

**INTERNATIONAL LAW, NATIONAL POLICY AND
LEGISLATION FOR
THE PREVENTION OF HIV/AIDS AND PROTECTION
OF HUMAN RIGHTS
OF PEOPLE LIVING WITH HIV/AIDS IN VIETNAM**



**Vietnamese Research Centre for Human Rights
Ho Chi Minh National Political Academy**

CARE International in Vietnam

**FINAL REPORT
Hanoi
November 2003**

ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
HIV	Human Immune Deficiency Virus
IDU	Injecting Drug User
IEC	Information Education Communication
NASB	National Aids Standing Bureau
NGOs	Non Government Organizations
O5 Centre	Sex Workers Rehabilitation Centre
O6 Centre	Injecting Drug Users Rehabilitation Centre
PLHA	People Living with AIDS
VND	Vietnamese Dong

TABLE OF CONTENTS

Executive Summary..... 4

I. INTRODUCTION 7

II. FINDINGS: VIETNAM AND ITS INTERNATIONAL COMMITMENTS RELATED TO HUMAN RIGHTS AND THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS..... 8

1. *International legal instruments*..... 8

2. *Other international documents related to HIV/AIDS that Vietnam has committed to*..... 8

2.1 *UNGASS Declaration on HIV/AIDS*..... 8

2.2 *International Consultations and International Guidelines on HIV/AIDS and Human Rights*..... 9

2.3. *Specific human rights of people living with HIV/AIDS*..... 9

III. FINDINGS: VIETNAM’S LAWS AND POLICIES ON THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS..... 14

3.1 *General policy and Law overview*..... 14

3.2 *Vietnam’s law on the rights of people living with HIV/AIDS*. 15

IV DISCUSSION AND RECOMMENDATIONS TO ENSURE THE HUMAN RIGHTS OF PEOPLE LIVING WITH HIV/AIDS 23

1. *Overcoming the inappropriate understanding of HIV/AIDS related issues*. 23

2. *Enhanced awareness of HIV/AIDS related issues and ensuring of human rights of people living with HIV/AIDS*. 23

3. *Some specific solutions*. 25

4. *Review and revision of certain provisions of law*. 27

5. *Recommendation of some specific provisions*. 28

BIBLIOGRAPHY..... 32

Annex A - Treaties Ratified by Vietnam 34

Annex B - A summary of recommendations for compliance to the International Guidelines of HIV/AIDS and Human Rights..... 35

Executive Summary

The purpose of this research is to outline the international and national legal instruments that apply to HIV/AIDS in Vietnam and to examine those instruments, as well as government policies, from a human rights perspective.

HIV/AIDS is a large and growing problem in Vietnam. UNAIDS estimate that 130,000 people were infected with HIV/AIDS at the end of 2001. More than 1,300 new HIV cases are reported each month (the equivalent of the annual rate a decade ago), however UN officials suspect that the real rate of new infections is actually several times higher than that amount.

The Government of Vietnam has vigorously tackled the issue of prevention through a range of policies, programs and legislation. However the growth in the population of People Living with HIV/AIDS (PLHAs) calls for an approach which bears the interests of both this group and the wider community in mind.

As a member of the United Nations (UN), Vietnam actively supports the documents adopted by the UN in relation to human rights, such as the Universal Declaration on Human Rights. Vietnam is party to a number of other important international covenants/treaties on human rights.

Specific human rights of people living with HIV/AIDS include: the right to non-discrimination and equality before the law; the right to liberty and security of person; the right to privacy; the right to marry and to start a family; the right to education; the right to work, the right to the highest attainable standard of physical and mental health; the right to an adequate standard of living and social security; and the right to enjoy the benefits of scientific progress and its applications.

Vietnam's domestic policies and legislation have focused mostly on prevention. However, there remains more work to be done, both in terms of the formation and the implementation of legislation.

The major findings of the study were:

- Human rights have been both the objective and the driving force of the socio-economic development of Vietnam. Vietnam is party to a number of other important international covenants/treaties on human rights, notably the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*. Vietnam is also committed to many non-legal binding instruments on HIV/AIDS adopted by the United Nations, including the *UNGASS Declaration on HIV/AIDS*.
- The revised *Law on the Promulgation of Legal Normative Documents* 2002 also specifies that in the drafting of laws, ordinances and resolutions (of the National Assembly), the Drafting Committee must 'take into account the international treaties that the Socialist Republic of Vietnam has signed and ratified, or acceded to'.
- At the ninth Party Congress, the policies and guidelines on HIV/AIDS were set to a greater extent. According to these policies and guidelines Vietnam would: "apply integrated, comprehensive mechanisms and measures, including communication, education, treatment, vocational training, employment creation, etc.; organize treatment to AIDS patients and drug addicts, helping them to live and work meaningfully in the community".
- There remain shortcomings, both in law and in reality, in the protection of the human rights of patients in general and of people living with HIV/AIDS in particular.

- The State allocates an average of 2.8 billion VND per annum for expenses related to the provision of drugs for HIV/AIDS and this amount can only support 210 patients in terms of the current drug price in Vietnam.
- People living with HIV/AIDS are not discriminated against whatsoever in their participation in the various forms of association as provided for in the law. However, the law does not contain provisions specifically on the association of people living with HIV/AIDS.
- Preventive measures, rather than treatment, remain the major focus of HIV/AIDS management in Vietnam.
- Dissemination of information related to HIV/AIDS has not been based on a human rights approach. Education and information on HIV/AIDS have focused more on preventing transmission, calling for tolerance and voluntary care from the community.
- The Ordinance on the Prevention and Control of HIV/AIDS adopted by the Standing Committee of the National Assembly of the Socialist Republic of Vietnam in 1995 could be amended in order to fulfill the realization of its goals. Some provisions of the Ordinance indicate that people living with HIV/AIDS have not been seen as the most in need of protection.

The key legal recommendations of the report are:

- The rights of People Living with HIV/AIDS should be recognized more concretely by the law of Vietnam.
- The spirit and provisions of the 1992 Constitution should be further specified and the relevant provisions contained in the International Conventions on Human Rights should be further incorporated into law.
- The Ordinance on the Prevention and Control of HIV/AIDS should specify its objective to protect the health of the people in general and the right of everyone to healthcare, including the right to healthcare of people living with HIV/AIDS.
- The Ordinance should be supplemented with a new chapter; "Rights and obligations of people living with HIV/AIDS". This Chapter should stipulate the fundamental rights of people living with HIV/AIDS, especially the right to healthcare, access to scientific and technological achievements (drugs) both at the national and international levels, the right to non-discrimination and the right to express one's opinion.
- The Ordinance's provisions on mandatory testing should be reviewed to enable the voluntary participation of people living with HIV/AIDS through counseling.
- The procedures for granting a marriage certificate for a foreigner with a Vietnamese person should be reviewed.
- Acts on non-discrimination should be added and specified in the law in relation to people belonging to vulnerable groups, including people living with HIV/AIDS. Acts of discrimination in all forms against vulnerable people should be accompanied with corresponding sanctions.

The key policy recommendations of the report are:

- Human rights based approaches should be incorporated into HIV/AIDS information dissemination.
- The understanding of key policymakers and legislators of the rights of people living with HIV/AIDS will need to be improved in order to implement human rights principles in detail.
- Resources for the prevention and treatment of HIV/AIDS need to be increased.

- The question of manufacturing anti-retroviral drugs should be viewed from a humanitarian perspective in order to ensure access to affordable drugs manufactured in this country, or purchased from a third country, would not affect international legal provisions on patents.
- Counseling should be seen as essential to resolving difficulties related to HIV/AIDS testing.
- Legal aid on HIV/AIDS related issues should be free of charge.
- The provisions for medical insurance related to people living with HIV/AIDS and HIV/AIDS related treatment should be reviewed. When access to cheap HIV/AIDS drugs is possible, medical insurance should be applied also to people living with HIV/AIDS.

I. INTRODUCTION

The protection of human and citizen's rights is in the nature of the State of Vietnam. After *Doi Moi*¹, the Communist Party of Vietnam has placed the human person at the centre of the development process. Human rights have thus been both the objective and the driving force of the socio-economic development of the country.

The position of the Party and State regarding human rights has been reflected in the policies and laws of Vietnam. Human rights have been established and broadened, in both quantity and content, through the succeeding Constitutions of Vietnam of 1946, 1959, 1980 and 1992. The 1992 Constitution states in Article 50 that:

In the Socialist Republic of Vietnam, the rights of the human person in the political, civil, economic, cultural and social fields shall be protected, embodied in the citizen's rights and stipulated in the Constitution and law.

The Resolution of the ninth Party Congress in 2001 emphasized the precious value of human rights and reaffirmed the national responsibility to fulfill their international commitments on human rights. The Political Report of the ninth Party Congress specified the tasks of:

... care for the human beings, protection of the legitimate rights and interests of all people; respect and implementation of international instruments on human rights that Vietnam has ratified or acceded to².

Vietnam's national legal system has clearly demonstrated the enormous efforts made in the development of Vietnam as the State of the people, by the people and for the people, based on the socialist rule of law. Vietnam has also tried to fulfill its legal obligations derived from the relevant international treaties on human rights. Taking into account the national socio-economic and political environment, the norms of the international treaties on human rights have been incorporated in Vietnam's national laws and policies.

It should be recognized that the legal system of Vietnam is in a process of reform in keeping with the country's socio-economic development in the period of industrialization, modernization and international integration. This process has gradually consolidated and upgraded the legal foundation of human rights in general and of the rights of vulnerable groups, especially the group of people living with HIV/AIDS.

The total number of HIV/AIDS cases in Vietnam, according to UNAIDS estimates, was 130,000 at the end of 2001. More than 1,300 new HIV cases are reported each month (the equivalent of the annual rate a decade ago), but UN officials suspect that the real rate of new infections is actually several times higher than that amount. In addition, new infections are not only confined to the high-risk groups. Infection rates are increasing amongst the general population. The number of infected pregnant women and children has increased considerably.

¹ In 1986 the Vietnamese Government implemented extensive economic and social reforms known as *Doi Moi*.

² Communist Party of Vietnam, Documents of the IXth Party Congress, National Political Publishing House, Hanoi 2001, p. 134

Given the serious nature of HIV/AIDS, the impact on people's lives and the potential for further increases in infection rates, the Government of Vietnam has developed a national HIV/AIDS strategy, guided by the Party's policies, laws and the Constitution. This especially aims to:

- *Enhance the enjoyment of the human rights of people living with HIV/AIDS;*

- *Supplement and revise the national laws and policies on prevention and combat against HIV/AIDS in the new circumstances.*

II. FINDINGS: VIETNAM AND ITS INTERNATIONAL COMMITMENTS RELATED TO HUMAN RIGHTS AND THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

As a member of the United Nations (UN), Vietnam actively supports the documents adopted by the UN in relation to human rights, such as the Universal Declaration on Human Rights. Vietnam is party to a number of other important international covenants/treaties on human rights.

1. International legal instruments

Vietnam has been party to nearly all UN instruments on human rights, including the Universal Declaration. As of now, Vietnam has ratified or acceded to many fundamental international treaties on human rights. (see Annex A)

2. Other international documents related to HIV/AIDS that Vietnam has committed to

2.1 UNGASS Declaration on HIV/AIDS.

The Declaration of Commitment on HIV/AIDS was adopted by the Special Session of the UN General Assembly on 27 January 2001. The Declaration, which contained strong political commitments, represented the common position of the Heads of State and Representatives of Government at the most important international forum. In relation to the HIV/AIDS epidemic, the Declaration recognized:

... this global epidemic as an emergency situation and one of the most serious threats to the life, dignity and welfare of the human beings, and to economic development. It affects all strata of society, from the states to the individuals³.

Through the Declaration, representatives of states set out that prevention is a main pillar in the fight against this epidemic. However, prevention, care, assistance and treatment are interrelated factors and must be combined in a comprehensive program of action.⁴ Accordingly, states do not only consider prevention as a main pillar but also recognized care, assistance and treatment as their essential tasks. The Declaration emphasized that "access to medicines is one essential element in the gradual achievement by all of the highest attainable standards of physical and mental health"⁵.

Representatives of states also recognized that:

³ UNAIDS, "Keeping the Promise-Summary of the Declaration of Commitment on HIV/AIDS", Published by UNAIDS, 2001, p.5.

⁴ Ibid, p.8.

⁵ Ibid, p.10.

*... the rights and fundamental freedoms for all people are essential in reducing the vulnerability to HIV/AIDS. The respect of the rights of the people living with HIV/AIDS is an effective prevention*⁶.

... the importance of protecting human rights in the prevention and fight against HIV/AIDS, the Declaration committed that *'priority should be given to the vulnerable groups in the prevention and fight (HIV/AIDS)*⁷.

2.2 International Consultations and International Guidelines on HIV/AIDS and Human Rights.

Three International Consultations on HIV/AIDS and Human Rights have been conducted by the Office of the UN High Commissioner for Human Rights and UNAIDS. Those Consultations prepared, discussed, adopted and updated recommendations which would assist and ensure that Vietnam was conforming to international guidelines (Outlined in Annex B).

2.3. Specific human rights of people living with HIV/AIDS

The rights of People Living with HIV/AIDS are documented in international instruments on human rights, especially the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. On the basis of the rights and fundamental freedoms derived from these two Covenants, people living with HIV/AIDS have the following rights⁸.

2.3.1. Right to Non-Discrimination and Equality before the Law.

The right to non-discrimination and equality before the law is a fundamental human right. Non-discrimination and equality in general, equality before the law in particular, have become a *peremptory norm* in international law. This right has become one of the fundamental principles of international human rights law. Non-discrimination and equality before the law has therefore been specified in international instruments on human rights, International Covenant on Civil and Political Rights (Articles 2 and 26), International Covenant on Economic, Social and Cultural Rights (Article 2), International Convention on the Elimination of All Forms of Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Rights of the Child.

The Universal Declaration on Human Rights and the two fundamental 1966 International Covenants on Human Rights have clearly stipulated that all people shall be entitled to human rights, without distinction of any kind, on the basis of "*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*". The UN Commission on Human Rights has analyzed and considered 'other status' to include the health conditions and status, including those of HIV/AIDS infected persons. As such the consideration of a person's HIV/AIDS status as a condition for discrimination is to be prohibited under international law.

⁶ Ibid, p.12.

⁷ Ibid, p.12.

⁸UNAIDS and Office of High Commissioner for Human Rights, "HIV/AIDS and Human Rights – International Guidelines, Second Consultation on HIV/AIDS and Human Rights", United Nations, New York and Geneva, 1996 and "HIV/AIDS and Human Rights – International Guidelines", Second International Consultation on HIV/AIDS and Human Rights, New York and Geneva, 2002.

2.3.2. *Right to Liberty and Security of Person.*

The right to liberty and security of person has been recognized in Article 3 of the Universal Declaration on Human Rights and Article 9 of the International Covenant on Civil and Political Rights. The Covenant provides that:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

According to this, people living with HIV/AIDS shall be entitled to:

- *The guarantee of their right to liberty and security of person without arbitrary interference by the authorities on the basis of HIV/AIDS. Any measure of detention in special colonies or separation from communities shall be considered as a violation of the liberty and security of person. In cases of dangerous behavior, restrictions on liberty may be imposed but that must be handled in accordance with the law;*
- *The freedom of compulsory HIV/AIDS testing. Compulsory HIV/AIDS testing constitutes an infringement of the liberty, security and inviolability of person. As provided for in Article 9 mentioned above, there is no public health and security justification for such involuntary HIV/AIDS testing.*

2.3.3. *Right to Privacy.*

The Universal Declaration on Human Rights (Article 12) and the International Covenant on Civil and Political Rights (Article 17) have recognized the right to privacy. Article 17 of the Covenant stipulates that:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks.

According to this provision, all people, including HIV/AIDS infected people shall be protected:

- *Against interference with the health privacy. HIV/AIDS testing without the consent of the persons concerned is viewed as unlawful interference with the right to privacy;*
- *That HIV/AIDS testing is considered lawful in the case of blood, organ or tissue donations as this relates to the health and security of person of other people;*
- *That, for the interest and health of the community, a HIV/AIDS infected person may authorize competent persons to disclose personal information to his/her family and community. This disclosure must ensure the confidentiality of the information and the entrusted competent persons must abide by that duty.*

2.3.4. *Right to Marry and to Found a Family.*

This right is provided in Article 16 of the Universal Declaration on Human Rights and Article 23 of the International Covenant on Civil and Political Rights. The Covenant stipulates that: *'The right of men and women of marriageable age to marry and found a family shall be recognized'*. Everyone is entitled to this right, including people living with HIV/AIDS.

The right to marry and to found a family is a fundamental right free from any discrimination. It is therefore not justifiable that pre-marital health and/or HIV/AIDS testing be imposed as a precondition for the granting of marriage licenses.

2.3.5. *Right to Education.*

This right is recognized in the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This includes:

- The right of both adults and children to receive HIV/AIDS-related education, particularly regarding prevention and care in the context of HIV/AIDS;
- The right to equal access to education, including access to elementary, secondary, university, vocational and other forms of education. National and international scholarships shall be granted without the discrimination as to HIV/AIDS status;
- The responsibility of the states to promote, through education, understanding, sympathy, tolerance and non-discrimination in relation to people living with HIV/AIDS.

2.3.6. *Right to Work.*

HIV/AIDS infected people are to enjoy the right to work without discrimination and they are:

- *not required to undergo HIV/AIDS testing during the process of employment recruitment;*
- *allowed to work according to their health condition;*
- *not required to undergo HIV/AIDS testing in connection with access to work compensation, pension benefits and insurance schemes.*

2.3.7. *Right to the Highest Attainable Standard of Physical and Mental Health.*

This right is provided in Article 12 of the International Covenant on Economic, Social and Cultural Rights. Thus, *'the right of everyone to enjoy the highest attainable standard of physical and mental health'* has been recognized.

Article 12 also states that the State shall have the obligation to prevent, treat and control epidemics and endemic diseases and to create conditions that would assure medical service and attention in the event of sickness. In order to meet those obligations, the State shall ensure:

- a. The provision of information, education and assistance in the context of HIV/AIDS, including access to services for sexually transmitted diseases, to means of prevention (such as condoms, clean injecting equipment) and to voluntary and confidential HIV/AIDS testing with pre- and post-test counseling, in*

order to enable individuals to protect the health of themselves and others. The State should also ensure a safe blood supply and implementation of 'universal precautions' to prevent transmission;

b. Access to adequate treatment and medication, within the overall context of public health conditions and policies to enable people living with HIV/AIDS to live as long and successfully as possible;

c. By special measures, equal access of all groups in society, particularly marginalized groups to prevention, care and treatment services. The State is required to ensure that no one is discriminated against in access to healthcare services on the basis of HIV/AIDS status.

2.3.8. Right to an Adequate Standard of Living and Social Security.

This right is stipulated in Article 25 of the Universal Declaration and in Article 11 of the International Covenant on Economic, Social and Cultural Rights.

The right to an adequate standard of living is of special importance for people living with HIV/AIDS and their families as most live in difficult economic and social conditions. The State, in introducing priority policies to assist vulnerable groups, should adopt comparable favorable conditions for people living with HIV/AIDS.

The State is also required to prevent all forms of discrimination to people living with HIV/AIDS in achieving an adequate standard of living and social security services.

2.3.9. Right to Enjoy the Benefits of Scientific Progress and Its Applications.

This right is provided in Article 15 of the International Covenant on Economic, Social and Cultural Rights. In the context of HIV/AIDS, this right is reflected in the enjoyment of the benefits from:

- Scientific medical advances in the safety of the blood supply and other medical activities;

- Advances in the treatment of HIV/AIDS. As people in developing countries can hardly obtain access to such benefits this right should therefore be understood at the international level. As such, countries should share and assist one another in the access to drugs and other less expensive treatment.

2.3.10. Freedom of Expression and Information.

This right is contained in Article 19 of the Universal Declaration and Article 19 of the International Covenant on Civil and Political Rights.

Accordingly, everyone has the right to seek, receive and impart information related to HIV/AIDS prevention. This includes the right to receive and impart educational materials and information related to HIV/AIDS transmission risks and prevention measures among groups - including special behavior groups such as injecting drug users or those engaged in same-sex sexual activity - without censorship, or liability for aiding or abetting criminal offences.

The mass media has the responsibility to respect human rights and dignity, specifically the right to privacy. The mass media should use appropriate language when reporting on HIV/AIDS, avoiding stereotyping and stigmatization.

2.3.11. Freedom of Assembly and Association.

This right is stipulated in both the Universal Declaration on Human Rights and the two 1966 International Covenants.

In the context of HIV/AIDS, this freedom of assembly and association among people living with AIDS is understood as an essential human right. The freedom of assembly and association is to ensure that people living with HIV/AIDS can express their needs and wishes and enable them to take part in the formation of HIV/AIDS related policies and laws and to help one another.

2.3.12. Right to Participate in State and Society Management and Cultural Life.

In general, people living with HIV/AIDS are entitled to their democratic right to participation in the conduct of state affairs without discrimination.

More specifically, people living with HIV/AIDS are to be enabled to take part in the development and implementation of HIV/AIDS related policies and programs that may directly affect their needs and interests.

The right to participation in cultural life means the right to undertake creative and artistic activities, which include those as a means of creative artistic expression or as a medium in the form of artistic creativity for imparting HIV/AIDS related knowledge and information and combating intolerance and prejudices.

Other rights, such as *freedom of movement, right to seek asylum, freedom from cruel, inhuman or degrading treatment or punishment*, shall be generally understood in accordance with the relevant Articles of the international instruments.

III. FINDINGS: VIETNAM'S LAWS AND POLICIES ON THE RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

3.1 General policy and Law overview.

3.1.1. *Upon its entry into international treaties, Vietnam has voluntarily committed itself to the legal obligations under the norms of those treaties. Vietnam has scrupulously implemented those international instruments on human rights that it has been a party to, especially the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.*

Human rights and fundamental freedoms and rights of citizens, including those of people living with HIV/AIDS, as provided for in the International Conventions that Vietnam has been party to, have been incorporated into the national laws and policies and have been implemented. The 1998 Ordinance on the signing and implementation of international treaties reaffirms that *'The Socialist Republic of Vietnam strictly abides by the international treaties that it has acceded to'* (Article 23). The revised 2002 Law on the promulgation of legal normative documents also specifies that in drafting of laws, ordinances and resolutions (of the National Assembly), the Drafting Committee must *'take into account the international treaties that the Socialist Republic of Vietnam has signed or acceded to'* (Article 26.7).

In implementing the international conventions on human rights, Vietnam has fulfilled its reporting obligations as per the requirements of the conventions.

3.1.2 *On commitments in relation to HIV/AIDS, Vietnam has made great efforts towards the realization of the objectives and targets agreed upon by the international community.*

The laws and policies of Vietnam demonstrates the concern and attention paid by the Party and the State on the prevention of HIV/AIDS, protection of community safety as well as legitimate rights and interests of people living with HIV/AIDS. In 1995, the Central Committee of the Communist Party of Vietnam issued the Instruction of 11 March 1995 on the *Leadership on The Prevention and Fight Against HIV/AIDS*. This instruction requires the Party leadership at all levels to pay attention to and enhance leadership on these pressing issues. In addition, over time the documents of the various Party Congresses have also raised the tasks of preventing and combating HIV/AIDS. The Eighth Party Congress in 1996 emphasized the need to *"prevent HIV/AIDS transmission and organize treatment to those infected"*⁹.

At the Ninth Party Congress, the policies and guidelines on HIV/AIDS were set to a greater extent. According to these policies and guidelines Vietnam would: *"apply integrated, comprehensive mechanisms and measures, including communication, education, treatment, vocational training, employment creation, etc.; organize treatment to AIDS patients and drug addicts, helping them to live and work meaningfully in the community"*¹⁰. To achieve those objectives, the CPV has stressed the importance of *"enhancing the equality and effectiveness in the people's access to and use of public healthcare service"*¹¹.

⁹ Communist Party of Vietnam, "Document of the VIIIth Party Congress", National Political Publishing House, Hanoi 1996, p.209.

¹⁰ Communist Party of Vietnam, "Document of the IXth Party Congress", National Political Publishing House, Hanoi 2001, p.215.

¹¹ Ibid, p.213.

The Government has adopted numerous policies and measures to implement the Party's policies and guidelines. Sets of policies have been issued by the various ministries and agencies, especially the Ministry of Public Health and the Ministry of Labour, War Invalid and Social Affairs, in relation to AIDS prevention, care and treatment of people living with HIV/AIDS. On 13 December 2001, the Prime Minister issued Decision 190/2001 QD-TTg approving the Program of national targets in the prevention and fight against certain social diseases, serious epidemics and HIV/AIDS for the period of 2001 – 2005.

To implement the Party's guidelines and State (Government) policies, Vietnam established in 1997 the National Committee on the prevention and control of HIV/AIDS, headed by a Deputy Prime Minister¹². Accordingly, AIDS prevention and control units have also been set up in each Ministry and other government agencies around the country.

It can be said that Vietnam has demonstrated the strongest commitment to, and undertaken the greatest efforts in, implementing the international commitments related to human rights in general and HIV/AIDS in particular. Vietnam has been making every effort to achieve the objectives of the United Nations Millennium Declaration, including those related to the prevention, control and reverse of HIV/AIDS. Vietnam has also been making efforts to implement the Declaration of Commitment on HIV/AIDS approved by the UN General Assembly. In this endeavor, the Government of Vietnam has reaffirmed its efforts to '*realize well... the Vietnamese Government's international commitments on HIV/AIDS*'¹³.

3.2 Vietnam's law on the rights of people living with HIV/AIDS.

The importance of the law lies in, among other things, the guarantee of human rights, especially the protection of the disadvantaged and vulnerable, including PLHA. Within its capacity, Vietnam has tried to mobilize resources and energy for the treatment of patients. At present, however, there remain shortcomings, both in law and in reality, in the protection of the human rights of patients in general and of people living with HIV/AIDS in particular. The greatest concern now is the serious situation of HIV/AIDS infection in Vietnam. The number of cases continues to increase and spread to all provinces and cities in the country.

3.2.1 Right to Equality and Non-Discrimination.

The Constitution and law of Vietnam provide that all citizens are equal in rights and obligations before the law. The law contains norms equally applicable to all people of its regulation. Further, besides the general provisions that are applicable to all, the law also contains specific provisions related to certain groups of people, such as people living with HIV/AIDS. Like all other citizens, people living with HIV/AIDS have rights and obligations as provided by the law.

Article 52 of the Constitution, Article 4 of the Criminal Procedure Code and Article 8 of the Civil Procedure Code all emphasize the principle of equality of all people and citizens. In Vietnam, the law has the same implication for all people. The Criminal Code has also provided aggravating and mitigating elements in relation to criminal liabilities applicable to all persons regulated by the Code.

¹² This Committee had been re-established by Decision 61/2000 of the Prime Minister as the National Committee on the prevention and control of AIDS, Narcotics and Prostitution.

¹³ The Prime Minister of the Government of Vietnam, The Prime Minister's Instruction No 02/2003 CT –TTg on enhancing HIV/AIDS prevention and control in 3/2003.

This demonstrates the justice and equality embodied in the criminal law of Vietnam. The application of other sanctions in the law of Vietnam must also abide by the procedures and proceedings stipulated by law without any distinction. HIV/AIDS infected persons, having committed a violation of the law, shall be subjected to similar, not greater, sanctions applicable to others in similar cases.

There are also specific provisions in law. For example, if HIV/AIDS positive persons, having known that they are infected with HIV/AIDS, commit an offense with deliberate HIV/AIDS transmission, they shall be subjected to a more severe penalty in accordance with the provisions of Articles 111, 112, 113, 114, 115, 116 and 256 of the 1999 Criminal Code.

3.2.2. Right to Life.

In the Declaration of Independence 1945, President Ho Chi Minh emphasized that: '*All people are born equal. The Creator has endowed them inviolable rights, which include the right to life, freedom and pursuit of happiness*'. In this spirit, almost all important laws and laws of highest legal force of Vietnam have a provision guaranteeing the right to life for everyone. For example, it is provided for in Article 71 of the Constitution, Articles 5 and 6 of the Criminal Procedure Code, and Article 32 of the Civil Code, that the citizens have the right to inviolability of person and are protected by law of their life.

In relation to HIV/AIDS, the 1999 Criminal Code added crimes such as the transmission of HIV to others and deliberate spreading of HIV to others (Articles 117 and 118). The crime of transmission is defined as when a person, having known he/she is infected with HIV, transmits the virus to others. The offender could be subjected to penalties of up to seven years imprisonment. On the other hand, the deliberate spread-of-HIV-crime, is applied to individuals who are not necessarily infected by HIV but intentionally make other individuals infected. For example a person deliberately using HIV contaminated equipment for injecting would be subjected to severe penalties, up to life imprisonment.

3.2.3. Right to the Highest Attainable Standard of Physical and Mental Health.

The law provides not only the right to life but also the legal basis for providing medical treatment to patients and to their achieving a higher quality of physical and mental health. Article 61 of the Constitution stipulates that the citizen has the right to healthcare. This provision has been specified in Article 1.1. of the 1989 *Law on Public Healthcare*: the citizen has the right to healthcare, rest, recreation and physical exercise; to hygienic working conditions, nutritional hygiene, clean living environment and medical services.

Article 32 of the Civil Code provides that: when a person is caught in an accident or disease that threatens his/her life, those having witnessed this nearby have the responsibility to take him/her to a medical station. Medical stations, either State, collective or private, shall not be allowed to deny treatment but must make all means of treatment available. Article 20 of the Ordinance on the prevention and control of HIV/AIDS specifies that: persons infected with opportunistic diseases shall receive treatment at specialized faculties or separate specialized faculties. The denial of treatment to HIV/AIDS infected persons is prohibited.

Various documents issued by the public health branch set out principles that are effective throughout the country.

Establishments that treat AIDS patients shall be consolidated and upgraded with necessary equipment. District medical centers have the responsibility to counsel patients as to whether they would be treated at the provincial hospital or receive treatment and care at the commune medical station as out-patients. People living with HIV/AIDS can therefore receive treatment either as out-patients in lesser cases or as in-patients at better equipped hospitals in more severe cases. Instruction 10/BYT-CT of 24 April 1997 of the Minister of Public Health on enhancing the prevention and control of HIV/AIDS stipulates that "*All medical stations shall not be allowed to deny treatment of HIV/AIDS patients*".

The Inter-Ministerial Circular 12/TTLB of the Ministry of Interior (now Ministry of Public Security), Ministry of Defence, Ministry of Finance, Ministry of Public Health and Ministry of Labour, Invalid and Social Affairs dated 20 December 1993 on the clothing, food, lodging, medical prevention and treatment, prevention of labor accidents and occupational diseases for prisoners, provides that; the care and treatment of people living with HIV/AIDS is the responsibility of the State, society and family, which should ensure them a stable, high standard of physical and mental health and living conditions.

At present, the State allocates an average of 2.8 billion VND per annum for expenses related to the provision of drugs for HIV/AIDS and this amount can only support 210 patients in terms of the current drug price in Vietnam¹⁴.

3.2.4 Right to Liberty and Security of Person.

The law provides for the protection of a citizens life, health, honor and dignity. The law also stipulates a citizen's right to freedom of movement, residence in the country, travel abroad and return to the country from abroad. The Constitution and the Criminal Procedure Code further provide that, no one may be arrested without a decision of the People's Court or a decision or an approval of the People's Procuracy. The arrest and detention of a person must be done in accordance with the law. In other words, only those having committed a violation of the law, in the cases specified by the law, can be arrested or detained. Those who have been wrongly arrested, detained, prosecuted or sentenced, shall be compensated, both materially and morally. These provisions are to be applied to all people without exception, including the case of people living with HIV/AIDS.

¹⁴ Hoai Thu, Nguyen Thi, Report of the Chairperson of the Committee on Cultural and Social Affairs of the National Assembly presented at the Third Session of the Tenth National Assembly, Nhan Dan Newspaper on 3 May, 2003 .

3.2.5. Right to Privacy

Article 73 of the Constitution, Article 7 of the Criminal Procedure Code and Article 42 of the Civil Code state that the citizen has the right to the inviolability of residence and the safety and confidentiality of mail, telephone and telegram correspondence. Article 34 of the Civil Code provides that the right to privacy of individuals is to be respected and protected by law. The collection and disclosure of information of the private life of an individual must only occur with his or her consent.

However, the legal documents relating to HIV/AIDS also contain other specific provisions. Article 17 of the 1995 *Ordinance on the Prevention and Control of HIV/AIDS* grants “*competent officials of medical establishments the right to decide on HIV/AIDS testing of HIV/AIDS-risk persons*”. Persons who enter Vietnam, in accordance with Article 19 of the Ordinance and Article 44.1 of the Decree 41/CP of 11 June 1998 on border medical quarantine of the Socialist Republic of Vietnam, are to declare their HIV/AIDS status. Failure to abide by this provision shall be dealt with in accordance with the provisions contained in Article 13 of Decree 46/CP dated 6 August 1996.

In the cases of positive HIV/AIDS test, Article 18 of the Ordinance stipulates that:

... the officials and establishments that have taken the test have the responsibility to ensure the confidentiality of the information involved. Only authorized persons have the right to disclose the test results to the spouse or members of the family, and to the agency or organization directly responsible for treatment and care of the infected person.

In order to ensure confidentiality, the law states that, such disclosure must be made directly to the person, not through mail, telephone or other means. Disclosure to the public of the names, ages, addresses or photos of HIV positive persons is strictly prohibited. Thus, the confidentiality of the private life and status of people living with HIV/AIDS is protected by law unless otherwise agreed by the HIV positive persons or their guardians.

3.2.6 Right to Assembly and Association.

Articles 68 and 69 of the Constitution provide that: the citizen is entitled to freedom of movement, expression, assembly and association. The freedom of association is also provided in the Law on the Trade Union and the Law on the Vietnam Fatherland Front. In the context of HIV/AIDS, Article 11 of the Ordinance stipulates that:

Every member of the family has the responsibility to work together with society to give healthcare and moral encouragement to the infected persons to enable their integration in the family and community.

Recently, the Government issued Resolution 88/CP dated 30 July 2003 on the organization, operation and administration of mass organizations. People living with HIV/AIDS are not discriminated against whatsoever in their participation in the various forms of association as provided for in the law.

At present, however, the law does not contain provisions specifically on the association of people living with HIV/AIDS.

3.2.7 Right to Work.

In Vietnam, work is both the right and duty of the citizen (Article 55 of the Constitution). Article 45 of the Civil Code and Article 5 of the Labour Code states that, everyone has the right to work, to freely select a job and a profession of their own choice, to vocational training and professional enhancement, without discrimination. At the same time, the law also contains specific provisions on the working conditions of people living with HIV/AIDS.

The Government Decree 34/CP of 1 June 1996, Guidance of the implementation of the Ordinance on the prevention and control of HIV/AIDS provides that:

... the family and society shall assist in and arrange for work suitable to people infected with HIV/AIDS.

The Inter-Ministerial Circular 14/2000/TTLT-BLDTBXH-BYT of the Ministry of Labour Invalid and Social Affairs and Ministry of Public Health on the administration, care and counseling of positive people at the treatment establishments of the branch of Labour, Invalid and Social Affairs issued 16 June 2000 states that: *"for unemployed people living with HIV/AIDS whose health conditions allow them to work, these establishments have the responsibility to advise them on vocational training and organize suitable job training to enable them to find jobs upon their integration in community.* However, HIV positive persons are not allowed to take certain jobs that a non-infected person could do.

The Inter-Agency Circular 29/2000/TTLT-BLDTBXH-BYT of 28 December 2000 identifies the types of work and professions that are prohibited to positive people, which include:

- Medical personnel having direct contact with human blood and bio-fluid;*
- Surgical personnel having direct contacts with human blood and bio-fluid.*

In such cases, the Circular implies that dismissal or termination of their contract is not allowed, and they should be transferred to another job. People who are to be transferred must agree to the area of work that they are to be transferred.

Government Decree 60/CP of 16 September 1993 issuing the 'Regulation on the prison' stipulates that: "Prison inmates shall receive suitable vocational training according to the prison conditions. Juvenile vocational training is mandatory (Article 24). Prison inmates work eight hours a day and take rest on holidays, Sundays and Lunar New Year as generally provided for by the State" (Article 21).

Thus, the rights to work and rest of people living with HIV/AIDS are clearly specified under Vietnamese law. However, the current rate of unemployment in Vietnam is relatively high and it is very difficult to find stable work for people living with HIV/AIDS. This becomes more difficult because there is a mobile population of people living with HIV/AIDS who are not under the care of the authorities, so the real figure of unemployed HIV positive people is not known.

3.2.8. Right to Marry and Found a Family.

Article 10 of the Constitution states that: the State protects the marriage and family. Article 5 of the Civil Code stipulates the right to marriage. Article 3 of the Law on Marriage and Family reaffirms that: *'The State shall adopt policies and measures to enable men and women citizens to enter into voluntary*

and progressive marriage'. To protect marriage and the family, this Law also specifies the legal requirements for marriage, such as:

- *Men must be twenty years or older;*

- *Women must be eighteen years or older;*

- *Marriage must be freely entered into by a man and a woman, without coercion and deceit on the part of either side; no one is allowed to coerce or hinder a marriage which is not prohibited by the law (Article 9).*

Marriage is prohibited in the following cases:

- *Marital persons; persons failing [in their] capacity of [acceptable] civil behavior; persons of direct kinship within three generations; parents (adoptive parents) and their children (adoptive, separate, in-law); persons of the same sexes (Article 10).*

Thus, apart from the cases prohibited by Article 10, any persons meeting the requirements specified in Article 9 are eligible to marry (which is respected and protected by Article 4 of the Law on Marriage and Family).

To ensure family happiness the law states that either spouse, having known that he/she is infected with HIV/AIDS, must inform the other spouse; otherwise, the director of the hospital from the district and or higher shall inform the spouse. However, such a disclosure must ensure the confidentiality of the people involved and appropriate counseling must be arranged.

3.2.9. Right to Equal Access to Education.

As provided for in Article 9 of the Constitution, education is both the right and duty of the citizen. The State facilitates the citizen's opportunities to literacy education and suitable vocational training and ensures the universal elementary and basic secondary education. Article 9 of the Law on Education provides that: all citizens regardless of ethnic nationalities, social status or economic conditions, are equal in educational opportunities.

The State pursues social justice in education, ensuring that everyone receives an education. In the context of HIV/AIDS, Article 8 of the Ordinance on the prevention and control of HIV/AIDS provides that:

Education on HIV/AIDS prevention and control shall be incorporated in the curricula of schools, with the contents suitable to each form of school, education levels, ages, sexes, and customs and practices of the ethnic nationalities.

Government Decree 34 states that: people living with HIV/AIDS receiving treatment shall have their accommodation, education, productive work arranged.

Government Decree 60/CP of 16 September 1993 issuing the 'Regulation of Prisons' stipulates that: 'Prison inmates shall receive literacy education to overcome their illiteracy and juvenile persons are to be provided with universal elementary education' (Article 24). Thus, in all circumstances, the law provides people access to education.

For people living with HIV/AIDS, they also have access to psychological counseling, advocacy on health and HIV/AIDS prevention and control, in the interest of themselves and of the community.

3.2.10. Right to an Adequate Living Standard.

Doi Moi has led to significant achievements and the life of the people in Vietnam has been improved. However, there still remain numerous problems that need resolving such as an undeveloped healthcare system. In this context, it is difficult to ensure adequate living conditions for people with HIV/AIDS.

Circular 128/TT-BTC of the Ministry of Finance issued 26 October 1999 provides guidelines for the allocation of financial resources and expenses for the national program on HIV/AIDS prevention and control, specially:

-Payment to peer education work at the province to mitigate impacts (payment to HIV/AIDS positive persons in conducting self assistance and exchange of experience in infection prevention and control), with each province to receive one ration generally and those provinces having the rate of HIV/AIDS cases higher than that of 40 cases /100,000 population to receive two rations; each ration is 80,000 VND a month;

- Support for poor patients and medical workers infected with HIV/AIDS with drug expenses at state medical establishments equivalent to 100,000 VND per patient per year;

- Accommodation support to HIV/AIDS patients, who lost their working capacity, at the 05 and 06 centers equivalent to 50,000 VND/person/year, but that would not exceed 6 months after the expiration of the grant period.

Given the high cost of living in Vietnam, this limited support has put the life of people living with HIV/AIDS into a difficult situation.

3.2.11. Right to social security, support and welfare.

Like other members of the community, people with HIV/AIDS have equal opportunities to social security, support and welfare. Government Resolution 20/CP on enhancing the prevention and control of HIV/AIDS provides for the organization of testing and treatment of AIDS patients at hospital infectious disease departments. When the number of patients increases the care and treatment may be expanded to the specialized establishments. The Government considers the prevention and control of HIV/AIDS similar to that of a natural disaster and allocates extra budget for HIV/AIDS prevention and control activities, however, the budget for this purpose is limited.

3.2.12. Right to Share Scientific Progress and Enjoy the Benefits of Scientific Progress.

Like some other countries in the world, Vietnam advances scientific study and researches ways and means relating to HIV/AIDS treatment. It supports research to reduce the price of treatment drugs.

On 8 May 2000, the Minister of Public Health issued Decision 1451/2000/QD-BYT on enacting 'Guidelines on HIV/AIDS therapy and treatment in Vietnam'. The decision stipulates that, the application of technical, specialized measures and HIV/AIDS therapy and treatment shall be taken at all treatment establishments in Vietnam- state-owned, people-owned, private and foreign invested. However, at present, not all such treatment establishments have applied these measures.

In addition, the budget for HIV/AIDS prevention and control in Vietnam stands at only 1,000 VND/person/year, while in Thailand and Cambodia that figure is 20,000 VND/person/year¹⁵. Those people infected with HIV/AIDS who can afford the expenses, cannot find the required drugs since they are not available on the market.

3.2.13. Right to participate in state management and life of society.

Article 60 of the Constitution provides that: the citizen has the right to scientific research, literature and art creation and criticism and participation in other cultural activities. Article 69 of the Constitution stipulates that: the citizen has the freedom of expression, freedom of the press and the right to receive information, right to assembly and association. Article 53 of the Constitution provides that the citizen has the right to participate in the management of the State and society, discuss the general issues of the country and of the locality, make recommendations to the State agencies and cast vote when the State organizes a referendum. Article 54 of the Constitution provides that: the citizen, regardless of ethnic nationality, sex, social status, belief, religion, educational level, profession and duration of residence, is entitled to the right to vote at the age of 18 and above and the right to stand for election to the National Assembly and the People's Councils at the age of 21 and above in accordance with the law. The 1994 Law on Election of Members of the People's Councils and the 1997 Law on Election of Members of the National Assembly provides no discrimination whatsoever with regard to the right to stand for election of citizens living with HIV/AIDS.

The law contains specific provisions to ensure the integration of people with HIV/AIDS into the community. Government Decree 34 stipulates that:

... the family and community have the responsibility not to adopt stereotypes and stigmatization against people with HIV/AIDS, but they must create favorable conditions for their physical, mental and health care. The People's Committee, at all levels, mobilize and guide the population to take part in the spiritual and health care of people living with HIV/AIDS, ensuring they are free from discrimination and enabling their integration into the community.

- Persons who complete their terms of treatment at the medical establishments are to be reintegrated into the community (Circular 14).

At present only 50 percent of those reported to have HIV/AIDS in Vietnam receive monitoring and support¹⁶. The other 50 percent declare false names and addresses or move to other places for various reasons. The principal reason of their concern is related to the possibility of prejudice according to the Report of the Chairperson of the Committee on Cultural and Social Affairs of the National Assembly. This situation not only deprives infected persons of medical care and integration into the community but increases the risk of HIV/AIDS transmission.

3.2.14. Freedom from Torture and from Cruel, Inhumane or Degrading Treatment or Punishment.

The Constitution and Criminal Code of Vietnam prohibit all forms of coercion, inhuman treatment and violation of the honor and dignity of the citizen. The law of Vietnam does not permit double adjudication of a single act of one offence. Only those persons who have committed a crime stipulated

¹⁵ Ibid.

¹⁶ Ibid

in the Criminal Code are to be subjected to criminal liability. Apart from that, in whatever circumstances, no one may be arbitrarily prosecuted or adjudicated.

IV. DISCUSSION AND RECOMMENDATIONS TO ENSURE THE HUMAN RIGHTS OF PEOPLE LIVING WITH HIV/AIDS

1. Overcoming the inappropriate understanding of HIV/AIDS related issues.

It could be said that over the past years in Vietnam significant achievements have been recorded in the work of communication and dissemination of information and knowledge related to HIV/AIDS. The level of awareness of HIV/AIDS in the community has improved. The Vietnam 2002 UNGASS report revealed that 79.4% of the youth believe that condom use could help prevent HIV/AIDS. Despite this basic understanding, the majority of people have adopted an attitude of prejudice and stigmatization against people with HIV/AIDS. This is for various reasons, such as:

- Fear for one's own personal safety;
- an over-estimation of the infectiousness of HIV/AIDS. Many people, while they understand the three ways of transmission, are still afraid of other possible transmission channels or of a high infection risk in their daily contact or work with HIV/AIDS infected persons. For example in the case of an accident or the like that may cause bleeding from persons with HIV/AIDS;
- view of people with HIV/AIDS as individuals involved in social evils, such as prostitution, drug abuse, or other unhealthy ways of life. Thus, HIV/AIDS is always considered as being related to bad behavior and practices that should be condemned in society. In general, a person who is infected with HIV/AIDS is identified as a person involved in social evils or even crimes.

Furthermore, according to several sociological surveys, the society, including relatives of people living with HIV/AIDS, still perceive that:

- Persons with HIV/AIDS can no longer work or can only work a little and they cannot make any contribution to society and family;
- persons with HIV/AIDS are those who carry the 'moral disease', who certainly have worse ethics as compared to other people in society or who harbor relations with 'wrong doers';
- priority should not be given to such a group of people because in society there are yet many other groups which need to receive attention. Moreover, as the country is still poor, there are many other priority problems that require solutions. From that, there emerges a general perception that the work of caring and assisting people with HIV/AIDS should only be voluntary, humanitarian and charitable activities rather than one that reflects the obligation of the State and society in ensuring their rights and interests as have been provided for in the law.

2. Enhanced awareness of HIV/AIDS related issues and ensuring of human rights of people living with HIV/AIDS.

2.1. WHO and UNAIDS forecast that the Asia-Pacific region and Southeast Asia, including Vietnam, are facing a possible explosion in the epidemic such as that experienced by African countries some years ago. A new approach to resolve this problem is therefore of the utmost importance.

HIV/AIDS is not just a health problem, but also a social problem. Firstly, we should determine the interdependent factors in dealing with this problem. The strategy for the prevention and control of HIV/AIDS should include two elements:

- the protection of individuals and that of society, particularly protection of people with HIV/AIDS and protection of the community from its effects;
- preventative activities (prevention) and combating activities (treatment) against HIV/AIDS.

To reinforce this, there needs to be established an understanding about these two relationships:

- the relation between the protection of the rights of the individuals and those of the community;
- the relation between the task of 'prevention' and that of 'combat' against HIV/AIDS.

The proper understanding and resolution of those relationships will bring about a greater effectiveness in resolving the HIV/AIDS problem in the country at present. Approaching the task of HIV/AIDS prevention and control from a human rights perspective will provide both a comprehensive and a highly feasible point-of-view for addressing all dimensions of the problem.

Human rights are rights of all people, without distinguishing between sex, color, language, religion, social status, origin or health conditions. Human rights of people living with HIV/AIDS should therefore be respected and protected as this is in keeping with the policy, law and humanitarian nature of our society.

One of the conditions that ensures the respect and protection of human rights of people with HIV/AIDS is the correct and adequate understanding of their human rights. Therefore, **rights of PLHA should be recognized more concretely by the law of Vietnam**. To enhance further the enjoyment of human rights, the State of Vietnam has ratified and acceded to many international conventions on human rights.

2.2. Both domestic and international legislation discussed in this report stipulate that human rights of persons are always accompanied with their obligations in relation to the community and society. People living with HIV/AIDS have the duty to protect the rights of other people as well as the rights and interests of the community. On the other hand, the community also has the duty and obligation not to do anything that may hinder the enjoyment of the rights by people living with HIV/AIDS.

When people living with HIV/AIDS are enabled to enjoy human rights with legal protection and are able to live in a discrimination-free environment, PLHA will better understand and comply with the spirit and responsibility to protect the community. Thus, the interests, rights and obligations of the community and society on the one hand and of people living with HIV/AIDS on the other are interconnected and must be pursued concurrently.

2.3. The human rights perspective is the most effective approach to resolve the relationship between prevention and treatment.

It may be understood that the relationship between preventive measures (prevention) and combating measures (treatment) against HIV/AIDS can be considered as the difference in the relationship between the rights and interests of the community and those of PLHA. This is because the 'preventive measures' target non-infected populations while 'combating measures' target infected persons.

Preventive measures, rather than treatment, remain the major focus of HIV/AIDS management in Vietnam. Over the years, various HIV/AIDS prevention, information and education dissemination activities have been undertaken on a wide scale and in various localities. Those activities have had certain impacts on the spread of HIV/AIDS. However without investing in treatment and care and support of PLHA, the overall effectiveness of HIV/AIDS management is limited.

Over the past years, the issue of care and treatment of people living with HIV/AIDS have not been weighed equally to that of prevention, because of:

- Inadequate awareness of the interrelationship between the prevention and cure of HIV/AIDS among policy makers and care givers;
- the focus on the protection of the community and society which, while appropriate, is not a comprehensive approach to combat HIV/AIDS ;
- budget constraints.

3. Some specific solutions.

3.1. To further strengthen information dissemination and education about human rights in the context of HIV/AIDS.

The international instruments that Vietnam has acceded or committed to, as well as the fundamental rights provided for in the national law, should be used to develop the theoretical approach to ensuring the human rights of people living with HIV/AIDS.

Dissemination of information related to HIV/AIDS has not been based on a human rights approach. Education on HIV/AIDS has focused more on preventing the transmission, calling for tolerance and voluntary care from the community. This may stem from the perception that people living with HIV/AIDS may be different from other people in society. This perception can lead to a subjective view that PLHAs rights and dignity are not on the same par as those of other people in society.

Human rights based approaches should be incorporated into information dissemination. This should be aimed at ensuring the respect, protection and promotion of the human rights of people living with HIV/AIDS is similar to that of other people in society without any discrimination. This understanding should be fully embraced in the work of communication and education on HIV/AIDS.

It is necessary to enhance the awareness of society as a whole of the human rights of people living with HIV/AIDS and changing the perception and guiding view of the community on this issue.

The enhanced information dissemination and education based on human rights, in the context of HIV/AIDS, should be directed at the following main groups:

- Leaders of agencies and branches involved in policy planning, leaders of localities, members of the National Assembly and of the People's Councils at various levels are groups of people involved in policy and legislation development, thus having adequate knowledge of the general principles of human rights provided in international law and in national laws and policies. **However, the understanding of key policymakers and legislators of the rights of people living with HIV/AIDS will need to be improved in order to implement human rights principles in detail.**

- Officials involved in law enforcement, health provision and other work related to HIV/AIDS;
- Members of social organizations, including non-governmental organizations, having this as a step to gradually achieve universal education in the entire society;
- Persons living with HIV/AIDS to enable them to understand better their human rights and responsibilities.

3.2. To enhance the resources for and accessibility to the care and treatment of people infected with HIV/AIDS (medical infrastructures, medical personnel, treatment drugs.).

The increase of resources for the prevention, and especially care and treatment of HIV/AIDS is one of the important solutions. At present, there are a serious lack of financial resources to support the care of people living with HIV/AIDS and other related activities and there also exists a major difficulty in international legal barriers against the access to affordable HIV/AIDS drugs.

To address this problem, the following is recommended.

3.2.1. **To increase the resources for the prevention and treatment of HIV/AIDS.** These resources include the following budgetary items:

- Acquisition of treatment drugs;
- Construction of infrastructures for HIV/AIDS related care and treatment;
- Support of medical workers in HIV/AIDS related care and treatment;
- Support of HIV/AIDS counseling and other related social activities.

3.2.2. To enhance the capacity and conditions of people living with HIV/AIDS in their access to various HIV/AIDS drugs.

Solutions to this problem should involve international legal issues. At present, almost all people living with HIV/AIDS cannot access HIV/AIDS drugs due to the high price. The question is how to create conditions for people living with HIV/AIDS to get access to treatment drugs at affordable prices.

At present, Vietnam is negotiating its entry into the World Trade Organization and will possibly achieve this in 2005. At the request of the Government, the Ministry of Public Health has been preparing a project to manufacture affordable anti-retroviral drugs (ARV). However the issues related to the right to patent protection remains a legal barrier to economic and commercial relations. **The question of manufacturing ARVs should be viewed from a humanitarian perspective in order to ensure access to affordable drugs manufactured in this country, or purchased from a third country, would not affect international legal provisions on patents.**

From the human rights based viewpoint, people living with HIV/AIDS have the right to enjoy the benefits of mankind's scientific, technological and cultural progress (Article 15, International Covenant on Economic, Social and Cultural Rights). This provision requires the legal duty of state parties, by its own efforts or through international cooperation (Article 2), to create conditions for their citizens, including people living with HIV/AIDS to get access to the benefits of humanity's scientific and cultural progress, in this case HIV/AIDS treatment drugs.

3.3. To enhance measures in support of people with HIV/AIDS.

Supporting people living with HIV/AIDS is one of the basic responsibilities of the State and community. Supporting activities undertaken have produced encouraging results that enable people living with HIV/AIDS to obtain necessary life conditions and confidence. To effectively ensure the human rights of people living with HIV/AIDS, the following measures are recommended.

3.3.1. HIV/AIDS counseling should be conducted on a voluntary basis with respect for dignity and fundamental human rights. Counseling activities, including pre- and post- HIV/AIDS testing counseling, should be enhanced. **Counseling should be seen as essential in resolving difficulties related to HIV/AIDS testing.** More specific recommendations are:

- To open more establishments and various forms of counseling;
- To ensure a high standard of specialized counseling that enables the high risk target persons to volunteer for testing; in cases where persons are yet to decide on taking the test or the result of their voluntary test is positive, proactive preventive measures and measures of care and protection for both themselves and the community should be initiated.

3.3.2. Research and programs on legal aid should be taken to assist people living with HIV/AIDS. **Legal aid on HIV/AIDS related issues should be free of charge.**

Such legal aid should be part of the legal aid centers of the localities. At present, these legal aid centers (belonging to the Ministry, provincial Departments and district Divisions of Justice) have been giving free-of-charge legal aid to targeted poor people. The State needs to add HIV/AIDS related legal aid, including healthcare, treatment, non-discrimination and education to this existing free-of-charge legal aid. To ensure the confidentiality, such legal aid shall not define people eligible to free-of-charge legal aid (meaning people living with HIV/AIDS) but provide only free-of-charge advocacy such as contents of the laws and policies related to HIV/AIDS.

The free legal aid establishments may also cooperate in various forms, such as within counseling centers on HIV/AIDS, as a function of domestic and foreign NGOs permitted to operate in the field of healthcare in Vietnam, or as part of scientific research institutions related to health and other social issues.

3.4. The following measures should be continued.

- enhance cooperative capacity of the state agencies in activities to prevent and combat against HIV/AIDS;
- continue the study of human rights and issues related to HIV/AIDS and human rights in international law and other international legal instruments in order to supplement and refine the provisions of the laws and policies of Vietnam.

4. Review and revision of certain provisions of law.

The legal system of Vietnam continues to be reformed and improved to meet the needs of the socio-economic development of the country in the period of industrialization, modernization and international integration. In this context, provisions in the current legal system and policies relating to HIV/AIDS should also be reviewed and revised. Moreover, from a human rights based approach,

certain provisions contained in the legal normative documents need to be reviewed in order to ensure more effectively the human rights of people living with HIV/AIDS and the rights and interests of the community.

The revision of certain legal documents related to HIV/AIDS should be directed towards the respect and protection of the legitimate rights and interests of people living with HIV/AIDS and at the same time, the fundamental rights of other individuals as well as those of the community.

To overcome the misconceptions of society towards the rights of people living with HIV/AIDS, **the spirit and provisions of the 1992 Constitution should be further specified and the relevant provisions contained in the International Conventions on Human Rights that Vietnam has been committed to should be further incorporated into law**, specifically:

- i) Protection against discrimination of any forms;
- ii) Voluntary HIV/AIDS testing (if mandatory testing is required, that must be in exceptional necessary cases and must satisfy certain conditions); protection of the right to privacy, liberty and security of person;
- iii) Enjoyment of the highest attainable standard of physical and mental health, such as: access to medical services, to treatment drugs, of rights, such as those related to healthcare, satisfactory living condition and the enjoyment of benefits of scientific and technological progress;
- iv) Participation in the development of laws and policies related to their rights, interests and obligations. For example, the right to participate in the management of the state and society, in cultural life; freedom of expression, assembly and association;
- v) Enjoyment of the right to education on prevention and combat against HIV/AIDS, on human rights and rights and obligations of HIV/AIDS infected people.

5. Recommendation of some specific provisions.

5.1. Recommendation regarding *The Ordinance on the Prevention and Control of HIV/AIDS* adopted by the Standing Committee of the National Assembly of the Socialist Republic of Vietnam in 1995.

This is an important legal document that focuses on the regulation of issues related to HIV/AIDS during the initial stages in Vietnam. The Ordinance has made great contributions to the work of preventing and treating HIV/AIDS in the country. However, after a period of implementation, the Ordinance could be amended in order to fulfill the realization of its goals.

Some provisions of the Ordinance indicate that people living with HIV/AIDS have not been seen as the most in need of protection. Of the 30 provisions of the Ordinance, 4 Articles (20, 22, 23 and 24) are directly related to the right of treatment at medical establishments (Article 20); professional limitations of people living with HIV/AIDS (Article 22); obligation to disclose information on their HIV/AIDS status to their spouse (Article 23); and duty not to transmit HIV/AIDS to others (Article 24.1).

Other aspects of the Ordinance that require revision are:

- the Ordinance provides for cases that require mandatory HIV/AIDS testing without taking adequate account of the subjective opinion of the person being directed to undertake such a test;
- the Ordinance sets prevention of the spreading of HIV/AIDS as the main objective without sufficiently protecting the legitimate rights and interests of people living with HIV/AIDS.

To overcome these limitations, it is proposed that the Ordinance be revised and supplemented as follows:

i) On the objective of the Ordinance:

The Ordinance should specify its objective to protect the health of the people in general and the right of everyone to healthcare, including the right to healthcare of people living with HIV/AIDS.

ii) On the content of the Ordinance:

The Ordinance should be supplemented with a new chapter; "Rights and obligations of people living with HIV/AIDS".

The additional Chapter is crucial in order to respond to the issues of HIV/AIDS that are faced by the ever increasing number of PLHA. This increase is a result of the rapid transmission of the disease as well as the likelihood of future availability of treatment and support measures that would contribute to prolonging the life expectancy of people with HIV/AIDS.

In relation to the content, this Chapter should stipulate the fundamental rights of people living with HIV/AIDS, especially the right to healthcare, access to scientific and technological achievements (drugs) both at the national and international levels, the right to non-discrimination and the right to express one's opinion. The Chapter should stipulate the specific obligations that PLHA's have to safeguard the rights of others and prevent the spread of the disease in the community and society.

The provision of the rights and obligations of people living with HIV/AIDS will be an important legal basis for people living with HIV/AIDS to protect themselves and at the same time enhance the capacity to ensure the safety of the whole society, as they are more conscious of their responsibilities.

iii) On provisions related to mandatory HIV/AIDS testing and disclosure of HIV/AIDS status:

As provided for in Article 16.2 of the Ordinance and Article 8.1 of Government Decree 34/CP of 1 June 1996 guiding the implementation of the Ordinance, the persons in charge of medical establishments from the district level and above '*have the right to request high risk persons to take HIV/AIDS testing*'¹⁷ and '*the hospital directors and persons in charge of medical establishments from the district level and above have the right to disclose results of the testing to the persons infected with HIV/AIDS, their spouses or members of their families and the organizations or persons directly responsible for the healthcare of the HIV/AIDS infected persons*'¹⁸.

¹⁷ Article 8.1, Decree 34/CP of 1 June 1996

¹⁸ Article 8.2, Decree 34/CP

As such, the right to privacy of some individuals has been somewhat restricted in certain cases, should those individuals fall into the group of people defined as 'high risk'.

The protection of the community (including relatives of infected persons) is extremely important. However, initiatives should be made to reduce interference in this right to privacy and security of person of people living with HIV/AIDS, and increase individual responsibility and self-consciousness towards their relatives and the community. Therefore, counseling must be emphasized and effectively used to enable people living with HIV/AIDS to take voluntary testing and preventive measures.

The Ordinance's provision on mandatory testing should be reviewed. The review should take into account the provisions of the international conventions on human rights, specifically the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, as well as other international commitments that Vietnam has taken part in, especially the Declaration of Commitment on HIV/AIDS and International Guidelines on HIV/AIDS.

iv) On the provision that foreigners, upon entry into Vietnam, must declare their HIV/AIDS status as stipulated in Article 19 of the Ordinance (and Article 44.1 of the Government Decree 41/CP of 11 June 1998 on the Regime of Border Medical Quarantine).

Arguably this provision is not easy to apply. In reality, very few people have publicly disclosed their HIV/AIDS status, and if they do not disclose such information there is little the authorities can do about it. Its practicality should be reviewed.

5.2. The *Law on the Protection of Health of People* of 1989 provides for mandatory treatment of people with HIV/AIDS. People living with HIV/AIDS must be treated at a medical establishment as in cases of other illness, such as severe mental diseases, TB and leprosy (Article 29).

This provision is mandatory, which would affect the freedoms of people living with HIV/AIDS. Moreover, unless we are to perceive that people living with HIV/AIDS are similar to persons with severe mental disease who have lost their capacity to make decisions for themselves, a similar mandatory treatment system is not justifiable. **Therefore the provision on mandatory testing should also be reviewed to enable the voluntary participation of people living with HIV/AIDS through counseling.**

5.3. The Law on Marriage and Family provides for the conditions where marriage is prohibited (coercion, direct kinship, younger than the legal marital age). The procedures for granting a marriage certificate for a foreigner with a Vietnamese person as provided for in Government Decree 184 CP on 30/11/1994 stipulates that, inter alia, each of the couple must present a certificate on his/her health status issued by a professional medical agency, including being free from HIV/AIDS. This provision does not show equality between individuals. If the couple is Vietnamese, they are not required to obtain a certificate declaring they are free from HIV/AIDS. **This provision should be reviewed.**

5.4. In relation to medical insurance, at present, there are no provisions for medical insurance for people living with HIV/AIDS. **Therefore the provisions for medical insurance related to people living with HIV/AIDS and HIV/AIDS related treatment should be reviewed. When access to cheap HIV/AIDS drugs is possible, medical insurance should be applied also to people living with HIV/AIDS.**

5.5. Acts on non-discrimination should be added and specified in the law in relation to people belonging to vulnerable groups, including people living with HIV/AIDS.

At present, the law, including the Criminal Code, only considers non-discrimination as a principle but has not yet defined the specific acts involved and sanctions against such discriminating acts.

The acts on discrimination in all forms against vulnerable people should be accompanied with corresponding sanctions. The guarantee against discrimination and prejudice is one of the essential elements that creates the confidence of people living with HIV/AIDS towards the community, enables them to voluntarily take testing and further upgrades the strategy to prevent and combat HIV/AIDS.

BIBLIOGRAPHY

A. Vietnamese documents

Communist Party of Vietnam, “Documents of the Eighth National Congress” National Political Publishing House, Hanoi 1996.

Communist Party of Vietnam, “Documents of the Ninth National Congress”, National Political Publishing House, Hanoi 2001.

Hoai Thu, Nguyen Thi, “Report of the Chairperson of the Committee on Cultural and Social Affairs of the National Assembly presented at the Third Session of the Tenth National Assembly, Nhan Dan Newspaper on May, 03 2003.

Ly Quang, Mai(ed), “Constitution of the Socialist Republic of Vietnam” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai(ed), “ Criminal Code ” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai(ed), “Criminal Procedure Code” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai (ed), “ Labor Code” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai(ed), “ Civil Code” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai (ed), “ Law on Education” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai (ed), “Law on Marriage and Family” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.

Ly Quang, Mai (ed), “Law on the Care and Protection of People’s Health ” in “A Selection of Fundamental Laws”, The Gioi Publishing House, Hanoi 2000.12. Quoc Viet, Nguyen (ed), “Ordinance on Prevention of infection of HIV/AIDS 1995” in “Existing Legal Documents on Prevention of HIV/AIDS”, Ministry of Justice, Hanoi 2003.

Vietnamese Research Center for Human Rights, “Independent Declaration of Vietnam (1945) in “National and International Instrument on Human Rights”, National Political Publishing House, Hanoi, 1996.

B. UN Documents

UNAIDS, “Keeping the Promise- Summary of the Declaration of Commitment on HIV/AIDS,” Published by UNAIDS 2001.

UNAIDS and Office of High Commissioner for Human Rights, “HIV/AIDS and Human Rights- International Guidelines, Second International Consultation on HIV/AIDS and Human Rights”, United Nations, New York and Geneva, 1996.

UNAIDS and Office of High Commissioner for Human Rights, “HIV/AIDS and Human Rights- International Guidelines, Second International Consultation on HIV/AIDS and Human Rights”, United Nations, New York and Geneva 2002.

UNAIDS and Inter-Parliamentary Union, “Handbook for Legislators on HIV/AIDS, Law and Human Rights”, UNAIDS/IPU, Geneva 1999..

Annex A: Treaties Ratified by Vietnam

- *International Convention on the Prevention and Punishment of the Crime of Genocide – 1948 (Vietnam acceded 9 June 1981).*
- *International Convention on the Elimination of All Forms of Racial Discrimination – 1965 (Vietnam acceded 9 January 1982).*
- *International Covenant on Economic, Social and Cultural Rights – 1966 (Vietnam acceded 24 September 1982).*
- *International Covenant on Civil and Political Rights – 1966 (Vietnam acceded 24 September 1982).*
- *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity – 1968 (Vietnam acceded 4 June 1983).*
- *International Convention on the Suppression and Punishment of the Crime of Apartheid – 1973 (Vietnam acceded 9 June 1981).*
- *International Convention on the Elimination of All Forms of Discrimination against Women – 1979 (Vietnam ratified 17 February 1982).*
- *International Convention on the Rights of the Child – 1989 and the two Optional Protocols (Vietnam ratified 28 February 1990 and 20 December 2001, respectively).*

In addition, as a member of the ILO, Vietnam has acceded to a number of important conventions of this organization, including:

- *Convention on Equal Payment – Convention 100 (Vietnam acceded 7 October 1997).*
- *Convention against Discrimination in Work and Employment – Convention 111 (Vietnam acceded 7 October 1997).*

Vietnam is also party to several UNESCO conventions, such as:

- *Convention against Discrimination in Education – 1962.*

Annex B: recommendations which would assist and ensure that Vietnam was conforming to the International Guidelines for HIV/AIDS and Human Rights.

***Guideline 1:** To establish an effective national framework for the response to HIV/AIDS.*

***Guideline 2:** Through political and financial support, ensure that the community consultation occurs in all phases of HIV/AIDS policy design, program implementation and evaluation and that community organizations are enabled to effectively carry out their activities, including in the field of ethics, law and human rights.*

***Guideline 3:** To review and reform public health laws to ensure that they adequately address public health issues raised by HIV/AIDS.*

***Guideline 4:** To review and reform criminal laws and correctional systems to ensure that they are consistent with international human rights obligations and are not misused in the context of HIV/AIDS or targeted against vulnerable groups.*

***Guideline 5:** To enact or strengthen anti-discrimination and other protective laws that protect vulnerable groups, including people living with HIV/AIDS.*

***Guideline 6** (as revised and updated at the third International Consultation on HIV/AIDS and Human Rights): To enact legislation to provide effective measures of prevention and treatment at affordable price in relation to HIV/AIDS and other related opportunistic infections.*

***Guideline 7:** To implement and support legal support services that will educate people affected by HIV/AIDS about their rights.*

***Guideline 8:** To promote, in collaboration with and through community, a supportive and enabling environment for women, children and other vulnerable groups by addressing underlying prejudices and inequalities through community dialogue, especially designed social and health services and support to community groups.*

***Guideline 9:** To promote the wide distribution of education, training and media programs explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance.*

***Guideline 10:** To ensure that the government and the private sector develop codes of conduct regarding HIV/AIDS issues that reflect the human rights principles.*

***Guideline 11:** To ensure monitoring and enforcement mechanisms to guarantee the protection of HIV/AIDS-related human rights, including those of people living with HIV/AIDS, their families and communities.*

***Guideline 12:** To cooperate through all relevant programs and agencies of the UN system, including UNAIDS, to share knowledge and experience concerning HIV/AIDS-related human rights issues and to ensure effective mechanisms to protect human rights in the context of HIV/AIDS at international level.*