³² It enables governments to draw on a range of available resources, including government legal sector providers, the private legal profession, paralegals, professional associations and community-based organisations. It can also encourage out-of-court dispute resolution through informal mediation and community dispute resolution mechanisms, and enables community legal education and other legal literacy initiatives to be integrated into legal aid provision.³³

³⁰ UN Legal Aid Principles and Guidelines, p4

³¹ UN Legal Aid Principles and Guidelines, Guideline 16, p20.

³² Leanne McKay, *State-Sponsored Legal Aid Schemes: Practitioner's Guide*, International Network to Promote the Rule of Law (INPROL), December 2015, pp23-4 (hereafter referred to as “INPROL Practitioner's Guide”).

³³ INPROL Practitioner's Guide, pp24-5.

5. Case Studies – Government-supported legal services for PLHIV



Although there are many examples of HIV-related legal services across the world, the majority of these have been funded privately or by international donors. It is only more recently that consideration has been given to linking legal services targeted specifically at PLHIV to government legal aid programs in an attempt to achieve ongoing sustainability and reduce reliance on increasingly scarce donor funding. The three services described below are examples of different models for the provision of legal services for PLHIV in partnership with government legal aid services or with government funding support.

5.1. Tamil Nadu State AIDS Control Society Legal Aid Clinics

In the State of Tamil Nadu in southern India, legal aid clinics for PLHIV have been established by the Tamil Nadu State AIDS Control Society (TANSACS) in partnership with the Tamil Nadu State Legal Services Authority (TNSLSA), which is the government agency responsible for legal aid services in the State. Under this program, TANSACS has set up 16 legal aid clinics alongside the HIV treatment centres located in the general hospital of each State District. TNSLSA assigns lawyers to attend the clinics and pays them a fee for attending the clinics and for ongoing legal representation of clients, if required.³⁴

Each legal aid clinic is staffed by a social worker and two or three part-time lawyers who are rostered monthly. When first established, each clinic also employed two outreach workers – people living with HIV where possible - whose role was to raise awareness among PLHIV and their communities about the services available at the clinics, to assist with gathering information from clients or potential clients, and to accompany clients to court or to the police station.

A key feature of the program is that TANSACS has identified a local network of PLHIV as a joint implementing partner for each of the clinics. The networks play a crucial role in identifying clients through promotion and outreach and in following up cases. In addition, each network employs social workers at its local clinic to provide additional support to clients. The fact that the clinics are located alongside hospital HIV treatment centres also helps to promote the service, and clients can be referred by counsellors at the treatment centres.

TANSACS has also worked closely with the District governments through each District Legal Services Authority, as well as with the judiciary and the police. Training for both lawyers and police has been undertaken as part of the project, and the trainers have included PLHIV as well as people from HIV-affected communities, such as injecting drug users, sex workers, men who have sex with men and transgender people.

While some initial funding support was provided by UNDP, ongoing funding comes from the government through the National AIDS Control Organisation and TNSLSA. Because the lawyers are paid out of the government's legal aid budget, through TNSLSA, the sustainability of the

³⁴ For a full description of this service, see Sumita Thapar, *UNDP-Supported Legal Services for People Living with HIV in Tamil Nadu and Andhra Pradesh: A Documentation and Assessment Report*, UNDP 2009, and *Scaling Up HIV-Related Legal Services – Report of Case Studies: Ukraine, Kenya and India*, International Development Law Organization (IDLO) and United Nations Joint Programme on HIV/AIDS (UNAIDS), 2010, pp25-33. The information about the service contained in this section is taken from these two documents.

service is enhanced. However, although the service is paid for by the legal aid budget, the clinics operate independently of other legal aid services as stand-alone HIV legal clinics. A number of key features of the model – and probably the reasons why it has been successful - are specific to HIV legal services, namely:

- The close partnership with local networks of PLHIV;
- The location of the legal aid clinics alongside HIV treatment centres, improving visibility and accessibility;
- A holistic and coordinated approach to medical, legal and social needs;
- The use of PLHIV as outreach workers for the service;
- The incorporation of HIV-related training for lawyers and police, using PLHIV and affected communities as trainers;
- Liaison with the judiciary to enlist their support for promoting and protecting the rights of PLHIV.

This program is therefore a good example of how government legal aid support can be tailored to achieve maximum reach and impact in the provision of legal services for PLHIV, and to reduce barriers that would otherwise exist to the enforcement of legal rights by PLHIV.’

5.2. HIV/AIDS Legal Centre, Australia

The HIV/AIDS Legal Centre (HALC)³⁵ in Sydney in the State of New South Wales is an HIV-specific legal service that operates under a hybrid funding model, with a mixture of government and private funding. Established in the 1990s, it has operated continuously since that time to provide HIV-related legal services to PLHIV and affected communities in New South Wales.

HALC has always been housed within the offices of ACON, the main community-based organisation in New South Wales supporting PLHIV and their communities. Its establishment was supported by ACON and a group of volunteer lawyers who provided many of the legal services during the Centre’s early years. It operates as an independent entity with its own management committee and budget. Core funding has been provided by both the Federal government and the State government through the Community Legal Services Program, with additional funding from the New South Wales Public Purpose Fund (a statutory fund controlled by the New South Wales Law Society) and private donations. In 2013-14, approximately 45% of HALC’s funding came from the Federal and State governments.³⁶

HALC employs three lawyers and a coordinator. Legal case work is done by both the employed lawyers and a large roster of private lawyers who volunteer their time to work at the Centre. It is estimated that by drawing on private lawyers as volunteers, HALC is able to double its capacity to provide legal services to individual clients.³⁷

³⁵ For further information, see www.halc.org.au

³⁶ HIV/AIDS Legal Centre Annual Report 2013-14, p38

³⁷ Annual Report 2013-14, p7

The work of HALC comprises not only legal advice and representation for PLHIV and affected communities but also community legal education and law reform in areas relating to HIV. In recent years, HALC has researched and written a number of detailed policy submissions to government, for example on amendments to Australian anti-discrimination laws, the New South Wales *Public Health* Act and the regulation of brothels in New South Wales. It also publishes guides for the community on HIV and the law, and conducts HIV legal training for health care workers and social workers, as well as lawyers.

Key strengths of the HALC model for HIV legal services are:

- The service is housed within the main community-based organisation providing services for PLHIV, and is therefore well-known and accessible;
- Although it receives substantial core funding from the Federal and State governments, it operates as an independent entity, working directly with the communities it serves;
- It combines legal advice and representation for PLHIV with work in the areas of community legal education and law reform advocacy – the legal case work provides an evidence base for community education and advocacy;
- By drawing on private lawyers as volunteers, the Centre has been able to double the scale of its legal service provision.

5.3. New York State Department of Health AIDS Institute, Legal and Supportive Services for Individuals and Families Living with HIV (LASSIF)

The AIDS Institute of the New York State Department of Health has established an innovative model for the provision of legal services to PLHIV in New York State that are integrated with a range of other social services for PLHIV.³⁸ As at 2012, 14.9% of all PLHIV in the USA lived in New York State, making it the highest concentration of HIV infection in the USA. 79% of all PLHIV in New York State are people of colour (42% African American, 32% Hispanic, and the balance other racial minorities). Many of these PLHIV face multiple sources of social disadvantage in addition to HIV, including poverty, substance abuse, unstable housing, domestic violence and mental illness.

In “listening forums” held throughout the State to obtain information from consumers, clinicians and other service providers about barriers for PLHIV to access HIV services, the need for legal assistance for PLHIV was identified. This was because many PLHIV in New York State experienced a range of legal problems, including the need for protection from abusive relationships, tenancy issues, consumer debt, disputes over disability payments and health insurance benefits, and family law issues such as child support and child custody actions. The stigma surrounding HIV and concerns over confidentiality were also identified as issues giving rise to legal problems for PLHIV.

³⁸ The information in this section about LASSIF is taken from the New York State Department of Health website – http://www.health.ny.gov/diseases/aids/general/about/comm_support_services.htm#legal – and from information and documentation provided by Ms Deborah Hanna, Initiative Director, New York State Department of Health AIDS Institute, Bureau of Community Support Services. Her assistance is gratefully acknowledged.

To address the need for legal assistance for PLHIV, the AIDS Institute within the New York State Department of Health has made funding available to support integrated models of legal services for PLHIV and families affected by HIV with the goal of providing a more stable foundation for these people to access HIV services and care. The legal services funded include legal assistance to address barriers to PLHIV and their families accessing HIV services and care, legal assistance in relation to child care and custody plans in families affected by HIV, and support to parents, children and caregivers to cope with the impact of HIV in the family and to stabilise newly blended families.

The Department of Health invited not-for-profit community-based organisations and not-for-profit academic legal clinics to tender for the contract to provide “Legal and Supportive Services for Individuals and Families living with HIV” - otherwise known as the “LASSIF” initiative. Applicants needed to demonstrate experience in providing legal services for the target communities as well as the capacity to provide family stabilisation support services, either themselves or in partnership with other not-for-profit organisations. The Department of Health also asked applicants to propose models of service delivery that address the comprehensive needs of PLHIV, and facilitate the removal of barriers that affect the ability of PLHIV to engage with and remain adherent to treatment. In particular, the Department identified the desirability of:

- Collaborative legal networks that increase the quality and quantity of legal services provided to PLHIV through the use of pro bono attorney networks, legal clinics or law school clinics; and
- Collaborative models with medical providers and other community-based service providers that proactively identify client needs to ensure appropriate referrals.

As a result of the tender process, government funding totalling US\$2.5 million has been awarded to 11 organisations across New York State already working with affected communities. They include, for example, the African Services Committee, the New York Council on Adoptable Children, the Erie County Bar Association Volunteer Lawyers Project, and the Albany Law School. Each organisation has an agreed annual budget to cover both legal services and other social services required by the client, and receives a monthly payment from the Department of Health based on client services provided and reported on, as well as other agreed performance indicators.

The LASSIF model is unusual in that the legal services for PLHIV are commissioned and coordinated by the State Department of Health rather than the Department of Justice or its equivalent. This would seem to facilitate a more seamless integration of legal services for PLHIV with health care and other social services, leading to a holistic approach to the full range of client needs. The decision to partner only with community-based organisations or academic legal clinics that already have experience in providing legal services to the target communities is also notable, as is the requirement that these organisations or legal services also have the capacity to service both the legal and the non-legal needs of their clients. This recognises the multi-faceted nature of the challenges faced by PLHIV, and the importance of effective legal assistance as part of a range of supports necessary to achieve improvements in the health and social wellbeing of PLHIV.

6. Expanding legal aid services in Viet Nam to cover PLHIV: Key issues and recommendations



The international experience to date with the provision of HIV-related legal services points to some important concerns that need to be borne in mind when determining how best to expand legal aid services to PLHIV in Viet Nam. The following issues and recommendations are proposed for consideration.

6.1. Defining eligibility for legal aid

Article 10 of Viet Nam's current Law on Legal Aid lists specific categories of legal aid beneficiaries. The existing beneficiaries include "poor people", "disabled people" and "helpless children." Under a decree guiding the implementation of the law, PLHIV who are incapable of working and having no any support from family relatives are subject to the state legal aid. An additional category of legal aid beneficiaries under the Law on Legal Aid is now proposed comprising:

“... persons infected with HIV, victims of domestic violence, persons with disadvantaged conditions incapable of affording a lawyer as specified in the law.”³⁹

In relation to this proposed amendment, two issues need to be considered:

(a) *Proof of HIV infection*

Some PLHIV in Viet Nam may already be eligible for legal aid under Article 10 if they are disabled as a result of their HIV infection and do not have any support from their relatives. However, the requirement to show certification of a positive HIV test result has been reported to be a significant barrier in practice for PLHIV to access legal aid, with only a limited number of legal aid centres providing services to PLHIV.⁴⁰ It is also undesirable to have disability as the test for eligibility since many people with HIV are otherwise well and do not wish to be viewed as disabled.

³⁹ Draft amended Law on Legal Aid, Article 8.

⁴⁰ Trinh Quang Chien, *Report on Legal Aid Services provided by the Consulting Center for Policies and Laws on Health and HIV/AIDS, 2009-2014*, section 3.

Many legal services for PLHIV in other countries do not require clients to produce any documentary evidence, such as a positive HIV test result, in order to prove their HIV status. The reason for this is simple. PLHIV who require legal assistance will almost always have this need because they have HIV and have experienced rights violations as a result. There is therefore no reason for a legal service to require proof of HIV infection in order to prevent people who do not have HIV from accessing legal assistance inappropriately. Moreover, given the stigma associated with HIV infection, it is not plausible to suggest that a person would pretend to have HIV merely to access legal assistance.

Recommendation 1:

PLHIV should be included as beneficiaries of legal aid in Viet Nam. They should be eligible to receive legal aid on the basis of their own declaration that they have HIV without the need to provide documentary proof of HIV infection.

(b) Will PLHIV need to demonstrate they cannot afford a lawyer?

The current draft amendments to the *Law on Legal Aid* propose that PLHIV will be eligible for legal aid only if they can show they are incapable of affording a lawyer. It would be undesirable to restrict legal aid to PLHIV in this way because:

- Having HIV is itself a source of vulnerability and disadvantage, and is therefore a sufficient and appropriate reason to extend the benefit of legal aid to all PLHIV;
- Recognising all PLHIV as legal aid beneficiaries regardless of their financial position would be an important public acknowledgment of the stigma and discrimination they experience and would demonstrate commitment by Viet Nam to a rights-based response to HIV/AIDS;
- Establishing financial need is likely to be administratively complex and could deter PLHIV from seeking legal aid even when they would qualify;
- The majority of PLHIV in Viet Nam come from disadvantaged groups with limited financial means in any event. Requiring them to demonstrate financial need therefore serves little purpose other than to make it more difficult for them to access legal aid.

Recommendation 2:

All PLHIV should be eligible for legal aid without having to satisfy any additional requirements to establish financial need.

6.2. The range and scope of legal aid services for PLHIV

The range and scope of legal problems faced by PLHIV are extremely broad. They include, for example, discrimination complaints, breaches of privacy related to HIV, employment issues, problems accessing health care and education related to HIV infection, criminal laws relating to HIV transmission, property and inheritance issues, and consent to medical research.⁴¹ Legal aid services for PLHIV need to be able to cover the full range of legal needs that might arise.

In order to achieve this, legal aid for PLHIV in Viet Nam must extend to all categories of legal cases – civil and administrative cases as well as criminal ones. HIV-related discrimination complaints, for example, would not normally be criminal matters, and yet are central to protecting PLHIV against rights violations. Similarly, claims for breach of privacy or employment disputes relating to HIV would normally be civil or administrative matters. Since complaints in these areas are the rights violations most commonly reported by PLHIV,⁴² their entitlement to legal aid should cover all categories of legal claims.

Recommendation 3:

Legal aid for PLHIV should cover all areas of law, including, criminal, civil and administrative matters.

6.3. What is the best delivery model for legal aid services for PLHIV in Viet Nam?

Finding the best delivery model for legal aid services for PLHIV in Viet Nam is perhaps the most critical issue for determining whether the legal aid services will be accessible, effective and sustainable. There is a range of different models that can be employed for legal aid services. Broadly speaking, these models can be categorised as follows:⁴³

- The private practitioner model: legal aid services are provided by private legal practitioners contracted and paid by the government on a case-by-case basis;
- The ‘public defender’ model: legal aid services are provided by salaried lawyers employed by a state-funded legal services body;
- The mixed model: legal aid services are provided both by private practitioners and by salaried government legal aid lawyers, but are supervised and managed by a single government legal aid agency;
- The ‘holistic’ model: governments partner with a range of individuals and organisations for the delivery of legal aid services, including government legal aid providers, private sector service providers (lawyers, bar associations etc.), university law clinics, civil society organisations and non-lawyers such as paralegals.

⁴¹ For a more detailed description of the nature and extent of HIV-related legal issues, see Toolkit, p13.

⁴² HIV Stigma Index 2014, p34

⁴³ This analysis of legal aid models is taken from the INPROL Practitioner's Guide, pp13-31.

The decision about what is the right model for Viet Nam can only be made by analysing the local context in light of the needs of PLHIV and the professional and financial resources available to meet those needs. In making the decision, relevant factors to consider include:

- The capacity, expertise and resources of existing legal aid service providers;
- What other resources exist to support legal services for PLHIV, such as NGO legal clinics and other relevant community-based organisations;⁴⁴
- Which delivery model will best support the scaling up of legal aid services for PLHIV in Viet Nam in relation to both the number of clients supported and the geographic reach of services;
- Which model is most cost-effective and therefore likely to support long-term sustainability;
- What barriers exist for PLHIV in Viet Nam to access legal services (e.g. fear of disclosing HIV status, lack of trust in legal service providers), and which model is most likely to reduce those barriers.

A key question is whether legal aid services for PLHIV in Viet Nam should be delivered through stand-alone HIV legal services or as part of generalist legal aid services. Existing legal aid service providers may have little or no experience with the needs of PLHIV or with the particular areas of law that might be relevant to their circumstances. Among the benefits of stand-alone HIV legal services are that they:

- Encourage the development of the knowledge and expertise of legal aid service providers around HIV-related legal issues;
- Build a legal workforce attuned to the particular sensitivities involved in working with PLHIV and their communities;
- Facilitate the delivery of an integrated suite of services, including legal advice and representation, HIV community legal education, training of paralegals and other service providers etc.;
- Enable the legal service to gather a body of evidence about HIV-related rights violations and monitor patterns of HIV-related discrimination, and then use this information to advocate for legal and policy reform.

On the other hand, unless there are sufficient resources available to support a network of stand-alone HIV legal clinics, access to services by PLHIV may be more limited if they are restricted to a small number of specialist HIV legal clinics. Care must also be taken to ensure that having stand-alone clinics does not result in further targeting and stigmatisation of PLHIV. There may be merit in considering a hybrid model that involves both stand-alone services and the skilling up of other legal aid service providers in order to expand the range of legal assistance available to PLHIV.

A related question is whether legal aid services for PLHIV in Viet Nam are best provided by government legal service providers or by the private or non-government sectors, or a combination of both. There is much to be said for a mixed or 'holistic' model that builds on existing expertise and resources in both the government and non-government sectors, with legal aid funding used

⁴⁴ For an analysis of the current situation in Viet Nam, see *Legal Services for PLHIV and Key Populations: An Assessment of the Current Situation and Recommendation for the Future* (Viet Nam), September 2012

to support whatever new or existing services are likely to have maximum impact.⁴⁵ In this regard, there is scope for innovative partnerships between government and the non-government sector that could support the participation of PLHIV and community-based organisations in the design and delivery of HIV legal services housed in existing NGOs.

Recommendation 4:

In determining how best to deliver legal aid services to PLHIV in Viet Nam, consideration should be given to a legal aid model that:

- *Draws on existing experience and expertise in Viet Nam in servicing the legal needs of PLHIV;*
- *In appropriate cases, allows NGOs to receive legal aid funding to provide legal services to PLHIV;*
- *Supports a small number of stand-alone HIV legal services as part of a larger network of other legal aid service providers.*

6.4. The need for effective partnerships with PLHIV and organisations working with PLHIV

Whatever model of legal aid service provision is adopted, the international experience to date with legal services for PLHIV has highlighted the importance of having effective partnerships between legal service providers, PLHIV and organisations established by or working with PLHIV or groups of people who are vulnerable to HIV. Partnerships of this kind are important to:

- Ensure legal aid service providers have a link into the communities where HIV-related legal services are required and understand the needs and concerns of PLHIV;
- Make PLHIV aware of their legal rights and the legal aid services that are available, and enable them to access those services readily;
- Build trust on the part of PLHIVs in the skills, professionalism and integrity of their legal aid service providers;
- Establish clear and accessible referral paths for PLHIV needing legal advice and assistance;
- Ensure the proper accountability of legal aid service providers to the clients and communities they serve.

In the Tamil Nadu legal aid service for PLHIV described in section 5.1 above, the partnership with networks of HIV positive people was considered to be a key ingredient in its success,⁴⁶ and partnerships of this kind have been a feature of many other legal services for PLHIV.⁴⁷ It is therefore important that decisions about the design, establishment and operation of legal aid services for PLHIV in Viet Nam involve the participation of PLHIV and relevant PLHIV organisations

⁴⁵ For further discussion of a 'holistic' model for providing legal aid services, see INPROL Practitioner's Guide, pp23-31.

⁴⁶ *Scaling Up HIV-Related Legal Services – Report of Case Studies: Ukraine, Kenya and India*, International Development Law Organization (IDLO) and United Nations Joint Programme on HIV/AIDS (UNAIDS), 2010, p32.

⁴⁷ For example, the Botswana Network on Ethics, Law and HIV/AIDS, "Time to Live" legal service in Ukraine, the Uganda Network on Law, Ethics and HIV/AIDS (UGANET).

or other NGOs. Similarly, collaboration with PLHIV and their communities should be a feature of the ongoing operation of legal aid services for PLHIV. In Viet Nam, a partnership model of this kind for HIV legal services has been successfully implemented in the past with the support of international donors, and this experience can be built upon when establishing legal aid services for PLHIV.

Recommendation 5:

Legal aid services for PLHIV in Viet Nam should be established and managed in partnership with networks of PLHIV or other NGOs working with PLHIV and their communities.

6.5. Maximising the quality, impact and effectiveness of legal aid services for PLHIV

Because of the marginalisation and vulnerability experienced by many PLHIV, there are particular challenges and sensitivities around providing legal services for them. If legal aid funds are to be used for this purpose, it is important that the legal services be designed and managed in a way that ensures they are effective in reaching PLHIV and in achieving good outcomes for them. Based on the international experience with legal services for PLHIV, the following issues need to be addressed.

(a) Training for legal aid service providers

Whichever model is chosen for the delivery of legal aid services to PLHIV, the scaling up of service provision in this area will mean that legal service providers who have not previously acted for PLHIV will need to develop an understanding of the relevant issues. As noted above,⁴⁸ this includes not only knowledge of applicable laws, but also an understanding of the HIV epidemic, its impact on vulnerable groups in Viet Nam, and the importance from a public health perspective of protecting the rights of PLHIV. Legal service providers must also understand the need to treat PLHIV respectfully and in a non-judgmental way, as well as to maintain their privacy. Partnering with PLHIV to provide this training, and using PLHIV themselves as training facilitators, can build mutual understanding and respect between PLHIV and legal service providers and can be a further means of countering stigma and discrimination against PLHIV.⁴⁹

Requiring legal aid service providers to undergo training of this kind will contribute to non-discriminatory legal aid services for PLHIV, and will give PLHIV confidence to seek legal advice and assistance in the expectation they will be treated with respect and understanding. Inappropriate behaviour by legal aid service providers or lack of relevant expertise could otherwise be a further barrier to PLHIV accessing legal services.

Consideration should also be given to extending training about HIV and relevant legal issues to other sectors, such as the police and the judiciary.

⁴⁸ See section 4.7.

⁴⁹ See Toolkit, pp32-35.

(b) Confidentiality protection for PLHIV

Fear of disclosing their HIV status has been reported to be a significant barrier for PLHIV to access legal services in Viet Nam.⁵⁰ It has also been noted that breach of privacy is one of the rights violations most commonly reported by PLHIV in Viet Nam and that fear of loss of privacy is one reason why PLHIV may be reluctant to enforce their legal rights.⁵¹ Because of these concerns, it is critical that legal aid services for PLHIV operate according to strict protocols to protect client confidentiality.

There is scope for confidentiality protection to be built into the *Law on Legal Aid* itself, particularly the procedures for applying for legal aid (Article 20 of the draft law) and management of the legal aid case file (Article 25). Consideration should also be given to measures that could be implemented to protect client confidentiality in court proceedings, such as the use of pseudonyms and non-publication orders in respect of the client's name. Ensuring that individual legal aid service providers are aware of the importance of respecting the privacy of PLHIV at all times is also very important.

(c) Community legal education for PLHIV and their communities

As noted above,⁵² lack of awareness on the part of PLHIV about their legal rights is a significant barrier to their seeking legal assistance in respect of rights violations they experience. If legal aid services for PLHIV are to have maximum impact in addressing these rights violations, there needs to be legal education for PLHIV and their communities about the legal protections that exist in Viet Nam and the avenues of assistance that are available to PLHIV for seeking legal redress.

Legal aid service providers who have acquired experience in HIV-related legal issues are well placed to conduct legal literacy programs for PLHIV and their communities. Extending these legal awareness programs to other relevant sectors, such as health care workers, teachers and employer associations, can also help in reducing rights violations in the first place. While community legal education may not normally form part of legal aid service provision in Viet Nam, it is likely to be of great assistance in improving the reach and effectiveness of legal aid services for PLHIV.

(d) HIV advocacy and law reform

A key public health rationale for providing legal services for PLHIV is that it supports a rights-based approach to the HIV epidemic, and in doing so, strengthens HIV prevention, treatment and care. For the full benefits of this approach to be realised, HIV-related legal services need to include not only legal advice and representation for PLHIV but also advocacy and law reform activities that can contribute towards creating a supportive environment for Viet Nam's response to HIV.⁵³

⁵⁰ Trinh Quang Chien, *Report on Legal Aid Services provided by the Consulting Center for Policies and Laws on Health and HIV/AIDS, 2009-2014*, section 3, and personal communication from

⁵¹ HIV Stigma Index 2014, p34-36.

⁵² Section 4.6 above

⁵³ See sections 3.3 and 4.8 above.

Advocacy and law reform may not normally be part of legal aid services in Viet Nam, so consideration needs to be given to how these components can best be supported. HIV legal services in other countries have made a valuable contribution to advocacy and law reform around HIV by systematically monitoring and documenting rights violations reported by PLHIV. This provides a powerful body of evidence to highlight advocacy priorities and to inform the development of effective government policy on HIV. Staffing and financial resources for these activities should be built into the planning of legal aid services for PLHIV.

(e) Monitoring and evaluation of HIV legal services

Effective monitoring and evaluation of legal aid services for PLHIV in Viet Nam is a further way in which the quality and suitability of the services can be maintained. Best practice in this area utilises participatory approaches to monitoring and evaluation whereby PLHIV and their communities are actively involved in reviewing and assessing legal services and providing recommendations for ongoing improvement.⁵⁴ Holding legal aid service providers accountable in this way builds confidence in the legal service on the part of PLHIV and can, in itself, strengthen otherwise vulnerable communities by giving them a sense of ownership of the legal service.

Monitoring and evaluation is particularly important when a new delivery model for HIV legal services is introduced, as would be the case if the services are to become part of Viet Nam's legal aid program. In addition to evaluating service quality, systems should be put in place to monitor the scale and reach of HIV legal services, the adequacy of resources allocated for the services and whether there is a need for further scaling up.

Recommendation 6:

To ensure that legal aid services for PLHIV in Viet Nam have maximum impact and effectiveness, and are of a high quality, these services should incorporate:

- *Training for legal aid service providers on HIV and HIV-related legal issues;*
- *Strong confidentiality protection for PLHIV built into legal aid policies and procedures;*
- *Community legal education for PLHIV and their communities so they are aware of their legal rights and the availability of legal aid services;*
- *Procedures for monitoring and documenting rights violations against PLHIV so this information can be used to advocate for appropriate changes to HIV law and policy in Viet Nam; and*
- *Systems for monitoring and evaluating the quality and effectiveness of legal services provided to PLHIV*

⁵⁴ For a discussion of different approaches to the monitoring and evaluation of HIV legal services, see Toolkit, pp36-41.

7. Conclusion



Viet Nam is to be commended for giving consideration to extending the benefit of legal aid to PLHIV. The initiative has great potential to bring real improvements to the lives of PLHIV and to contribute positively to a supportive environment for Viet Nam's other HIV policies and programs.

If legal aid services for PLHIV are to have maximum impact, it is important to learn from the international experience about what makes HIV legal services most effective. The existing delivery model for legal aid services in Viet Nam may not be best suited for PLHIV. There is merit in considering other ways in which legal aid services could be delivered to PLHIV, including by drawing on existing NGO experience and expertise and by creating important links between individual legal service provision, community legal education and HIV advocacy and law reform. Establishing effective partnerships between legal aid service providers, PLHIV and relevant community-based organisations will also be critical to expanding the scope and reach of HIV legal aid services.

The recommendations in this paper are intended to assist Viet Nam in deciding how best to implement this proposal. It is hoped that they provide relevant and practical guidance for what is both an innovative and an important initiative.

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