

Comparative Analysis of HIV/AIDS Laws in Selected Asian Countries That Affect Stigma and Discrimination

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Table of Contents

Table of Contents	2
Executive Summary	3
Part 1	4
Introduction	4
What is AIDS-related stigma and discrimination?	4
Rationale of the Study	5
Objectives of the Study	6
Research Design	6
PART 2	7
HIV AIDS Situation and Stigma and Discrimination in the Selected Countries of this Study	7
PART 3	10
The Philippine AIDS Prevention and Control Act of 1998	10
Code of Practice on Prevention and Management of HIV/AIDS at the Workplace (Malaysia 2001)	13
The Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome (Mongolia 2004)	16
The Law on Prevention and Control of HIV/AIDS (Vietnam 2006)	18
Comparison of the Four Laws	24
Conclusion	26
Recommendations	26
References	28

Executive Summary

Since its discovery, HIV/AIDS has affected an estimated 60 million people worldwide according to the World Health Organization (WHO), caused 25 million deaths, and still continues to spread.

Discrimination is an **overt behavior in which people are given unfavorable treatment** based on their HIV status or a “*process of devaluation*” of people either living with or associated with HIV and AIDS. Stigma is defined as holding and **expressing derogatory social attitudes and beliefs** or hostile behavior towards members of a specific group according to Pinoy Plus a Philippine NGO.

The fear of discrimination can prevent persons from seeking voluntary counseling and treatment or disclosing their condition. Because of this, government has the responsibility to provide assistance, assurance and support. This remains the **single most important barrier** to public and personal action and the **chief reason** why HIV AIDS continue to devastate societies.

This study aims to provide a basic understanding of policies that seeks or should protect PLHIVs from stigma and discrimination. Since the PLHIV stigma index is being conducted currently in several countries around the world the information it generates may improve response to the issues, problems and needs of PLHIV because of stigma and discrimination.

This study aims to complement the PLHIV Index as a baseline study of existing laws that guides and responds to HIV AIDS in general that include stigma and discrimination. This comparative analysis of HIV/AIDS laws in selected Asian countries. These countries are the Philippines, Malaysia, Mongolia and Vietnam. A short profile of each country is presented to provide context to the discussion of its HIV AIDS laws. This study has picked out specific provisions that respond to stigma and discrimination and provides comparisons.

Findings show that some country has mandated precise actions on stigma and discrimination while others have not emphasized on it strongly. However, it is clear that those who do have provided policy experiences that have become the basis for recommendations. These essential provisions are summarized to inform current and future laws that are anti stigma and discrimination because of HIV/AIDS.

Part 1

Introduction

AIDS, or Acquired Immune Deficiency Syndrome, is a disease that attacks the immune system. It is caused by the human immunodeficiency virus (HIV). This disease makes the affected individual more likely to get infections. It is considered a pandemic as it has affected an estimated 60 million according to the World Health Organization (WHO) people worldwide, caused 25 million deaths, and still continues to spread.

In 1998, as a response to the spread of AIDS, the Philippine government enacted Republic Act 8504 or RA8504, otherwise known as The Philippine AIDS Prevention and Control Act of 1998. This law addresses both the health concerns of HIV/AIDS and contains a human rights component that addresses discrimination against victims of the disease. Other countries have similarly enacted laws that address these same concerns. Below are a comparison of RA8054 and the laws of Malaysia, Mongolia and Vietnam.

What is AIDS-related stigma and discrimination?

HIV/AIDS-related stigma and discrimination are known to exist worldwide due to several factors: it is life-threatening; it is often associated to other behaviors such as drug-use, homosexuality, promiscuity and prostitution.

Discrimination is an **overt behavior in which people are given unfavorable treatment** based on their HIV status or a “*process of devaluation*” of people either living with or associated with HIV and AIDS. These are the guiding definitions of presented by Pinoy Plus, a local NGO in the Philippines, during the Sub Regional Training Workshop of the Coalition of Cities under the UNESCO RUSHSAP.

Discrimination against HIV/AIDS victims could mean being shunned by family or the community, poor treatment in healthcare, education or work environments and the violation of human rights.

Stigma is defined as holding and **expressing derogatory social attitudes and beliefs** or hostile behavior towards members of a specific group according to Pinoy Plus. This stigma also serves as a barrier to proper treatment and prevention of HIV/AIDS. The fear of discrimination can prevent persons from seeking voluntary counseling and treatment or disclosing their condition. Because of this, government has the responsibility to provide assistance, assurance and support. It remains the **single most important barrier** to public action and the **chief reason** why AIDS epidemic continue to devastate societies

Recognizing the immense obstacle to counseling, treatment and care of people living with HIV and AIDS advocates internationally are now undergoing studies using the

PLHIV (People Living with HIV) Stigma Index. It is a tool that measures stigma and discrimination experienced by people living with HIV.

As an example of the PLHIV Stigma Index study the Pinoy Plus has reported the following results that show the extent of stigma and discrimination in the Philippines.

- *The study revealed that most of the study participants experienced varying degree of stigma and discrimination e.g. social exclusion, insults and gossips, loss of livelihood, internal stigma, isolation, poor treatment, disclosure & confidentiality, and having children some even attempting suicide*
- *The experience of stigma and discrimination is more heightened / severe among vulnerable groups: young people, women, sex-workers, less educated, unemployed, and migrant-workers*
- *Misinformation, ignorance on how HIV are transmitted, moral judgments/biased, and unfounded fears are the root cause and fuels of stigma and discrimination*
- *Fear of stigma and discrimination discourages people from seeking information on HIV and AIDS, come out for counseling, testing, disclosing their status or accessing ARV treatment and services*
- *Discrimination within health settings - majority not receiving pre-test counselling, breaches of confidentiality by health workers were common*
- *HIV/AIDS stigma has lead to limitations on PLHIVs reproductive lives*

The foregoing results and findings reveal that this study may aid in the crafting of proper and responsive legislation to address stigma and discrimination. This study shows the actual form of the discriminatory act and to whom such acts were committed. There are also findings on the causes of stigma and discrimination which is based mainly on not having the right information and outdated moral judgement.

In very specific settings, particularly the health sector, it is important that it be the least in terms of committing discrimination because it prevents people from seeking counsel, treatment and care.

Finally, there are findings that have affected PLHIV productivity because stigma and discrimination limits their opportunities.

Rationale of the Study

This comparative analysis of HIV/AIDS laws in selected Asian countries aims to provide a basic understanding of policies that seeks or should protect PLHIVs from stigma and discrimination. Since the PLHIV stigma index is being conducted currently in several countries around the world the information it generates may improve response to the issues, problems and needs of PLHIV because of stigma and discrimination.

Hence, this study aims to complement the PLHIV Index as a baseline study of existing laws handles that responds to stigma and discrimination.

Objectives of the Study

1. Identify provisions on stigma and/or discrimination contained in laws of selected countries.
2. Provide an analysis of some provisions that directly addresses stigma and discrimination.
3. Provide recommendations on essential provisions that respond to stigma and discrimination.

Research Design

This comparative analysis of state policies on AIDS was made through extensive review of the prevention and control policies in the Philippines, Malaysia, Mongolia and Vietnam. A comparison was made specifically on particular provisions that addresses HIV/AIDS related stigma and discrimination.

A brief overview of the HIV/AIDS situation at the global and country level provides the context for addressing stigma and discrimination to enable better treatment, care and support.

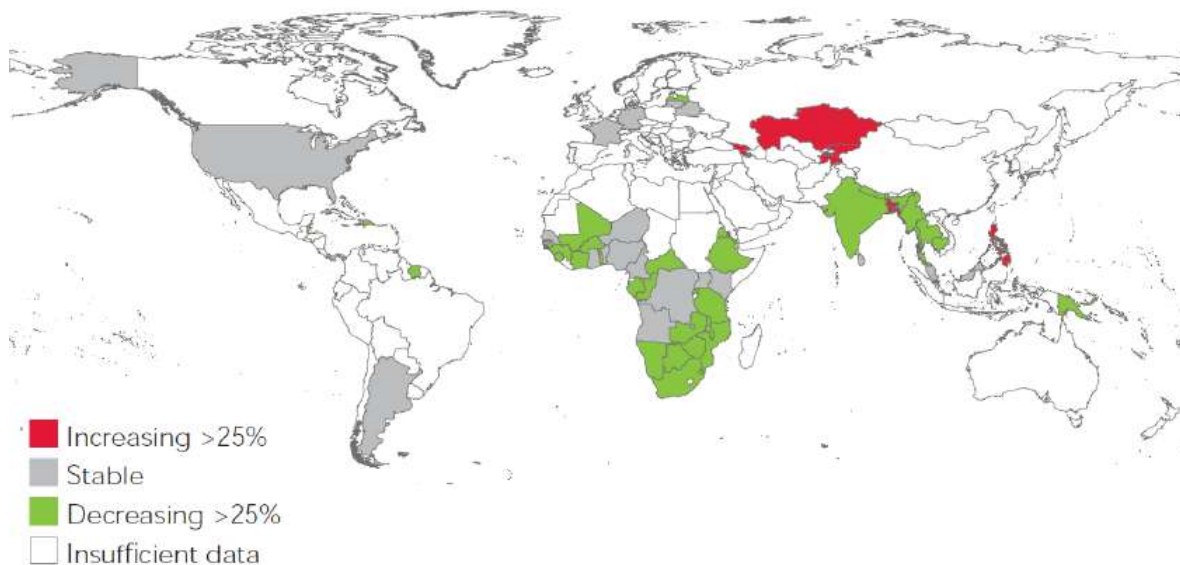
An analysis of specific provisions of state laws provide insights on how some Asian states regard the issues related to HIV/AIDS and stigma and discrimination

Findings and recommendations for essential provisions are provided to guide current and future laws on anti stigma and discrimination related to HIV/AIDS.

PART 2

HIV AIDS Situation and Stigma and Discrimination in the Selected Countries of this Study

Globally there could be over 35 million people living with HIV (2009). This figure alone shows the spread of this pandemic. According to the presentation of the Philippine National AIDS Council during the Sub Regional Conference on Anti Discrimination on HIV AIDS and reproductive health of young people conducted in December 2011 this figure may only represent 50% of the actual number. In the map below, the prevalence is increasing by more than 25% in the former USSR that are now composed of independent states. In Asia this is prevalent in Bangladesh and in some parts of the Philippines.



There are an estimated 4.9 people in Asia living with HIV, with 360,000 newly-infected people in 2009. The biggest concentrations are with drug users, sex workers and men who have sex with men.

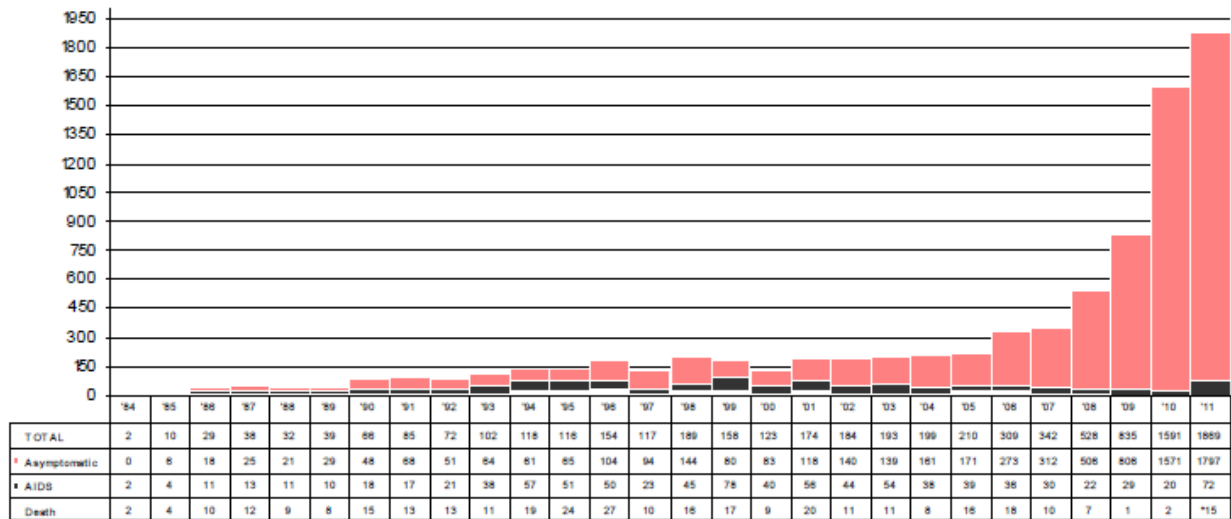
There are 4,424 known HIV cases in the Philippines as of December, with the number of cases increasing per year. There was a 54% increase from 2007 to 2008 and a 58% increase from 2008 to 2009, with 90% of infections coming from unprotected sex.

Advocates in the Philippines were suddenly alarmed with the exponential increases in absolute number of HIV and AIDS in the Country. The situation was formerly described as low and slow but has since been questioned to escalate and is now described as hidden

and growing 1984 there were only 2 recorded cases of HIV this has since increased to 7,884 cases in 2011. The year 2011 contributed 1,869 cases only from January to October.

The data released by the Philippine National AIDS Council represented by the graph below shows how “fast and furious” are the increases in HIV and AIDS.

Figure 3. Number of HIV/AIDS Cases Reported in the Philippines by Year, Jan 1984 to October 2011 (N=7,884)



*Nine initially asymptomatic cases reported in 2011, died due to AIDS that same year.

Mongolia has 62 cases of HIV infection, which is 0.02% of the adult population despite having a large percentage of sexually transmitted diseases. According to the HIV AIDS Data Hub in Asia-Pacific “The first case of HIV infection in Mongolia was detected in 1992[2]. Since then, it has remained a low prevalence country with the estimated number of adults and children living with HIV at less than 500 [1]. However, the number of cases has been increasing, constituting 92% of all reported cases in the last five years, or a cumulative total of 62 reported cases.”

The 2009 Second Generation Sentinel Surveillance (SGSS) found 0% HIV prevalence among young people aged 15-24 years old and 68% were found among men who have sex with men (MSM) and 10% among female sex workers (FSWs); 21% of cases were transmitted via other heterosexual sex.

As of December 2009, Malaysia has recorded 87,710 HIV infected people. 90.8% of those infected are men. The most common method of transmission is through drug use (70.6%). According to the HIV AIDS Data Hub in Asia-Pacific the first reported HIV case in Malaysia was in 1986. By the end of 2009, an estimated 100,000 adults and children (up from 67,000 in 2001) were living with HIV, of which 11,000 were women 15 years and older.

It was found that Malaysia is experiencing a concentrated HIV epidemic wherein the primary mode of transmission is through injecting drug users and heterosexual sex. Since Malaysia is also a country several races it was found that cases are amongst the Malays (71%), followed by the Chinese (14%) and the Indians (8%).

In Vietnam, there were 15,713 newly-reported HIV cases in 2009. The first case of HIV infection was reported in 1990 in Ho Chi Minh City (HCMC). In a span of only 8 years the number increased from 140,000 in 2001 to 280,000 in 2009. Specifically the number of women living with HIV more than doubled, from 39,000 to 81,000, respectively. The data shows that the increase is very rapid in the country. The two most prominent mode of transmission was through injecting drug users comprising 53% and heterosexual contact (28%). Eighty percent of PLHIV are relatively young employable persons ages 20-39 mostly among among men (73%).

PART 3

Analysis

This analysis focuses on the state laws that set the HIV/AIDS policy for the Philippines, Malaysia, Mongolia and Vietnam, namely:

1. The Philippine AIDS Prevention and Control Act of 1998
2. Malaysia's Code of Practice on Prevention and Management of HIV/AIDS at the Workplace
3. Mongolia's Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome
4. Vietnam's Law on Prevention and Control of HIV/AIDS

These laws are analyzed based on the criteria shown below. Specific provisions are cited relevant to each criteria and a comparison and analysis are done afterwards:

1. **Policy and Definition:** What is the law's policy, goal or objective when it comes to protecting human rights and reducing discrimination and stigmatization? How does it define discrimination?
2. **Application and Scope:** Where is this law applicable? What actions or behaviors are considered discriminatory and unlawful?
3. **HIV-Testing and Privacy:** Confidentiality and privacy is one way of protecting a person from discrimination and is mentioned separately from the other rights accorded an individual. How does the law protect a person living with HIV's privacy? Is compulsory testing required or prohibited?
4. **Education and Information:** Lack of information and misinformation are causes for discrimination. How does the law address this?

The Philippine AIDS Prevention and Control Act of 1998

Policy and Definition

Section 2 of RA8504, Declaration of Policies strongly states that protection of human rights is one of the key objectives of the law. No definition is given for discrimination but it is strongly worded against discrimination, considering ***discrimination, in all its forms and subtleties, as inimical to individual and national interest.*** As stated in Section 2:

(b) The State shall extend to every person suspected or known to be infected with HIV/AIDS full protection of his/her human rights and civil liberties.

(1) compulsory HIV testing shall be considered unlawful unless otherwise provided in this Act;

(2) the right to privacy of individuals with HIV shall be guaranteed;

(3) discrimination, in all its forms and subtleties, against individuals with HIV or persons perceived or suspected of having HIV shall be considered inimical to individual and national interest; and

(4) provision of basic health and social services for individuals with HIV shall be assured.

Application and Scope

Discrimination is elaborated in Article VII, Discriminatory Acts and Policies. While no definition is given for discrimination, RA8504 mentions specific acts that are considered discriminatory, including acts within the workplace and schools; acts affecting travel and habitation; services such as health, insurance and burial. It also protects the right to seek elected office. Article VII also provides penalties for violators of the other sections in the article:

Section 35. Discrimination in the workplace. – *Discrimination in any form from pre-employment to post-employment, including hiring, promotion or assignment, based on the actual, perceived or suspected HIV status of an individual is prohibited. Termination from work on the sole basis of actual, perceived or suspected HIV status is deemed unlawful.*

Section 36. Discrimination in schools. – *No educational institution shall refuse admission or expel, discipline, segregate, deny participation, benefits or services to a student or prospective student on the basis of his/her actual, perceived or suspected HIV status.*

Section 37. Restrictions on travel and habitation. – *The freedom of abode, lodging and travel of a person with HIV shall not be abridged. No person shall be quarantined, placed in isolation, or refused lawful entry into or deported from Philippine territory on account of his/her actual, perceived or suspected HIV status.*

Section 38. Inhibition from public service. – *The right to seek an elective or appointive public office shall not be denied to a person with HIV.*

Section 39. Exclusion from credit and insurance services. – *All credit and loan services, including health, accident and life insurance shall not be denied to a person on the basis of his/her actual, perceived or suspected HIV status: Provided, That the person with HIV has not concealed or misrepresented the fact to the insurance company upon application. Extension and continuation of credit and loan shall likewise not be denied solely on the basis of said health condition.*

Section 40. Discrimination in hospitals and health institutions. – *No person shall be denied health care service or be charged with a higher fee on account of actual, perceived or suspected HIV status.*

Section 41. Denial of burial services. – *A deceased person who had AIDS or who was known, suspected or perceived to be HIV-positive shall not be denied any kind of decent burial services.*

Section 42. Penalties for discriminatory acts and policies. – *All discriminatory acts and policies referred to in this Act shall be punishable with a penalty of imprisonment for six (6) months to four (4) years and a fine not exceeding Ten thousand pesos (P10,000.00). In addition, licenses/permits of schools, hospitals and other institutions found guilty of committing discriminatory acts and policies described in this Act shall be revoked.*

HIV-Testing and Privacy

As stated above in Section 2(b), the law considers compulsory testing as unlawful and guarantees the right to privacy of individuals. Article III, Testing, Screening and Counseling, details the prohibition on compulsory testing and the need for consent for HIV testing:

Sec. 15. Consent as a requisite for HIV testing. – *No compulsory HIV testing shall be allowed. However, the State shall encourage voluntary testing for individuals with a high risk for contracting HIV: Provided that written informed consent must first be obtained. Such consent shall be obtained from the person concerned if he/she is of legal age or from the parents or legal guardian in the case of a minor or a mentally incapacitated individual...*

Section 16. Prohibitions on compulsory HIV testing. – *Compulsory HIV testing as a precondition to employment, admission to educational institutions, the exercise of freedom of abode, entry or continued stay in the country, or the right to travel, the provision of medical service or any other kind of service, or the continued enjoyment of said undertakings shall be deemed unlawful.*

This protection of a person's right to privacy is detailed in Article VI, Confidentiality, Sections 30 and 32, with penalties imposed for violators shown in Section 33.

Sec. 30. Medical confidentiality. – *All health professionals, medical instructors, workers, employers, recruitment agencies, insurance companies, data encoders, and other custodians of any medical record, file, data, or test results are directed to strictly observe confidentiality in the handling of all medical information, particularly the identity and status of persons with HIV.*

Section 32. Release of HIV/AIDS test results. – *All results of HIV/AIDS testing shall be confidential and shall be released only to the following persons:*

(a) *the person who submitted himself/herself to such test;*

- (b) either parent of a minor child who has been tested;*
- (c) a legal guardian in the case of insane persons or orphans;*
- (d) a person authorized to receive such results in conjunction with the AIDSWATCH program as provided in Sec. 27 of this Act;*
- (e) a justice of the Court of Appeals or the Supreme Court, as provided under subSec. (c) of this Act and in accordance with the provision of Sec. 16 hereof.*

Section 33. Penalties for violations of confidentiality. – Any violation of medical confidentiality as provided in Sec.s 30 and 32 of this Act shall suffer the penalty of imprisonment for six (6) months to four (4) years, without prejudice to administrative sanctions such as fines and suspension or revocation of the violator's license to practice his/her profession, as well as the cancellation or withdrawal of the license to operate any business entity and the accreditation of hospitals, laboratories or clinics.

Section 34. Disclosure to sexual partners. – Any person with HIV is obliged to disclose his/her HIV status and health condition to his/her spouse or sexual partner at the earliest opportune time.

Education and Information

Article I of RA8504 provides guidelines for how education and information dissemination would be handled. It does not mention the discussion of human rights, stigmatization or discrimination as topics to be discussed with HIV/AIDS. It focuses more on the prevention and control of HIV/AIDS and mentions confidentiality in Section 5, HIV/AIDS information as a health service, and Section 6, HIV/AIDS education in the workplace. It also mentions *attitude towards infected employees and workers* in Section 6.

Code of Practice on Prevention and Management of HIV/AIDS at the Workplace (Malaysia 2001)

Policy and Definition

The Code of Practice on Prevention and Management of HIV/AIDS at the Workplace was provided by the Department of Occupational Safety and Health to reduce the spread of HIV/AIDS and act as a guide for HIV/AIDS in the workplace. One of the stated objectives of this Code is to:

Provide a non-judgemental, non discriminatory work environment.

Due to its' nature, this Code of Practice limits itself to the workplace. It does provide more detailed guidelines on responsibilities and actions to be taken in that environment. The code also provide a definition for discrimination:

***Discrimination** means any distinction, exclusion or preference made on the basis of real or perceived HIV status that has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation. It covers access to training, access to employment and job security, and terms and conditions of employment. However, any distinction, exclusion or preference in respect of a specific job based on the inherent requirements of that job is not considered as discrimination.*

Application and Scope

The code defines the responsibilities of the employer and employees with regards to HIV/AIDS. It states that HIV-positive status should not be used as a basis for decisions made on the employees status and discourages discrimination and stigmatization. Disciplinary action is recommended for employees who discriminate against persons with HIV/AIDS but no penalties are imposed by the Code.

In section 3.3.4 Non-judgemental, Non-discriminatory Employment Practices, it states the employer should ensure that:

- i) Employment practices should be based on the scientific and epidemiological evidence that people with HIV/AIDS do not pose a risk of transmission of the virus to co-workers through ordinary workplace contact.*
- ii) HIV-positive status should not be the sole criterion for disqualification from any form of employment.*
- iii) HIV-positive employees should have the right to continue in employment as long as they are able to work and as long as they are able to work and as long as they do not pose any danger to themselves, their co-workers and other individuals in the workplace.*
- iv) The procedure for termination of employment on medical grounds for HIVpositive employees should be the same as for any other disease.*
- v) Disciplinary action should be taken against any employee who discriminates or stigmatises HIV-positive or perceived HIV-positive employees.*

Section 3.4 states the following responsibility for employees:

- d) Employees should not discriminate against or stigmatise co-workers who are HIV-positive or perceived to be HIV-positive. Disciplinary action should be taken against any employee who discriminates against or stigmatises a co-worker who is HIV-positive or perceived to be HIVpositive.*

The Code also has a section (3.6) regarding gender equality stating:

6.1. An employer should recognise the gender dimensions of HIV/AIDS. Women are more likely to become infected and more often adversely affected by the HIV/AIDS epidemic than men due to biological, sociocultural and economic reasons. The greater the gender discrimination in societies and the lower the position of the women, the more negatively they are affected by HIV. Therefore, more equal gender relations and empowerment of the women are vital to more successfully prevent the spread of HIV infection and better enable women to cope with HIV/AIDS.

HIV-Testing and Privacy

The code gives a general guideline for privacy and confidentiality in section 3.3.5. This is repeated several times within the code, making assurances that a person's HIV status is kept confidential.

An employer should ensure that HIV-positive employee is not required to disclose his/her status to the employer or anyone at work. In situations where the employee needs to reveal his/her status, confidentiality and privacy regarding all medical information related to his/her HIV/AIDS status should be maintained at all times.

Section 3.3.6, Screening/HIV-antibody Testing, discourages the practice of HIV testing as a policy within the workplace.

Employers should not practice screening or HIV-antibody testing as a precondition to employment, promotion, or other employee benefits

Education and Information

Section 3.5.2 provides the guidelines for education and training programmes. It makes specific mention of promoting tolerance and reducing stigmatization.

i) An employer should implement a workplace education, training and awareness programmes in order to fight the spread of disease and to foster greater tolerance for HIV-positive employees. Effective education can contribute to the capacity of employees to protect them against HIV infection, reduce HIV related anxiety and stigmatisation, minimise disruption in the workplace, and bring about attitudinal and behavioural change

Section 3.5.5, Counseling and Social Support, suggests the setup of counseling and support services for employees with HIV/AIDS in part to address stigmatization and discrimination:

i) An employer should establish a mechanism to encourage openness, acceptance, and support for those employees who voluntarily disclose their HIV status, which should include but may not necessarily be limited to:

- *Encouraging persons living with HIV/AIDS to be involved in education and awareness programmes;*
- *Ensuring that there is no discrimination or stigmatisation toward HIVpositive employees, and*
- *Encouraging the development of support groups for HIV-positive employees.*

The Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome (Mongolia 2004)

Policy and Definition

The Mongolian law on AIDS puts a bigger focus on prevention than human rights. It provides less definition on what discrimination is and what acts constitute discrimination. The Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome states the following purpose in Article 1:

1.1. The purpose of this Law shall be to define the powers of the state bodies and local self-administrative organisations, responsibilities of the health organisations, medical doctors and health workers, rights and responsibilities of citizens, and people infected by the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome, regarding the prevention of and the fight against the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome; and to regulate the relations with regard to the implementation of the above mentioned powers, responsibilities and rights.

Application and Scope

This law does not specifically state any act as being discriminatory. It does mention the protection of a person's rights against discrimination but only in general terms. It also provides penalties for the violation of a person's human rights based on HIV/AIDS discrimination.

Article 9, Rights and Duties of Citizen, includes the following responsibility:

9.2.2. shall not discriminate legal rights and interests of people determined to be infected with the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome;

Article 10, Protection of Rights of Person infected with the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome provides the following rights:

10.1. The rights and freedom of a person infected with the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency

Syndrome shall not be restricted on a basis of the presence of his/her disease, unless otherwise stipulated by law.

10.2. Any form of insult or discrimination of a person infected with the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome shall be prohibited.

10.3. An official or citizen shall be prohibited to divulge an information on people infected with the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome.

Article 13, Liabilities for Offenders of Law

13.1.3. for the breach of Article 10. of this Law a citizen shall be fined 20,000-50,000 MNT, an official shall be fined 40,000-60,000 MNT, a business entity or organisation shall be fined 200,000-250,000 MNT.

HIV-Testing and Privacy

There is less emphasis on confidentiality with the Mongolian law. There is no mention of any prohibition of compulsory or mandatory HIV testing. In Article 9, it mentions that getting tested and treated is a right of the individual:

9.1.2. to undergo tests and examinations for detection and confirmation of the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome HIV/AIDS on a voluntary basis;

And in Article 11 even makes it a requirement for people with HIV to be tested:

11.1.2. to undergo tests and examinations within the terms required by an appropriate health organization;

Also, under the Mongolian law, while Section 10.3 as shown above does respect the right to privacy, disclosure of information is required. An excerpt of Article 12, Duties of a Person Infected with the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome states that:

11.1. A persons infected with the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome shall have the following duties:

11.1.1. to provide a health organization with the true and accurate information on the means and cause of infection;

11.1.2. to undergo tests and examinations within the terms required by an appropriate health organization;

11.1.3. to inform a health organization about known Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome when receiving health care services;

11.1.7. if a person is determined to have the Human Immunodeficiency Virus Infection or Acquired Immune Deficiency Syndrome he or she shall immediately inform his wife or her husband, or a partner on the disease.

And failure to do so, according to Article 13:

13.1.4. for the breach of Article 11. of this Law a citizen shall be fined 20,000-50,000 MNT.

Therefore, while it gives protection and penalizes any violation of a person's right to privacy and confidentiality in Article 10.3, this law also places penalties for non-disclosure of information by that person in Article 11.

Education and Information

This law makes no mention of education with regards to discrimination and the protection on human rights. In Article 6, Powers of Hural of Citizens Representatives and of Governors, it does mention that there are economic and social issues involved but does not mention what those issues are.

6.1. Hural of Citizens Representatives, at all levels, shall take measures for preventing and combating the Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome in their respective areas, shall involve citizens, business entities and non-governmental organisations in related educational and awareness activities, and shall take measures to address the economic and social issues in the preventing and combating the virus infection and Acquired Immune Deficiency Syndrome.

The Law on Prevention and Control of HIV/AIDS (Vietnam 2006)

Policy and Definition

Vietnam's Law on Prevention and Control of HIV/AIDS states that ending stigmatization and discrimination as one of its principles. Article 3: Directive principles in HIV/AIDS prevention and control:

4. Ending stigmatization and discrimination against HIV/AIDS infected people and their families; supporting the participation of people infected with HIV/AIDS and their families in social activities, especially HIV/AIDS prevention and control activities.

This law describes both discrimination and stigmatization where stigmatization is the attitude of condescension or disrespect while discrimination is the behavior towards a person with HIV/AIDS:

4. Stigmatization against a person infected with HIV/AIDS is an attitude of condescension or of disrespect towards another person due to the awareness or suspicion that the person is infected with HIV/AIDS or has close relationship with a HIV-infected or suspected HIV-infected person.

5. Discrimination of a person infected with HIV/AIDS is a behavior of alienation, refusal, isolation, mal-treatment, prejudice or restriction of rights towards another person because of the awareness or suspicion that the person is infected with HIV/AIDS or has close relationship with a HIV-infected or suspected HIV-infected person.

Application and Scope

The law goes into very specific behaviors/actions on what is and what is not allowed within the law regarding HIV/AIDS. It provides lists of rights and, obligations for people infected with HIV/AIDS in Article 4 and a list of prohibited behaviors in Article 8. Taken together these two articles define the rights of a person with HIV/AIDS and defines further what can be considered discrimination and stigmatization in more detail. It does not, however, mention what penalties, if any, are imposed on those that violate the law.

Article 4, Rights and obligations of people infected with HIV/AIDS includes the right to refuse treatment if a person with HIV/AIDS is already in the last stages of the disease. It also puts these rights in a very positive light by starting with the right to an ***integrated life within the community and society***.

1. People infected with HIV/AIDS have the following rights:

- a) Integrated life within the community and society;*
- b) Treatment and health care;*
- c) Education, vocational training, employment;*
- d) Protection of privacy and confidentiality with respect to HIV/AIDS;*
- e) Refusal of examination or treatment in the last phase of the disease;*
- f) Other legal rights as provided by this Law and other related legal provisions.*

2. People infected with HIV/AIDS have the following obligations:

- a) Implementation of measures to prevent the transmission of HIV to other people;*
- b) Informing his/her HIV-positive test result to his/her spouse or fiancé;*
- c) Adherence to ARV treatment regulations;*

d) Implementation of other obligations provided by this law and other related legal provisions.

Article 8, Behaviors strictly prohibited, includes discrimination and stigmatization. It also includes certain acts, such as child abandonment, publicizing a person's information if he's HIV-positive, falsely reporting HIV/AIDS infection, refusal of health and burial services and taking advantage of HIV/AIDS for financial reasons.

- 1. Purposefully transmitting or trying to transmit HIV to another person.*
- 2. Threatening to transmit HIV to another person.*
- 3. Stigmatizing and/or discriminating against people infected with HIV/AIDS.*
- 4. Parents or guardians abandoning underage children infected by HIV.*
- 5. Publicizing the name, age, address, images of a person infected with HIV/AIDS or disclosing information about someone's HIV infection to others without consent of that person, except in cases mentioned in Article 30 of this Law.*
- 6. Falsely reporting HIV/AIDS infection about a person uninfected with HIV/AIDS.*
- 7. Compulsory HIV testing other than cases provided in Article 28 of this Law.*
- 8. Transfusion of HIV-contaminated blood or blood products, transplantation of tissues or body parts contaminated with HIV to another person.*
- 9. Refusing to provide examination or treatment to a person on the grounds that this person is or suspiciously infected with HIV/AIDS.*
- 10. Refusing the burial or cremation of a dead person for reasons related to HIV/AIDS.*
- 11. Taking advantages of HIV/AIDS control activities for profit or illegal behaviors.*
- 12. Other behaviors that are prohibited by the law.*

The Law goes into Articles protecting the rights of a person who has HIV/AIDS within the office environment, educational facilities and in the community, again going into very specific details on what is not allowed.

Article 14: HIV/AIDS prevention and control in the work place

- 2. The employer is not allowed to:*

- a) Terminate the job of an employee or create difficulties on the ground that this person is or suspiciously infected with HIV/AIDS;*
- b) Force a healthy employee to transfer from the job he/she has been doing on the ground that this person is or suspiciously infected with HIV/AIDS;*
- c) Refuse to give a salary raise to or to promote a person, or not ensure the legalized rights or benefits on the ground that this person is or suspiciously infected with HIV/AIDS.*
- d) Request employees to have HIV tested or to ask a job applicant or an employee for an HIV test result, to refuse to hire an applicant because he/she is infected with HIV, except in cases mentioned in item 3, Article 28 of this Law.*

Article 15: HIV/AIDS prevention and control in educational facilities belonging to national educational system

- 2. Educational and training facilities are not allowed to:*
 - a) Refuse to admit a student because under the suspicion or awareness that the person is infected with HIV/AIDS;*
 - b) Apply disciplinary action, or expel a student because of the suspicion or awareness that the person is infected with HIV/AIDS;*
 - c) Separate, limit or forbid students participating in school activities of the awareness or doubt that the student is infected with HIV/AIDS;*
 - d) Request student to be tested for HIV or to ask an applicant for an HIV test result.*

Vietnam's Law also puts a lot of emphasis on the community in Article 17, mentioning the role of The People's Committee and Residential Clusters

Article 17: HIV/AIDS prevention and control in communities

- 1. The People's Committee of a commune/ward/district town shall be responsible for:*
 - a) Organizing HIV/AIDS prevention and control activities in the communities, educating people on caring and support for HIV-infected people, developing good traditions of the family, the clan, the original village and the cultural identity of Vietnamese people;*
 - b) Organizing care and support for people infected with HIV/AIDS, and facilitating people infected with HIV/AIDS to integrate in the community;*

c) Promoting the role of village patriarchs, heads of village and hamlets, heads of residential clusters, heads of clans, religious leaders, elderly people and people with prestige in the community in the mobilization of the people in HIV/AIDS prevention and control.

d) Formulating and developing the model of culture family and culture-healthy village or residential cluster.

e) Implementing communication on anti-stigmatization and anti-discrimination against HIV infected people and their families.

2. Residential clusters, hamlets shall be responsible for:

a) Communicating, motivate and educate families in the cluster to participate in and implement regulations on HIV/AIDS prevention and control;

b) Integrating HIV/AIDS prevention and control activities into public campaigns, sport, culture and music events in the community, training courses, talk sessions and other social events.

c) Implementing anti-stigma and anti-discrimination against HIV infected people and their families.

3. The State encourage friends, families, relatives, and neighbors of HIV infected people taking care of and supporting HIV infected people to integrate into the society and community.

HIV-Testing and Privacy

Confidentiality and the right to privacy are mentioned in Article 4, which includes protection of the right to privacy, and behaviors that are restricted, and Article 8. which includes prohibition to compulsory HIV testing and disclosing information of a person with HIV/AIDS

Article 30, Informing of HIV positive testing result, provides the details of who should receive information on test results:

1. "Positive" test results shall only be released to following persons:

a) Tested person;

b) His/her spouse; his/her parent(s) or legalized guardian(s) if the tested person is underage or lacks typical behavioral competence.

c) Authorized persons who are responsible for informing "HIV positive" test results and providing counseling to tested persons;

d) Those who are responsible for providing care and treatment for HIV infected people in health facilities, including: the head of medical department or ward where the HIV infected people are being treated; authorized staff and health care personnel in health establishments who directly involve in treatment and care for HIV infected people;

e) Directors, medical officers and staff who are directly involved in treatment and care for HIV infected people kept in prisons, educational facilities, and centers for treatment-education-social labor;

f) Authorized persons from organizations stated in item 1 Article 28 of this Law.

2. Persons stated in item 1 of this Article shall be responsible for the confidentiality of “HIV positive” test results, except the tested person stipulated at point a, item 1 of this Article.

3. The Ministry of Public Health shall regulate detailed procedures and responsibilities for disclosing “HIV positive” test results.

Education and Information

Vietnam’s AIDS Law puts specific emphasis on requirements and contents of educational and informational communications regarding HIV/AIDS. It also specifies passages that directly impact discrimination as show in an excerpt of Article 9, Purpose and requirements of information-education-communication on HIV/AIDS prevention and control, below:

c) Being non-discriminatory, not affecting gender equality and not making negative reference to HIV infected people.

In Article 10: Contents of information-education-communication on HIV/AIDS prevention and control, the law further details what kind of information should be emphasized in educational and informational materials, providing heavy emphasis on human rights and the social aspect of HIV/AIDS:

1. Causes of HIV infection, routes of HIV transmission, measures to prevent HIV transmission and measures to care and treat HIV/AIDS infected people;

2. Impacts of HIV/AIDS on human health, life and socio-economic state;

3. Rights and obligations of individuals, families and people infected with HIV/AIDS in HIV/AIDS prevention and control;

4. HIV testing, care, support and treatment methods and services designated for HIV-infected people;

5. *Responsibilities of offices, institutions, organizations and communities in HIV/AIDS prevention and control.*
6. *Harm reduction interventions used in HIV/AIDS prevention and control.*
7. *Anti-stigmatization and anti-discrimination.*
8. *The Party's lines and guidelines, the State's policy and legislation on HIV/AIDS control.*

Comparison of the Four Laws

Policy and Definition

The Philippines' RA8504 and Vietnam's Law on Prevention and Control of HIV/AIDS are strongly worded with regards to the protection on human rights and discrimination. RA8504 has the full protection of human rights and civil liberties and condemns discrimination as ***inimical to individual and national interest***. Vietnam's law has ending stigmatization and discrimination as one of its directive principles.

In comparison, Malaysia's code just seeks to provide a non-judgmental and non-discriminatory work environment and Mongolia's law was designed to define the rights and regulates those rights along with the responsibilities of the state and its citizens.

Vietnam's law is the only one that has a definition for both stigmatization and discrimination. It defines stigmatization as the attitude of condescension or disrespect while discrimination is the behavior towards a person with HIV/AIDS. Malaysia's code defines discrimination as acts that nullifies or impairs equal treatment except when the exclusion is based on the requirements of the job. The Philippines' RA8504 and Mongolia's law do not provide any definitions for stigmatization or discrimination.

Application and Scope

The laws of the Philippines, Vietnam and Mongolia, are general laws of the land affecting all aspects of life whereas Malaysia's code, by its nature, is the most limited as it is very specific to the work environment.

Malaysia' law is focused on ensuring equal treatment in the workplace and providing support and counseling to persons living with HIV. Disciplinary action is recommended for employees who violates the law and discriminate against persons with HIV/AIDS but no specific penalties are imposed by the Code. It is notable that it is the only law of the three that mentions gender equality's effect on HIV/AIDS.

Mongolia's law focuses more on the prevention and control of HIV/AIDS. The violation of rights and discrimination are described as prohibited and penalties are described for

violation of those rights but no specific definition is made on what discrimination is or what acts or behavior constitute discrimination.

The Philippines' RA8504, specifically Article VII, provides mentions specific acts that are considered discriminatory. This includes acts within the workplace and schools; acts affecting travel and habitation; services such as health, insurance and burial. It also protects the right to seek elected office. Furthermore, it provides penalties for acts described in Article VII

Vietnam's law is the most detailed of the four laws, as it goes into very specific behaviors and actions on what is and what is not allowed within the law regarding HIV/AIDS. Each right and responsibility is given specific mention and enumerated in Article 4. In addition to the actions and behaviors described in RA8504, it mentions the right to have an integrated life within the community and society and the right to refuse examination and treatment when in the last phase of the disease. In Article 8, it also adds child abandonment, misinformation on a person's HIV status and taking advantage of HIV for profit as violations of a person's rights. But as detailed as it is, it makes no mention of penalties for violation of the law.

Of the four laws, only Vietnam's law puts emphasis in support within the community, in Article 17, where it promotes the support of the community to person's with HIV/AIDS which could be key in eliminating discrimination and stigmatization.

HIV-Testing and Privacy

All four laws provide for the protection of a person's right to privacy and confidentiality when it comes to the result of HIV tests. The laws of the Philippines and Mongolia also provide penalties for inappropriate or illegal disclosure of that information.

Compulsary testing is mostly considered unlawful in the laws of the Philippines and Vietnam. Testing as part of employment requirements is prohibited in Malaysia's code. However, in Mongolia's case, it is required for a person to be tested and treated.

With regards to disclosure of person's living with HIV to their spouse, fiancé or sexual partner, RA8504 suggests but not requires disclosure. Mongolia and Vietnam requires disclosure but Mongolia only mentions the spouse and fiancé. Also, while Mongolia's law is the only one that prescribes a penalty for non-disclosure.

Education and Information

Vietnam's law is the only one that heavily promotes education in eliminating discrimination and stigmatization. It is also the only law of the four that promotes integration and support of the community for persons living with HIV.

Mongolia mentions the social aspect of the disease but provides no does not provide any details that specifically addresses discrimination. Malaysia's code meanwhile promote

training programmes and counseling to address possible discrimination. The Philippine law does not mention discrimination or human rights when it comes to education, focusing more on the treatment, prevention and control of the disease/

Conclusion

The Philippine AIDS Prevention and Control Act of 1998 (RA8054) provides strong protection to the rights of people living with HIV/AIDS. It provides specific situations protecting privacy and strong anti-discrimination section, with specific penalties for violators.

Malaysia's Code of Practice on Prevention and Management of HIV/AIDS at the Workplace is more a set of guidelines as is what it was meant to be. It gives specific scenarios applicable to the work environment and presents the concept of counseling as a means of addressing discrimination in the work area.

Mongolia's The Law on Prevention of Human Immunodeficiency Virus Infection, and Acquired Immune Deficiency Syndrome focuses more on prevention but still has some sections addressing discrimination. It also has a penalty for non-disclosure of information from people with HIV/AIDS that may make these people hesitant about getting tested.

Vietnam's Law on Prevention and Control of HIV/AIDS is the most detailed of the laws discussed above, providing lists of rights, obligations, behaviors and responsibilities. It also clearly specifies education, information and communication as a means of protecting rights and combating discrimination. This Law also presents the communities: The People's Committee and Residential Clusters as responsible for implementing anti-stigma and anti-discrimination campaigns and providing support for HIV/AIDS infected people.

Recommendations

The intents of these recommendations are to enhance the responses to the findings of other studies particularly those on stigma and discrimination. It is also a guide in crafting or reviewing local or national policies that respond to stigma and discrimination related to HIV AIDS the following are recommended.

1. Any HIV AIDS law should be optimal and must be a general law of the land affecting all aspects of life or sector and in relation to HIV AIDS. It may pinpoint certain environments or interventions when deemed critical by experts, PLHIVs and policymakers.

2. Define clearly and correctly what stigmatization and discrimination is among people living with HIV and AIDS with the end in view of providing full protection of the rights of PLHIVs.
3. Any policy on HIV AIDS would serve those affected if it provides for the full protection of human rights and civil liberties and condemns discrimination as ***inimical to individual and national interest***.
4. It would be helpful to guide a policy in enumerating, after careful study of existing and future situations, the specific acts that are discriminatory, where it occurs and how it occurs.
5. It may prescribe acts that are non-judgmental and non discriminatory to educate the general population. To an extent of clearly explaining specific behaviors on what is and what is not allowed within the law.
6. Mandating PLHIV stigma type of studies as part or separate study would help in informing policymakers.
7. The duties of the state and individuals in support to reducing stigma and discrimination may be included and broadened to create a supportive community environment that may help reduce the prevalence of HIV AIDS.
8. Policymakers must be reminded that stigma and discrimination contributes to the increases in prevalence.
9. Existing and potential violations should be studied carefully so as not to violate the rights of all concerned.
10. There must be strong provisions that promote and sustain education in eliminating discrimination and stigmatization.

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