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CENTER FOR CONSULTING ON LEGAL  
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# LEGAL AID - HAPPINESS FOR PEOPLE LIVING WITH HIV

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## **LEGAL AID - HAPPINESS FOR PEOPLE LIVING WITH HIV**

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## ***Introduction***

The *Law on HIV/AIDS Prevention and Control* was passed on June 29, 2006 by the National Assembly and took effect on January 1, 2007. The *Law on HIV* guarantees that people living with HIV (PLHIV) are entitled to the same rights as other people in Vietnam. People living with HIV have the right to live in integration with the community and society, to enjoy medical treatment and healthcare, to have general education, vocational training and work, to have their privacy related to their HIV status kept confidential and to live free of stigma and discrimination. The *Law on HIV* is an important legal protection instrument for people living with HIV and it is on the basis of this law that they are most likely to seek legal aid to rectify a rights violation.

It is important to note that although the *Law on HIV* is used to prevent and control the spread of HIV, it is just as importantly a tool for protecting the rights of people living with and affected by HIV as well as outlining their responsibilities.

Despite the existence of the *Law on HIV*, people living with HIV continue to suffer from stigma and discrimination in the community, as well as the violation of their rights and legal benefits. Furthermore, they

often do not know how to protect themselves. This situation can make them feel hopeless.

It is the mission of the lawyers of the Legal Clinics on HIV/AIDS (within the Vietnam Lawyer's Association) and the Lawyer's Associations of An Giang, Hai Phong and Ho Chi Minh City, Quang Ninh, Dong Nai and Thanh Hoa to help people living with HIV to claim their rights and, in so doing help them to improve the quality of their lives.

The purpose of the book is to record and publicise real-life stories of people living with HIV who successfully claimed their rights, with the support of Legal Clinic lawyers and peer counsellors since 2007. The book is divided in three sections:

Section one summarizes the standard procedures that the legal clinics on HIV and the Lawyers Associations mentioned above follow when a person living with HIV or affected by HIV seeks their legal advice. This section is designed to be a quick reference and check list for legal practitioners.

Sections two and three include real stories from different people that have turned to the Centre for assistance and describe the different actions taken by the legal clinics to support them. Some cases are related to violations of the right to work, access education and be treated without stigma and discrimination. Others involve the right to access social support. Many illustrate the effectiveness of a multi-

dimensional response- that is, legal advising combined with advocacy to local political leaders and awareness raising and capacity building in the community.

We would like to thank UNAIDS Viet Nam for its technical and financial support to complete this book. Our gratitude also extends to the Law and HIV Working Group, the Centre for Consulting on Legal and Policy on Health and HIV/AIDS and the Legal Clinics of An Giang, Ho Chi Minh City, Hai Phong and Quang Ninh, Dong Nai and Thanh Hoa, all of whom are coordinating with us to protect the rights of HIV people living with and affected by HIV.

## **SECTION ONE**

### **THE LEGAL CLINIC'S PROCEDURES FOR PROVIDING LEGAL AID TO PEOPLE LIVING WITH AND AFFECTED BY HIV**

It is the task of the lawyer to objectively research and analyse each client's complaint, determine the legal basis of the case, and counsel the client on the legal options open to her or him. In order to ensure this process is objective and thorough, Legal Clinic lawyers adhere to the following five steps. Note that the specific tasks done in each step will vary according to the characteristics of the case.

**STEP 1: Research the situation**

**STEP 2: Assess the situation**

**STEP 3: Identify relevant laws and policies**

**STEP 4: Develop a plan for legal support**

**STEP 5: Support client to protect rights**

## STEP 1: Research the situation

This step is composed of the following actions:

Action	
<b>a. Introduce client and legal team</b>	<ul style="list-style-type: none"> <li>➔ Lawyers/peer counsellors introduce themselves to the client</li> <li>➔ A representative introduces the organisation</li> <li>➔ Client introduces her/himself</li> <li>➔ <i>Note: If clients prefer anonymity, the legal team should establish a confidentiality clause</i></li> </ul>
<b>b. State the client's side of the case</b>	<ul style="list-style-type: none"> <li>➔ Client presents her/his case</li> <li>➔ Legal team identifies the client's needs</li> </ul>
<b>c. Collect key supporting documents, information</b>	<ul style="list-style-type: none"> <li>➔ Client provides those documents requested by the legal team</li> <li>➔ Client and legal team meet to clarify the content of relevant documents</li> <li>➔ Legal team pursues additional supporting documents not immediately accessible to client</li> </ul>
<b>d. Collect additional</b>	<ul style="list-style-type: none"> <li>➔ Legal team collects statements from other sources, such as relevant</li> </ul>

<b>information</b>	agencies and individuals  ➔ Legal team collects supporting multimedia, such as relevant pictures, videos and audio files
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## STEP 2: Assess the situation

The information provided in step one will allow the lawyer or legal team to identify the nature of the problem: i.e., is it a legal, social or psychological issue? Making this distinction is key to developing an appropriate **action plan**.

In some cases, a client's access to education, legal aid or social benefits (i.e. pension and health insurance as provided by law) is denied on the grounds of the client's HIV status. This is a rights violation and should be handled as such (see Section Two).

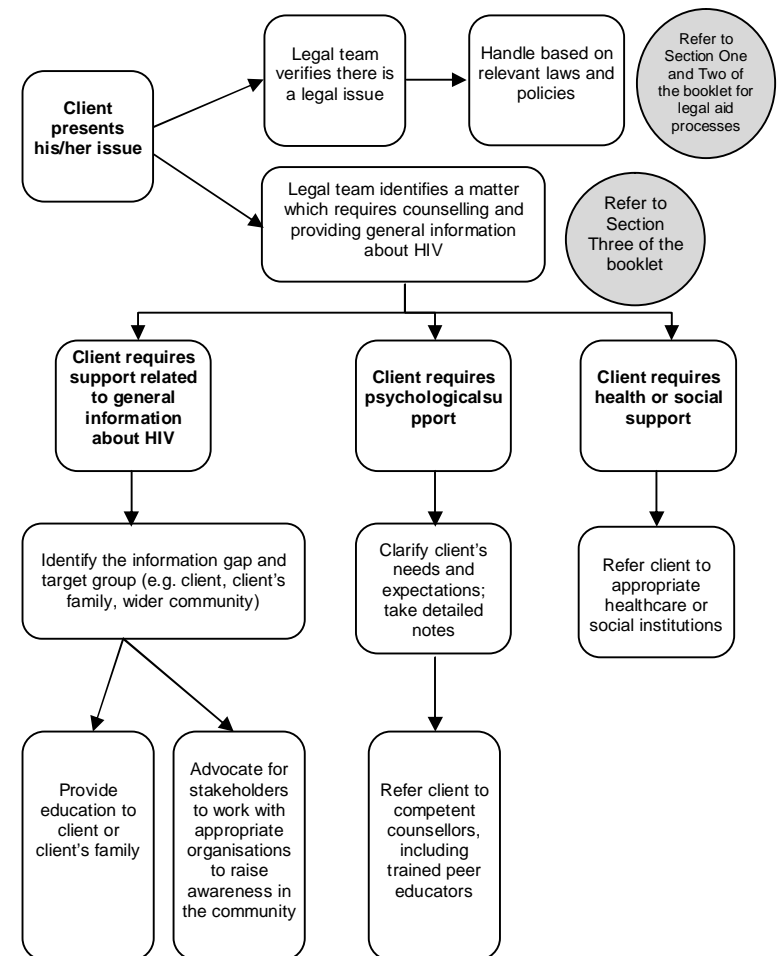
Cases requiring legal intervention usually fall into one or more of the following **categories**:

1. Education and training
2. Labour and employment
3. Examination, treatment and healthcare
4. Confidential information related to HIV
5. Stigma and discrimination
6. Administrative sanction (compulsory drug treatment, re-education)

7. Violation of penal code (sex work, illegal drug, theft, intentional HIV transmission)
8. Divorce and marriage
9. Inheritance
10. Medical insurance
11. Birth, marriage and death records
12. Social support beneficiaries

In other cases, people living with and affected by HIV face difficulties because they or their communities do not fully understand HIV – especially how HIV is transmitted and how it can be prevented. Misunderstanding and misinformation create fear and this in turn leads quite often to stigma and discrimination. If the lawyers identify a problem of lack of understanding of what HIV is and how it is transmitted, they should offer general information about it to the client, client's family or community, (see Section Three).

Finally, it may also happen that a client does not have access to support services because the client has not sought them out. This can be due to a lack of information or to psychological or social issues. Legal practitioners are encouraged to put clients in touch with individuals and/or organisations that can support them to access the services they need (Section Three).



At this point in the assessment, the lawyer or legal team must estimate the quantity of work, the time it will take and the human resources and facilities the case will require.

### **STEP 3: Identify relevant laws and policies**

Based on the specific case, the lawyer or legal team should first identify those laws and policies that can serve to support and/or challenge the client's claim. When researching relevant documents, the following should be kept in mind:

- Subject of act/dispute
- Damage (including causes and consequences)
- Action/content of dispute
- Time and place where dispute happened
- Key issues (see above 'categories')
- Client's requirements and expectations

Appendix A provides a list of the legal documents and policies that are referenced most frequently by Centre lawyers. (Note that the list is not comprehensive and additional research will be needed for every case undertaken.)

When a right has been violated, it is also key to identify where the responsibility for the violation lies. Generally, **responsibilities** can be:

1. Penal
2. Administrative
3. Disciplinary
4. Civil

Once the lawyer or legal team has identified the legal basis for the client's complaint and listed those agencies, organisations and individuals that hold the responsibility for fulfilling the client's right, it is time to develop a plan to provide legal support.

### **STEP 4: Develop a plan for legal support**

After completing steps 1-3, the legal aid provider should be in a position to develop a **plan for legal support** based on the client's needs and the laws and policies that apply to the case. The plan for legal support answers:

1. What is the right that was violated?
2. How was it violated?
3. Who violated it?
4. When and where was it violated?
5. Who has the responsibility to protect/fulfil the right?
6. What is the outcome that the client requests?

7. What is the legal basis for the right and responsibility and what is the expected outcome (s) of the legal action?

The answers to these questions will inform the **action plan** that the lawyer or legal team designs and follows. When deciding which actions are appropriate, the following questions should be asked:

- What work needs to be done? (i.e. drafting official letters, calling relevant officials and stakeholders)
- Where will the work take place?
- What is the action timeline?
- What organization/agencies/individuals need to be involved?
- What are the objectives and expected outcome(s) of each task?

#### **STEP 5: Support client to protect rights**

Finally, the legal aid provider implements the action plan. It is important to bear in mind the need to prioritise those cases that deal with access to medical care and education, as these issues are time-sensitive and need a quick resolution.

The first step of this action plan must always be counselling the client on her/his rights and the nature of the case. Most commonly, the lawyer or legal team then writes or supports the client to write letters of complaint or petition to the relevant authorities.

Throughout this process, the lawyer should work to find a workable solution and resolve the case cordially.

#### **General Remarks**

★ Every step in this process is important. Each builds on the previous step and as such none should be disregarded or skipped.

★ The legal aid provider should maintain a calm, honest, confident and decisive demeanour throughout the legal aid process. At no time should the lawyer or legal team compromise or break the client's confidentiality.

★ After the case has been resolved, the legal aid provider should follow up on any outstanding commitments, document the case (including collecting the statements of those involved), report on the case to relevant stakeholders and file the case documents appropriately.

★ Legal aid providers must be careful when advertising legal services for people living with HIV. As in any business – non-profit and otherwise –



advertising is essential to generating a client pool. For those clinics that are donor-funded, it is particularly important that the target clients (e.g. PLHIV) are reached. However, it is essential that legal aid providers respect PLHIV's confidentiality and demonstrate sensitivity in regard to the stigma and discrimination that clients may be subject to if their status is revealed.

With this in mind, the following approaches have been successful in reaching clients without compromising their confidentiality:

1. Approaching clients through peer educators
2. Approaching clients through voluntary testing and counselling centres, out-patient clinics and Centers for HIV/AIDS Prevention and Control
3. Advertising in workplaces and legal education workshops
4. Advertising in media outlets (e.g. TV, public loudspeakers, and newspaper interviews, articles and advertising spots)
5. Fliers and posters
6. Internet (e.g. website, emails, publishing news, banners)
7. Using identifiable pictures, slogans and labels/trade marks

## **SECTION TWO**

### **LEGAL CASE STUDIES**

The following stories are drawn from the lives of the many people that have received legal support from the Legal Clinics on HIV/AIDS since 2006.

All names and identifying information have been changed to protect clients' and family members' confidentiality.

#### **CHAPTER I: HIV AND THE RIGHT TO EDUCATION**



The following stories address the issue of HIV and the right to education.

#### ***HOA GOES TO SCHOOL***

*'Hoa'<sup>1</sup> is a 9-year old girl who lost both her parents to AIDS. She is HIV positive and depends on her grandfather for care. Despite having a clear legal right to access education without discrimination, Hoa's local*

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<sup>1</sup> The individual's name has been changed to protect her confidentiality.

*school board submitted to pressure from students' parents and refused to admit her as a student. After trying repeatedly to negotiate on her behalf, and receiving only refusals, Hoa's grandfather sought assistance from the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH) which belongs to Vietnam Lawyers' Association. The Centre used the following steps to successfully advocate for Hoa's enrolment in her local primary school.*

### **1. Assess the situation**

Based on the available information, the Legal Clinic confirmed Hoa's story and determined that the girl's right to education, as protected by the *Law on HIV/AIDS Prevention and Control*, had not been respected. The Legal Clinic appointed lawyers to support Hoa and to work with the school board to handle her case.

### **2. Identify relevant laws and policies**

#### ***Law on Child Protection, Care and Education***

➤ Article 4: 'Children, whether female or male, born in or out of wedlock, biological or adopted, born to one or both marital spouses; irrespective of their nationality, belief, religion, social background and position as well as the political opinions of their parents or guardians, have the right to enjoy protection, care, education, and all other rights prescribed by law.'

➤ Article 16.1: 'Children have the right to study'.

➤ Article 28 stipulates the responsibilities of the child's family, the State, school and other educational establishments to ensure the child's right to study.

➤ Article 53: 'Children living with HIV are not to be discriminated against but are to be supported with enabling conditions for medical treatment and care by their families or child-support establishments.'

#### ***Education Law***

➤ Article 10 stipulates the right and responsibility of all citizens to pursue an education.

#### ***Law on HIV/AIDS Prevention and Control***

➤ Article 3.4 stipulates that the principles of HIV prevention and control include: 'Elimination of stigma and discrimination against HIV-infected people and their family members...'

➤ Article 4.1 safeguards the rights of people living with HIV to: have general education, vocational training and work.

➤ Article 8.3 includes 'stigmatizing and discriminating against HIV-infected people' among those acts which are prohibited.

➤ Article 15.2a: 'Educational establishments are forbidden to refuse admittance to a student or learner on the grounds that such person is infected with HIV.'

➤ Article 17.1d stipulates the responsibility of commune People's Committees to broadcast messages calling on community members to oppose HIV-related stigma and discrimination.

***Directive No. 61/2008/CT-BGDĐT dated on November 12<sup>th</sup>, 2008 of the Ministry of Education and Training on strengthening HIV prevention and control in the field of education.***

- According to this Directive, educational establishments must protect the right of people living with or affected by HIV to have a general education and vocational training, to work and to live as integrated members of the community. It is illegal for an educational establishment to request that a student, learner or candidate have an HIV test or produce an HIV test result.

### **3. Identify main stakeholders**

At this stage lawyers identified the stakeholders (agencies, individuals, etc) that had the responsibility to protect Hoa's right to education.

- Provincial Centre for HIV/AIDS Prevention and Control
- District People's Committee
- District Education Department
- District Committee of Care and Education
- Commune People's Committee

- Headmaster of the local primary school
- Commune village mayor

They then drafted a work plan that detailed the specific actions they would use to obtain their collaboration in resolving the case.

### **4. Support client to protect rights**

On the strength of the above laws and policies, Legal Clinic lawyers met with Hoa's grandfather. They explained to him what Hoa's rights and responsibilities were, according to Vietnamese law, and they discussed the responsibilities of Hoa's school board and other relevant bodies. Lawyers emphasized the right of people living with HIV, including children, to access education.

After looking at different options, it was decided that Hoa's grandfather would write letters of complaint to his district People's Committee, district Education Department, commune People's Committee and the headmaster of Hoa's school. Legal Clinic lawyers assisted him to compose and mail the letters. The letters highlighted Hoa's rights vis-à-vis Vietnamese law, and called upon the recipients to protect Hoa's right to attend school.

Next, Legal Clinic lawyers accompanied Hoa's grandfather to visit the offices of the provincial Centre for HIV/AIDS Prevention and Control, the commune

People's Committee, the local social union and the board of the commune primary school. In meeting with these agencies, Legal Clinic lawyers re-stated the information that Hoa's grandfather had given in his letters of complaint: Vietnamese law recognises Hoa's right to education, that right has not been respected, and it is the responsibility of the relevant agencies to step in and protect Hoa's right.

As a result of these meetings, the lawyers requested the commune People's Committee to instruct the commune village mayor to initiate an anti-discrimination media campaign. The lawyers also worked with the provincial Centre for HIV/AIDS Prevention and Control to spread messages to the teachers of the primary school and to the people in the commune. Advocacy messages included information on HIV, the *Law on HIV/AIDS Prevention and Control* and the rights of people living with HIV. Messages targeted educators, school officials, community members and the parents of other pupils in the school, and emphasised the illegality of discriminating against PLHIV and barring PLHIV from attending school.

## 5. Outcomes

In the 2009-2010 school year, Hoa was permitted to enrol in grade one. In order to help her make up for lost time, Legal Clinic lawyers sought and obtained the school headmaster's agreement to assign a teacher to tutor Hoa during the summer holiday.

## NOT TOO SICK TO PLAY

*'Quynh<sup>2</sup> is a young woman living with HIV in Viet Nam. 'Minh,<sup>3</sup> her young son, is also HIV positive. When Minh was five years old, Quynh attempted to enrol him in nursery school but was refused. The headmaster of the local nursery school explained that Minh could not be admitted because the Chapter of Nursery Schools stipulates that children with infectious diseases are not permitted to attend nursery school. Quynh turned to the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH) for assistance.*

### 1. Assess the situation

Based on the information provided by Quynh and the work done by the Legal Clinic to confirm the facts of the case, the lawyers identified that the problem in this case was twofold. On the one hand, lack of understanding of the nature of HIV. On the other hand, several laws were violated. Therefore, the legal clinic assembled a legal team to support Quynh in her efforts to enrol Minh in nursery school.

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<sup>2</sup> The individual's name has been changed to protect her confidentiality.

<sup>3</sup> The individual's name has been changed to protect his confidentiality.

## 2. Identify relevant laws and policies

In this case, Minh was not being barred from school because he was living with HIV, he was being barred because school officials considered HIV an infectious disease. The Chapter of Nursery Schools does not allow children with infectious diseases to attend nursery school with other children. Thus the legal team decided that the best course of action would be to demonstrate that HIV does not qualify as an infectious disease, as defined by the *Law on Infectious Disease Prevention and Control* and referenced in the *Chapter of Nursery School*.

According to the *Law on Infectious Disease Prevention and Control*, agents of infectious disease include 'viruses, bacteria, parasites or fungi capable of causing an infectious disease' and a 'person suffering from an infectious disease means a person who is infected with agents of an infectious disease and shows symptoms of the disease.' (Article 2.2 and 2.4)

HIV is a virus that makes the body susceptible to disease, however it is not itself a disease. As recognised by the *Law on HIV/AIDS Prevention and Control*, HIV 'causes acquired immune deficiency syndrome in humans, causing the body to lose the ability to fight disease-causing agents' but is not itself such a 'disease-causing agent.' Only a child with 'disease-causing agents' could legitimately be banned from school in order to protect other children. Unless and until a child demonstrates symptoms or can be

diagnosed with 'disease-causing agents' (including opportunistic infections), she or he has the right to attend school with other children.

Quynh's legal team concluded that The Chapter of Nursery Schools is consistent with the *Law on HIV/AIDS Prevention and Control*. The local nursery school board had misunderstood the nature of HIV, and had therefore, in attempting to implement the Charter of Nursery Schools, violated the *Law on Child Protection, Care and Education* (Articles 4, 16, 28, 53), the *Law on Education* (Article 9) and the *Law on HIV/AIDS Prevention and Control* (Articles 3, 4, 8, 15).

### ***Law on Child Protection, Care and Education***

➤ Article 4: 'Children, whether female or male, born in or out of wedlock, biological or adopted, born to one or both marital spouses; irrespective of their nationality, belief, religion, social background and position as well as the political opinions of their parents or guardians, have the right to enjoy protection, care, education, and all other rights prescribed by law.'

➤ Article 16.1 stipulates the right of children to access education.

➤ Article 28 stipulates the responsibilities of the child's family, State, school and other educational establishments to ensure the child's right to study.

➤ Article 53: 'Children living with HIV are not to be discriminated against but are to be supported with

enabling conditions for medical treatment and care by their families or child-support establishments.'

### ***Education Law***

➤ Article 10 stipulates the right and responsibility of all citizens to pursue an education.

### ***Law on Infectious Disease Prevention and Control***

➤ Article 2.2: 'Agents of infectious disease include viruses, bacteria, parasites and fungi capable of causing an infectious disease'.

➤ Article 2.4: 'Person suffering from an infectious disease means a person who is infected with agents of an infectious disease and shows symptoms of that disease'.

### ***Law on HIV/AIDS Prevention and Control***

➤ Article 3.4 stipulates that the principles of HIV prevention and control include: 'Elimination of stigma and discrimination against HIV-infected people and their family members...'

➤ Article 4.1 safeguards the rights of people living with HIV to:

a) live as integrated members of their communities and society

c) have general education, vocational training and work

➤ Article 8.3 includes 'stigmatizing and discriminating against HIV-infected people' among those acts which are prohibited.

➤ Article 15.2a: 'Educational establishments are forbidden to refuse admittance to a student or learner on the grounds that such person is infected with HIV.'

➤ Article 17.1d stipulates the responsibility of commune People's Committees to broadcast messages calling on community members to oppose HIV-related stigma and discrimination.

### ***Directive No. 61/2008/CT-BGDĐT dated on November 12<sup>th</sup>, 2008 of the Ministry of Education and Training on strengthening HIV prevention and control in the field of education.***

• According to this Directive, educational establishments must protect the right of people affected by HIV to have a general education and vocational training, to work, and to live as integrated members of the community. It is illegal for an educational establishment to request that a student, learner or candidate have an HIV test or produce an HIV test result.

### ***Chapter of Nursery Schools (issued together with Decision No. 14/2008/QĐ-BGDĐT dated April 07<sup>th</sup>, 2008 of the Ministry of Education and Training).***

➤ Article 42.2: "Children who are with infected infectious diseases or dangerous congenital diseases are not to be accepted to study in nursery establishments".

### **3. Identify main stakeholders**

- Vietnam Administration for HIV/AIDS Prevention and Control (VAAC), within the Ministry of Health
- Nursery Education Department within the Ministry of Education and Training
- Provincial Education and Training Department
- Provincial Centre for HIV/AIDS Prevention and Control
- District People's Committee
- District Education Department
- District Committee for Child Care and Education
- Commune People's Committee
- Headmaster of the local nursery school
- Commune branches and unions

### **4. Support client to protect rights**

The legal team explained to Quynh the laws and policies that affected her case and made sure she understood the rights to education. Lawyers then supported her to write letters of complaint to her district People's Committee, district Education and Training

Department, commune People's Committee and the headmaster of the local nursery school.

With the legal team's support and advice, Quynh asked her provincial Centre for HIV/AIDS Prevention and Control to raise the community's awareness of HIV-related stigma and discrimination by spreading messages about the *Law on HIV/AIDS Prevention and Control* and the rights of people living with HIV.

The CCLPHH Director then informed the VAAC (Ministry of Health) of Minh's case. VAAC, having the responsibility to coordinate with relevant agencies to implement the Law on HIV/AIDS Prevention and Control, forwarded the Director's dispatch to the Ministry of Education and Training. The CCLPHH then called a meeting with the Department of Nursery Education, within the Ministry of Education and Training. Meeting participants concluded that Minh's nursery school had misinterpreted the provisions of the Chapter of Nursery Schools and in so doing had violated the *Law on HIV/AIDS Prevention and Control*.

### **5. Outcomes**

With the approval of the Ministry of Education and Training, the Department of Nursery Education informed Quynh's provincial Education and Training Department of the case and instructed them to strictly implement the *Law on HIV/AIDS Prevention and Control*. As a result of this intervention, the Education

and Training Department required Minh's nursery school to enrol him.

Minh was accepted into the nursery school and in 2009-2010 will begin first grade in the commune primary school.

### ***LIKE OTHER CHILDREN***

Born to parents who were dependent on injecting drugs and living with HIV, 'Cong'<sup>4</sup> had a difficult beginning. His parents were homeless migrants. They were unable to feed "Cong" or care for him and were very quickly obliged to give him up to the care of a couple who made their living selling wood.

The couple named the boy 'Cong' and cared for him until he was 2 years old. By that time they realised something was wrong with his health; he was stunted and sickly. They took him for an HIV test and discovered that he was living with HIV. When they discovered his status, the couple did not want to keep him anymore and abandoned him to the care of another couple in LX village. Fortunately for Cong, the couple that adopted him was kind. They loved him like their biological child and took good care of him. Whenever he fell ill, they did whatever they could to get him treated.

When Cong was old enough to attend primary school, the couple brought him to the LX Primary School and asked the school to admit him. They were upfront about Cong's health and informed the school that Cong was living with HIV and would require some

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4 The individual's name has been changed to protect his confidentiality.



extra care. This honest request would later cause them great difficulties.

As soon as the school board knew Cong was HIV-positive they refused to accept him. Cong's adopted parents returned to the school many times, hoping to convince the board, but had no success. They did not know what to do. Luckily, they heard that their province had a legal aid clinic under the direct management of the Provincial Lawyers' Association and they went there to demand help.

The Legal Clinic informed the LX Primary School that based on *the Law on Child Protection, Care and Education; the Education Law, the Law on HIV/AIDS Prevention and Control and Directive 61 on strengthening HIV prevention and control in the field of education* (see specific articles in previous cases). The school was responsible for fulfilling Cong's right to go to school. The legal clinic then coordinated with the People's Committee of Cong's commune and provincial agencies, such as the provincial Centre for HIV/AIDS Prevention and Control, local union and mass media to educate community members in Cong's commune on HIV and the law. In this way, they were able to reduce the stigma and discrimination experienced by all people living with HIV in the area, and by Cong in particular. Later on, the Legal Clinic helped Cong enrol in a social welfare programme that granted him a monthly stipend.

He was entitled to this benefit under Decree No. 67/2007/ND-CP of the Government about policies supporting beneficiaries of social protection

Now Cong goes to school like other children. He has a loving family and a father and mother who overcame major difficulties and obstacles in order to give him the best care possible.

## CHAPTER II: HIV AND THE RIGHT TO WORK



The following stories address the issue of HIV and the right to work

### KNOWLEDGE IS POWER

*‘Anh<sup>5</sup> was a nursery school teacher in the same school for ten years. She had an excellent record and good relationships with her students. Nevertheless, when the school board learned that she was living with HIV, Anh was removed from her teaching position and assigned to be an ‘assistant to the headmaster’ – a job in name only. Anh sought legal advice from the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH).*

#### 1. Assess the situation

Anh’s legal team coordinated with the Centre for HIV/AIDS Prevention and Control in Anh’s city to collect

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<sup>5</sup> The individual’s name has been changed to protect her confidentiality.

and confirm information relevant to Anh’s case. The legal team concluded that Anh’s nursery school had assigned her to a job that was inconsistent with her abilities. The team further concluded that the headmaster had been unaware that these actions constituted a violation of the *Law on HIV/AIDS Prevention and Control*.

#### 2. Identify relevant laws and policies

##### ***Law on HIV/AIDS Prevention and Control***

- Article 4.1.c: Right to work of people living with HIV/AIDS.
- Article 14.2b stipulates that it is illegal to ‘Force a physically fit employee to change the job he/she has been doing on the grounds that such person is infected with HIV.’

***Directive No. 61/2008/CT-BGDDT dated on November 12th, 2008 of the Ministry of Education and Training on strengthening HIV prevention and control in the field of education***

According to this Directive, educational establishments must protect the right of people living with and affected by HIV to have a general education and vocational training, to work, and to live as an integrated member of the community. It is illegal for an educational establishment to request that a student,

learner or candidate have an HIV test or produce an HIV test result.

### ***Law on Complaints and Denunciations***

Article 1.1: "Citizens, agencies and organizations are entitled to complain about administrative decisions and/or administrative acts of State administrative bodies and/or competent persons therein when having grounds to believe that such decisions and/or acts have contravened laws and infringed upon their legitimate rights and interests."

### **3. Identify major stakeholders**

- District People's Committee
- District Education Department
- Factory inspector
- Educational inspector
- City/Provincial Centre for HIV/AIDS Prevention and Control
- Headmaster of the nursery school
- Nursery school labour union

### **4. Support client to protect rights**

Anh's legal team explained to her what her rights and responsibilities are, according to Viet Nam's policy

and legal framework and specifically according to the *Law on HIV/AIDS Prevention and Control*.

Then, CCLPHH and the Centre for HIV/AIDS Prevention and Control worked directly with the nursery school board to educate them on HIV, HIV prevention and HIV transmission.

Anh's lawyers explained the laws and policies that apply to HIV issues in the workplace, and explained how changing Anh's job when she was still physically capable of continuing her current position had been a violation of her right to work (Article 4.1c and 14.2b, *Law on HIV/AIDS Prevention and Control*).

### **5. Outcomes**

After meeting with Anh's legal team, the board of Anh's nursery school understood that the headmaster's actions had been illegal, and they understood why. They apologised to Anh and reinstated her as a teacher. Now, Anh continues teaching. She always tries her best to be a good teacher, in order to contribute to society in the field of education and training.

## **NOT ONLY HIS JOY**

*'Huy<sup>6</sup> had been working in the X unit for 17 years. After taking an HIV test, he realized he was HIV positive. His first thoughts were of his family – he wondered what their reactions would be and feared that they would be disappointed and that this would make the whole family fall apart. Fortunately his wife was very supportive and together they resolved to face life positively. However, he got a letter from the director of his office asking him to retire.*

*Through the mass media Huy learned about the Legal Clinic on HIV/AIDS in Ha Noi (within the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH)) and knew that it was a trusted place for people living with HIV to get help on legal issues. He decided to ask the Centre for support and legal counselling.*

### **1. Assess the situation**

After listening to Huy's case and collecting all pertinent information, the Legal Clinic on HIV/AIDS set up a legal team who then created an action plan to support him.

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<sup>6</sup> The individual's name has been changed to protect her confidentiality.

## **2. Identify the relevant law and policies**

The team researched and analysed the legislation relevant to Huy's case,

### ***Law on HIV/AIDS Prevention and Control***

- Article 14.1.c stipulates Right to work of people living with HIV/AIDS
- Article 14.2.a: "The employer shall not be allowed to: Terminate the labour or job contract of an employee or cause difficulties to this person in his/her work on the grounds that such person is infected with HIV".

### ***Law on Appeals and Denunciations***

Article 1.1: "Citizens, agencies and organizations are entitled to complain about administrative decisions and/or administrative acts of State administrative bodies and/or competent persons therein when having grounds to believe that such decisions and/or acts have contravened laws and infringed upon their legitimate rights and interests."

## **3. Identify the major stakeholders.**

- The leader of Unit X
- The leader of the higher level Unit of Unit X

#### 4. Support client to claim rights

The lawyers of the Legal Clinic on HIV/AIDS counselled Huy on his rights and supported him to write a letter explaining to his director that his forced resignation was a violation of *Law on HIV/AIDS Prevention and Control*, and requesting his director to arrange a job suitable to his health and ability. This would allow Huy to continue working for three more years until he had reached 20 years of employment, the minimum time required to receive a pension and other retirement benefits such as medical insurance. It would also allow him to access healthcare services for examination and treatment.

In addition, the Centre contacted relevant agencies such as the leader of the division with jurisdiction over Unit X, the Inspector of Ministry of Defence, and the Department of justice – Ministry of Defence and asked them to consider Huy's case and handle it in line with Article 14 of the *Law on HIV/AIDS Prevention and Control*.

#### 5. Outcome

After researching the legal basis of Huy's argument and considering his request, Huy's director decided to re-hire Huy, ensure his access to health services and arrange suitable work for him. The joy that Huy experienced after getting his job back was not limited to him but encompassed all those who had stood by him – his family, his friends and his legal aid team.

### CHAPTER III: OTHER RIGHTS OF PEOPLE LIVING WITH HIV

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*The following story addresses the issue of HIV rights in cases involving the Law on Criminal Procedures and Law on HIV/AIDS prevention and control.*

#### TIME TO HEAL

*A young man living with HIV in Viet Nam, Dong, was found guilty of robbery and detained for four months. While waiting to stand trial, he became gravely ill. Dong's family approached the Legal Clinic on HIV/AIDS for help requesting a suspension of the investigation against Dong so that Dong could access treatment.*

#### 1. Assess the situation

The legal team confirmed that Dong had in fact contracted a serious disease while in detention B and although he had received medical treatment his situation was becoming steadily worse. It was necessary to require a temporary suspension of the investigation against him so he could leave the center and receive the treatment needed.

## **2. Identify relevant laws and policies**

### ***Law on Criminal Procedures***

Article 160.1: 'When the accused is suffering from mental diseases or other dangerous ailments, and such ailments are certified by the forensic examination council, the investigation may be suspended ahead of the investigation time limit.'

### ***Law on HIV/AIDS Prevention and Control***

Article 42.1: 'If a person who is being investigated, prosecuted or tried has full-blown AIDS, he/she shall be granted a temporary suspension of the investigation or a suspension of the criminal case, according to the provisions of the *Law on Criminal Procedures*.'

## **3. Identify major stakeholders**

- Investigation Agency
- District People's Procuracy
- Medical clinic where Dong was treated
- City/Provincial Centre for HIV/AIDS Prevention and Control

## **4. Support client to protect rights**

The Legal Clinic team recognised that Dong had a strong case. They advised his family to go to the medical clinic that had treated Dong, as well as to the

Centre for HIV/AIDS Prevention and Control, to collect information on Dong's health status.

The district hospital informed the family that Dong had a serious liver condition. Dong's liver condition was grave enough to make him eligible for a temporary suspension of the investigation against him, based on Article 160 of the *Law on Criminal Procedures* and Article 42 of the *Law on HIV/AIDS Prevention and Control*.

The legal team supported Dong's family to apply to the Investigation Agency and the district People's Procuracy for a review of Dong's case and a temporary suspension of the investigation against him. In their application, they stressed the seriousness of Dong's medical condition and made it clear that if he was to remain in detention, this would not only have major repercussions on his health, it could cost him his life.

## **5. Outcomes**

The Investigation Agency and People's Procuracy recognised Dong's legal right to health and granted his family's request. The investigation against Dong was suspended and he went home for treatment. When his health is well again, he must conform to the decision of the investigation.

*The following story addresses the right of people living with HIV to marry, have a family and care for their children.*

### **FROM SHADOW TO ACTIVIST**

'Ly'<sup>7</sup> started out with every advantage. Her family was well off and she was beautiful and kind. When she graduated from high school, she was full of dreams of the future and felt confident about her luck. She had a number of job offers but after careful consideration decided to accept a position in a joint stock company. There she met 'An'<sup>8</sup>, another employee, and fell in love.

An was handsome, well spoken and had a good income. He bought Ly expensive presents and showed her every affection. Ly's family and friends were happy for Ly and believed she and An would have a bright future.

Unfortunately, Ly's luck began to run out. An started using drugs – at first casually, but then more and more, until he became dependant on them. He shifted from smoking to injecting heroin and, knowing

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<sup>7</sup> The individual's name has been changed to protect her confidentiality.

<sup>8</sup> The individual's name has been changed to protect her confidentiality.

nothing about HIV prevention, began sharing needles and syringes with other drug users.

Ly had no idea that An was using drugs. She also did not know he had contracted HIV. Both An and his family were careful to keep his dependency and his HIV status a secret. After they had been married for two years and their daughter was nearly eighteen months old, An developed full-blown AIDS and passed away.

It was only then that Ly realised her husband had been HIV positive. Her grief was profound. After burying her husband, Ly brought her daughter to a clinic and they were both tested for HIV. Ly was positive; her daughter was not.

From this point on, Ly's life grew even bleaker. Her husband's family made her move back into her own parents' house and leave her daughter behind. Not only did her mother-in-law refuse to let her visit, she forbade Ly from taking care of, or even touching, her daughter. Her one joy denied her, Ly felt as if she were no longer a human being, but merely a shadow.

Nevertheless, Ly did not give up. She tried to find a way to get her daughter back and learned, from peer educators, that the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH) provided free legal aid to people living with HIV. She went to CCLPHH and found, in addition to legal counsel,

support from people whose situations were similar to her own.

Ly's legal team helped her understand her legally guaranteed rights, particularly her right to look after her child. According to the:

➤ *Law on Protection, Care and Education of Children*, "Children have the right to live with their parents. No one has the right to force them to live separately from their parents" -(Article 7);

➤ *Law on Marriage and Family*, "Parents have the right and responsibility to love, look after, care and protect the legal rights and benefits of their children" - (Article 34, Clause 1);

➤ *Law on HIV/AIDS Prevention and Control* , "Other rights as provided for by this Law and other related laws" (Point f, Clause 1, Article 4)

In addition to helping her understand her rights and responsibilities, the legal team helped Ly write to the relevant State agencies and branches and local unions for help. They then accompanied Ly to her mother-in-law's house and explained to the family that keeping Ly from her daughter was a violation of the Law and social values.

When the local administration and relevant state branches decided in her favour and ordered her husband's family to allow her to visit more frequently and take care of the baby, Ly felt as if she had been

given a new lease on life. Her mother-in-law complied and since then Ly has been welcome to visit.

Yet not all of Ly's problems had been solved. Her health was deteriorating. She chose to leave her job – but that left her dependant on her parents for support.

The CCLPHH Director offered her a job as a peer educator in the Centre. Now Ly is able to work and earn money in order to feed herself and her child – and most importantly, she can help other people living with HIV and help reduce the stigma and discrimination that so many of them face in the community.



*The following story discusses the property right of people living with HIV.*

### **A TWIST OF FATE**

'Hanh'<sup>9</sup> grew up in a picturesque riverside village, the third of four daughters in a family that owned a small, busy restaurant and enjoyed a high position in the community.

Hanh was very beautiful and many men admired her. After she finished secondary school and began working part-time in her family's restaurant, some even came to the restaurant just to see her. But Hanh was focussed on helping her parents; she rarely noticed the men's attention.

There was just one customer who managed to capture her interest. 'Lai'<sup>10</sup> ate at Hanh's restaurant regularly twice a day and seemed different from the other men. He was honest and straightforward. He tried to strike up conversations with her and brought her wonderful gifts. Before long, Hanh felt drawn to him as well and they fell in love. Believing they were destined for one other, Hanh and Lai promised to spend their

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<sup>9</sup> The individual's name has been changed to protect her confidentiality.

<sup>10</sup> The individual's name has been changed to protect her confidentiality.

lives together. After their families agreed, they were married.

Hanh and Lai lived together happily until Hanh became pregnant and went to the hospital for an antenatal check-up. A routine HIV test showed that she was positive for the virus. Hanh was astonished. When she went back home and confronted Lai, he admitted that he injected drugs and had known for a long time that he was living with HIV. Hanh collapsed completely. All her dreams went up in a puff of smoke. To get by, she refused to think about herself and concentrated on her family instead. More than anything she wanted her husband to be healthy and her child to live free of HIV.

Unfortunately, shortly after his birth her son was found to be HIV positive.

Two years passed. In that time, Lai's health deteriorated. He developed full-blown AIDS and passed away suddenly, leaving Hanh alone with their young son. Hanh did the best she could, but after just one year her son passed away too. In a mere two years Hanh had lost two of the people she loved most. She sank into a chilly, windowless depression and lay awake at night unable to sleep, weeping in anguish and calling out the names of her departed son and husband.

Hanh thought that life could not get any worse – but fate had another cruel twist in store for her. Soon after her son's death, her husband's family came to

evict Hanh from her house. Hanh did not know what to do; she had no idea how to protect herself. Everything seemed hopeless.

Fortunately, just then an area PLHIV self-help group heard about Hanh's plight and paid her a visit. They listened to her story, comforted her and encouraged her to fight for her rights. They brought her to the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH).

CCLPHH lawyers questioned Hanh about her situation and studied the documents that she provided – documents that proved she was the legal owner of her house. The legal team determined that because her husband's family had presented she and Lai with the land as a gift, and because they had taken out a loan in their own names to build the house, the house and land belonged indisputably to Hanh.

The legal team helped Hanh prepare petitions to send to her commune People's Committee, and the commune public security bureau, requesting them to intervene to help her protect her rights. They then visited her husband's family and explained reasonably and logically, that Hanh was the owner of the house and property. As such, they could not evict her.

Finally, Hanh was able to live in her own house; her legal rights had been protected and respected. She moved back in and took up the task of caring for her husband's grandmother.

With her home once more secure, Hanh's fate twisted again. The CCLPHH offered her a job, and she accepted. Since then Hanh has turned into a motivated AIDS activist, educating others throughout the province on HIV prevention, treatment, care and support, helping families access testing and healthcare for their children and teaching parents how to care for their children living with HIV. The cause that most motivates her, though, is protecting the rights of people living with HIV. She fights hard to make sure that no matter how many times fate twists, no other person living with HIV in her province has to live without her or his basic rights respected.

### **SECTION THREE**

#### **HIV INFORMATION AND LEGAL COUNSELLING CASE STUDIES**

Up until this point, this booklet has addressed the legal needs of people living with and affected by HIV. In some cases, however, clients seeking assistance with non-legal matters approach lawyers. It is up to the lawyer or legal team to determine if a rights violation has occurred. If no violation has occurred, legal practitioners may wish to provide non-legal support in the form of education on HIV and related matters and psychological counselling, or they may wish to refer the client to other individuals or organisations that can provide the needed non-legal support.

This section presents case studies that illustrate best practices in the provision of counselling and providing information about HIV. All are real-life examples drawn from the work of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS. All names and identifying information have been changed to protect clients' and family members' confidentiality.

#### ***IN HIS FAMILY'S GENEROUS EMBRACE***

'Quan'<sup>11</sup> was born and grew up in a suburb of Ha Noi. Although his family was very poor, his parents were loving and hardworking and did their best to facilitate Quan's education. Quan responded by studying hard. He got good marks and was always at the top of his class. Thanks to his hard work, he passed the university examination and was accepted into the school of his choice. His parents were immeasurably proud.

Then one day a classmate gave him a white powder to try. Not wanting to lose face, Quan injected a little and became heroin dependant. He began skipping class and his studies deteriorated rapidly. Eventually he was arrested and expelled from university.

Things went from bad to worse when he found out he had contracted HIV. Quan felt hopeless as if the sky had collapsed under his feet.

Quan's parents were just as upset. For them, however, Quan had brought not only grief to the family, he had brought disappointment and shame. They felt ashamed in front of their friends and neighbours. They forbade Quan to enter the house, afraid that he would bring shame to their ancestors as well. Not

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<sup>11</sup> The individual's name has been changed to protect her confidentiality.

understanding HIV transmission, they were also afraid that Quan would give HIV to other members of the family.

His parents built Quan a small one-room house and made him live there alone. His mother brought him food every day but Quan felt lonely and isolated. He wished his parents would understand him and accept him back into the family, but it seemed impossible. Quan's thoughts ran repeatedly to suicide.

One day, Quan told a fellow PLHIV about his situation and she advised him to go to the Center for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH) to ask for help.

When he arrived at the Centre the lawyers and peer counsellors there received him enthusiastically. Quan felt as if he had been welcomed back into a family.

After talking things through with a legal team, Quan had a better understanding of HIV and his rights and responsibilities vis-à-vis HIV. He asked that the legal team accompany him to his family's house and support him to demand that his family respect his rights.

The director of the Centre agreed and Quan went to see his parents, together with a lawyer, a peer counsellor and four officers from the commune

People's Committee. The discussion was cordial – even cheerful. The team explained basic HIV prevention and transmission to Quan's parents and talked to them about the *Law on HIV/AIDS Prevention and Control* and the rights and responsibilities that it stipulates for people living with HIV.

Finally, the peer counsellor talked to Quan's parents about her own situation, the way that she had overcome her difficulties and the work she was then doing at the Centre. After listening to what the lawyer and peer counsellor had to say, Quan's parents were deeply moved. They understood what they had done to their son and their regret was profound. Quan's mother cried. His father stood up, went outside to Quan's small house and brought the young man's clothes back into the family's house. From that moment on, Quan lived again in his family's generous embrace.

## **A RARE SMILE**

Day after day, in the sun and in the rain, people passing by see an old woman sitting on the pavement, selling tea on a small street near the B Train Station. Very few know what she suffers.

Like many other women in Viet Nam, 'Ha'<sup>12</sup> married and had a family. Unlike many other women, however, she has never been able to enjoy the happiness of family life. When still quite young, Ha's husband was diagnosed with cancer. Ha cared for him but there was little she could do. They did not have enough money to buy pain medication and Ha's husband lived and died in agony, often shaking the walls of their small house with his moans. Ha's two children, a boy and a girl, have a history of drug use and are both spending time in administrative detention centres for the possession and use of illegal drugs. Both Ha's daughter and her grandson are living with HIV; when Ha's daughter was detained, she left her young son in his grandmother's care.

Unfortunately, with her low income Ha could not afford to care for the child. She heard about the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH) from a TV show and went there to

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<sup>12</sup> The individual's name has been changed to protect her confidentiality.

ask for assistance in accessing the social welfare benefit that she knew she was entitled to by law.

The legal team at CCLPHH listened to her story and counselled her. The first step, the team knew, would be to help Ha overcome her anxiety, low self-confidence and timidity at standing up for herself and claiming her rights. The legal team worked with Ha for a long time, building a relationship of trust and educating her about the law and her rights. The legal team explained that Ha was eligible for social support according to:

➤ Decision No. 170/2005/QĐ-TTg dated 8/5/2005 of the Prime Ministry applying the poverty standard in the period 2006-2010

➤ Decree No.67/2007/NĐ-CP date 14/4/2007 of the Government on the issuance of monthly social support

The legal team helped Ha to write a letter of appeal to her commune People Committee. As she waited for their decision, CCLPHH put her in touch with organisations that could provide her with nutritional support for the child. When the decision finally came, and Ha learned that she would receive the benefits, her austere face cracked into a rare smile.

The legal team later visited Ha to see if she needed anything; they were greeted with warm handclasps and joy. The child was doing well and Ha was confident about her future.

## ***AN UNEXPECTED ESCAPE***

‘Trang’<sup>13</sup> comes from a poor farming village in Viet Nam. Like many children, she had a cheerful and innocent childhood. In spite of their poverty, her family was happy and their house was full of laughter. Unfortunately, after she had finished the seventh grade, Trang’s family could no longer afford to pay her school fees and she had to drop out of school. Undaunted, Trang borrowed books from other students and studied by herself. Her goal was to improve her life: she wanted to escape from poverty.

When Trang was seventeen years old she began working as a manual labourer in the limekilns, carrying sacks of lime on her shoulder for hours every day. The job was hard and the income was low but she was proud of her work. Many men in the village admired and tried to flirt with her but she refused them all.

Until she met Quang<sup>14</sup>. With Quang it was love at first sight. He was strong and well spoken and seemed very honest. Most importantly, he lived in town; every girl in Trang’s village wanted to improve her life by marrying a town man. Trang and Quang married four months after they met and ten months later their first

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<sup>13</sup> The individual’s name has been changed to protect her confidentiality.

<sup>14</sup> The individual’s name has been changed to protect her confidentiality.

daughter was born. Everybody congratulated them on the baby’s health.

They lived happily for 2 years. Then Trang’s husband made a new group of friends and started injecting drugs with them. Things changed. Quang stopped working and spent all his time with his friends, using drugs and committing small thefts against the neighbours. Finally he was arrested and sentenced to two years of administrative detention in a drug detoxification centre. When he came back, he was still using heroin. Things continued like this for one more year; then Quang’s immune system collapsed and he died from multiple infections.

Trang guessed that Quang had died from AIDS. She was so worried about her own status that she did not dare to have an HIV test. Finally, with her parents’ encouragement, she brought her daughter to a clinic and they both had an HIV test. As she had feared, they were both positive for HIV. Overwhelmed and grieved, Trang had no one to confide in. She knew that HIV was incurable and she thought that she and her daughter might die at any time.

It was not long before the entire village knew that Trang was living with HIV. Her life became more and more difficult; no one wanted to hire someone living with HIV. Trang had no income and when she and her daughter got sick, there was no money to pay for medicines. They did not even have money for the girl’s school fees and so her daughter did not go to school.

As they say in Viet Nam, “God never gives you everything and never takes everything away.”, In the midst of her despair, members of an area PLHIV self-help group found Trang and passed her the number of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS, an organisation that offered free counselling and legal advice for people living with and affected by HIV.

The counsellors who answered Trang’s phone call invited her to come in and speak directly with a lawyer. She agreed. After a consultation, CCLPHH lawyers brought Trang to a health clinic in town and signed her and her daughter up for antiretroviral therapy. They also helped her apply for social welfare benefits – her right, according to *Decree No. 67/2007/ND-CP of 13 April, 2007* – and made sure her daughter was granted a reduced school fee. Taking sympathy on Trang and her difficult situation, the CCLPHH director also offered her a job as a peer counsellor.

Nowadays Trang is happy and proud of her stable job. Thanks to the support of the Government and Communist Party and the help of CCLPHH, she overcame her many difficulties and escaped at last from poverty.

## ***FOR MY DAUGHTER AND MY FUTURE***

Born into a well-educated family, ‘Hoa’<sup>15</sup> was an intelligent and beautiful woman; no one knew that hidden behind her pretty face were the bitter memories of a long and difficult life.

From the time that she was a little girl Hoa had wanted to be a teacher and, like her parents, contribute her skills to the development of education in Viet Nam. She worked hard, was accepted into a teacher training college and received an appointment at a middle school. She was proud of her position and always tried her best to complete her tasks well.

All of Hoa’s colleagues loved and respected her – but one man, a leader in the school, paid her special attention. He was handsome and well spoken and even though Hoa knew he had been divorced twice, he was charming and persistent and she could not stop herself from falling in love with him. She buried her misgivings and agreed to be his wife.

They celebrated their wedding and Hoa was a jubilant bride. Unfortunately, her happiness did not last long. Soon after she became pregnant, Hoa discovered that her husband was having an affair with one of their colleagues at the school. Hoa’s heart was broken but

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<sup>15</sup> The individual’s name has been changed to protect her confidentiality.

as her pregnancy grew, she took comfort knowing that she was about to be a mother. Her hopes were high and she looked forward to giving birth.

When the time for her delivery came, Hoa arrived at the hospital and was administered an HIV test. She found out, to her shock, that she was HIV positive. She delivered a healthy baby girl but when she got home and told her husband of her status, he abandoned her. Distressed and hopeless, Hoa was left to raise their daughter alone.

At this time Hoa was put in touch with the Centre for Consulting on Legal and Policy on Health and HIV/AIDS (CCLPHH). Counsellors there worked with her to help her overcome her despair and find the strength to raise her daughter and go on living. When her daughter tested negative for HIV, Hoa was ecstatic; she resolved to be strong and live for her daughter.

Hoa dropped her grief and concentrated on her future. She decided to study for a Masters degree. She sent her daughter to her parents and devoted herself to her studies. At the time of writing, she had finished the first half of her degree and had earned high marks on all of her examinations.

Through all her decision-making and in every dark moment, CCLPHH was with Hoa every step of the way. Her success sets an example not just for PLHIV, but also for all people everywhere.

## **APPENDIX A: LEGAL REFERENCES**

### **I. Cornerstones of the legal framework to provide legal counselling and aid to People Living with HIV**

✦ *Constitution of the Socialist Republic of Vietnam* stipulates the rights and obligations of citizens and, most importantly, clearly states that all people are equal before the Law, including vulnerable people, the elderly, women, children, ethnic minorities, the poor, the disabled and people living with HIV

✦ *Directive No 54/CT-TW dated November 30<sup>th</sup>, 2005 of the Secretariat of Vietnamese Communist Party on strengthening leadership in HIV/AIDS prevention and control in the new situation*

✦ *National Strategy for HIV/AIDS Prevention and Control to 2010 with a vision til 2020* (issued together with *Decision No. 36/2004/QD-TTg dated March 17<sup>th</sup>, 2004 of the Prime Minister*)

### **II. Key articles/clauses of other important laws and policies**

#### **A. Law on HIV/AIDS Prevention and Control (2006)**



Article 4.1 HIV-infected people shall have the following rights:

- a) To live in intergration with the community and society;
- b) To enjoy medical treatment and healthcare
- c) To have general education, learn jobs and work;
- d) To have their privacy related to HIV/AIDS kept confidential;
- e) To refuse medical examination and treatment when having treatment of full-blown AIDS'
- f) Other rights as provided by this and other related laws

### ***B. Penal Code***

**Article 111 addresses the crime of rape, stipulating that:**

3. For offenders in one of the following circumstances, punishment is imprisonment from twelve to twenty years, life imprisonment or the death penalty:

- a) Victim incurred injuries over at least 61% of body
- b) Offender knew s/he was living with HIV**
- c) Victim died or committed suicide.

**Article 112 addresses child rape, stipulating that:**

3. For offenders in one of the following circumstances, punishment shall be imprisonment for twenty years, life imprisonment or the death penalty:

- a. Crime was premeditated
- b. Offender is guilty of multiple crimes
- c. Offence occurred multiple times
- d. Offender has targeted multiple people
- e. Victim incurred injuries over at least 61% of body
- f. Offender knew s/he was living with HIV**
- g. Victim died or committed suicide.

**Article 117 addresses the crime of HIV transmission to others that:**

1. Those who know that they are infected with HIV and intentionally spread the disease to other persons shall be sentenced to between one and three years of imprisonment.

2. Committing the crime in one of the following circumstances, the offenders shall be sentenced to between three and seven years of imprisonment:

- a) Against more than one person;

b) Against juveniles;

c) Against the doctors or medical workers who directly give medical treatment to them;

d) Against persons performing their official duties or for reasons of the victims' official duties.

**Article 118 addresses the crime of deliberately transmitted HIV to others that:**

*1. Those who intentionally spread HIV to other persons in cases other than those defined in Article 117 of this Code shall be sentenced to between three and ten years of imprisonment.*

*2. Committing the crime in one of the following circumstances, the offender shall be sentenced to between ten and twenty years of imprisonment or life imprisonment:*

*a) In an organized manner;*

*b) Against more than one person;*

*c) Against juveniles;*

*d) Against persons performing their official duties or for reasons of the victims' official duties;*

*e) Abusing their professions.*

*3. The offenders may also be banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.*

**C. DECREE No. 45/2005/ND-CP dated April 06<sup>th</sup>, 2005 of the Government on sanctioning administrative violations in the field of health**

**Article 14: Violation of regulations regarding HIV/AIDS prevention and control**

1. A fine of between VND 2,000,000 and 5,000,000 is applicable for the following acts:

a) Disclosing the results of confidential tests, revealing HIV test results to the persons tested or to other people without permission

b) Violating the regulations on keeping the name, age, address and image of PLHIV confidential

c) Publishing the name, age, address or image of PLHIV in the mass media without their consent or the consent of their relatives in cases where such people have died or lost their ability to act in a civil capacity

d) Refusing to give medical treatment to PLHIV

2. A fine of between VND 5,000,000 and 10,000,000 is applicable for the following acts:

a) Violating the regulations on blood transfusion, sterilization, disinfection and other regulations regarding the professional handling of HIV cases

b) Notifying anyone other than the tested person of a positive HIV test result

c) Requiring an HIV test when recruiting labour or enrolling trainees, except in special cases prescribed by law

d) Failing to supply information on HIV infection and prevention to labourers in production enterprises

e) Administering HIV tests without having a laboratory that is recognized by the Ministry of Health as being fully qualified for confirming positive HIV cases

f) Firing labourers or expelling pupils or students for reasons on the grounds of HIV infection.

3. Remedial measures: Compel employers to re-hire PLHIV and arrange appropriate jobs for them, in accordance with the regulations, or compel schools to re-enrol HIV-positive pupils or continued study students, in the case of violations prescribed in Point f, Clause 2 of this Article

#### ***D. Law on Protection, Care and Education of Children (2004)***

**Article 7 lists prohibited acts, including:**

Clause 8: Obstructing children's study

**Article 16 stipulates children's right to have a general education:**

1. Children have the right to have general education

2. Children in public primary schools do not have to pay school fees

**Article 28 lists those with the obligation to protect children's right to have general education:**

1. Family and Government have the responsibility to ensure children's right to a general education and must create good conditions for them to study at a higher level.

2. School and educational establishments have the responsibility to educate children comprehensively regarding morals, aesthetics and biology

3. Pre-educational establishments and primary establishments must have adequate teaching staff, materials and facilities to ensure educational quality.

**Article 53 addresses the needs of children living with HIV:**

HIV-infected children shall not be discriminated against; they should enjoy good conditions regarding their medical treatment and upbringing on the part of

their family or support establishments by state and society.

***E. Directive No. 61/2008/CT-BGDĐT dated November 12<sup>th</sup> 2008 on strengthening the work of HIV/AIDS prevention and control in the field of education***

....Educational establishments must not stigmatize and discriminate against learners, teachers and officers living with HIV/AIDS or affected by HIV/AIDS...

...Educational establishments shall not request a student, learner or candidate to have an HIV test or produce HIV test results; shall not refuse to admit and shall not discipline or expel, separate, limit or forbid learners, teachers and officers from participating in the establishment's activities or services on the grounds that such person is living with HIV.

**III. Codes, laws and ordinances related to HIV prevention and control**

- ❖ Civil Code
- ❖ Law on Labour
- ❖ Law on Legal Aid
- ❖ Law on Marriage and Family
- ❖ Law on Gender Equality

- ❖ Law on Domestic Violence Prevention and Control
- ❖ Law on Education
- ❖ Law on Social Protection
- ❖ Law on Medical Insurance
- ❖ Law on Prevention and Control of Infectious Diseases
- ❖ Law on Land
- ❖ Law on Drug prevention and control
- ❖ Ordinance on Prostitution Prevention and Control
- ❖ ...

## **APPENDIX B: CLIENT TESTIMONIALS**

***Ha Noi, September, 20, 2009***

*Dear Ms Trinh Thi Le Tram, Director of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS and the Ha Noi Legal Clinic on HIV/AIDS:*

*My situation was so complicated. My husband died of AIDS and I myself am living with HIV. I felt so hopeless. I did not understand how the neighbours learned that my husband died of AIDS. From the time they found out, they stopped coming to my store to eat noodle soup, thinking that if they ate noodle soup at my store they would also contract HIV. I had to close my store and did not have enough money to pay for my children's school fees. I went to the Legal Clinic on HIV/AIDS in Ha Noi and asked for their support. The lawyers and peer counsellors encouraged and counselled me. The lawyers also came to my community to teach about HIV and the Law on HIV/AIDS Prevention and Control. Thanks to this awareness raising, my children and I experience less stigma and discrimination. My neighbours have started eating noodle soup at my store again.*

*I am extremely thankful to the Director and the lawyers of the Legal Clinic. Thanks to your legal support, I feel more confident and find more reasons to keep living.*

*I would like to send my best regards to the director of the Centre, the lawyers and peer counsellors of the Legal Clinic.*

***September 17, 2009***

*Dear Ms Trinh Thi Le Tram,*

*On behalf of the MN School in X commune, Y district, Z city, I sincerely thank you for providing the documents promptly and helping us to have the documentation we needed to explain and raise the awareness of the parents of other pupils, in particular, and the community, in general, and get their support to coordinate with us to protect the rights of children living with HIV to live in integration with other children.*

*In the future, we are sure that we might have more and more difficulties; I hope that you will help and support us.*

***Ha Noi, September, 7, 2009***

*Dear Ms Trinh Thi Le Tram, Director of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS:*

*I am an unfortunate person because I am infected with a disease. When people do not really understand this disease, they stigmatize and discriminate against me. Additionally, I have had many troubles in my life and my work. At first, I was so distressed. I thought and cried so much. After that, I regained my balance. Although I do not have much time, I must try to better and take responsibility for my life. I spend more time with my family and my children, and on my work.*

*But in my work, once again I had to face difficulties. The Headmaster changed my position, removing me from a position that I have had for 10 years. They assigned me to an odd job. I was so disappointed and tried to explain that even though I have HIV, I am still healthy enough to contribute to the students' education, but I received no support from the Headmaster. Fortunately, I am a member of a self-help group and they introduced you and Mr Tuan to me. When I first talked with you, I knew that you could be my moral support. You encouraged me and helped me get my job back. I am really happy, and much more optimistic because I have known many good people like you and Mr Tuan. I am really thankful to you and Mr Tuan because you gave me, an unfortunate person, belief in life. I do hope that with your care, sympathy and knowledge, you and Mr Tuan will support us and help us stand firm in life.*

*I would like to send you and Mr Tuan my best wishes.*

*If there were a title of honour for you, I would name you a hero in the field of HIV prevention and control*

**September, 6, 2009**

*To the Legal Clinic on HIV/AIDS of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS:*

*Through this letter of thanks, Ms Nguyen and I would like to send the lawyers and peer counsellors of the Centre our best wishes.*

*We are living with a disease that the community does not understand well. Up to now, we are really touched to receive the support of the Party and Government, the Vietnam Lawyer's Association and the Centre for Consulting on Legal and Policy on Health and HIV/AIDS.*

*Thank you for your many activities and for the Centre's wide community network. You are good examples of those rare people in life who are ready to support everybody. Ms Tram, the director of the Centre for Consulting on Legal and Policy on Health and HIV/AIDS, the lawyer Chu Anh Quan, and Ms Thuy did not hesitate at long distances and bad weather to come to the community and teach about HIV.*

*The programme "who built the warmth" on VTV1 showed what a big effect the Legal Clinic has had in giving people in the community information on HIV. Now more people understand about HIV and there is less stigma and discrimination. One example is the case of NP, who was not allowed to attend school. Now she has been accepted into school and made welcome by the teachers of her primary-school. Her friends came to our house to visit her. Thanks to the work of the Legal Clinic and the enthusiasm of the lawyers and peer counsellors, we have had these positive results.*

*Our family and Phuong are extremely thankful to Ms Tram and the lawyers and peer counsellors of the Centre who brought us 'moral medicine' and helped us have more confidence, believe in life, and continue learning and working in order to contribute to our country.*

*Our family is really thankful to you. We sincerely wish you and your family health, happiness, prosperity and everything to your liking.*

**Socialist Republic of Vietnam**

**Independence – Freedom – Happiness**

*To: Center for Consulting on legal and Policy on Health, HIV/AIDS*

*My name is Nguyen Van M, I live in a suburb of Ha Noi. Recently, I knew that I infected with HIV. When I told my family that I am positive with HIV, my parent built a small one-room house and made me live there. I am so sad. Fortunately, I met the Center for Consulting on Legal and Policy on Health, HIV/AIDS. Lawyer Thuat and peer counselor Hien went to my house to propagandize about HIV/AIDS for my family.*

*Lawyer Thuat also talked about Law on HIV/AIDS prevention and control and help my parent understand my situation. My mother cried, my father went to small room and took my clothes back to the house. I felt so happy and I am really thankful to the Center, Mr. Thuat, Ms. Hien. I sincerely wish you healthy and happiness.*

**AB province, December 21<sup>st</sup>, 2010**

*I'm Chu Thi C, born in 1972 in AD village, AB Commune, KX district, TB Province.*

*My son is Nguyen Minh D who was born in Mars 16th, 2003.*

*Duc infected with HIV from me and his father. In 2007, at the school age of my child, I sent an application to management board of Nursery School of AB Commune in order that they would accept him to go to school but they refused because my son was infected with HIV.*

*I didn't know how to protect right to have general education for him. Fortunately, thanks to helps and interventions of Ms Trinh Thi Le Tram and officers in Center for Consulting on Legal and Policy on Health, HIV/AIDS and Centre for HIV/ AIDS prevention and control of TB province, my son could go to school.*

*Through this letter, I would like to thank Ms Trinh Thi Le Tram and officers of Center for Consulting on Legal and Policy on Health, HIV/AIDS for helping me during that time and helping my son to live in integration with the community. I wish Ms Tram and other officers a new year with a good health in order to help more people at the same situation with my son.*