

**LEGAL SERVICES FOR PLHIV AND
KEY POPULATIONS:**

**AN ASSESSMENT OF THE CURRENT SITUATION AND
RECOMMENDATION FOR THE FUTURE**

- September, 2012

Abbreviation

| | |
|-----------------|---|
| ADB | Asian Development Bank |
| AusAid | Australian Agency for International Development |
| CBO | Community-based organization |
| CIDA | Canadian International Development Agency |
| DANIDA | Danish International Development Agency |
| DOJ | Provincial Department of Justice |
| DOLISA | Provincial Department of Labor, War Invalids and Social Affairs |
| FGD | Focus Group Discussion |
| GFATM | The Global Fund to Fight AIDS, Tuberculosis and Malaria |
| HCMCYU | Ho Chi Minh Communist Youth Union |
| Key Populations | Those most likely to be exposed to HIV or to transmit it and whose engagement is critical to a successful HIV response. In Vietnam, this group includes: people who inject drugs, men who have sex with men, sex workers, and transgender people. |
| LCC | Legal Consulting Center |
| MOF | Ministry of Finance |
| MOH | Ministry of Health |
| MOHA | Ministry of Home Affairs |
| MOJ | Ministry of Justice |
| MOLISA | Ministry of Labor, War Invalids and Social Affairs |
| MSM | Men who have sex with men |
| NLAA | National Legal Aid Agency |
| PAC | Provincial AIDS Committee |

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|-------|---|
| PBA | Provincial Bar Association |
| PC | People's Committee |
| PLAC | State Legal Aid Center under Provincial Department of Justice |
| PLHIV | People living with HIV |
| PWID | People who inject drugs |
| SCS | Save the Children Sweden |
| SDC | Swiss Agency for Development Cooperation |

ACKNOWLEDGEMENTS

As author of this Report, the Research Team of NHQuang & Associates and CHP acknowledges with great appreciation Dr. Tran Huy Lieu (NLAA), Mr. Le Khac Quang (VLA), Mr. Christopher Fontaine (UNAIDS), Mr. Nicholas Booth and Mrs. Le Nam Huong (UNDP), Mr. David Stephens (Pathways) and Mr. Neil Poetschka (CARE International) for making comments. The Research Team is especially grateful to Mrs. Carmen Gonzales (UNAIDS) for reviewing and editing and to Mr. Andrew Wang (University of Michigan) for English editing.

EXECUTIVE SUMMARY

From December, 2011 to June, 2012, UNAIDS and UNDP sponsored an independent assessment on legal services for PLHIV in Vietnam which aims at providing a comprehensive understanding of the current availability, accessibility and quality of legal services provided to PLHIV and key populations, as well as factors that enable or constrain efforts to claim and protect their rights, and to recommend possible solutions to improve the protection of their rights.

The assessment was conducted by a Research Team of NHQ & Associates in cooperation with CHP which used a methodology which comprises of desk review, analysis of relevant data of the UNAIDS/ sponsored HIV-Stigma Index Survey conducted by VNP+, and conduct of 97 in-depth interviews and 10 FGDs with representatives from responsible agencies, legal service providers, PLHIV and representatives from key populations in five provinces (Hanoi, HCMC, Can Tho, Dien Bien and Hai Phong).

The major constraint of the research was that the data collected was limited, scattered and heterogeneous due to lack of an agency which assumes the central control of legal services provided to PLHIV.

The research has come to the following conclusions:

On the “demand side”,

- The intensive legal dissemination activities conducted by the Government and organizations have brought positive results on the level of awareness on the Law on HIV among PLHIV,
- However, PLHIV’s awareness about their rights and knowledge about the legal services and the mechanism available to protect those rights are still limited; as such, there is a need to design and promote “rights-based” legal dissemination activities and to further publicize legal services available,
- Stigma and discrimination against PLHIV are still common despite prohibition by a strong legal framework, and the fear of being discriminated hampers the access to legal services, and
- PLHIV who accessed legal services in the past have showed a high level of their satisfaction about the services provided by the existing HIV-LCCs.

As regarding the “supply side”,

- Legal services for PLHIV include legal consultancy, mediation of legal dispute settlement and litigation services provided by a HIV-LCC.

- All HIV-LCCs featured active engagement in legal dissemination activities on HIV which proved to be a main mechanism to provide legal services; they preferred to use mediation to solve a legal dispute and were rarely or not involved in litigation; they maintained close collaboration with SHGs and/or PAC; and they have a serious concern about their future after finalization of the current donor's support;
- The most common cases handled by HIV-LCCs include the following:
 - (a) children living with HIV were refused to enter the school,
 - (b) PLHIV were dismissed or moved from job,
 - (c) women living with HIV were sent out from their husband's house empty-handed,
 - (d) PLHIV were hindered from marriage and/or inheritance,
 - (e) HIV status was disclosed without consent of PLHIV,
 - (f) SWs or PWIDs were sent to education or rehabilitation centers despite being at the late stage of AIDS,
 - (g) SWs or PWIDs were refused to obtain identity cards or residence registration,
 - (h) PLHIV were refused to be certified as poor to access government aid, and
 - (i) PLHIV were held in custody or prison despite at the late stage of AIDS.
- There is a strong support from the NLAA and VLA to continue the development of legal services targeting PLHIV; however, there is no specific government policy guiding the next steps;
- There is limited funding available for legal services for PLHIV and key populations;
- There is also a lack of effective legal instruments to protect the rights and interest of key populations such as SW, PWID, MSM and TG; and
- Between the MOJ and MOH, there is non or limited coordination in providing legal support for PLHIV.

Based on the above assessment, the Research Team has come up with the recommendations for the future of legal services for PLHIV as follows:

As for establishment of a long term model of supply of legal services for PLHIV, there are overall targets determined such as:

- a. an open model of legal services for PLHIV should be established which include both Government and non-government sectors;
- b. Clients of legal services should be expanded to include people at high risk of HIV-infection such as SW, PWID, MSM and TG as well as PLHIV; and
- c. the term "HIV-related legal services" should be developed to include not only legal consultancy for settlement of rights violations and legal disputes but also legal education and dissemination on HIV related issues.

One of the first steps to make progress in this direction should be that the MOJ, in cooperation with VLA, to draft a Project on Development of Legal Services for PLHIV and key Populations targeting on Government policy advocacy, amendment of Law on legal Aid, Law on HIV Prevention and Control and amendment or new issuance of other relevant regulations including a Government decree on implementing the Law on Legal Education and Dissemination to include specific legal education and dissemination on HIV.

As for immediate measures and activities, it is recommended by the Research Team that a Joint Regulations on Cooperation (or inter-ministerial circulars) should be issued by the MOJ and the MOH and by the NLAA, VLA and the VBF as to establish or enhance collaboration between these agencies in setting up, to continue and/or improve legal services for PLHIV and key populations.

As regards donors, their role has been further assessed as highly important for development of legal services for PLHIV in Vietnam. However, from the past experience of the donor's support, it is recommended that the donors should continue their support by providing funding and/or technical assistance to build a strategy on sustainable legal service model for PLHIV and key populations, rather than implementing specific projects.

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1. Introduction

1.1. Background

During the past 20 years, Vietnam has achieved great progress on the prevention and control of the HIV epidemic. One of the key factors¹ for this success is the existence of a comprehensive legal framework that provides strong protection for the rights of people living with HIV (PLHIV) and creates favorable conditions for the implementation of the HIV prevention and control activities. In addition to the legislation which provides rights protection for all Vietnamese citizens², the Law on HIV/AIDS Prevention and Control (No. 64/2006/QH11) provides specifically PLHIV with the right to live as an integrated member of the community; the right to enjoy medical treatment and health care; the right to be educated and work; the right to privacy and confidentiality, and the right to refuse medical examination and treatment at the final stage of AIDS. Despite this powerful legal framework, stigma and discrimination against PLHIV and violation of their rights continue to take place in communities, health care and education facilities, workplaces and even in their own family.

People at higher risk of HIV infection (called hereafter 'key population') such as people who inject drugs (PWID), sex workers (SW), men who have sex with men (MSM) and transgendered persons (TG) also face stigma and discrimination and a variety of rights violations.

To overcome the mentioned difficulties and challenges, different measures need to be exploited. One of the important measures to achieve this goal is to establish and efficiently operate a system to provide legal services for those in need. In June 2011 the UN General Assembly Special Session on HIV/AIDS (UNGASS) highlighted the key role of the HIV-related legal services in the creation of enabling legal environments for effective HIV responses and made a specific commitment to include legal services programs in national HIV and AIDS strategies³.

Following such approach, UNAIDS and UNDP Vietnam have supported an independent assessment of the current availability, accessibility and quality of legal services provided to people living with HIV and key populations. Specific objectives of the assessment are:

- a. To identify barriers and enabling factors in the legal and policy framework for the provision of legal services to PLHIV and key populations.
- b. To map the legal services available to and accessible by PLHIV and key populations in Viet Nam, including practical barriers for legal services providers in the provision of legal aid for those populations.
- c. Identify the strengths and weaknesses of the current legal services providers to reach PLHIV and key populations and provide legal support relevant to their needs.

¹ Other recognized factors contributing to this success are the existence of a system including a National coordinating authority, the National Committee on AIDS, Drugs and Prostitution Prevention and Control; a specialized agency, the Vietnam administration of HIV/AIDS Control-VAAC-with branches at the local level and a National HIV Strategy (currently the National Strategy on HIV/AIDS to 2020 with the vision to 2030).

² The general law includes the Constitution 1992, the Law on the Protection of People's health, the Law on Gender Equality, the Law on Children Care and Education, the Law on Education and the Labor Code, among others.

³ Clause 80 of the 2011 Political Declaration on HIV/AIDS

- d. Identify the most common cases brought by PLHIV and key populations to legal service providers
- e. Identify the methods to resolve the cases PLHIV and key populations bring to the legal service providers and analyze their rate of success as well as the difficulties in handling those cases.
- f. To evaluate the level of awareness by PLHIV and key populations of their legal rights and usage of legal services, and to analyze the enablers and obstacles for PLHIV and key populations to protect their rights through legal services.
- g. Measure PLHIV's and key populations' level of confidence in the system to uphold their rights and the level of satisfaction by PLHIV and key populations of the legal services received and explain the impact of the legal support in PLHIV's and key populations' lives.
- h. Recommend strategies to improve access to legal services for PLHIV and key populations.

1.2. Methodology

The research has been implemented by a group of experts from a law firm in cooperation with a non-Governmental organization working on HIV (hereinafter referred to as "the Research Team")⁴, using a mix of the following methods:

- a. Desk review of the existing relevant documents and materials related to HIV and legal services.
- b. Analysis of the data resulting from the Stigma Index Surveys⁵, which targeted 1,642 PLHIV and members of key populations in five provinces including Ha Noi, Dien Bien, Hai Phong, Ho Chi Minh City and Can Tho.
- c. In-depth interviews (97 participants) and focus group discussions (129 participants) on selected issues with PLHIV, groups of key population and relevant organizations and individuals managing and providing HIV legal services at central level as well as provincial level in the five above mentioned provinces.

Details of the methodology are specified in the Annex I.

The research project started in December 2011 and was completed in June 2012.

The following report is structured as follows:

- The first section provides a brief and general explanation about organization of the legal services in Vietnam;
- The second section describes the legal services that currently are or have been available for PLHIV in the last years.
- The third section focuses on the demand of PLHIV and key populations on legal services;

⁴NHQuang&Associates Law Firm in cooperation with the Center for Community Health Promotion (CHP).

⁵This survey was conducted in 2011 by VNP+, the Viet Nam Network of PLHIV, with technical and financial support from UNAIDS

- The fourth and fifth section explain enabling factors and constraints of access to legal services in the “demand side”⁶ and “supply side”⁷; and
- The two remaining sections will be conclusions of the assessment and recommendations for the future of legal services for PLHIV.

A set of Annexes with back-up information on the assessment are included in the Report.

The lack of systematized data and genuine information on the legal services provided to PLHIV and key populations has been a major constraint during the implementation of this assessment. There is no single agency which can provide comprehensive and reliable source of data and information. Information must be collected from different sources, including government agencies, donors, social organizations, V-NGO and legal service providers, and must then be cross-checked and verified before being analysed.

However, with reasonable effort taken to cope with this difficulty, the Research Team believes that for the purpose of drawing an overall picture of the current status of HIV-related legal services in Vietnam, the above-said constraints would not adversely affect the quality of the assessment, especially the recommendations made towards setting up a system of legal services for PLHIV.

2. Organization of Legal Services in Vietnam

A brief description of the organization of the legal services in Vietnam is included in this section as background information to facilitate the understanding of the broader context that frames the legal support to PLHIV and key populations.

2.1. Forms of legal services

Legal services are understood as forms of professional activities recognized by law and provided by organizations and individuals with professional competence and authority in order to satisfy the needs of everyone in the society when dealing with legal issues. In Vietnam, statutory provisions for legal services and activities include the Law on Lawyers, Law on Legal Aid and Decree No. 77/2008/ND-CP of the Government dated 16 July 2008 on legal consultancy (hereinafter referred to as “Decree 77/2008”)⁸.

Accordingly, there are four types of legal services recognized in the official legal documents mentioned above, as follows:

(i) Legal consultancy

It means services which include providing legal information and advice on solutions, rendering opinions, and drafting legal related documents for those who request such services. These services can be provided via phone, mobile legal service, legal topic discussions, etc.

⁶ It means PLHIV and the key populations.

⁷ It means legal service providers for PLHIV and bodies in charge or involved in HIV/AIDS control and prevention, including government agencies and social organizations.

⁸ In addition, the Law on Intellectual Property also deals with a particular subject of the legal services such as representative services for intellectual property rights protection which is, however, not necessarily explored for the purpose of this Report

(ii) *Litigation services*

In case one is prosecuted or having a case settled by the Court, he/she can seek the support of a legal service provider. The legal service provider, subject to his competence stipulated by the laws, may act as defender in the whole litigation process or legal representative of its client at the Court⁹.

(iii) *Representation services*

The legal service provider can act as legal representative by a power of attorney issued by the client in any matters and transactions required. Being as such legal representative, the service provider can meet, contact, discuss with people and organizations, including Government authorities, and make decisions and sign any documents on behalf of the client subject to its competence stated in the issued power of attorney. The laws, however, provide for certain matters whereby such representation service is excluded, e.g. marriage and criminal matters.

(iv) *Other related services as stipulated by the laws*

The Law on Lawyer and Law on Legal Aid specify various matters on which one can request for support of a lawyer or other legal service providers. Such support can include handling of administrative procedures, document certification and translation services.

In addition to the services identified by the Law on Lawyers and Law on Legal Aid, legal awareness and dissemination of legal information (also called legal education or legal popularization and propaganda) is a regular legal activity closely related to the ones mentioned above. The objective is to inform target groups (ex. PLHIV, domestic violence victims, etc) about the content of relevant laws, their rights and responsibilities as well as about legal procedures and contacts for legal support. These services are provided by State agencies¹⁰, the legal professionals and also by civil society organizations, staff or individuals with specific competence, ability and practical experience in law.

Normally legal services include fees such as service charges and actual costs incurred while providing the service. Nevertheless, free services can be voluntarily provided by the legal professionals or under the framework of projects funded by the Government or other sponsors. We refer to "legal aid"¹¹ when the service is provided free of charge to certain groups of people in the society¹² using the fund from the Government¹³ or other sponsor sources.

⁹ It should be noted that under the laws on criminal procedures and civil procedures, one cannot act as both "defender" and "legal representative" at the same time and only one who acts as "defender" is entitled to access the Court files

¹⁰ At the central level, the Ministry of Justice's Department of Law Popularization and Education is responsible for formulating master plans, guiding professional skills and training reporters in order to conduct this activity nationwide. This activity is funded entirely by the state budget on the basis of target programs formulated by state agencies.

¹¹ Article 3 of the Law on Legal Aid (2006) defines legal aid as "pro bono" legal services to legal aid beneficiaries in accordance with this Law to help them protect their legitimate rights and interests and improve their legal understanding as well as their sense of respect for and observance of law; to contribute to law dissemination and education, protect justice, ensure social equity and prevent and restrict disputes and violations of law.

¹² The groups defined by the Law are: a) The Poor; b) Persons with recognized contributions to the national revolution; c) Along-standing elderly, the disabled and the shelter less children; and d) Minority ethnic people living in areas of particularly difficult socio-economic conditions. Local People's Committees of the commune or district issue a certificate to them.

2.2. Legal Professionals

Legal professionals who are recognized and/or admitted by the Government as individual service providers are required by law to provide legal services. Under the above-mentioned laws and regulations and in the context of this Report, legal professionals comprises of Lawyers, Legal Consultants, Legal Consultancy Collaborators, Legal Aid Providers and Legal Aid Collaborators. Except for lawyers, other legal professionals can only provide services through organizations that employ them.

(i) Lawyer

The lawyer's job and profession are governed by the Law on Lawyer. Accordingly, one who has obtained a law university decree, completed a compulsory lawyer training course, passed a national examination and finished 18 month internship in a law firm can become a lawyer¹⁴. A lawyer is granted a legal practice certificate by Ministry of Justice and required to be registered as a member of a provincial Bar Association. A lawyer is entitled to provide all types of legal services whether personally or through a law firm set up by or employs him or her. Under the Law on Lawyers, lawyers have a general obligation to provide pro-bono services. As required by the Law on Legal Aid, legal aid provided by a lawyer is required to be registered with the provincial Department of Justice.

(ii) Legal Consultant

Legal consultant is defined by Decree 77/2008 as one who has obtained a law university decree, served minimum three years in the legal sector and been granted a legal consultant card by the provincial Department of Justice. A legal consultant is entitled to provide all types of legal services and can do it only through a LCC that employs him or her. A legal consultant can provide legal aid subject to registration with the provincial Department of Justice.

(iii) Legal Consultancy Collaborator

Under Decree 77/2008, one who has obtained a law university decree and served minimum three years in the legal sector can be contracted on a part-time basis with a LCC to act as legal consultancy collaborator¹⁵. As a legal consultancy collaborator has no professional card issued by the provincial Department of Justice, he or she must obtain a letter of introduction of a LCC that employs him or her when providing legal consultancy. Subject to the employment contract, a legal collaborator is entitled to provide all types of legal services and can do it only through a LCC that employs him or her.

(iv) Legal Aid Provider

¹³ For that purpose, the legal aid fund was established in 2002 by the Government (Decision No. 257/2002/QD-BTP of the Minister of Justice dated 10/7/2002, replaced later on by Decision No. 84/6/2008/QD-TTg of the Prime Minister dated 30/6/2008) and administrated by the Ministry of Justice to finance all legal services provided by the PLACs.

¹⁴ As of October, 2011, there are 7072 lawyers nationwide of which 5829 lawyers are registered with the Bar Association in Ha Noi and Ho Chi Minh city, accounting for 82,4%.

¹⁵ For remote and mountainous areas or provinces with poor and difficult conditions, it can be accepted that the legal consultant has obtained another university decree, a law college decree or is even one who is reputable and highly recognized by the community.

Under the Law on Legal Aid, legal aid providers are individuals employed as permanent staff of the Provincial Legal Aid Centers (PLACs) who have obtained law university degree, completed a legal training course for legal aid providers, served minimum 2 years in the legal sector and been granted by the provincial Department of Justice the legal aid provider card. Staffed by the PLAC, a legal aid provider is entitled to provide all type of legal services.

(v) *Legal Aid Collaborator*

According to the Law on Legal Aid, one who has obtained a law university degree or university degree in human rights can apply with the provincial Department of Justice for granting a legal aid collaborator card and be contracted with a PLAC to act as legal aid collaborator¹⁶. Subject to employment contract, a legal collaborator is entitled to provide all types of legal services and can do it only through a PLAC that employs him or her.

2.3. Legal Service Providers

Under the laws, except for lawyers who are entitled to individual legal practice, legal services must be registered to be provided by an organization such as law firm, PLAC and LCC under a so-called “social - political organization, a social – political – professional organization, a social – professional organization”¹⁷, or an educational or research institution in law. Below is a short description about such organizations.

(i) *Law Firm*¹⁸

A law firm can be established by one or more lawyers and registered with provincial Department of Justice in accordance with the Law on Lawyers in the form of an individual law office, a partnership or a limited liability company. A law firm is generally entitled to provide all types of legal services and can provide legal aid under the Law on Legal Aid subject to registration with the provincial Department of Justice.

(ii) *PLAC*¹⁹

PLAC is established by the provincial People’s Committee as key state institutions providing legal aid under the Law on Legal Aid. Each PLAC can set up branches and legal aid clubs operating at district and commune level, respectively, within the province. Operations of all PLACs are instructed and supervised by the National Legal Aid Agency under Ministry of Justice. Staff of a PLAC comprises of legal aid providers, legal aid

¹⁶ For remote and mountainous areas or provinces with poor and difficult conditions, it can be accepted that the legal aid collaborator has obtained a law college degree or is even one who has served minimum three years in the legal sector or has legal knowledge and highly recognized by the community.

¹⁷ All those are generally named “social associations” in Vietnam being members of Vietnam Fatherland Front which have been classified as (i) social – political organizations (i.e. five organizations such as the Communist Youth Union Ho Chi Minh, the Vietnam Women Union, the Vietnam Farmers Association, the Veteran Association and the Vietnam Labor Union), (ii) social – political – professional organizations (e.g. Vietnam Lawyer Association and Vietnam Journalist Association, and (iii) social – professional organizations (e.g. Vietnam Lawyer Federation and Vietnam Architect Association).

¹⁸ As of October, 2011, there are 2831 law offices registered nationwide of which 1805 offices are operating in Ha Noi and Ho Chi Minh city, accounting for 63,7%. Source: Vietnam Lawyer Federation.

¹⁹ As of February, 2012, there are 63 PLACs established in 63 provinces, comprising of 300 legal aid providers, 700 full-time legal aid collaborators and 8000 “part-time collaborators”. Source: National Legal Aid Agency.

collaborators and those who are individual lawyers or legal consultants who are registered to provide legal aid and contracted with the legal aid center to act as “part-time collaborators”. A PLAC is entitled to provide all types of legal services.

(iii) Legal Consulting Center²⁰

A LCC can be established by a social - political organization, a social – political – professional organization, a social – professional organization²¹, or an educational or research institution in law in accordance with Decree 77/2008. Staff of a LCC comprises of legal consultants and legal consultancy collaborators. A LCC is generally entitled to provide all types of legal services and can provide legal aid under the Law on Legal Aid subject to registration with the provincial Department of Justice²².

(iv) Legal clinics

Thanks to the initiatives of some law lecturers and the support of some donors, many legal clinics under or next to law universities have been established since 1997. The first and main purpose of such legal clinics is to train law students in the practice of law, but they also functionally provide consultancy and legal services for people on a free-of-charge basis. The service provision is conducted by law lecturers and students who are qualified in terms of legal knowledge and professional skills and who have certain community communication capacity. Some centers have guided law students to participate in community activities in rural areas via the organization of “mobile clinics”. Some well-established clinics can be mentioned as follows:

- Center for Legal Education and Services (LERES) adjacent to the Law School of Vietnam National University, Ha Noi.
- Legal Consulting Center of the Judicial Academy.
- Legal clinic of the Faculty of Law, National Economics University.
- Center of Law Application and Popularization, (CLAP) under Ho Chi Minh City Law University

In addition, according to the Research Team’s findings, all law faculties of Ha Noi Law University, Can Tho University, Hue University, Vinh University and Da Lat University have started to deploy the establishment of legal clinics under Decree No. 77/2008.

²⁰ According to the survey of the Research Team, organizations such as VLA, VWU and VFU which are among few having the largest membership base, have established numerous LCCs to provide legal services to their members and others. In addition, educational institutions such as the Law Faculty of Hanoi National University, the Judicial Academy, the Law Faculty of the National Economic University and the Law University of Ho Chi Minh City have also established LCCs for the purpose of student training through providing certain legal services to the people.

²¹ See Footnote 8.

²² The Law on Legal Aid allows certain financing from the legal aid fund for legal aid provided individual lawyers or LCCs provided that those are registered as “legal aid providers” with the provincial Department of Justice and subject to availability of funds. However, According to a source of the National Legal Aid Agency, the average annual funding from the Government for legal aid is approximately 3 billion VND which is therefore not sufficient to cover all legal aid services especially those of non-state legal aid providers

3. Legal Services for PLHIV

All bodies described above, such as individual lawyers, law firms, PLACs and LCCs, operate as providers of general legal services with a broad client base which can include PLHIV and key populations.

In addition to the general legal services, certain legal providers have targeted on serving for PLHIV. Among those, we can make a distinction between two groups such as (i) service providers providing general services to population with a particular focus on PLHIV (“Legal services engaged on HIV”) and those established with the sole target of providing legal support to PLHIV (hereinafter called “HIV-specific legal service providers” or “HIV-specific LCC”). This section includes a description of both.

3.1. Legal services engaged on HIV

There are two types of organizations who target a broader group of population but have particularly approached PLHIV through specific projects.

3.1.1 PLACs

It should be noted that PLHIV are not directly eligible for services provided by a PLAC unless they concurrently justify the criteria established by the Law on Legal Aid²³.

However, from 2005 to 2009, under the Project on Support to Legal Aid System funded by SIDA, SDC, Oxfam Novib and SCS (the “SIDA Project”), the National Legal Aid Agency expanded its operations to include HIV-related legal issues and services for PLHIV²⁴. According to a report of the National Legal Aid Agency, project activities included the following:

- Five PLACs in Bac Lieu, Hai Phong, Hoa Binh, Lao Cai and Long An started to provide legal services for PLHIV on trial basis.
- In 2006 and 2007, there were several training courses organized by the National Legal Aid Agency on HIV related knowledge and skills to communicate with PLHIV for about 100 legal aid providers and legal aid collaborators coming from of five PLACs and 400 members of legal aid clubs in those provinces.
- In 2008, another training course on HIV/AIDS was organized by the national Legal Aid Agency in cooperation with the Center for Consultancy on Health Policy and Law on HIV/AIDS (“**CCLPHH**”) under VLA for legal aid providers of 15 PLACs²⁵.

²³In Decree 07/2007/ND-CP on guiding some provisions of the Law on Legal Aid issued on 1st January, 2007 (“Decree 07”), the definition of “the disabled” is who eligible for legal aid was extended to include PLHIV provided that those lack working capacity and helpless.

²⁴The overall goal of the Project was “to contribute to ensure equal access to justice for the poor, preferential policy beneficiaries and disadvantaged groups in particular, women, children and ethnic minority people, people with HIV/AIDS infection etc. so that they can enforce their legal rights upheld by Vietnamese law and international human rights treaties, which Vietnam is member.” Source provided by NLAA.

²⁵In 2010, another similar training course was also held by the NLAA within the framework of the donor funded Justice Partnership Program for 232 participants being legal aid providers and collaborators of PLACs.

Through a discussion between the Research Team and Mr. Nguyen Huy Lieu, Director of the NLAA, he identified some of the lessons learned from the support provided by SIDA to PLACs activities on HIV as follows:

- Legal aid for PLHIV under the SIDA Project brought limited results as it did not focus specifically on PLHIV but widened disadvantaged groups. In addition, there was not included in the sponsored activities that a PLAC may organize community propaganda events to pro-actively approach PLHIV, including SHGs. Consequently, there were not many PLHIV who became aware of the Project.
- PLACs operate subject to procedures stipulated by the Law on Legal Aid which require, among others, that a client of legal aid must prove itself “being eligible”. Accordingly, in case of a person living with HIV, he or she is required to show a certificate of being HIV-positive issued by a legally recognized medical center. Most PLHIV were either unable or unwilling to obtain and show this certificate
- In their daily operations, with limited resources available, PLACs tried their best to meet demand by the “eligible groups”²⁶ on legal aid, so, they could not pay specific attention on PLHIV.

As HIV-related services were provided by PLACs at such limited scale, the NLAA does not have specific data or reports on same.

3.1.2 LCCs of VLA

Under the Vietnam Lawyer Association²⁷, there are currently 48 LCCs established and operating whether as units under direct supervision of VLA or those under VLA provincial branches²⁸. According to a survey on VLA consulting centers conducted in 2011²⁹ (the “VLA-LCC Survey”), each LCC is staffed with 5 or 6 in average, of whom 3 or 4 are full-time legal consultants. Subject to demand on legal consultancy, from time to time each center employs about 10 to 15 collaborators, including legal consultants, legal consultancy collaborators and lawyers who work on part-time basis.

Also from that survey, all LCCs of VLA provide full services to clients, including members and non-members of VLA, and all of them have registered with provincial Department of Justice to provide legal aid under the Law on Legal Aid.

Since 2009, VLA started to engage three LCCs in providing legal services for PLHIV through a project managed by CARE International and funded by the European Commission. Accordingly, two LCCs in Hanoi and one in Ho Chi Minh City were selected to pilot such activities, namely:

²⁶ Those are groups of people specified in the Law on Legal Aid. Pls. see Footnote 12.

²⁷ A political-social and professional organization with a broad membership of 44,000 comprising of working or retired lawyers, judges, prosecutors, policemen, law graduates and Government officials serving in the legal sector who are registered as members of VLA

²⁸ There are 8 LCCs in Hanoi operating as units of VLA, including the Center for Consultancy on Health Policy and Law on HIV/AIDS, and 40 LCCs under of provincial branches of VLA.

²⁹ A survey conducted by Mr. Tran Huy Lieu of the NLAA on operations of LCCs of VLA which was completed with the final report in December, 2011..

| Name | Address | Management |
|--|--|--|
| 1. LCC – Office 1 (VLA Branch Hanoi) | No. 35 Nguyen Chi Thanh Street, Ba Dinh District, Ha Noi | Nguyen Hong Tuyen, Director Tel: 04 3771 1382 |
| 2. LCC – Office 2 (VLA Branch Hanoi) | No. 2 Quang Trung Street, Ha Dong District, Hanoi | Nguyen Thi Hoai Thanh, Deputy Director Tel: 04 3382 8725 |
| 3. LCC No. 9 (VLA Branch Ho Chi Minh City) | No. 279 A, Hau Giang Street, District 6, Ho Chi Minh City | Le Thi Tuyet Nga, Director Tel: 08 3969 5300 |

During the three year period of operations from 2009 to 2011, the CARE Project conducted, among others, the following notable main activities³⁰:

- Providing training to strengthen capacity of 25 VLA members from the above LCCs so that they are able to provide friendly, sensitive and professional legal consultation services to PLHIV and HIV-affected people;
- Providing support to six self-help groups (“SHGs”) of PLHIV, including small grants and internship at the above LCCs, so that the SHGs be able to conduct HIV issue – based advocacy and provision of legal consultation service;
- Providing human rights and HIV/AIDS law training of trainers to 19 VLA members who are working at VAL branches in 8 provinces; and
- Providing small grants to those LCCs to finance their daily operations, including overhead expenses for office, conference equipment and remunerations for collaborators³¹.
- HIV and law dissemination meetings in cooperation with SHGs which were attended by 440 PLHIV from Hanoi and 660 PLHIV from Ho Chi Minh City.

Thanks to the CARE Project support, the above three LCCs successfully provided legal services to PLHIV with results of their operations in 2010 as follows³²:

- There were a total number of 670 “cases”³³ where PLHIV obtained consultancy services from the LCCs.
- Of such total figure, 508(i.e.75.8%) were the number of inquiries raised by PLHIV in HIV and law dissemination meetings organized by the LCCs in several places (community, workplace, hospital, etc) with advice directly given by the

³⁰ Source: CARE – Project Final Evaluation Report – April, 2011

³¹ According to Mrs. Le Thi TuyetNga, Director of LCC No.9, under the CARE Project an average monthly remuneration payable to a collaborator hired by the Center was 800.000 VND.

³² Source: Data provided by Mr. Le Khac Quang, Director of the Research Center of VLA who was in charge of monitoring the CARE Project implementation.

³³ The term of “case” here means both inquiries and response in law dissemination meetings with PLHIV organized or attended by the LCC and client visits in the office of the center.

legal consultants (“Out of office consultancy”) The rest of 162 (i.e.24.2%) being client visits to get advice at the office of the LCCs (“In office consultancy”).

- In addition, 4 PLHIV were supported in their Court cases.

For details, pls. see Table 1 below:

**Table 1 - Result of Legal Consultancy
For PLHIV of VLA LCCs in 2010 (Unit: Cases)**

| | Advising on civil and marriage matters ³⁴ | | Advising on administrative matters | | Advising on labor and social protection matters | | Advising on criminal matters | | Defending in criminal case in Court |
|-------------------|--|---------------|------------------------------------|---------------|---|---------------|------------------------------|---------------|-------------------------------------|
| | In office | Out of office | In office | Out of office | In office | Out of office | In office | Out of office | |
| LCCs of VLA Hanoi | 40 | 68 | 13 | 80 | 24 | 40 | 6 | 18 | |
| LCC No. 9 | 31 | 87 | 15 | 115 | 18 | 71 | 11 | 29 | 4 |
| Total | 71 | 155 | 28 | 195 | 42 | 111 | 17 | 47 | 4 |
| | 226 | | 223 | | 153 | | 64 | | |

There is other noticeable information supporting an assessment of the LLCs operations in HIV field as follows:

- The rate of the out-of-office consultancy was much higher compared with the in-office consultancy. As explained by Mr. Le Khac Quang (see Footnote 28), PLHIV are often reluctant to come to office of the LCC since if being there, they have to expose themselves or even prove being HIV positive. In law dissemination meetings, they feel that there is no need to disclose their status.
- It was necessary for all LLCs to collaborate with SHGs of PLHIV and such collaboration has showed an effective way in providing legal services for PLHIV. A good example of that was the partnership of Mr. To Hoang Vuong the leader of SHG “Hallo New Day” (*Chao Ngay moi*) and other members of this group with the LCC No. 9 (VLA Ho Chi Minh) whereby Mr. Vuong and his group members, after received some training on HIV and legal services, could be able to provide consultancy to other PLHIV³⁵.

³⁴ In terms of classification, it was clarified among the Research Team and the interviewees that (i) Civil and marriage matters mostly comprises of inheritance, divorce, house rent, domestic violence and disclosure of health information; (ii) Administrative matters mostly comprises of refusal of identity card issuance, residence registration, refusal of visit to school and refusal of access to ARV or methadone treatment; (iii) Labor and social protection matters mostly comprises of job dismissal, issuance of social aid certificate; and Criminal matters mostly comprises of arrest of PLHIV by police followed by a Court case for various crimes committed by PLHIV.

³⁵ In August 2010, after completing a training course under the CARE Project, Mr. Vuong was contracted with LCC No. 9 as “collaborator” to provide legal consultancy for PLHIV. According to him, the total number of client’s matters supported by him was 28. In addition, He was also chairing and giving advice to PLHIV in 12 community meetings organized by the LCC No. 9 Center or his group which were attended by 300 PLHIV and those HIV

Likewise, the LCCs of VLA Hanoi have engaged SHG “*Uoc mo va Mat troi cua Be*” (“Kid’s Dream and Sun”) in providing “on site” consultancy services, for example, in September 2010, the LCC No. 2, in cooperation with this group, sent legal consultants to a hospital in Ha Dong town to meet and provide consultancy to 35 HIV-affected patients being treated here, of which 28 were PLHIV.

- As regards Court cases involving PLHIV, the data from the LCC No. 9 showed that in all criminal cases, where PLHIV were prosecuted for criminal crimes, including drug trafficking and robbery, lawyers who were designated by the Center helped them to get some relief in the Court sentence, e.g. temporary suspension time or exemption of imprisonment due to the fact the sentenced PLHIV face with last AIDS period³⁶.

In talking with Mr. Nguyen Hong Tuyen, Director of VLA LCC Hanoi and Mrs. Le Thi Tuyet Nga, Director of the LCC No. 9, they admitted that not in all cases their assistance brought out a success due to many reasons of which major ones come from the side of PLHIV. In particular, those can be summarized as follows:

- o *First*, PLHIV did not receive full support from their families in preparing necessary documents which are required for proceeding with any legal support, as well as keeping regular contacts with LLCs to follow up the settlement process, so that in many cases, due to lack of completed documentation or delayed submission, applications were not accepted or claim of rights were denied by the state authorities.
- o *Second*, PLHIV often did not disclose their HIV-infection when approaching lawyer or legal consultant, so that service providers were unable to take use of all possible resources provided by the applicable laws to defend them.

The above constraints could partly be dealt with by getting support from SHGs who usually have close contacts with PLHIV and/or their families. A major concern felt from all above LLCs that after the CARE Project was completed in March 2011, there has been a downscaling in terms of legal consultancy for PLHIV. According to Mr. Tuyen of LCC of VLA Hanoi and Mrs. Nga of LCC No. 9, their offices are still ready to provide continuing support to PLHIV if they are coming and in case of lack of professional personnel required, they will refer clients to other “suitable addresses”³⁷.

3.2. HIV- Specific Legal Service Providers

Beside the PLACs and VLA LCCs which, as described above, provide certain services to PLHIV as a part of their general consultancy, a number of other legal service providers under VLA were newly established or enhanced its operations to provide exclusively legal

affected. According to Mr. Vuong, his own services focused on simple matters, while those with complex nature had been referred to the LCC for lawyer service.

³⁶*Mr. V. was PLHIV, arrested in August, 2006 and sentenced for 5 years imprisonment for drug trafficking. In September, 2010, as Mr. V’s health was getting worse because of proceeding to the forth AIDS period, he was referred to lawyer Dao Kim Lan of the Legal Consulting No. 9 by Mr. To Hoang Vuong of SHG “Chao Ngaymoi” for applying for suspension of imprisonment. The case succeeded and consequently, in March 2011, Mr. V was sent to hospital for ARV treatment.*

³⁷ *Those may be a PLAC if the client is eligible, or a volunteer lawyer.*

services to PLHIV thanks to support of the Health Policy Initiative³⁸. Those are five LCCs under VLA or VLA provincial branches with particulars as follows:

| Name | Address | Contact |
|--|--|---|
| 1. Center for Consultancy on Health Policy and Law on HIV/AIDS (the " Hanoi Center ") | No. 1, Lane 135, Nui Truc Str., Ba Dinh District, Hanoi | Md. Dr. Trinh Thi Le Tram, Director Tel: 04-3736 8043 |
| 2. Center for Legal Aid on HIV Haiphong (" HaiPhong Center ") | No. 58 Dien Bien Phu Str., Hong Bang District, Hai Phong | Mr. Pham Hoc Hai, Director Tel: 031-374 6182 |
| 3. Center for Legal Aid on HIV Quang Ninh (" Quang Ninh Center ") | Lane 12, Nguyen Van Cu Str., Ha Long Town, Quang Ninh | Mr. Do Trung Hai, Acting Director Tel: 033-3820 014 |
| 4. Center for Legal Aid on HIV Ho Chi Minh City (" Ho Chi Minh City Center ") | No. 111 Le Thanh Ton Str., District 1, Ho Chi Minh City | Nguyen Thi Nga, Director 08-3822 3028 |
| 5. Center for Legal Aid on HIV An Giang (" AnGiang Center ") | No. 32 Chu Van An, Long Xuyen Town, An Giang | Mr. LuuHy, director 076-394 9234 |

Below is a short description about those LCCs with material provided by Abt & Associates, the VLA LCC Survey final report and direct interviews by the Research Team with the head or contact person of each center.

3.2.1 Ha Noi Center

This center was established in 2004 but started its intensive operations in 2007 with donor supported projects³⁹ providing legal consultancy for PLHIV in Hanoi and other provinces. Its main activities include both consultancy for PLHIV and training for VLA members and PLHIV on HIV-related policy and laws.

A telephone hotline was also established by this center to support to PLHIV with toll-free consultancy.

³⁸ Health Policy Initiative – HPI for Vietnam (2008 – 2013) is a project funded by USAID and implemented by Abt& Associates which included the support to the establishment and/or enhancing operations of five HIV legal clinics through cooperation with VLA. Except for Hanoi where Hanoi Center was established in 2004 and supported by HPI to enhance its operations from 2009 to 2011, provincial branches of VLA in Hai Phong, Quang Ninh, Ho Chi Minh and An Giang established one specific LCC each to provide legal services for PLHIV. Professional staff allocated to each Center comprising of two full-time consultants (being one lawyer and one legal consultant) and four part-time collaborators.

³⁹ In addition to HPI project, the Hanoi Center received support from the Ford Foundation or the Global Fund

Statistics have shown that within the period of 2009 – 2011⁴⁰, there were totally 8238 “cases”⁴¹ handled by Hanoi Center excluding hotline services⁴². Of that total, there were 2862 cases being inquiries come up by PLHIV in law dissemination meetings organized by the center, accounting for 35%. In terms of type of cases, the center’s consultancy covered broad areas such as civil matters, criminal matters, administrative matters, land disputes, labor matters and matter related to social protection policy. It should also be noted that in the majority of cases, (i.e.5739 of 8238), clients also raised inquiries on general legal matters not related to HIV, general questions about the rights of PLHIV or places to access medical treatment and harm reduction measures, accounting for 69,7%. *Details are given in the Table 2 below.*

Table 2:Result of Legal Consultancy for PLHIV of Hanoi Center of 2009 - 2011 Period

| Year | Total | Legal Matters | | | | | | Other inquiries ⁴³ | Place of Service | |
|--------------|-------------|---------------|------------|------------|-------------|------------|-------------------|-------------------------------|------------------|----------------------------|
| | | Criminal | Civil | Admin. | Land | Labor | Social Protection | | In office | Law dissemination meetings |
| 2009 | 2447 | 27 | 59 | 95 | 201 | 24 | 35 | 2006 | 1569 | 878 |
| 2010 | 2924 | 97 | 179 | 52 | 359 | 24 | 133 | 2089 | 1576 | 1357 |
| 2011 | 2867 | 63 | 188 | 112 | 598 | 109 | 153 | 1644 | 2240 | 627 |
| TOTAL | 8238 | 187 | 426 | 259 | 1158 | 157 | 321 | 5739 | 5385 | 2862 |

In response to a question on the major types of services used in providing legal support for PLHIV, from an in-depth interview of the Research Team with Md. Nguyen Thi Le Tram, Director of Hanoi Center, the following information has been obtained regarding the center’s operations in 2010 and 2011:

- As the most common service, accounting for about 95% of all works done, the center was giving legal advice to clients (directly in the meeting at the office or through hotline), which included guiding in details on how to draft and submit a claim on right protection to be submitted to Government authorities for settlement⁴⁴.
- In certain number of cases, accounting for about 3%, professional staffs of the center had to go out of office to meet with clients and relevant parties, including

⁴⁰ Source: VLA Consultancy Survey Report

⁴¹ Pls. see Footnote 29.

⁴² According to Hanoi Center, there were about 8,000 telephone calls responding to client inquiries recorded since 2007 and from Abt & Associates source, there were 2270 telephone calls as such in 2011.

⁴³ “Other inquiries” are those mostly related to general rights of PLHIV and even non-legal issues, e.g. medical treatment and harm reduction measures etc.

⁴⁴ **Example 1:** Mr. Huy was an army official having service time of 17 years. As he was found HIV-infected, his military Unit decided to dismiss him from service without proper material compensation. Approaching Hanoi Center, he was advised and guided how to draft a claim to be sent to his Unit and the supervising one pointing all legal basis for protection of his rights as a PLHIV. As a result of that, his military Unit revoked the dismissal decision, allowed him to continue his service at a suitable position until he reached 20 years of service which then facilitated him to enjoy his retirement. Source: “Legal Aid – Happiness for PLHIV” by UNAIDS, VLA and Center for Consultancy on Health Policy and Law on HIV/AIDS published by Hong Duc Publishing House – June, 2010 (“**HIV Legal Aid Book**”).

right infringers, for the purpose of providing explanation on the law provisions and reconciliation of disputes⁴⁵.

- In case a client was unable to follow the given advice, the center obtained a power of attorney from him/her to act as representative to submit the statement of claims to the state authorities and follow up the settlement procedures.⁴⁶.
- It was so rare but not unnecessary, that in case where a direct discussion and negotiation with the relevant parties could not resolve the right infringement or dispute, the center helped the clients by sending letters to various relevant bodies including state authorities, social organizations and press agencies to alarm the case and request for attention and interference⁴⁷.

It is noticeable that there was only one litigation case in the last three years handled by Hanoi Center where the center provided a lawyer defend a PLHIV in a criminal matter settled by the Court in 2011.

To pro-actively approach PLHIV, the center maintains regular contacts and cooperation with some SHGs⁴⁸. Likewise, a co-ordination of the center with PAC in 10 cases in 2010 and 13 cases in 2011 also helped bring better success in the settlement of disputes.

3.2.2 LCCs Hai Phong and Quang Ninh

The Research Team contacted the LCCs in Hai Phong and Quang Ninh but did not receive their operation's data in all years from 2009, when they started to provide legal services for PLHIV, except 2011, the year both centers selected in terms of the number of "cases" handled⁴⁹. *Details are shown in Table 3 below.*

⁴⁵ **Example 2:** *Mrs. Anh was a highly-regarded teacher in a kindergarten in the city H. before she got HIV-infected from her husband. As such, she was stopped from teaching and moved to a house keeping job with a lower salary. Being involved in the case, Hanoi Center relied on the right to work of PLHIV protected under the Law on HIV Prevention and Control and sent its staffs to met with various bodies such as the local People's Committee, local Department of Education, local Inspector of Education, the PAC, the Management and Trade Union of the Kindergarten for law dissemination and reconciliation to restore the job position for Mrs. Anh. That negotiation succeeded and Mrs. Anh, again, could continue her role as teacher. Source: "HIV legal aid book".*

⁴⁶ **Example 3:** *Hoa, 9 years old, being both fatherless and motherless, was HIV infected and lived with her paternal grandfather. She could not go to school as the Management Board of the school had to refuse her to school due to the pressure from other parents. Hanoi Center has represented Hoa and her grandfather to work with the relevant communal people's committee and the school, asking for cooperating in propagandizing and explaining so that the community could stop discriminating or stigmatizing against Hoa. Consequently, Hoa could go to the school for the first time. Source: "HIV legal aid book".*

⁴⁷ **Example 4:** *Dong was a HIV-infected, living in the town H. He was arrested by police and held in custody for investigation on property robbery. During the custody, his health has worsened due to interrupted medical treatment. In a meeting at Hanoi Center, his family members were advised on legal procedures to be taken to protect his right for medical treatment. Concurrently, the Center issued letter of support addressed to relevant authorities such as Police Office, Prosecutor Office, the PAC and the Medical Center where Dong was treated requesting for relieving him from custody. That claim was successful and Dong then was sent back home for continuing his ARV treatment under police supervision. Source: "HIV Legal Aid Book".*

⁴⁸ *For instance, in 2010, there were 47 matters where the center collaborated with SHGs in reaching a settlement.*

⁴⁹ *Pls. see Footnote 22 for the meaning of "cases". The report of the center operations of 2009 and 2010 could not be found when the Research Team was taking in-depth interviews with both HaiPhong and QuangNinh centers for the given reason that the personnel in charge are no longer working in the centers, and so, a breakdown of cases handled in 2011 could also not be established.*

Table 3
Result of Legal Consultancy for PLHIV
of Hai Phong Center and Quang Ninh Center in 2011

(Unit: Cases)

| Types of Cases | Hai Phong Center | Quang Ninh Center |
|--|------------------|-------------------|
| 1. Civil and Marriage Matters | 114 | 94 |
| 2. Administrative Matters | 21 | 87 |
| 3. Criminal Matters | 1 | 0 |
| 4. Labor and Social Protection Matters | 140 | 56 |
| TOTAL | 276 | 237 |

Using the same formula from the interview with the Hanoi Center, the Research Team asked the directors of both LCCs Hai Phong and Quang Ninh about the types of services they provided. An assessment of that based on the data of 2011 showed four major types of works done by such centers. Interestingly, in terms of frequency, “giving advice” was the most common service provided by the Hai Phong Center, while “sending consultants out of office for on-site settlement” was the most common in the Quang Ninh Center. *Pls. see the Table 4 below for details.*

Table 4
Type of Legal Services Frequently Used by Hai Phong Center and Quang Ninh Center

(Unit: %)

| Options | Hai Phong Center | Quang Ninh Center |
|---|------------------|-------------------|
| 1. Providing clients with advice on rights and guiding them how to prepare claims for right protection. | 69,5 | 26,2 |
| 2. Sending consultants out of office to meet the client and relevant parties, including right infringers, to negotiate and reconcile the dispute. | 26 ⁵⁰ | 72,4 |

⁵⁰**Example 5:** *Mrs. H. in An Duong District, HaiPhong is a PLHIV. Her child Binh, born 2006 is also HIV-infected. In June, 2010, as Mrs. H brought her child to the Kindergarten of An Hung Commune, she was refused. A support from the director of the Commune Medical Center didn't help as the management of the Kindergarten suffered pressure from other children's parents. The Hai Phong Center got involved by sending consultants to organize a meeting with all relevant parties, including representatives of the other children's parents to explain about rights of PLHIV and discuss the solution. After that, little boy Binh was accepted to the Kindergarten with sympathy paid by the whole community. Source provided by Hai Phong Center.*

| | | |
|--|-----------------|-----|
| 3. Representing the client in making contacts with relevant authorities, submitting the claim and follow up decision making process. | 4 ⁵¹ | 0 |
| 4. Issuing a letter of support to be sent to relevant agencies requesting for interference and/or ceasing the right violation. | 0,5 | 1,4 |

In addition to legal consultancy, both Hai Phong Center and Quang Ninh Center were actively engaged in propaganda on HIV and legal protection for PLHIV. Accordingly, data of 2011 showed that 106 PLHIV and HIV-affected people were participating in propaganda events organized by Hai Phong Center, while for Quang Ninh Center, such figure was 718.

It is also remarkable that like Hanoi Center, both LCCs in Hai Phong and Quang Ninh have well established contacts and cooperation with SHGs of PLHIV and engaged them in providing legal services for PLHIV. In Hai Phong, there was 48% of cases of 2011 where SHGs were involved supporting for PLHIV, while in the same year, the SHGs cooperated with the Quang Ninh Center in 18,5% of consultancy cases.

3.2.3 Ho Chi Minh City Center

In the survey, Ho Chi Minh City Center provided the Research Team with a summary report on its operations of the full year of 2010, 2011 and first six months, 2012. Although information was not given in the recommended format, it provided a general understanding about operations of Ho Chi Minh City Center.

As for general achievement, there were 1063 “cases”⁵² recorded since Ho Chi Minh City Center was engaged in providing legal advices and consultancy support for PLHIV, including defenses in the Court. A breakdown of years is shown as follows:

Table 5
Result of Legal Consultancy for PLHIV of Ho Chi Minh City Center
in period of 2010 – 2012⁵³ (Unit: cases)

| 2010 | 2011 | First 6 months of 2010 |
|------|------|------------------------|
| 379 | 556 | 128 |

⁵¹ **Example 6:** Mrs. Ng. in Le Chan District, Hai Phong had a child, Dung born in 1994. Her husband died in 2001 for AIDS. Her family was so poor and homeless, living in a small rented house. That’s why as Dung became 17 years, he was still refused by the Commune People’s Committee in applying for an identity card which made him impossible to get job. In August, 2011, the case was referred to Hai Phong Center by a SHG. The Center then acted as representative of Mrs. Ng. and Dung to contact and negotiate with the Police Office of the relevant Commune and of District Le Chan. The application for issuance of identity card for Dung was then approved. Source provided by Hai Phong Center.

⁵² These cases mean client visits to get legal advice and support from the Center, excluding responses to inquiries raised in law dissemination meetings.

⁵³ Excluding 1171 responses to inquiries raised by PLHIV in law dissemination meetings and/or per telephone.

Interestingly, the report indicates that there were 19 success stories related to settlement of legal disputes by local People's Committees and Court as follows:

- Five labor disputes brought up to the Court by the PLHIV relating to unlawful dismissal without payment of material compensation, non-payment of Social Insurance and non-return of Social Insurance Book.
- Three cases where people who use drugs living with HIV escaped from the compulsory drug rehabilitation camps and were refused by the local community People's Committee in residence registration so that they could not be re-integrated to family and community.
- One case where a drug user living with HIV was exempted from compulsory drug rehabilitation because of suffering the last stage of AIDS.
- Three civil and marriage cases where PLHIV suffered from unlawful actions related to (i) prevention of PLHIV from marriage because of HIV status, and (ii) prevention of women living with HIV from taking care of her child and taking part of property in divorce.
- Seven cases where PLHIV could enjoy temporary suspension of imprisonment, early relieve from imprisonment and/or reduction of criminal charges because of suffering the last stage of AIDS.

In all above cases, as stated by lawyer Nguyen Thi Ngoc Thu, a permanent staff of the center, due to their complex nature, *"there could be no success without effective assistance and enthusiasm from lawyers recruited by the center who possess good knowledge of HIV and relevant laws and regulations"*⁵⁴.

According to Ho Chi Minh City Center report, there were, however, 104 cases which didn't succeed since 2010. Those are:

- 13 cases where the Center helped apply for suspension of criminal prosecution against PLHIV;
- 14 cases where the Center helped apply for issuance of residence registration of HIV-infected drug users who escaped from compulsory drug rehabilitation camps;
- 22 cases where the Center helped PLHIV apply for temporary suspension of compulsory drug habilitation due to being in AIDS period; and

⁵⁴ **Example 7:** V., a 17 years old PLHIV, was convicted by the district court in Ho Chi Minh City of 3 years imprisonment for robbery. His family appealed for him to the City Court and sought legal aid from Ho Chi Minh City Center with the purpose to get some relieve of his sentence. In taking efforts to find legal arguments, lawyer Huynh Khac Thuan, a collaborator of Ho Chi Minh City Center was finally revealed by V. family that he was HIV-infected. With a doctor certificate proving that he already got into AIDS status, lawyer Thuan successfully convinced the judge of the City Court to review the judgment and consequently applied 3 years suspended imprisonment for V. Source provided by lawyer Huynh Khac Thuan.

Example 8: KH., a HIV-infected criminal who was convicted of 18 months imprisonment for public disorderly conduct and kept in jail. His family was concerned about his poor health as he was approaching AIDS period. A claim for his relieve from imprisonment was, however, firstly refused. In hopelessness, KH. family approached to seek help from Ho Chi Minh City Center. Lawyer Nguyen Thi Ngoc Thu took the case, used all of her efforts, including personal relations with the judges to obtain a relieve for him. A relieved judgment was finally given but too late. Kh. was sent back home from the prison and died one month after that. Source provided by Ho Chi Minh City Center.

- 55 cases where the Center helped PLHIV apply for temporary suspension of and/or relieve from imprisonment due to being in AIDS period.

As reasons for such failure, lawyer Nguyen Thi Ngoc Thu provided the following assessment:

- *First*, the clients of failed cases were involved in severe crimes which are not subject to any relief as provided for by the Criminal Code;
- *Second*, clients of failed cases were living with HIV but possessed bad criminal records, thus could not pass the review by relevant authorities for any relief;
- *Third*, there was a lack of coordinated support from the client’s family; and
- *Fourth*, clients of failed cases and their family didn’t disclosure their HIV-infected status or did that too late, and/or could not obtain a legitimate doctor certificate on their health status.

As regards legal dissemination activities, since 2008, Ho Chi Minh City Center organized and/or participated in 111 law dissemination meetings held in different places at the grass-root level such as communes, industrial zones, Government or corporate offices which were attended by 14.590 people of which, as reported by lawyer Nguyen Thi Ngoc Thu, about 30% were PLHIV.

3.2.4 An Giang Center

The so-called “HIV-Legal Aid Center” An Giang was established in 2009 under the HPI Project. Upon the HPI Project completion at the end of 2011, An Giang Center was dissolved in March, 2012 and merged to the general consultancy of VLA An Giang Branch. For that reason, the Research Team could not obtain any information on operations of An Giang Center except some statistics from internal reports of Abt & Associates showing certain figures of the center operations in 2011 which was the peak year as according to Abt & Associates staff who provided such information. Accordingly, there are a total number of 439 cases handled by the center in that reported year comprising of direct client visits to the center and advices per telephone. *Pls. see Table 6 for some details.*

Table 6 - Result of Legal Consultancy for PLHIV of An Giang Center in 2011 (cases)

| Labor | Marriage | Education | Social Protect. | Medical Care | Confidential Info. | Civil – Admin. | Criminal | Others |
|-------|----------|-----------|-----------------|--------------|--------------------|----------------|----------|--------|
| 8 | 38 | 12 | 37 | 114 | 171 | 30 | 4 | 25 |

3.3. General Findings and Observations

Based on the discussions with the above LCCs and analysis of material provided by them, the Research Team could established some general findings and observations regarding operations of the LCCs in providing legal services for PLHIV as follows:

- What were the typical cases handled by the LCCs, the most frequent method of settlement used by them and the chances of their success? Below is a summary on this.

| Matters | Method of Settlement | Chance of Success |
|--|--|--|
| 1. Children living with HIV were not allowed to attend school. Schools often blamed this on objection from other children's parents. | LCC held discussions with the school to confirm the children's rights. Meetings with parents of other children were frequently held to explain HIV transmission and HIV-laws. Amicable settlement was reached subject to successfully convincing other children's parents to withdraw their objection. | Success is highly rated. The children living with HIV were accepted by the school. |
| 2. PLHIV were dismissed from employment. | LCC held discussions with the employer and got relevant bodies involved (TU, WU, and PAC etc.) to reconcile the dispute. Commencement of lawsuit was sometimes necessary. | PLHIV could not resume their work but successfully claimed material compensation for the employment termination. |
| 3. PLHIV were requested to change their work position to another one with less favorable conditions. | LCC held discussions with the employer and got relevant bodies involved (TU, PAC etc.) to reconcile the dispute. | In some cases, PLHIV did recover their old work position but could not hold it for a long time. |
| 4. PLHIV were hindered by their family to inherit property. | LCC held discussions with the family of PLHIV to reconcile the dispute. | LCC's service was occasionally successful depending on what type of property was involved (e.g. real estate inheritance was normally difficult). |
| 5. Women living with HIV were forced to divorce without right to nurse children and own property. | LCC held discussions with their family and got relevant bodies involved (WU, local PC, and PAC etc.) to reconcile the dispute. | Mostly successful. |
| 6. PLHIV were hindered from marriage by family and/or local PC. | LCC held discussions with their family and/or local PC and got relevant bodies involved (e.g. PAC) to clarify the rights of PLHIV and rectify the legal infringement. | Mostly successful. |
| 7. PLHIV were hindered from renting house. | LCC held discussions with their family and got relevant bodies involved (e.g. local PC) to reconcile the dispute. | LCC's service was sometimes successful where the landlord accepted the lease but only for short time period. |
| 8. Health status of | LCC held discussions with the relevant | LCC's service was mostly |

| | | |
|---|--|--|
| PLHIV was disclosed to others at work or residential community. | employer or local PC to request assistance with stopping the spread of information and stigmatization. | successful but limited to stopping the dissemination of information on the PLHIV only. |
| 9. SW, PWID living with HIV were refused to be re-granted identity card or re-register their residence by the local police after being released from education/rehabilitation camp. | LCC held discussions with the relevant police agency and obtained letters of support or undertaking from the family of PLHIV toward requesting the re-granting of identity cards and re-registering residence for PLHIV. | Mostly successful. |
| 10. PLHIV were refused by the local PC to be certified as the poor to enjoy Government aid. | LCC held discussions with the relevant local PC and submitted documented evidence proving the eligibility of PLHIV for Government aid. | Mostly successful. |
| 11. HIV-infected PWID and SW were sent to compulsory drug rehabilitation or education camps, respectively, regardless of their AIDS stage. | LCC initiated many legal proceedings to submit administrative claims for PLHIV, obtained letters of support or undertaking from their family, and submitted relevant medical records. | Sometimes successful. |
| 12. PLHIV were prosecuted, held in custody and/or sentenced in criminal case regardless of their AIDS status. | LCC initiated many legal proceedings to submit administrative claims and/or defend clients in Court. | Center's service was sometimes successful depending on (i) types of crimes committed (ii) criminal record of the client and (iii) provision by the client of sufficient medical records. |
| 13. PLHIV were held in prison regardless of their AIDS status. | LCC initiated many legal proceedings to submit administrative claims and/or defend clients in Court. | Center's service was sometimes successful depending on (i) types of crimes committed (ii) criminal record of the client and (iii) provision by the client of sufficient medical records. |

- Another significant point was the way clients became aware of and approached HIV-LCCs. From the Abt & Associates survey of 2671 clients visiting the five HIV-specific LCCs in Hanoi, Hai Phong, Quang Ninh, Ho Chi Minh City and An

Giang from October 2010 to September, 2011⁵⁵, it has been revealed that three major sources of client’s knowledge of those centers were connections with legal consultants, law dissemination meetings and family relatives or friends, including SHGs while advertisements on newspapers or T.V channels didn’t play an important role. *Details of that are shown in Table 7 below.*

Table 7 - The Ways PLHIV Approached HIV- Specific LCCs

(Unit: %)

| Press/TV | Location of the Center | Legal Consultants | Propaganda Meetings | Others (Family Relatives, Friends, SHGs) |
|----------|------------------------|-------------------|---------------------|--|
| 4,2 | 8,5 | 42,8 | 23,5 | 21,0 |

- Regarding general operations of HIV-LCCs, it is also remarkable that all of them have actively been involved in law disseminations towards raising awareness of people at grass-root level in general and PLHIV in particular about HIV law. According to lawyer Nguyen Thi Ngoc Thu of Ho Chi Minh City Center, law dissemination constituted a vital part of the LCC’s operations because of the following:

- *First*, it gave a good chance for legal service providers to approach PLHIV to advertise services and learn about issues of common concern of PLHIV⁵⁶.
- *Second*, as law dissemination meetings were often co-organized by a LLC and the PAC, the WU, the VLA, the PLAC, the V-NGO or the SHG, it enhanced cooperation relationship of the LLC with those organizations.
- *Third*, it helped a LLC save time and human resource by giving legal advice to a large audience.

That explanation was shared and reconfirmed by Mr. Le Khac Quang of the VLA and Mr. Son, the manager of Quang Ninh Center.

Regarding the role of law dissemination for PLHIV, a group discussion between the Research Team and PLHIV in Can Tho city gave another evidence that 8 of 10 participants expressed their view that most of PLHIV never thought of using any legal consultancy because they didn’t know what for. So, law dissemination meetings provided them with the first opportunity to learn about their rights. Also, in Dien Bien province, where drug use is considered the main source of HIV-infection, stigma and discrimination by the community against PLHIV have increased. According to the general reflection from a group discussion with 12

⁵⁵Data collected and analysed based on Abt&Associates’ internal Report

⁵⁶ An explanation from Ho Chi Minh City Center and Quang Ninh Center why 2011 was the “pick year” was that in this year there was a high number of propaganda events on HIV organized by Government and social organizations.

PLHIV, the situation, however, had been improved after HIV-related law dissemination meetings were organized by the VLA Branch Dien Bien⁵⁷.

In addition, as regards the role of SHGs, an executive member of Dien Bien Bar Association confirmed a necessity of cooperation relationship between legal service providers and those groups as in specific case of Dien Bien, where a large number of PLHIV are of ethnic minority groups, lawyers who are Kinh, due to language and cultural barriers, cannot approach these people without SHG's support.

- It is noteworthy that each of the HIV-specific LCCs supported by HPI Project was initially allocated a fixed number of professional staffs comprising of one lawyer, one legal consultant and four part-time collaborators. The fact that the HPI Project is about coming to an end, has resulted in downsizing in all centers⁵⁸. According to assessment by directors of those LCCs, the constraint in professional personnel has been the main restrictive factor affecting their operations. To cope with that, all centers mainly used mediation service as their key method dealing with legal disputes and infringements rather than taking administrative complaining procedures or litigation which are often time consuming and requires specific professional expertise. As such, client's matters which require services beyond the center's capacity have been referred to other consulting offices⁵⁹.
- Last but not least, all HIV-specific LCCs proved their weakness in keeping files and records of clients. As an evidence of that, it was often difficult for the LCCs to collect and prepare information requested by the Research Team. According to Mr. Tran Huy Lieu, Director of the NLAA, a lack of proper file and record keeping can be a barrier for a LCC to access the Legal Aid Fund as according to the Law on Legal Aid, any payment from the Legal Aid Fund strictly requires clear evidences of legal aid provided.

4. Demand of PLHIV and Key Populations on Legal Services

4.1. Assessment of PLHIV's demand for legal services

The analysis of the demand of legal services by PLHIV is based on data from the Stigma Index and the Access to Justice Survey⁶⁰ as well as on the interviews and focus groups discussions conducted in the five provinces. The report looks first at the data on the most common rights violations suffered by PLHIV. Later on, it focuses on the analysis of the reactions to those violations and the factors that affect the individuals' behavior.

⁵⁷ VLA Branch Dien Bien was established in 2007. In 2010, in cooperation with Hanoi Center it organized two law dissemination meetings on HIV and related laws and regulations for 45 PLHIV.

⁵⁸ Since October, 2011 there are only one permanent staff and two part-time collaborators left in Quang Ninh Center, likewise, Ho Chi Minh City Center terminated its one part-time collaborator contract while An Giang Center already has been merged to the general consultancy service under VLA Branch An Giang.

⁵⁹ For instance, since December, 2011 there have been six criminal cases related to PLHIV referred to lawyers of legal aid centers by Ho Chi Minh City Center. THESE ARE GOOD EXAMPLES OF REFERRAL THAT SHOULD BE MENTIONED AS BEST PRACTICES AND INCLUDED IN THE RECOMMENDATIONS

⁶⁰ This survey was conducted in 2010 by NHQuang&Associates under an UNDP sponsored project.

4.1.1 Status quo of violations of rights of PLHIV

In the HIV Stigma Index Survey, when being asked whether their specific rights protected under HIV – related laws and regulations have been violated in the past 12 months, 21.8% of the interviewed PLHIV confirmed that they were infringed, 75.9% did not experience rights violation and the rest were not sure of any rights violation. Specifically, the highest percentage of respondents confirmed that they were stigmatized and discriminated; following was those confirming violation of right to privacy. Coming after that were violations of right to education, right to work, right to get married and others. For further details, please see Figure 1 and Figure 2.

Figure 1: Violation of respondents' rights as people living with HIV in the last 12 months

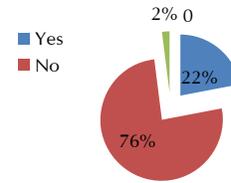
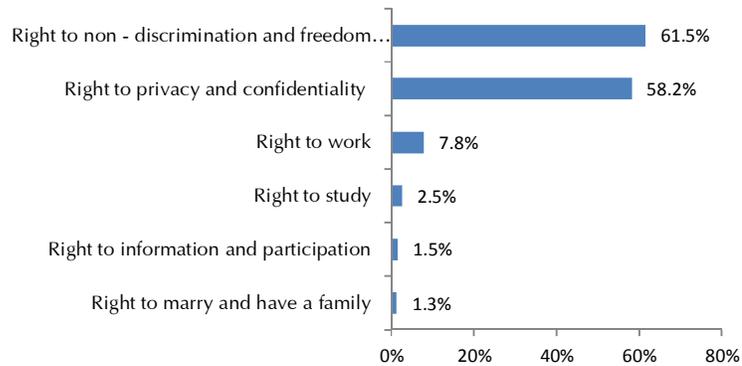


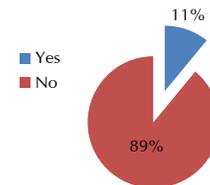
Figure 2: Type of rights violations experienced by respondents (multiple-answer question)



4.1.2 Reaction by PLHIV against right violation

It should be noted that among those interviewed in the HIV Stigma Index Survey, who confirmed right violations, only 10.8% (i.e.43 of 397 people) responded that they had some actions to protest and/or claim by any means. As for a comparison, from the Access to Justice Survey, when asked the same question as whether you would take any actions to protest in case of right violations or legal dispute, 71.9% of all people interviewed responded with affirmative answer.⁶¹

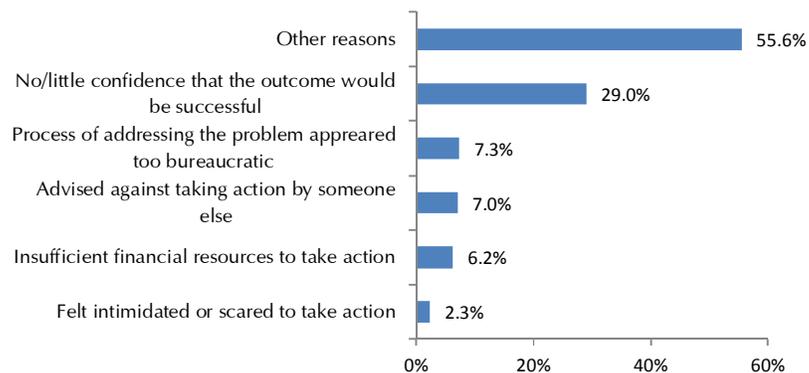
Figure 3: Incidence of seeking legal redress for any abuse of rights



⁶¹ In the Access to Justice Survey, in such a case, 71.9% of 1000 respondents said that they would request for external intervention from agencies to resolve such as People's Committee or police agency at commune or ward level, mediation team, prestigious person in the community, court and social organizations while the remaining (28.1%) select the option of "ignoring and taking lesson".

As for reasons for not taking any reactions, the HIV Stigma Index Survey put forward six options for the respondents to choose such as (i) insufficient financial resources to take action, (ii) process of addressing the problem appeared too bureaucratic, (iii) felt intimidated or scared to take action, (iv) being advised by someone else not to take action, (v) no or little confidence that the outcome would be successful, and lastly (vi) none of the above reasons. Surprisingly, 56,6% of the respondents did select the answer of the last option, 29% of them confirmed that “no or little confidence that the outcome would be successful” while the rest of the given options were not significantly chosen. For details, pls. see the Figure 4 below.

Figure 4: Reasons for not seeking legal redress



From in-depth interviews taken with PLHIV, explanations were obtained in relation to the fact that 56,6% of respondents did not select any of the above optional answers recommended to them as follows:

- As most PLHIV were afraid of being exposed as “PLHIV” to the public, the reason for them not to take any legal redress is that they believe that in doing so, their HIV status will spread faster⁶².
- Another reason is that discrimination and stigma are easy to be felt and realized by PLHIV but difficult for them to prove for the purpose of raising an official complaint⁶³.

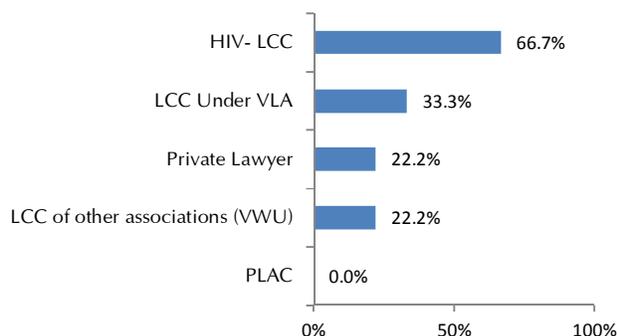
⁶² In an group discussion, a girl living with HIV told her own story that when she was requested by the company owner to leave because of being HIV-infected, she tried to react and got a response that the company owner may have a sympathy for her but other staffs and customers would not. So, if she voluntarily leaves, her “secret” will be protected. This girl then decided to leave.

⁶³ The leader of a SHG in Hai Phong told a story of a girl as her group member who used to worked in a garment factory that just two weeks after her HIV status was confirmed by a district medical center, for unclear reasons given by the factory manager, she was moved from the tailor job to working in the packing division with lower pay. Along with that, she felt being kept away from others but no one frankly told to her that she was HIV-infected. After one month, she applied for job termination which was immediately accepted by the company. As this example was presented in in-depth interviews, It was confirmed by 15/17 respondents as a common practice of discrimination against PLHIV at workplace .

4.1.3 Use of legal services by PLHIV to make complaint

Among that above 10.8% who ever took an action to protect their legitimate rights, there were only 20.9% (i.e.9 of 43 people) reporting that they had sought and accessed the legal support from relevant organizations and individuals. Those 8 interviewed people have reportedly approached HIV-LCC, LCC of VLA but

Figure 5: Selection of Service Providers



not PLAC. For details please see Figure 5. This fact does not necessarily mean that PLACs were not engaged in providing legal services for PLHIV⁶⁴. However, as explained by Mr. Tran Huy Lieu, Director of NLAA, PLHIV may be reluctant to approach PLAC since they will be required to prove their HIV status.

Also, in order to identify any barriers for PLHIV not to access legal services, the HIV-Stigma Index listed seven different factors as those may be problems in question. Accordingly, there are four factors that were mostly considered by the respondents as such barriers comprising of a lack of general knowledge of legal services, a fear of the HIV status to be disclosed, the financial difficulty and a fear of stigmatization and discrimination by the community. For details, pls. see the Table 8 below.

Table 8: Reasons for PLHIV not Accessing Legal Services

| No. | Options | Rate (%) |
|-----|--|----------|
| 1 | Financial difficulty | 24.8 |
| 2 | Distance to access legal service | 16.0 |
| 3 | Lack of information or knowledge of legal services | 52.9 |
| 4 | No trust to receive the expected support | 10.7 |
| 5 | Fear of being stigmatized by lawyers or legal consultants | 9.9 |
| 6 | Fear of HIV status to be disclosed | 29.4 |
| 7 | Fear of being stigmatized and discriminated by the community | 22.9 |

4.1.5 Understanding of PLHIV about particular legal service providers

Obtaining information about legal service providers is an important factor to consider an access to them. When being asked about any available legal service that they knew

⁶⁴Data from Ho Chi Minh City Center already showed that since November 2011 there were 7 HIV-court cases were referred to the PLACs.

at their residence place, based on the data from the HIV Stigma Index Survey illustrated in Table 11 below, it is remarkable that the rate of PLHIV knowing about consulting centers of social organizations (e.g. Vietnam Women Union) is the highest, followed by the rate of knowledge about HIV-LCCs⁶⁵, law office and LCC of VLA. The fact, that the rate of people hearing about PLACs is lowest may add to the explanation in Paragraph 4.1.3 above why none of respondents have accessed their services. *Pls. see Table 9 for details.*

Table 9: Awareness of PLHIV about Legal Service Providers at their Locality

| Service providers | HIV-LCC | PLAC | LCC of VLA | LCC of other organization (e.g., VWU) | Law office |
|---------------------------|---------|------|------------|---------------------------------------|------------|
| Proportion of knowing (%) | 34.0 | 4.9 | 9.0 | 57.8 | 18.6 |

As matter of fact, PLACs and LCCs of the VLA are not widely known in the provinces as each province usually has only one legal aid center and not every provincial VLA branch has its own LCC. In case of law firms, there are in fact a large number of law firms operating in cities, so such a high figure of interviewed PLHIV knowing them may be due to the fact that 78.7% of the interviewees of the HIV Stigma Index Survey come from urban areas where many law firms exist⁶⁶. WU is very active in organizing community propaganda and training activities for their members. PLHIV could approach WU's legal consultancy through participating in such activities.

4.1.6 Level of satisfaction of PLHIV in legal services

Among those who did use legal services for dealing with any of their issues, the HIV-Stigma Index showed a positive result that 88.8% of them satisfied in recognizing that the legal services received met much or a part of their demand. Also, in particular, of those who tried to claim their rights in the last 12 months of the interviewing date, 58.1% confirmed that their claims have been settled, 14% were pending, and 27% were not accepted and unsolved. As per the experience of the Research Team, this is a good achievement in comparison with the general practice of settlement of legal complaints and disputes⁶⁷.

⁶⁵ It should be noted that provinces subject to the HIV Stigma Index Survey also includes those which don't have any HIV-LCC such as Dien Bien and Can Tho. Accordingly, it is reasonable to assume that taken the number of the respondents of these provinces out of the total data, the rate of people knowing HIV-LCC can be higher.

⁶⁶ For example, in the two biggest cities (concurrently the most crowded place of PLHIV) particularly, Ha Noi and Ho Chi Minh City, there are 1,805 law offices (of the total of 2,831 law offices nationwide), meanwhile in principle, each province, city only has one LCC under socio-political organizations like VLA or VWU and a legal aid center, though such centers can open one or more branches in districts. LCCs for HIV do not exist in all provinces. In some localities where such centers are not set up as an organization under VLA, consulting activities may be those performed by the Center for HIV/AIDS Prevention of the province.

⁶⁷ For example, according to figures of the Government Inspectorate, the average proportion of administrative complaints from citizen which are solved by state agencies from 2008 to 2011 is 70%. Please see documents of the Conference of the Government Inspector dated 27/3/2012 in Can Tho on "The work of citizen reception, complaint and denunciation settlement of provinces, cities under central governance in southern area".

Figure 6: Incidence of seeking and accessing legal support

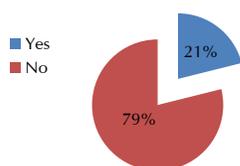
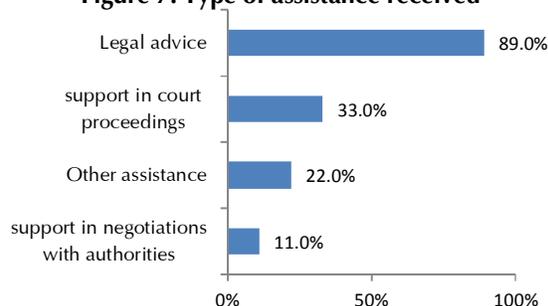


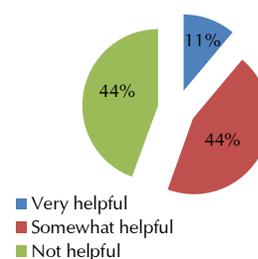
Figure 7: Type of assistance received



4.1.7 Observations

As to summarize the above facts, it is simply to say that there was one of every five respondents experienced right infringement; however, only one of ten of those experiencing right infringement ever reacted or complained and nearly one of every five of those complaining ever used legal services to do that. Based on that, there would be a common concern that given the high rate of confirmed rights infringement, why there was just a lower figure of complaints and even fewer number of people who accessed any type of legal support?

Figure 8: Level of satisfaction with the service



Beside the answer to that question given from the HIV Stigma Index Survey as described above, the in-depth interviews taken by the Research Team in Dien Bien and Can Tho where specific legal services for PLHIV have not been yet established also came out with notable findings. In Dien Bien, most of PLHIV in a group discussion explained that they were poor and living with low self-esteem, that has motivated them to use drugs and because of that they have become HIV-infected. In the whole life period as such, they didn't know about any rights they have or any support they may receive from the Government or community except that as drug users and HIV-infected people they are considered "criminals" and social evils and should be punished. Likewise, PLHIV in Can Tho whom had been interviewed reflected another disadvantage they suffer that is lack of education and knowledge. As 6 of 10 respondents admitted that they didn't finish the primary school so they all are unable to read or understand any legal news or legal documents. From those two examples, it may be concluded that demand for legal services amongst PLHIV in general will be generated based on a series of activities that should be taken in favor of PLHIV, including basic education of rights, and guiding on use of legal services.

From another angle, there are another positive fact found from the Stigma Index Survey as a high rate of PLHIV confirmed their awareness of applicable laws in the field of HIV, and a high rate of people who used legal services with satisfaction and, so stated their trust in it. Understanding about laws does certainly not necessarily mean understanding about rights and being ready to claim same. However, that fact, together with the trust

in legal services would be a positive starting point which makes one logically to believe that in long term, demand of PLHIV on legal services will definitely increase.

4.2. Remarks on the key populations

PWID, SW, MSM and TG do not enjoy a specific legal framework to protect their rights. However, they are entitled to the same rights as any other Vietnamese citizen. If they are living with HIV, they would also be protected by the HIV Law.

Remarks need to be made when evaluating the demand of the key populations (i.e. PWID, SW, MSM and TG) for legal services because of the two following reasons⁶⁸:

Firstly, as under the current laws PWID and SW are considered delinquent⁶⁹, when looking at their demand for legal services, it is necessary to focus on the protection of their rights from both angles such as (i) their enjoyment of due legal process while they are administratively sanctioned, and (ii) their enjoyment of rights as any other Vietnamese citizen⁷⁰.

Secondly, as regards MSM⁷¹ and TG, there is currently no specific legal framework to govern rights of these as a specific social group in general,⁷².Accordingly, as far as provision of legal services is a law-based activity and aims at an effective and efficient right protection, meaning provision of not only legal arguments but also practical solutions and supports, it would logically face certain challenges.

As the HIV Stigma Index Survey didn't provide specific data on HIV-negative key populations, it was necessary for the Research Team to conduct a number of in-depth

BOX 1

Ms. H, a SW in Hanoi told her story that when she went to a hospital for an examination, knowing that she was a SW, the doctor immediately told other colleagues and displayed a lack of interest and enthusiasm. This causes her as SW to go to private and small clinics where they have also to face greater risk of abuse, including higher service charges.

⁶⁸ According to the data of the HIV-Stigma Index Survey as reported by VNP+, in terms of violations of rights, respondents confirmed high rates of abuses among FSW in Ha Noi (42.0%) and PWID in Dien Bien (35%). MSM in Ho Chi Minh City reported the fewest abuses (11.3%) but more MSM than other respondents were not sure whether they had suffered violations of their rights (7%).

⁶⁹ The Law on Drug Control and Prevention of 2000 (amended 2008) and Ordinance on Prostitution Control and Prevention of 2003.

⁷⁰ There was a serious concern raised in the in-depth interviews and group discussions about abuses of rights of PWID and SW as they are suffering "double" stigma and discrimination as PWID or SW and PLHIV.

⁷¹ As men who have sex with men describes a sexual behavior rather than a social group with specific identity. The term "MSM" used here refers to "gay group" which has demand on equal rights protection.

⁷² Pursuant to Decree No.88/2008/ND-CP dated 5/8/2008, persons with congenital sex defects or of unidentifiable sex may carry out legal procedure for sex reassignment after the birth declaration based on the conclusions of medical establishments, meanwhile conducting sex assignment for persons upon their subjective wish is prohibited.

interviews and group discussions with PWID, SW, MSM and TG to further explore their problems, including demand on legal services, if possible⁷³.

(a) *PWID*

In in-depth interviews and groups discussions conducted with PWIDs⁷⁴, the Research Team has been reflected with following general situation:

For PWIDs who live with their family, it is very likely that they will be neglected by their family and be isolated by the community once their drug use is revealed, whether by accident or through relevant propagation events organized in the community where list of drug users may publicly be announced by the commune authorities. Such announcements may be followed by stigma and discrimination against them in the community and thus, they will easily lose their existing job or could hardly find one.

In the worst case, especially when drug fighting campaigns are conducted, PWIDs are vulnerable to being arrested and brought to drug rehabilitation camps. Although the Law on Drug Control and Prevention and the Law on Administrative Sanctions provide for certain legal procedures that must be complied to treat an PWID in such a case, (e.g. community education measures must be taken before being sent to a Rehabilitation Center), such procedures were strictly followed.

According to some PWIDs interviewed in Ha Noi and Ho Chi Minh City, a number of whom had experienced stays in drug rehabilitation camps and were HIV – infected, they often had to work too heavily and did not receive proper prevention or treatment against HIV in accordance with relevant laws and regulations.

(b) *SW*

There are some noticeable findings related to problems faced with by SWs in general as follows:

- *The stigma and discrimination against SWs would be more common and serious than for normal PLHIV.* Among PLHIV being at the same time SWs interviewed in the HIV Stigma Index Survey, 20% of them confirmed that they have been subjected to insults, offenses and assaults. Through in-depth interviews and groups discussions with 33 SWs in Hanoi and Ho Chi Minh, 26 of them reflected that being known as SW, they would often be refused or caused difficulty to access to most of social services such as medical examination and treatment, including consultancy on HIV prevention, temporary or permanent residence registration, issuance of ID card and birth certificate for children and house lease. In case where SWs are HIV-infected, they would also meet difficulties in accessing medical treatment because of discrimination or be provided HIV treatment subject to proof that they no longer work as a SW.
- *SWs would be subject to sex violence but unable to resist or not protected.* 19 of 33 SWs interviewed confirmed that even if they called for help, no

⁷³ *HIV Stigma Index Survey conducted by VNP* did not interview separately this key population group, thus, the Research Team implemented 81 in-depth interviews and 10 group discussions complementarily.*

⁷⁴ *There were 19 PWID interviewed and one group discussion organized with participation of 14 PWID.*

functional agency would interfere or in case getting such interference, they may be arrested or fined afterwards.

- *SWs would be victims of abuse, law violation or negligent acts of functional agencies or officers.* According to the results of the Research Team's interviews with the leaders and 5 members of two CBOs of SW in Ha Noi and Ho Chi Minh city, they revealed that about some of their "friends" have been victims of sex abuse (not being paid) and/or bribe to authority officers who are "degenerative" and "corruptive" in exchange for the delay of arrest and/or continuity of their work. In case of refusal to do so, they could be arrested, then forced to go to compulsory medical treatment and education camps⁷⁵ for a minimum stay of 6 to 18 months. In addition to note is that such an arrest and forced referral to compulsory medical treatment and education camps may be taken by avoiding certain regulatory procedures. It was also told by the above interviewed SWs that during the stay in compulsory medical treatment and education camps, medical treatment for those HIV-infected, may be interrupted or omitted.

(c) *MSM and TG:*

There are no exact statistics on MSMs or TGs in Vietnam; however, according to the "Preliminary Viet Nam HIV/AIDS Estimates and Projections 2011" conducted by MOH and the National Technical Working Group on HIV Estimates and Projections, 2011, there are about 285.000 MSM with much fewer TGs. Vietnamese law does not recognize the existence of "gay", as well as the right to transfer their gender. Therefore, people who belong to two groups above are unlikely to reveal their identity.

BOX 2

Mr. M. (a MSM in Ha Noi), said: "MSM clearly know that the law does not recognize them and it will therefore be useless to seek legal services".

Interviews and group discussions conducted by the Research Team with MSMs and TGs⁷⁶ revealed that one of the biggest difficulties of these two groups is stigma and discriminatory behavior by people around them, including their families and community at their living and working place. They are not only considered as a distortion of culture and lifestyle but also an expression of decadent ethics. In the HIV Stigma Index Survey, of PLHIV being MSMs and TGs at the same time, 15% of MSMs and 23% of TGs responded that they used to be offended and defamed several times. Consequently, several of them lost their jobs or were even assaulted

⁷⁵ *These camps are officially called Centers for Treatment, Labor and Education which are established by the Government under the management of the Provincial Department of Labor, Invalids and Social Affairs for the purpose of treating PWIDs and SWs who are subject to administrative sanctions under the Law on Administrative Punishment and the Ordinance on Prostitution Control and Prevention. Entrance procedures and operation of such centers are regulated in Decree No. 135/2004/ND-CP dated 10/6/2004 whereby it is required that a women firstly engaged in prostitution shall be subject to warning and education at the community but not immediately sent to the Center for Treatment, Labor and Education. WE NEED TO REFLECT THE CHANGE IN LEGISLATION ACCORDING TO THE NEW LAW ON ADMIN SANCTIONS*

⁷⁶ *The Research Team conducted interviews with 29 MSMs, 4 TGs and 2 groups discussions with 12 MSM each in Hanoi and Ho Chi Minh.*

for this reason. For TGs⁷⁷, they can face up with a direct legal barrier that is the inability to identify themselves according to personal legal papers such as birth certificate, ID card and household residence book; meanwhile it is impossible for them to change or have such personal legal papers renewed. These matters lead to many difficulties for their work and life such as applying for job, joining in studying at school, leasing house, establishing enterprises, etc... even when they travel inside or outside of the country.

Until now, when facing such challenges, most people who belong to these two groups choose to “keep silent and skip”, because they are aware that the more they resist, the worse situation will be since their personal information will be more widely spread. Therefore, the two groups do not have the demand for direct legal advice for particular cases or individual problems they meet. Instead, their demand basically rises towards to the recognition of law in general and the right to be linked and grouped to help them or to be assisted to mediate specific cases in particular. According to Mr. Son Minh of the SHG of MSM “We are students”, some SHGs of MSM have approached PAC to claim their rights to access available consultation and harm reduction measures on HIV/AIDS.

In summary, the Research Team holds the view that in light of the above description of facts, such specific demand of those key population groups needs to be well addressed in discussions about legal services for PLHIV subject to the following notes:

- *Firstly*, PWIDs, SWs, MSMs and TGs, to the extent they are HIV-infected, should be treated equally as other PLHIV subject to all rights they are entitled to under the legal framework on HIV. Specifically, any legal barriers they would face while exercising HIV-related rights due to being PWID, SW, MSM or TG should be handled in the way that HIV-related rights shall prevail and/or still well be protected.
- *Secondly*, they should all be supported in their effort to obtain access to legal services, mechanisms to account for abuses, and information about their rights.
- *Thirdly*, legal services provided to those key populations should include policy advocacy works towards creating and/or making improvements of legal framework protecting rights of key populations as citizens and human being.

5. Enabling Factors and Constraints of Access to Legal Services in “Demand Side”

This section will focus on deeper analysis of the “demand side” toward determining what should be enabling factors as well as constraints for PLHIV to access legal services. In particular, the following areas are subject to that analysis:

- Legal awareness of rights and right protection
- Stigma and Discrimination toward HIV

⁷⁷Who has to make sex reassignment surgery abroad because according to Vietnamese laws, medical facilities are not permitted to make such surgery.

- Payment capacity for legal services
- Support from community
- Organization of PLHIV

5.1. Legal awareness of rights and right protection

The HIV Stigma Index Survey showed a finding that 60.4% of PLHIV have read legal documents on HIV. This result is highly positive compared with the normal standard⁷⁸. The explanation for that may be that intensive propagandas on HIV conducted so far have been fruitful. Knowledge of the law should be the first enabling factor; however, in order to actually access legal services, one would need to understand legal institutions and appropriate enforcement mechanism at least at the basic level.

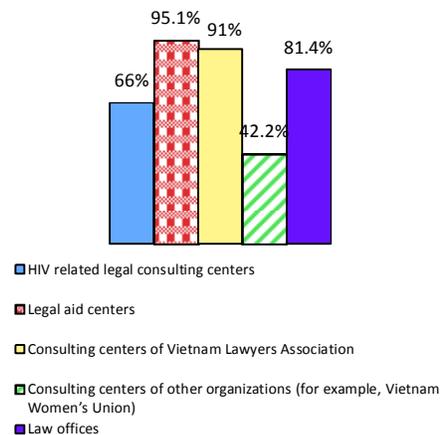
From the HIV Stigma Index Survey, of those who did not use legal services in making their complaint about right violation, 52.9% described barriers to access to legal services as “lack of specific information” or “completely no knowledge about such services”. Also, among all interviewed PLHIV, 66% did not know about any HIV/AIDS related LCC at their residential area. There was an even higher percentage of those who did not know about law offices which have, in fact, become popular in recent years. *For further details, please see Figure 10 herein⁷⁹.*

5.2. Stigma and Discrimination

Stigma and discrimination against PLHIV does exist but is a barrier which can be overcome. This is evidenced by the fact that all HIV-specific LCCs were able to show that nearly all HIV-affected children who have been hindered from going to school went to the school again after legal service providers successfully reconciled their difficulties with other children’s parents. One major concern that arose from a review of the HIV-Stigma Index Survey was the self-stigmatization by PLHIV which would create a constraint for them to access to legal services. According to the survey data, 42.2% of the respondents confirmed that they feel themselves “guilty”, and 28.8% of them would accept to be “punished”.

BOX 3
Mr. D., an official in the Standing Committee of the Association for HIV/AIDS said that: “In Vietnam, basically, HIV is still considered as an evil. Thus, PLHIV are often judged as being destroyed in term of morality and the source of dangerous diseases”.

Figure 9: The proportion of asked persons who did not know about the existence of legal service providers



⁷⁸This rate is higher than the average rate of 51.5% of people who ever read a legal document under the Access to Justice Survey.

⁷⁹ Also according to the Survey on Access to Justice 2010, the average rate of the people who did not know about lawyers’ services was 24.7% and that rate about PLACs was 63.1%.

With such a low self-esteem feeling, a PLHIV would try to keep being separate from other people. 29.4% of those interviewed expressed that they always are afraid of their HIV-infection be disclosed, 22.9% are afraid of being stigmatized and discriminated by the surrounding community, and 9.9 % are even afraid of being discriminated even by lawyers or legal consultants they approach.

Given that fact, according to Mr. Son, manager of Quang Ninh Center and lawyer Nguyen Thi Ngoc Thu of Ho Chi Minh City Center, it is so important for their centers to maintain regular contacts and cooperation with SHGs of PLHIV which help create better mutual understanding and contact between lawyers, legal consultants and PLHIV⁸⁰.

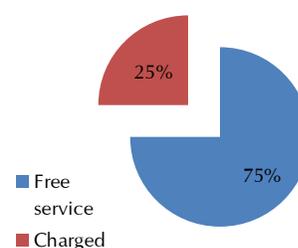
BOX 4

Ms. H., the Head of a PLHIV network in the South said "The role of our network is mainly to consult its members and to contact functional authorities and PAC once rights of PLHIV are infringed. As we are well-connected and respected, our work is rather advantageous and effective".

5.3. Capacity to Pay for Legal Services

From those who already used legal services, according to HIV-Stigma Index Survey, 75% confirmed 100% fee exemption and the rest only paid less than 500.000 VND which is also a very small amount as compared to the local standard of using legal service. It is self-explanatory as all HIV LCCs have been supported by donor funded projects. So, the question is after those projects have been completed and in case the existing LCCs can no longer continue their toll – free services, whether the majority of PLHIV would be able to pay for required services?

Figure 10: Legal services fees



In response to that question, the HIV Stigma Index Survey gave a relevant data that, on the issue of what kind barriers would exist in their concern of using legal services, 24.8% of all interviewed people confirmed a fee-related barrier. An analysis of the respondents by income revealed that 41% of them have usual monthly income of 2.5 million VND and less which, in fact, means a minimum coverage of basic needs. It is also be noted that according to the current Government regulations, with a monthly income of more than 500.000 VND in urban areas and 400.000 VND in rural areas, a person may no longer be regarded as the poor for being eligible to services of a PLAC⁸¹. Thus, despite their low

⁸⁰As reported by Mr. So and lawyer Nguyen Thi Ngoc Thu, about 50 – 60% of clients of Quang Ninh Center and Ho Chi Minh City Center come by referral or introduction of SHGs.

⁸¹Decision 09/2011/TTg dated 30 November, 2011 issued by the Prime Minister on the poor threshold applied for the period of 2011 to 2015. In addition, according to the data of the HIV Stigma Index Survey, there was 4.1% of respondents reported their average monthly income of 500.000 VND and less which would make them qualified under such Government poor threshold.

income, there would be a large number of PLHIV who cannot be clients of payable legal services⁸².

In general, payment of legal services can also be a problem of many people. In the Access to Justice Survey, 44% of people who used to access to lawyer services told that lawyer services are “costly” or “very costly”.

5.4. Support from the Community

Support from the community where PLHIV live and/or work would be significant in relieving their own self-stigma and creating social pressure which helps reduce or prevent specific stigmatizing and discriminating actions from occurring. In particular, support from the community will also be important in providing witness of right violations in case the PLHIV wishes to proceed with legal complaints.

From the HIV Stigma Index Survey, 66.7% of respondents admitted that the difficulty in collecting evidence of right violations (especially in case of stigma and discrimination) was a major barrier preventing the success. It is fortunate, nevertheless, that on the question whether lack of community support would be the reason for not having such evidence, only 11.1% of the respondents gave their affirmative answer.

In group discussions with PLHIV, including SHGs, there were more explanations to this matter, namely, in cases of making a legal claim, PLHIV, subject to involvement of a LCC, would often receive support from various agencies in the community such as social organizations and the commune authorities, or in case of work place the trade union representative. As confirmed by the HIV-LCCs contacted by the Research Team, such kind of support constitutes a major enabling factor in the process of settlement of legal claims or disputes.

5.5. Organization of PLHIV

In the HIV Stigma Index Survey, when asking about difficulties in seeking a settlement of their legal claims, 22.2% interviewed PLHIV responded that it was difficult for them to access Government authorities. There may be various reasons for them to make that statement which naturally include lack of knowledge of legal institutions or even low self-esteem feeling. Nevertheless, from case to case, that issue has been resolved as PLHIV have established their own organizations which are usually called peer groups (*Nhom dong dang*) or self-help groups (*Nhom tu luc*). While *Nhom dong dang* and *Nhom tu luc* mainly operate within a community or province, larger or more sophisticated organizations of PLHIV and key populations of different type such as network, CBO, cooperative or company which were established in recent years go far beyond one province or nationwide⁸³.

Having discussed this matter with the SHGs, they all confirmed that being grouped and organized as such, PLHIV through SHG or organization which represent them can have

⁸² According to the HIV-Stigma Index Survey, only 4,1 of respondents who have average monthly income of up to 500.000 VND can be justified as the poor to be eligible for legal aid provided by a PLAC.

⁸³ There are a number of such organizations, e.g. VNP+ as the national network of PLHIV, “We are students” as regional northern network of MSM, G-Link a CBO of MSM in Ho Chi Minh City registered under the Law on Enterprise a company etc.

better access to Government authorities and other organizations. In addition, it would be needless to repeat that all existing HIV LCCs have been well working together with SHGs in effectively maintaining their operations⁸⁴.

6. Enabling Factors and Constraints of Provision of HIV-related Legal Services in “Supply Side”

With the same approach, the following section will deal with enabling factors and constraints in the current system in providing legal services for PLHIV. In particular, the following areas have been taken into consideration:

- General policy and legal environment supporting provision of legal services for PLHIV,
- Organization and staff of legal services for PLHIV
- Funding

6.1. General Policy and Legal Environment Supporting Provision of Legal Services for PLHIV

The Vietnamese Government is strongly committed in the fight against HIV by taking a series of actions, including creating specific legal framework on HIV, setting up a system of Government agencies in charge of HIV control, issuing strategies on HIV prevention etc. Nevertheless, from perspective of provision of legal services for PLHIV, there are still problems and areas which needs to and can be improved as follows:

- *There is still lack of a specific policy of the Government towards development of legal services for PLHIV.*

The legal aid system was established by the Government which, however, does not cover PLHIV as an independent eligible group for services of PLACs. So far, all LCCs comprising of specific services for PLHIV or those partly engaged in supporting PLHIV, have been set up under donor sponsored projects in cooperation with VLA which have shown successful results but are not a long-term solution. As a matter of fact, the development of legal services for PLHIV requires specific support as it is related to vulnerable groups who suffer numerous disadvantages, including general incapacity of payment. In addition, as explained in the earlier sections, even though legal services for PLHIV are in place, it was not easy for PLHIV to know and access it.

In the Prime Minister’s Decision No. 608/QĐ-TTg dated 25 May, 2012 approving the National Strategy of HIV/AIDS Control and Prevention until 2020 with vision until 2030 as submitted by Ministry of Health (the “National Strategy”), legal services for PLHIV was encouragingly mentioned by one sentence which says: “*To develop centers and units of social, legal support for PLHIV*”. However, no further clarification or solutions toward implementing this direction was stated in the National Strategy.

At the recent regional Conference on HIV⁸⁵, Mr. Tran Huy Lieu – Director of the Department of Legal Aid, Ministry of Justice expressed his full support to develop legal

⁸⁴ For example, Ho Chi Minh City Center maintains cooperation with 23 SHGs and Quang Ninh Center also keeps regular contacts with 10 SHGs.

⁸⁵ The Conference was held in February, 2012 in Bangkok under sponsorship of UNAIDS, UNDP, RTI, AusAid, University of Sydney, IDLO and APN+ focusing on regional consultation on HIV related legal services.

services for PLHIV in Vietnam but at the same time raised his concern that *“There is unfortunately still lack of consistent coordination between the Ministry of Justice with the Ministry of Health and other State agencies in prevention and fight against HIV/AIDS”*.

The above implies that development of legal services for PLHIV is still not a focus in the overall policy of the Government regarding HIV area.

- *There is still a lack of legal framework protecting specific rights and interests of MSMs and TGs.*

Despite the fact that key populations are generally mentioned in the National Strategy from HIV prevention and control’s perspective, specific rights and interests of MSMs and TGs are still not officially recognized. Since there are neither regulations nor a Government policy direction on this matter, authorities of each locality may behave in different manners leading to sufferings by MSMs and TGs⁸⁶.

- *From policy direction perspective, civil society organizations are still not encouraged to be established which would hinder the operations of SHGs to the extent those require legal impersonality registration.*

Under the current law (i.e. Decree 45/2010 of the Government dated 21 May, 2010 on Organization, Establishment and Management of Associations), as there already exists the National Association on HIV Control and Prevention which was set up under Government sponsorship, PLHIV and key populations are not allowed to set up their own organizations. Thus, existing SHGs and CBOs cannot be registered as a social organization with independent legal personality. To the extent that the SHGs and CBOs play a significant role in development of legal services for PLHIV, this issue would also need to be reviewed and resolved.

In addition, the VLA has shown strong support in taking the local part in the donor’s projects on legal support for PLHIV. It is also envisaged that the role of the VLA will be enhanced in development of legal aid services by non- government organizations. In the interview of the Research Team with Mr. Pham Quoc Anh, the Chairman of VLA, it revealed that VLA has been mandated by the Government to conduct a project on “socialization of legal aid services” which includes legal aid for PLHIV⁸⁷. In addition, in the working session of the VLA with the Prime Minister on 16 July, 2012, the VLA was instructed by the Prime Minister to cooperate with the Ministry of Justice to draft a Decree on Socialization on Legal dissemination and Education and another Decree on Socialization on Legal Aid to be submitted to the Government for issuance⁸⁸. In particular, according to Mr. Pham Quoc Anh, it is intended by the VLA to maintain the existing legal

⁸⁶ *In May, 2012, there was a wedding party of two MSMs in Ha Tien province. The local police interfered by imposing a fine on the marriage couple which pushed them escape from their home village. Also, In July, 2012, another same sex wedding party of two girls was organized in a restaurant in Binh Duong province. As the local police came and threatened a punishment to them, those two girls escaped from the party and home town.*

⁸⁷ *On 22 March, 2012, in a conference in Hanoi co-organized by VLA and JPP-JIFF, VLA presented a draft project document on “Socialization of Legal Education, Propaganda and Legal Aid” which was compiled by the VLA in cooperation with Ministry of Justice and Ministry of Finance.*

⁸⁸ *This instruction was given by the Prime Minister in the meeting of the Chairman of VLA with the Prime Minister on 16 July, 2012. Source: Article on Nguoidua tin newspaper of VLA issued on 31 July, 2012*

services by VLA for PLHIV and expand such services to all LLCs of VLA provincial branches.

6.2. Organization and Staff of Legal Services for PLHIV

From interviewing all existing LCCs the Research Team has come to the following observations:

First, as “enabling factors”, during the past years all LCCs have undergone a difficult but fast development whereby their operations have been quite successful in terms of the number of PLHIV consulted and the type of legal matters handled. Each center successfully built up a small but well-trained professional staff, comprising of one lawyer, one legal consultant and four part-time collaborators, who became skillful in approaching PLHIV. A suitable model of cooperation between legal services providers and SHGs has been established and proved as well functioning. Accordingly, a number of PLHIV and members of SHGs who have specifically been trained in provision of legal services, has become the “second task force” supplementing to the professional staffs of HIV-LCCs.

Nevertheless, there are certain constrains in the staff of HIV-LCCs. First, the number of professional and full-time staffs is small compared with number of cases they handled. This issue has been resolved by recruiting part-time collaborators; however, it can be a challenge for the centers to keep them for long term. Second, there is a lack of experienced lawyers who are able to defend clients in Court. Statistics of operations of all centers showed that in one case, there are none or just a small number of Court cases handled, while in the other, there may be a larger number of Court cases handled which, however, then must be referred to other lawyers who are more experienced in Court.

Second, there are factors that will influence the future development of HIV-related legal services as follows:

- In terms of organization, there is no centralized management under the VLA which coordinates and controls operations of all consulting centers and service providers. In the short-term, as all key service providers (i.e. the five HIV-specific consulting centers in Hanoi, Quang Ninh, Hai Phong, Ho Chi Minh City and An Giang) have been operating under support and supervision of Abt & Associates as executing agency of the HPI Project, there are still some connections set up and maintained among them; that, however, would be no longer the case upon the completion of the HPI Project which soon comes in September, 2012. In addition, the LCCs under VLA branch Hanoi and the LCC No. 9 under VLA Branch Ho Chi Minh City which provide legal services for PLHIV, as part of their operations, under the CARE Project do not link in any aspects to others which do same but under HPI Project.
- Due to a lack of centralized coordination and management as well as impacts by the HPI Project scheme⁸⁹, each HIV- LCC tends to operate and set its goal differently subject to the particular status of individual VLA Branches, e.g. An Giang Center has already been closed and merged with the VLA Branch’s general consultancy; Quang Ninh Center would survive six months after the HPI Project is ended; Ho Chi Minh City Center would expand its services to all type of clients in order to financially

⁸⁹ At the end of the first Phase, after a competitive selection process, HPI Project will continue in two of the five LCCs.

survive. This means that, in the long term, there is no clear future of those HIV-specific LCCs.

- As regards the PLACs which have been providing certain HIV related legal services to the extent authorized by the National Legal Aid Agency or on matters referred by other HIV-LCCs, their operations in the HIV area are, therefore, limited or of project-based nature. It is a matter of fact that all PLACs will continue their main tasks specified by the Law on Legal Aid and would not expand their operations to the HIV area unless there will be an relevant amendment in the Law on Legal Aid.
- As regards lawyers and law offices who and which bear legal obligations to provide pro-bono services, those have still not strongly participated in provision of legal services for PLHIV so far. Thus, a link between the National Legal Aid Agency, VLA and Vietnam Bar Federation should firstly be established to get the lawyer community actually engaged in this area.
- Last but not least, as mentioned in the earlier sections of the Report, LCCs of the social organizations (e.g. WU) and legal clinics under the educational institutions also took part in serving with legal support for PLHIV or key populations. Unfortunately, there has been no evidence of cooperation or link established between these institutions, PLACs and LCCs under VLA.

6.3. Funding

As concluded in an earlier section, PLHIV have a low capacity of payment for legal services. To cope with that challenge, legal service providers would need to seek funding by themselves in order to provide toll-free consultancy for their clients. There are two main solutions taken by the LCCs so far such as obtaining donor' grants on project basis (as primary source) and getting some reimbursement from the Legal Aid Fund for providing registered legal aid services. The latter was, however, not a reliable support as it must be subject to approval process under the Law on Legal Aid⁹⁰. In addition, the Legal Aid Fund itself is not a significant source as it receives limited funding from the Government⁹¹. An interview with the head of LCCs of VLA Branch Hanoi revealed that all funding sources available to them, including CARE Project funding, only met 50% to 80% of their demand of free legal consultancy for vulnerable groups who come and request for services, including PLHIV. As to cover the balance, they could not take any solutions other than mobilizing voluntary collaborators. In case of Ho Chi Minh City Center, according to its permanent staff, lawyer Nguyen Thi Ngoc Thu, as the HPI Project ended, the center plans to expand to payable services to generate income to cover expenses of toll-free services for PLHIV.

Another foreseeable funding risk is the gradual reduction of financial support by international sponsors in the coming years, whereas the demand for comprehensive

⁹⁰ According to Mr. Lieu, Director of NLAA, nearly all LCCs under VLA have registered with provincial Department of Justice to provide legal aid, so that they may receive reimbursement for such services by the Government. In reality, however, many LCCs did not manage to finalize documentation work as required by the approval process so that they could not receive such funding.

⁹¹ Pls. see the Footnote 22.

deployment of activities on HIV/AIDS prevention and control is increasing. This shows the imperative necessity to diversify funding sources for this activity⁹².

7. Conclusions

In this concluding section, before going to recommendations for the future of legal services for PLHIV, it is reasonable for the Research Team to summarize and draw some general remarks as follows:

- (a) *Regarding existing LCCs which are partly or specifically engaged in providing legal services for PLHIV.*
- Legal services for PLHIV were initiated in 2005 by NLAA where the SIDA Project provided to it with some grants for training legal service providers for PLHIV and organizing piloted provision of legal services for PLHIV in some PLACs. However, the year 2009 marked a milestone where with the support of CARE Project and HPI Project, LCCs were established, expanded or set up their specific operations to provide legal services specifically for PLHIV. Those comprise of 4 existing LCCs in Hanoi and Ho Chi Minh who set up legal consultancy for PLHIV, 4 LLCs newly established in Quang Ninh, Hai Phong, Ho Chi Minh and An Giang as HIV-specific legal service providers and 1 LCC in Hanoi which was established as HIV-specific legal service provider before but since then expanded its operations with the renewed donor's support.
 - There are common features identified from operations of all LCCs providing services for PLHIV such as (i) being actively engaged in legal dissemination and education on HIV, (ii) rarely or not being involved in litigation in Court, (iii) using amicable solutions as the key service, and (iv) maintaining close relationship and collaboration with SHGs and also with PAC, to certain extent.
 - All above-said LCCs proved their significant achievements in providing legal support for PLHIV so far, however, there is a common concern about their future as all of them would have to downscale or even stop their current operations when the relevant donor's projects go to an end. In other words, it is now a challenge to maintain such established legal services for PLHIV sustainable and further developed.
- (b) *Regarding demand on legal services for PLHIV subject to the HIV- Stigma Index Survey and in-depth interviews.*
- There are a number of barriers that prevent PLHIV to access legal services, including and especially the lack of knowledge on their rights and the rights protection. Despite the limited number of PLHIV accessing legal services, the important finding was, however, that a high rate of them who experienced right infringements and ever used legal services expressed their satisfaction. In addition, there is also a high

⁹²For instance, PEPFAR, an organization that often supports the biggest fund for HIV/AIDS prevention and control in Vietnam also intends to reduce its fund by about 10 million USD per year. Specifically, in 2011 PEPFAR supported Vietnam more than 82 million USD, but by 2015 it intends that its fund will be only about 40 million USD. It is comprehensively estimated that by 2015, Vietnam will be in lack of nearly 150 million USD per year for HIV/AIDS prevention and control. With such situation, in the National Strategy for HIV/AIDS Prevention and Control up to 2020, and the vision to 2030, Vietnamese Government focuses on the policy and the demand for socialization of such activity through the diversification of mobilized funding sources and deployment of public private partnership.

rate of PLHIV confirming their awareness of laws and regulations on HIV. That would give a good reason to forecast that demand on legal services by PLHIV will strongly be increased in the long-term.

- In remote or less developed areas such as Dien Bien province where the majority of PLHIV is poor, less educated and of ethnic minority groups, there is an urgent need for legal awareness raising and rights education.
- Stigma and discrimination against PLHIV and key populations have been highly rated among right infringements experienced by the respondents in the survey. The actual demand by PLHIV and key populations on legal support on that issue would not only be limited to professional services in terms of case settlement, but other activities such as education on HIV transmission in order to remove the fear and misconceptions and policy advocacy towards complying with and/or putting citizen and human right standards into practice.

(c) Regarding enabling factors and constraints for development of legal services for PLHIV.

- As on the “demand side”, focusing on constraints, there would be two major ones such as fear of discrimination and low self-esteem by PLHIV and their limited capacity to pay for legal services. This currently hinders many PLHIV to access any type of legal support available. It was so common that LCCs have pro-actively approached PLHIV in law dissemination meetings or through SHGs. It was also rare that PLHIV have pro-actively accessed law firms due to a general bias that they never afford to pay for lawyer.
- As on the “supply side”, the most encouraging fact which is directly related to development of legal services for PLHIV was found in the supportive behavior of the NLAC and VLA. The NLAC on its own is committed to facilitating the expansion of PLACs toward providing legal services for PLHIV, and the VLA intends to enhance its role in developing and coordinating legal aid services among the social organizations, including legal support for PLHIV. The main outstanding issue is still a lack of coordination between the Ministry of Justice (as represented by the NLAC), the VLA, and the Ministry of Health, which is in charge of Government policy making in the field of HIV and is expected to be crucial for policy advocacy in favor of development of legal services for PLHIV.
- Finally, as regards key issues of the future development of legal services for PLHIV, based on the assessment by the Research Team, there are three issues which need to be dealt with in terms of both targets and solutions such as (i) how to raise demand by PLHIV for legal services, (ii) how to facilitate the smooth access by legal service providers to their target clients being PLHIV and the key populations and vice versa and, (iii) how to ensure the sustainability of HIV-legal consultancy in general and the operations and development of the HIV-LCCs in particular.

8. Recommendations

8.1. General viewpoint

Based on the above conclusions, the Research Team has taken the general viewpoints in making recommendations for the future development of legal services for PLHIV as follows:

- (a) The future of legal services for PLHIV and the key populations would depend on a right model developed for the long-term and immediate measures taken to ensure the continuance of the existing HIV-LLCs and their sustainability. The long-term model should be developed in line with the Government policy of “socialization” of legal education, propaganda and legal aid services. It means that “players” in this sector would not only be Government bodies but social associations and non-government organizations. As to ensure the sustainability of legal services for PLHIV, there are two key factors that need to be successfully dealt with such as (i) a strong and specific support from the Government should be available and (ii) the funding issue needs to be resolved.
- (b) HIV-related legal services should also cover people at high risk of HIV-infection such as SW, PWID, MSM and TG regardless of whether they are HIV-infected or not. Given certain existing legal barriers related to this group of people which need to be overcome in the long-term, measures should immediately be taken towards protection of their specific rights and interest.
- (c) Last but not least, as for implementing mechanism, existing government and/or non-government agencies and organizations should be identified which will take the recommendations as put forward therein and move on with further necessary actions, including building strategy and plan, managing the implementation and coordinating all efforts and support from bodies and elements engaged in the HIV-prevention and control.

8.2. Recommendations to develop the long-term model of legal services for PLHIV and key populations

(a) Services and activities

The Research Team is using a triangle to describe bottom-up four levels of services and/or activities required to be provided and/or taken toward reaching the overall targets as follows:



- *Level 1 (Legal Education and Dissemination):*

The current Law on HIV Prevention and Control has provided for education programs on HIV prevention which must generally be introduced in schools, colleges and universities. Given that prevention of HIV-infection is the main target set forth in such programs, there should also be education on the role of law in exercising the rights of people to healthcare as well as specific rights of PLHIV to be protected against stigma and discrimination. It is hereby to recommend that legal education on HIV-related

subjects should compulsorily be included in curriculums of all educational institutions with teaching material specifically developed to include matter of rights protections for PLHIV in general and HIV-infected children and students in particular.

Dissemination and education on HIV prevention and control has been emphasized and actively implemented by Government and non-government organizations so far. Propaganda events have, however, been mostly headed by healthcare institutions, including VAAC and PAC, and thus lacked content of legal rights of PLHIV and rights protection for them. It is therefore recommended that law dissemination events should be co-organized or even headed by legal institutions, including the NLAA, provincial Justice Department and PLACs, VLA, Law Schools and Universities and legal service providers. Contents of law dissemination should not be limited to introduction of existing provisions of the laws but, and more importantly, extended to rights of PLHIV and mechanism of their rights protection, including direct legal consultancy or guide for PLHIV to access to legal support. In addition, SHGs should be engaged in these activities as to promote self-dissemination of law among their members at the community level.

- *Level 2 (Legal Consultation):*

Legal consultation which aims at providing PLHIV with concrete instructions and guide as well as practical solutions in case they wish to know about their rights, how to exercise it and/or how to protect themselves against violations. This type of services can be provided not only by lawyers, legal consultants but also by PLHIV themselves who are specifically trained to do so among their members of SHGs.

It is therefore recommended to further organize specific trainings on HIV-related laws and legal consultation skills for selected members of SHGs as to engage them in legal consultancy at community level.

- *Level 3 (Mediation Services):*

As it comes to right violations and disputes, as shown from operations of the HIV-LCCs, mediation services would be the first steps taken by the lawyers, legal consultants or collaborators of such centers and it has proved a high rate of success so far. The success of such mediation services, as in terms of problem solving and time and cost saving, would, however, depend not only qualification and enthusiasm of legal service providers but also support from relevant organizations. It is therefore to recommend to establish a cooperation mechanism between HIV-legal service providers and Government and social organizations, including the NLAA, provincial Justice Department, PAC, local PC, VLA, VWU, VFU, HCMCYU and Trade Union, as to obtain such support on the case-by-case basis.

- *Level 4 (Litigation Services):*

The fact that litigation services have been rarely provided by the HIV-LCCs so far does not necessarily mean that there is less demand by PLHIV on legal protection in Court. As matter of fact, legal proceedings in Court and other judicial agencies requires highly professional support of lawyers rather than legal consultants of the HIV-LCCs. As Court cases should normally be referred to professional lawyers, it is hereby to recommend to get the lawyer community involved by mobilizing their pro-bono services.

(a) Key players and supporting bodies

As to ensure the overall success, all level of services and/or activities as above said should be centrally managed and/or coordinated. It is therefore necessary to identify both the key players and supporting bodies to deal with such functions. In this regard, the Research Team recommends as follows:

- *As regards the key players:*

First, on the Government part, there should be MOJ which will act as the representative body of the Government in charge of coordination of the development of legal services for PLHIV and the key populations. In line with its functions, MOJ takes responsibilities for the overall management of legal education, legal dissemination and legal aid. Accordingly, Ministry of Justice should organize provision of HIV-related legal services through PLACs and at the same time be the focal point of connecting with other agencies and organizations and coordinating all relevant activities. In particular, in terms of legal consultancy, all PLACs as supervised by the NLAA shall expand their functions to provide legal services for PLHIV.

Second, on the part of non-government organizations engaged in HIV-related legal services, it is suggested that the VLA will play the key role as one who takes responsibility to provide such legal services through the LCCs under VLA provincial branches and acts as supporting body to promote related activities of other social organizations.

- *As regards supporting bodies:* There is a number of agencies and organizations necessarily to be involved to support development of legal services for PLHIV and key populations as follows:

(i) As for Government agencies:

- MOH will direct the involvement of VAAC and PACs in supporting HIV-LCCs for purpose of right protection for PLHIV;
- MOLISA, with the direct involvement of PDOLISAs which supervise Educational and Rehabilitation Camps, will facilitate the provision of legal support for PWID held in Educational and Rehabilitation Camps;
- MOF which will support by providing state funding for legal aid for PLHIV.

(ii) As for non-government agencies:

- VWU which will promote legal services, especially legal dissemination on HIV for its members and WLHIV;
- VFU which will promote legal services, especially legal dissemination on HIV for its members and PLHIV in the rural areas; and
- HCMCYU which promote legal services, especially legal dissemination on HIV for its members and young PLHIV.

(iii) As for law educational institutions:

The existing law schools and universities, including legal clinics established by them, in Hanoi, Ho Chi Minh city, Can Tho, Hue, Da Lat and Vinh should be involved by mobilizing law students as volunteers to support HIV-related legal

dissemination events, especially those organized by SHGs at the community level.

(b) Method of implementation

It is recommended that in reference to the specific recommendations stated hereinabove, MOJ, with the NLAA playing a key role, should cooperate with the the VLA to work out a Project on Development of Legal Services for PLHIV and Key Populations for the period of 2012 to 2020 to be submitted to the Prime Minister for approval which will, among others, target on the following:

(i) Government policy advocacy:

- To issue a Government policy to promote the development of legal services for PLHIV and key populations;

(ii) Amendment of major laws related to legal services for PLHIV:

- To amend the Law on Legal Aid as to include PLHIV as eligible groups subject to state legal aid services;
- To amend the Law on HIV Prevention and Control as to include legal services for PLHIV and key populations as one of measures of HIV prevention and control; and
- To include legal dissemination and education for PLHIV in the Government Decree to guide the implementation of the newly adopted Law on Legal Dissemination and Education⁹³.

(iii) Amendment and new issuance of other relevant regulations:

- To amend existing and/or issue new regulations on functions of Ministry of Justice, the NLAA and the VLA as to determine their key role in development and overall management of legal services for PLHIV and key populations; and
- To issue a Prime Minister's directive to assign duties to relevant Ministries and political – social organizations to cooperate with Ministry of Justice and the VLA, respectively, in implementing the approved Project on Development of Legal Services for PLHIV and Key Populations.

It is proposed that the above activities should be implemented in 2013 so that the amendment of the Law on Legal Aid, the Law on HIV Prevention and Control and the Law in Legal Dissemination and Education can be completed within 2014. Based on such newly adopted legal basis, further activities determined in the Project on Development of Legal Services for PLHIV and Key Populations will be implemented.

8.3. Recommendations on immediate measures and activities on continuance and improvement of legal services for PLHIV and key populations

As the implementation of the recommended long-term model of legal services for PLHIV and key populations would depend on the likelihood of the MOJ's development of the

⁹³ *The Law on Legal Dissemination and Education was adopted by the National Assembly on 20 June, 2012 and takes effect from 1 January, 2013.*

Project on Development of Legal Services for PLHIV and Key Populations and the Prime Minister’s approval for same, the Research Team recommends measures and activities which, from a practical point of view, can immediately be taken to improve and ensure the continuance and sustainability of provision of legal services for PLHIV and key populations.

(a) Overall measures and activities

Pending the amendment of the relevant existing laws and/or the issuance of the recommended regulations, it is recommend for the relevant agencies and organizations to issue joint regulations on cooperation and coordination (the “Joint Regulations” or “*Quy che phoi hop*”) as follows:

First, as stated in the earlier sessions of the Report, a lack of cooperation and coordination between MOJ and MOH is an overall issue affecting provision of legal services for PLHIV. Likewise, between MOH and the VLA which supervises all existing HIV-LCCs, there is also no such cooperation and coordination. Accordingly, it is highly recommended that as a result of mutual discussions and agreements, a Joint Regulation (or inter-ministerial circular) should be issued by MOJ, MOH and VLA on providing legal services for PLHIV and key population. In particular, the Joint Regulation will focus on the following:

- Setting up a mutual consultative mechanism on issuing policy and legal regulations on HIV prevention and control for the purpose of highlighting the role of legal support for PLHIV and key populations⁹⁴;
- Setting up a cooperation and coordination among PAC, DOJ and VLA provincial branches as well as between PAC and HIV-testing centers one side, and PLACs, HIV-LCCs and SHGs, on the other, for the purpose of conducting joint law dissemination events, work referrals and facilitating better access of legal service providers to PLHIV.

Second, there should also be a Joint Regulations issued by the NLAA, VLA and VBF in terms of guiding pro-bono services by lawyers for PLHIV and key populations and providing professional training for LCCs’ staff.

(b) Specific measures and activities

| Measures and Activities | Responsible Bodies |
|--|-----------------------|
| Raising Demand for Legal Services | |
| 1. To conduct joint HIV-specific propaganda events for | PACs, PLACs, LLCs and |

⁹⁴It is likely that due to lack of such cooperation and coordination, the Law on Legal Aid and the Law on Legal Dissemination and Education which were drafted by the MOJ did not contain HIV-related issues, and likewise, the Law on HIV Prevention and Control and the National Strategy on HIV Prevention and Control to 2020 and with vision to 2030 which were drafted by MOH did not contain legal aid, and to adequate extent, the legal services for PLHIV.

| | |
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| raising legal awareness by PLHIV and key populations in communities. | SHGs |
| 2. To conduct joint legal dissemination for raising legal awareness by SW and PWID in Educational and Rehabilitation Camps. | PDOJ and VLA, LLCs to cooperate with DOLISA |
| 3. To include matter of legal aid for PLHIV in propaganda programs conducted by VWU, VFU and HCMCYU. | PLACs, LLCs to cooperate with VWU, VFU, HCMCYU |
| Facilitating Access to Legal Services | |
| 1. To introduce and refer PLHIV in need to legal services providers. | PACs and HIV-testing and treatment centers |
| 2. To set up and maintain regular contact and cooperation with existing SHGs. | LLCs, PLACs |
| 3. To guide lawyers to provide pro-bono services for PLHIV. | NLAA to cooperate with VLF, PBA |
| 4. To include legal consultancy for PLHIV, SW, PWID in law dissemination and education events. | LLCs, PLACs to cooperate with PACs, DOLISA |
| 5. To propose amendment of Decree 07 guiding the implementation of the Law on Legal Aid by no longer requiring PLHIV to be “handicapped” in order to be eligible for legal aid and simplify procedures of legal aid services of PLACs for PLHIV. | NLAA |
| Improving Current Operations of HIV-LCCs | |
| 1. To set up and maintain mutual cooperation by issuing support letters required from case to case while providing mediation services to settle legal infringements and/or disputes. | PACs to cooperate and support LCCs |
| 2. To set up and maintain mutual cooperation by referring Court cases to qualified lawyers who are willing to provide pro-bono services. | LCCs to cooperate with PLACs as the later have a widened contacts with legal aid collaborators |
| 3. To guide LLCs to improve file and record keeping as to meet professional standards of legal services. | VBF and NLAA to assist LCCs |
| Ensuring Continuance and Sustainability | |
| 1. To ensure the continuing operations of the HIV-specific | VLA |

| | |
|--|------------------|
| LCCs by seeking financial and material support from provincial PC ⁹⁵ . | |
| 2. To expand legal consultancy for PLHIV and key populations in LCCs in provinces other than Hanoi, Hai Phong, Quang Ninh, Ho Chi Minh city and An Giang, especially in poor provinces. | VLA |
| 3. To push the development of the Project on Development of Legal Services for PLHIV and Key Populations by MOJ to be submitted to the Government. | NLAA |
| 4. To do advocacy works aiming at issuance of a MOHA Circular to guide Decree 45/2010 on Organization, Operations and Management of Association as to facilitate legal registration of SHGs so that with legal personality SHGs can better establish official contacts with other agencies and organizations such as PAC, VLA, PLACs and LLCs. | NLAA, VUSTA, VLA |
| 5. To provide funding and/or technical assistance to build a strategy on sustainable legal service model for PLHIV and key populations | DONORS |

ANNEXES

ANNEX I: METHODOLOGY

ANNEX II: QUESTIONNAIRE OF IN-DEPTH INTERVIEW

ANNEX II: LIST OF IN-DEPTH INTERVIEWEES

ANNEX III: LIST OF PARTICIPANTS IN GROUP DISCUSSIONS

ANNEX IV: LIST OF MATERIAL USED

⁹⁵ Also in the meeting of the Chairman of VLA with the Prime Minister on 16 July, 2012, the Prime Minister confirmed that he will issue a directive to request provincial People's Committee to support operations of VLA provincial branches. Source: Article in *Nguoi dua tin* Newspaper of the VLA dated 31 July, 2012.