

**UN comments and recommendations including international reference on
Supplementation and Amendments of
*Law on HIV/AIDS Prevention and Control***

10 December 2019

Words in blue: newly added content proposed by VAAC as of Sept 2019 Law on HIV/AIDS Prevention and Control Consultation Workshop

Words with yellow highlight: content with considerable amendment proposed by United Nations

~~Words being crossed out:~~ content to be deleted proposed by VAAC as of Sept 2019 Law on HIV/AIDS Prevention and Control Consultation Workshop

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
General		<p>Appropriate terminology is essential to avoid stigmatizing language and strengthen the global response to HIV. UNAIDS terminology recommends the following¹:</p> <ul style="list-style-type: none"> • Replace “HIV Infected People” by “Persons living with HIV” • Replace “Drug Addicts/ Drug Abusers” by “People who use drugs (PWUD)” • Replace “Higher risk group/ Vulnerable group/ Target group with high risk behavior” by “Priority populations”, “Key populations” or describing the behavior each population is engaging in that places individuals at risk of HIV exposure to avoid stigmatizing caused by overly broad definition. • Replace ‘risky behavior’ by ‘behavior that put people at risk of HIV’. • Use “Intervention” when implying medical treatment, health systems and healthcare; use “Programming” when implying programmes at community level and the concept of participatory responses. • Replace “Spousal transmission” by “Intimate partner transmission”

¹ UNAIDS (2015). UNAIDS Terminology Guidelines. Available at https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf

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		More preferred terminology, rationale behind and useful background to selected terms can be found in UNAIDS Terminology Guidelines (2015).
Article 1 Scope of regulation and subject of application	<p>1. This Law provides for HIV/AIDS prevention and control measures; the care, treatment and support for HIV-infected people and conditions for the implementation of HIV/AIDS prevention and control measures.</p> <p>2. This Law shall apply to Vietnamese and foreign agencies, organizations and individuals in Vietnam.</p>	See UN general comment on terminology
Article 2 Terminology Explanation	<p>In this Law, the following terms are construed as follows:</p> <p>1. HIV is the abbreviation of the English phrase Human Immunodeficiency Virus, which is the virus that causes the acquired immune deficiency syndrome in human, causing the body to lose the ability to fight disease-causing agents.</p> <p>2. AIDS is the abbreviation of the English phrase Acquired Immune Deficiency Syndrome, which is caused by HIV, normally manifested by opportunistic infections and cancers, and may lead to death.</p> <p>3. Opportunistic infections are infections that happen to a body due to the deficiency of the body's immunity caused by HIV infection.</p> <p>4. Stigmatization against an HIV-infected person is an attitude of contempt or disrespect towards another person because of the awareness or suspicion that such person is infected with HIV or has close relationship with an HIV-infected or suspected HIV-infected person.</p> <p>5. Discrimination against an HIV-infected person is an act of alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the awareness or suspicion that such person is infected with HIV or</p>	<p>See UN general comment on terminology</p> <p>2. AIDS is the abbreviation of the English phrase Acquired Immune Deficiency Syndrome, which is caused by HIV, making an individual susceptible to opportunistic infections and, if left untreated, leading to death.</p> <p>Suggest using the UNAIDS global definition:</p> <p>4. Stigmatization of PLHIV is a negative belief, feeling or attitude towards people living with HIV, groups associated with PLHIV and other key populations at higher risk of HIV infection.</p> <p>5. Discrimination against PLHIV is an act or omission that is the alienation, refusal, isolation, maltreatment, disgrace, prejudice or restriction of rights towards another person because of the real or perceived HIV-status of that person or because of the close relationship with a PLHIV, either real or perceived. Discrimination can be directly</p>

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	<p>has close relationship with an HIV-infected or suspected HIV-infected person.</p> <p>6. High-risk behaviors are behaviors that easily cause HIV transmission such as unsafe sex, needle/syringe sharing and other behaviors that easily cause HIV transmission.</p> <p>7. Exposure to HIV is the exposure by direct contact with blood or bio-fluids of an HIV-infected person and at risk of getting infected with HIV.</p> <p>8. HIV/AIDS epidemiological surveillance is the regular and systematic collection of information on epidemiological indicators of HIV/AIDS of different risky groups to know temporal trends and results in order to provide information for the planning, prevention, control and evaluation of the effectiveness of HIV/AIDS prevention and control measures.</p> <p>9. HIV/AIDS sentinel surveillance is the collection of information through regular and systematic HIV tests of selected target groups to monitor annual HIV infection rates and trends in order to provide information for the planning, prevention, control and evaluation of the effectiveness of HIV/AIDS prevention and control measures.</p> <p>10. HIV/AIDS counseling is a process of dialogue and provision of necessary knowledge and information about HIV/AIDS prevention and control between the counselor and the counseled, in order to help the counseled make his/her own decisions and resolve problems related to the prevention of HIV/AIDS transmission and the care for and treatment of HIV-infected persons.</p> <p>11. HIV testing is the application of professional techniques to determine the status of HIV infection in samples of blood or bio-fluid from a human body.</p>	<p>or indirectly, expressly or by effect, immediately or over a period of time.</p> <p>6. Behaviours that put people at greater risk of HIV infection such as unprotected sex, in particular with multiple partners, needle/syringe sharing and other behaviours that places individuals at risk of HIV exposure.</p> <p>Replace “risky groups” with “key populations”.</p> <p>10. HIV and AIDS counseling is a process of dialogue and provision of necessary knowledge and information about HIV prevention and control between the <u>trained</u> counselor and the counseled, in order to help the counseled make his/her own <u>informed</u> decisions and resolve <u>personal, social, or psychological problems and difficulties, as well as inform and resolve problems related to the prevention</u> of HIV transmission and the care for and treatment of PLHIV.</p> <p>11. HIV testing refers to any facility-based, mobile medical procedure, or community-based screening modalities that are conducted to determine the presence or absence of HIV in a person’s body. HIV testing is confidential, voluntary in nature and must be accompanied by</p>

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	<p>12. HIV positive is the result of a test of blood or bio-fluid samples of a human body determined as HIV-infected.</p> <p>13. Peer education group is a group of volunteers to carry out propaganda and motivation activities and assist people in the same plight.</p> <p>14. Mobile population group is those who regularly live far from their families and change their residences and workplaces.</p>	<p>counseling prior to, and after the testing, and conducted only with the informed consent of a person.</p> <p>12. HIV positive is the presence of HIV infection as documented by the presence of HIV or HIV antibodies in the sample being tested.</p>
Article 2 Terminology Explanation (cont.)	<p>15. Harm reduction intervention HIV Prevention and Harm Reduction measures to prevent HIV transmission include behavior change communication, mobilization and encouragement of the use of condoms, clean syringes and needles, opioid addiction substitutions, HIV pre-exposure prophylaxis (PrEP) and other harm reduction intervention measures in order to perform safe behaviors to prevent HIV transmission.</p>	<p>The UN recommends a broader concept of prevention than ‘harm reduction interventions’ which has a limited definition.</p> <p>WHO Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations (2016)² suggests condoms with condom-compatible lubricants as a preventive measure options to prevent sexual transmission of HIV. Oral pre-exposure prophylaxis (PrEP) containing tenofovir disoproxil fumarate (TDF), and post - exposure prophylaxis (PEP) should be offered as an additional prevention choice for key populations at substantial risk of HIV infection. It is also recommended to ensure all key populations have same access to prevention of coinfections and co-morbidities.</p> <p>For people from key populations with harm alcohol or other substance use³, needle & syringe programme, opioid substitution therapy, naloxone and evidence-based interventions (including brief psychosocial interventions involving assessment, specific feedback and advice) should be provided as comprehensive harm reduction package.</p>

² See ARV-related prevention, P.44-46 from WHO (2016). Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations. Available at <https://www.who.int/hiv/pub/guidelines/keypopulations-2016/en/>

³ See Recommendations, P.6-7 from UNAIDS (2019). Health, Rights and Drugs: Harm Reduction, Decriminalization and Zero Discrimination for People Who Use Drugs. Available at https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf

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		<p>WHO, UNODC, UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users – 2012 revision, which lays out the key harm reduction interventions, available at https://www.who.int/hiv/pub/idu/targets_universal_access/en/</p> <p>It is recommended to add a definition of ARV. Suggested text: “ARV is the abbreviation of antiretrovirals. Antiretrovirals, also called antiretroviral medicines, are highly active in suppressing viral replication, reducing the amount of the virus in the blood to undetectable levels and slowing the progress of HIV disease.”</p>
Article 3. Principles in HIV/AIDS prevention and control	<p>1. Combination of social, technical and medical measures in HIV/AIDS prevention and control on the principle of regarding prevention as the major measure and information, education and communication for behavioral change as the key measure.</p> <p>2. Implementation of multi-sectoral collaboration and social mobilization in HIV/AIDS prevention and control; integration of HIV/AIDS prevention and control activities into socio-economic development programs.</p> <p>3. Close combination of HIV/AIDS prevention and control with the prevention and control of drug abuse and prostitution, attaching importance to harm reduction intervention measures in the prevention of HIV transmission.</p> <p>4. Elimination of stigma and discrimination against HIV-infected people and their family members; facilitation of HIV-infected people and their family members to participate in social activities, especially in HIV/AIDS prevention and control.</p>	<p>See UN general comment on terminology</p> <p>Replace "drug abuse" by "Drug use" Replace “prostitution” by "selling sex"</p>
Article 4 Rights and Obligations of	<p>1. HIV-infected people shall have the following rights:</p> <p>a) To live in integration with the community and society;</p>	<p>See UN general comment on terminology</p>

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HIV-infected people	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 for by this Law and other related laws.	<ul style="list-style-type: none"> - The UN recommends to reformulating this article as it would be better would be to highlight the specific rights under separate articles. For instance: <ul style="list-style-type: none"> o Health and support services (treatment of PLHIV, access to medical series, etc) o Education (prevention, parents and guardians, etc) o Workplace (education, employers, etc_ o Confidentiality o ...
Article 4 Rights and Obligations of HIV-infected people (cont.)	2. HIV-infected people shall have the following obligations: a) To apply measures to prevent the transmission of HIV to other people b) To inform their HIV positive test result to their spouse or fiancé (fiancée); c) To observe instructions on treatment with ARVs; d) Other obligations as provided by this Law and other related laws + see below on new 2 (d) clause proposed	<p>See UN general comment on terminology</p> <p>The UN recommends reformulating ‘To apply measures to prevent the transmission of HIV to other people including intimate partners, spouse or fiancé (fiancée)’</p> <p>The UN recommends deleting Clause 2 b) as it should not be an obligation. Regarding notification to partners, HIV status disclosure should only be done by PLHIV and on a voluntary basis. As stated in UNAID and UNDP Policy Brief on Criminalization of HIV Transmission⁴, the UN does not support a legal obligation to disclose one’s HIV positive status. Everyone has the right to privacy about their health and should not be required by law to reveal one’s HIV status. It is also recommended to address the risk of violence against women at disclosure.</p> <p>However, all people have the ethical obligation not to harm others. Governments should provide HIV programmes for HIV-positive people that empower them to practice safer sex and/or voluntarily disclose their status in safety, as agreed in the Political Declaration on HIV (2006)⁵.</p>

⁴ See Disclosure and partner notification, P.4. UNAIDS and UNDP (2008). Policy Brief: Criminalization of HIV Transmission. Available at http://data.unaids.org/pub/basedocument/2008/20080731_jc1513_policy_criminalization_en.pdf

⁵ United Nations (2006). Political Declaration on HIV/AIDS. Available at http://data.unaids.org/pub/report/2006/20060615_hlm_politicaldeclaration_ares60262_en.pdf

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		<p>No healthcare provider shall disclose the HIV-positive status of a person under his/her direct care to his/her sexual partner. A healthcare provider may disclose the HIV-status of a person under his direct care to his/her sexual partner, if:</p> <ul style="list-style-type: none"> (i) The person living with HIV in question has been thoroughly counselled; and (ii) Counselling of the person living with HIV has failed to achieve appropriate behavioural changes; and (iii) The person living with HIV has refused to notify, or consent to the notification of his/her partner(s); and (iv) A real risk of HIV transmission to the partner(s) exists; and (v) The person living with HIV is given reasonable advance notice; and (vi) The identity of the person living with HIV is concealed from the partner(s), if this is possible in practice; and (vii) Follow-up is provided to ensure support to those involved, as necessary <p>WHO supplement Guidelines on Self Testing and Partner notification (2016)⁶ recommended that voluntary assisted partner notification services should be offered as part of a comprehensive package of testing and care offered to people living with HIV. However, the guidelines stress that supportive policies are essential for successful and effective programme implementation. In some settings, medical secrecy laws may prohibit HIV partner notification; in other contexts, restrictive laws and policies may put clients and their partners at risk of stigmatization, discrimination, criminalization and punitive actions.</p> <p>Countries should review their laws and policies to be more supportive of people living with HIV and the programmes that serve them. This includes prohibiting mandatory or coercive partner notification practices and revising laws and policies that stigmatize, criminalize and discriminate against people from key population groups and people with HIV. Programme managers should identify and develop</p>

⁶ WHO supplement Guidelines on Self Testing and Partner notification (2016) available at: <https://apps.who.int/iris/bitstream/handle/10665/251655/9789241549868-eng.pdf;jsessionid=988FE987EA8244685516D0BB5A103EBA?sequence=1>

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		<p>approaches with written standard operating procedures, policies and protocols for delivering HIV partner notification services. Regardless of the approach utilized, it is critical that all People living with HIV are made aware that partner notification services are always voluntary and that people living with HIV will still have access to other services if they decline notification services. Mandatory or coercive partner notification is never warranted.</p>
Article 4 Rights and Obligations of HIV-infected people (cont.)	<p>Clause 2 (đ) To provide an individual accurate information for the HIV/AIDS functioned agencies;</p>	<p>The UN recommends adding ‘within appropriate safeguards of confidentiality’ in Clause 2 (d).</p> <p>As collecting accurate information of people diagnosed with HIV it is important for support and monitor their enrollment in and adherence to treatment, people may fear a breach of identity. Corresponding legal framework and policies shall be implemented to create an enabling environment for people living with HIV to provide their personal information. In the context of Viet Nam, accurate information is indeed important for HIV treatment reimbursement under the Social Health Insurance system.</p> <p>OHCHR and UNAIDS International Guidelines on HIV/AIDS and Human Rights (2006)⁷ states that general confidentiality and privacy laws should be enacted. HIV-related information of individuals should be included within definitions of personal/medical data subject to protection and should prohibit the unauthorized use and/ or publication of HIV-related information on individuals.</p> <p>UNAIDS Guidance on Fast-Track and Human Rights in Efforts to Accelerate the Response to HIV (2017)⁸ urges that policies and protocols in HIV services must guarantee at least confidentiality—and preferably anonymity, where practicable—to further reduce the risk of privacy violations. This includes practices for gathering and storing</p>

⁷ See Guidelines for State Action, Guideline 5: Anti-Discrimination and Protective Law, P.32-33 from OHCHR and UNAIDS and (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). Available at <https://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

⁸ See Principle 3: Privacy and Confidentiality from UNAIDS (2017). Guidance: Fast-Track and human rights Advancing human rights in efforts to accelerate the response to HIV. Available at http://www.unaids.org/sites/default/files/media_asset/JC2895_Fast-Track%20and%20human%20rights_Print.pdf, July 2019.

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		<p>personal health information, and for protecting against unauthorized disclosure or misuse of that information.</p> <p>For example:</p> <ul style="list-style-type: none"> • Patient files must not be visibly marked or stored in ways that communicate a person’s HIV status to casual observers; • Information in patient files, whether paper or electronic, should only be accessible to authorized health personnel who are subject to clear, known and enforced rules regarding patient confidentiality; • Information should be reasonably protected against unauthorized access by others through physical safeguards (e.g. locked offices and storage units accessible only to authorized service providers) and/or digital ones in the case of electronic records (e.g. password protection and encryption)
<p>Article 5. Responsibilities in HIV/AIDS prevention and control</p>	<p>1. Agencies, organizations and people’s armed force units shall, within the scope of their assigned functions and powers, be responsible for formulating, and organizing the implementation of, programs of action for HIV/AIDS prevention and control.</p> <p>2. The Vietnam Fatherland Front and its member organizations shall have the responsibility to propagandize and mobilize the people to participate in HIV/AIDS prevention and control; participate and supervise the implementation of HIV/AIDS prevention and control measures; and organize and carry out campaigns to provide material and mental supports for HIV-infected people.</p> <p>3. Vietnamese and foreign agencies, organizations and individuals in Vietnam shall have the responsibility to implement the provisions of law on HIV/AIDS prevention and control.</p> <p>4. Families shall be responsible for applying measures to prevent and control HIV/AIDS.</p>	<p>The UN recommends removing Art 5 (4) as it is not clear and puts the burden on families and may have unintended consequences in an already stigmatized context.</p>

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Article 6 State Policies on HIV/AIDS prevention and control	<p>1. The State shall provide investment to make sure a basic financial resource for HIV/AIDS prevention and control which is appropriate to the socio-economic condition of the country in each stage of development; the State budget is prioritized for the following activities:</p> <p>a) Procurement and free of charge provision of commodities for HIV prevention and control measures defined in the Law on HIV/AIDS Prevention and Control</p> <p>b) Medicines for opioid addiction substitution treatment;</p> <p>c) Ensure PLHIV have health insurance cards;</p> <p>d) Harm Reduction Intervention Activities</p> <p>d) HIV epidemiological surveillance;</p> <p>g) Other activities in accordance with annual budget conditions</p>	<p>See UN general comment on terminology The UN recommend reformulating b) as ‘Medicine for opioid dependence substitution treatment’ The UN recommend reformulating d) as ‘Prevention and Harm Reduction Interventions activities’</p> <p>The UN recommends that governments must assume greater responsibility for financing HIV, TB and viral hepatitis response. This includes ensuring sufficient investment in human rights programmes for law reform and access to justice⁹.</p> <p>Regarding, States’ investment on HIV response, the following publications from UNAIDS can be used as references:</p> <ul style="list-style-type: none"> • UNAIDS, WHO and UNDP Policy Brief on Using TRIPS Flexibilities to Improve Access to HIV Treatment (2011) ¹⁰ • UNAIDS Investing for Results. Result for people: A people-centred investment tool towards ending AIDS (2012) ¹¹ • UNAIDS Smart Investments (2013) ¹² • The Global Fund's Sustainability, Transition and Co-Financing Policy¹³ <p>More specifically for Viet Nam:</p> <ul style="list-style-type: none"> • MOH, Optimizing Viet Nam’s HIV response: an investment case¹⁴
Article 6 State Policies on HIV/AIDS	2. To support the domestic production of ARVs; to take measures to reduce prices of ARVs.	See UN general comment on terminology

⁹ See P.26, Recommendations from Global Commission on HIV and the Law, which is an independent body, established at the request of UNAIDS Programme Coordinating Board and supported by a Secretariat based at UNDP, *Risks, Rights and Health Supplement*, July 2018. Available at: <https://hivlawcommission.org/wp-content/uploads/2018/09/HIV-and-the-Law-supplement-FINAL.pdf>

¹⁰ UNAIDS, WHO and UNDP (2011). Policy Brief on Using TRIPS Flexibilities to Improve Access to HIV Treatment. Available at

https://www.unaids.org/sites/default/files/media_asset/JC2049_PolicyBrief_TRIPS_en_1.pdf

¹¹ UNAIDS (2012). Investing for Results. Result for people: A people-centred investment tool towards ending AIDS. Available at

http://files.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2012/JC2359_investing-for-results_en.pdf

¹² UNAIDS (2013). Smart Investment. Available at https://www.unaids.org/en/resources/documents/2013/20131130_smart-investments

¹³ https://www.theglobalfund.org/media/4221/bm35_04-sustainabilitytransitionandcofinancing_policy_en.pdf

¹⁴ MOH: Optimizing Viet Nam’s HIV response: an investment case, October 2014 available at: http://unaids.org.vn/wp-content/uploads/2016/09/VIET-NAM-INVESTMENT-CASE_-En_FINAL_Oct2014.pdf

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prevention and control (cont.)	<p>3. To encourage enterprises, agencies and peoples' armed force units to train and employ HIV-infected people and their family members or to invest resources in HIV/AIDS prevention and control.</p> <p>4. To mobilize the participation of the whole society and the financial and technical contributions of domestic and foreign agencies, organizations and individuals in HIV/AIDS prevention and control.</p> <p>5. To mobilize and coordinate resources for HIV/AIDS prevention and control suitable to national socio-economic conditions and HIV/AIDS epidemic situation in each period.</p> <p>6. To support scientific research, experts exchange and training, and technology transfer in HIV/AIDS prevention and control.</p> <p>7. To support the prevention and control of mother-to-child HIV transmission, the rearing of under-six-month babies born to HIV-infected mothers with substitute milk, and support AIDS patients in particularly difficult circumstances.</p> <p>8. To treat, care for and support people infected with HIV due to occupational accidents.</p>	<p>The UN recommends that governments and the private sector must adjust their policies and subventions for universal healthcare to focus on the rights of individuals to access the highest attainable standard of health. They must not derogate from individual rights provided in international human rights law by reference to economic classifications of national wealth that result in derogations from these human rights¹⁵.</p> <p>Governments must enact laws that provide an enabling environment for civil society organizations to operate, including those providing services to populations living with or affected by HIV, TB or viral hepatitis.</p> <p>Governments should also consider proactively use other areas of law and policy such as competition law, price control policy and procurement law which can help increase access to pharmaceutical products¹⁶, as well as the labour code for ensuring social protection measures and health services respond to the needs of women who take on caregiving roles in households with member(s) living with HIV.</p> <p>Clause 7: suggest replacing “Prevention and Control” by “Elimination” as in the context of the 2030 agenda, countries have committed to the “Elimination of Mother to Child Transmission of HIV” and especially since Vietnam has adopted a Triple Elimination of HIV, Syphilis ad Hep B Plan.</p>
Article 7. State management agencies in charge of HIV/AIDS	<p>1. The Government shall perform the unified state management of HIV/AIDS prevention and control.</p> <p>2. The Ministry of Health shall take responsibility before the Government for performing the state management of HIV/AIDS prevention and control.</p>	<p>No comment</p> <p>Useful references on integrating HIV services include:</p> <ol style="list-style-type: none"> 1. WHO, Transitioning to Integrated Financing of Priority Public Health Services in the Western Pacific, 2018¹⁷

¹⁵ See P.26, Recommendations from Global Commission on HIV and the Law, which is an independent body, established at the request of UNAIDS Programme Coordinating Board and supported by a Secretariat based at UNDP, *Risks, Rights and Health Supplement*, July 2018. Available at: <https://hivlawcommission.org/wp-content/uploads/2018/09/HIV-and-the-Law-supplement-FINAL.pdf>

¹⁶ See Part 6.3.4, P.105 from UNDP (2012) .Global Commission on HIV and the Law: HIV and the Law: Risks, rights and health. Available at <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights--health.html>

¹⁷ <https://iris.wpro.who.int/handle/10665.1/14223>

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prevention and control	<p>3. Ministries and ministerial-level agencies shall, within the scope of the respective tasks and powers, coordinate with the Ministry of Health in performing the state management of HIV/AIDS prevention and control.</p> <p>4. People’s Committees at all levels shall perform the state management of HIV/AIDS prevention and control with their respective localities.</p>	<p>2. USAID, Integrating the HIV Response at the Systems Level, 2018¹⁸</p>
Article 8 Prohibited acts	<p>1. Purposefully transmitting or causing the transmission of HIV to another person.</p> <p>2. Threatening to transmit HIV to another person.</p> <p>3. Stigmatizing and discriminating against HIV-infected people.</p> <p>4. Parents abandoning their HIV-infected minor children; guardians abandoning their HIV-infected wards.</p> <p>5. Making public the name, address and images of an HIV-infected person or disclosing information on a person’s HIV infection to another without consent of that person, except for the case specified in Article 30 of this Law.</p> <p>6. Falsely reporting HIV infection of a person not infected with HIV.</p> <p>7. Forcing HIV testing, except for the cases specified in Article 28 of this Law.</p> <p>8. Conducting transfusion of HIV-contaminated blood or blood products, transplantation of HIV-contaminated tissues or body parts into another person.</p>	<p>See UN general comment on terminology</p> <p>+ For Clause 12 of Article 8, see recommendations for Article 4 Clause 2 (b)</p> <p>The UN does not support criminalizing transmission of HIV. The criminalization of HIV (non-disclosure, exposure) transmission as stated in articles 8 (1) and (2) is problematic. The UN thus strongly recommends to delete these provisions as general criminal provisions would suffice.</p>

¹⁸ <https://www.hfgproject.org/integrating-the-hiv-response-at-the-systems-level-experience-of-four-countries-in-transition/>

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	<p>9. Refusing to provide medical examination or treatment to a patient for knowing or suspecting that such person is infected with HIV.</p> <p>10. Refusing to bury or cremate the corpses of dead persons for HIV/AIDS-related reasons.</p> <p>11. Taking advantage of HIV/AIDS prevention and control activities to make personal profits or to commit illegal acts.</p> <p>12. To provide an individual's inaccurate information while participating in HIV/AIDS prevention and control services.</p> <p>13. Other acts being prohibited by the laws</p>	
Article 9. Purposes and requirements of information, education and communication on HIV/AIDS prevention and control	<p>1. Information, education and communication on HIV/AIDS prevention and control shall aim at raising awareness, changing attitude and behavior, and fighting stigmatization and discrimination against HIV-infected people.</p> <p>2. The provision of information, education and communication on HIV/AIDS prevention and control shall meet the following requirements:</p> <p>a) Being accurate, clear, simple and practical;</p> <p>b) Being relevant to the targeted audiences, their education level, age, gender and traditions, culture, ethnic identity, religion, social morals, beliefs and customs;</p> <p>c) Being non-discriminatory, not affecting gender equality and not using negative information on or images of HIV-infected people.</p>	<p>See UN general comment on terminology</p> <p>The UN recommends under Clause 2 c) to replace ‘‘ being non-discriminatory, not affecting gender equality’ by ‘use non stigmatizing and non-discriminatory language, be respectful of and sensitive to gender issues including Sexual Orientation and Gender Identity and seek to promote gender equality’...</p>
Article 10. Contents of information, education and	<p>1. Causes of HIV infection, routes of HIV transmission, measures to prevent HIV transmission and measures to care for and treat HIV-infected people.</p>	<p>See UN general comment on terminology</p>

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communication on HIV/AIDS prevention and control	<p>2. Impacts of HIV/AIDS on human health and life and national socio-economic development.</p> <p>3. Rights and obligations of individuals, families and HIV-infected people in HIV/AIDS prevention and control.</p> <p>4. Testing, care, support and treatment methods and services designated for HIV-infected people.</p> <p>5. Responsibilities of agencies, organizations, people's armed force units and communities in HIV/AIDS prevention and control.</p> <p>6. Harm reduction intervention measures to prevent HIV transmission.</p> <p>7. Fighting of stigmatization and discrimination against HIV-infected people.</p> <p>8. The Party's line and guidelines, the State's policy and laws on HIV/AIDS prevention and control.</p>	
Article 11 The Targeted Audiences of HIV/AIDS Information, Education and Communication (IEC)	<p>1. Everyone has the right to access the HIV/AIDS information, education and communication.</p> <p>2. The priority of accessing to the HIV/AIDS information, education and communication will be given to the following target audiences:</p> <p>a) People living with HIV and their family members;</p> <p>b) People who use drugs (PWUDs);</p> <p>c) Sex workers (SWs);</p> <p>d) Men have sex with mem (MSM)</p>	<p>The UN support adding the group of Transgender people and suggest also adding 'people in closed settings' into the clause.</p> <p>Countries should offer Transgender people access to comprehensive and effective HIV and health information and services. A 2015 WHO/UNAIDS regional meeting called on member states to recognize, and collect data on, trans people as a population distinct from MSM (WHO WPRO and UNAIDS, 2015). This reflects WHO recommendations about the importance of setting and monitoring targets disaggregated for and by key population(s) (WHO 2014a; WHO 2015e, d).</p> <p>The UN recommends comprehensive HIV prevention, care and treatment services for prisoners. See ILO, UNDP, WHO, UNAIDS,</p>

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	<p>đ) Trans-people</p> <p>e) People who have sexually transmitted diseases;</p> <p>ê) Mobile population group</p> <p>g) Pregnant women</p> <p>h) People who are living in remote and isolated areas and the arears with particularly difficult socio-economic conditions;</p> <p>i) Those who are wives, husbands or sexual partners of the persons in the groups that are specified in b, c, d and đ of this Article.</p>	<p>HIV prevention, treatment and care in prisons and other closed settings: a comprehensive package of interventions, 2013.¹⁹</p> <p>In WHO Technical Brief for HIV and Young Transgender People (2015)²⁰ recommends implementation of supportive laws and policies to young Transgender people. Some relevant recommendations are abstracted below:</p> <ul style="list-style-type: none"> • Work for the legal recognition of an individual’s chosen gender identity • Enforce antidiscrimination and protective laws to eliminate stigma, social exclusion and violence against young transgender people based on actual or assumed HIV status, gender identity or sexual orientation • All acts of violence and harmful treatment – including harassment, discriminatory application of public-order laws and extortion – by law enforcement officials, should be monitored and reported, redress mechanisms established, and disciplinary measures taken. • Advocate for removal of censorship or public-order laws that interfere with health promotion efforts • Include relevant programming specific to the needs and rights of young transgender people in national health plans and policy, with linkages to other relevant plans and policies, such as those pertaining to the child protection and education sectors. <p>The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity²¹ (International Commission of Jurists, 2007) provide clear recommendations for applying existing international human rights</p>

¹⁹ https://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf

²⁰ See Considerations for law and policy reform, research and funding, P.20 from WHO (2015). A Technical Brief: HIV and Young Transgender People. Available at https://www.unaids.org/sites/default/files/media_asset/2015_young_transgender_en.pdf

²¹ Yogyakarta principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (2006 and 2017) were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others. Available at: <https://yogyakartaprinciples.org/>

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		<p>standards to the barriers faced by trans people. More information about Transgender people focused approaches for services delivery, programmes strategic information, research and funding can be found in the same technical brief and also UNAIDS Action Framework (2009)²², which can be taken into consideration for future national strategy planning in line with the newly amended laws.</p> <p>The Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific²³ reaffirmed their right to health requiring that health systems and services be available, accessible, acceptable, and of quality.</p> <p>The UN recommends using the terminology “People with sexually transmitted infections” rather than ‘people who have sexually transmitted diseases’ as many sexually transmitted infections (STIs) do not cause symptoms and are therefore not recognized by affected individuals as diseases.</p>
Article 12. Responsibility for information, education and communication on HIV/AIDS prevention and control	<p>1. Agencies, organizations and units shall, within the scope of their respective tasks and powers, be responsible for informing, educating and communicating knowledge of HIV/AIDS prevention and control.</p> <p>2. The Ministry of Health shall assume the prime responsibility for, and coordinate with other concerned agencies in, providing accurate and scientific information on HIV/AIDS.</p> <p>3. The Ministry of Culture and Information shall be responsible for directing the mass media to regularly disseminate information and conduct communication on HIV/AIDS prevention and</p>	<p>The UN recommends adding text to ensure the mass media provide correct and non-stigmatizing information and respect the confidentiality principles for communication related to PLHIV.</p> <p>The Global Commission on HIV and the Law (2018)²⁴ recommended that ‘Governments must establish legal protections to safeguard the privacy and confidentiality of social media users, digital health technologies, online healthcare records, electronic medical records and communications with healthcare providers. Governments must protect sensitive health information such as HIV status or hepatitis or tuberculosis infection against unjustifiable access and impose strong penalties on those that violate users’ rights’</p>

²² UNAIDS and UNDP (2009). UNAIDS Action Framework: Universal Access for Men who have Sex with Men and Transgender People. Available at <https://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/unaids-action-framework-universal-access-for-men-who-have-sex-with-men-and-transgender-people/MSM%20Framework%20with%20UNDP%20Logo.pdf>

²³ Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. 2015. *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities*. Washington, DC: Futures Group, Health Policy Project. Available at :https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/hiv_aids/rbap-hhd-2015-asia-pacific-trans-health-blueprint.pdf

²⁴ Global Commission on HIV and the Law, which is an independent body, established at the request of UNAIDS Programme Coordinating Board and supported by a Secretariat based at UNDP, *Risks, Rights and Health Supplement*, July 2018. Available at: <https://hivlawcommission.org/wp-content/uploads/2018/09/HIV-and-the-Law-supplement-FINAL.pdf>

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	<p>control, and integrate HIV/AIDS prevention and control programs into other information and communication programs.</p> <p>3. The Ministry of Information & Communication shall be responsible for directing the mass media to regularly disseminate information and conduct communication on HIV/AIDS prevention and control, and to integrate HIV/AIDS prevention and control programs into other information and communication programs</p> <p>4. The Ministry of Culture, Sport and Tourism shall be responsible to take the lead in coordinating with other concerned Ministries, Sectors and Agencies to provide directions and conduct the implementation of HIV harm reduction interventions through using condoms in the commercial entertainment places as well as to integrate HIV/AIDS communication into other relevant events”</p> <p>5. The Ministry of Labor, War Invalids and Social Affairs, the Ministry of Public Security and the Ministry of Defense shall, within the scope of their respective tasks and powers, assume the prime responsibility for, and coordinate with other concerned ministries and branches in, directing information, education and communication on HIV/AIDS prevention and control in medical treatment establishments, educational establishments, reformatories, social relief establishments, prisons and detention houses.</p> <p>6. People's Committee at all levels shall be responsible for organizing information, education and communication on HIV/AIDS prevention and control for their local people.</p> <p>7. The mass media shall have to give priority to the time and length of radio and television programs and the content, length and position of news and articles in printed, visual and electronic press on information, education and communication on HIV/AIDS control and prevention according to regulations of the Ministry of Culture and Information. Such information, education and</p>	

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	communication on HIV/AIDS prevention and control shall be conducted free-of-charge, except when it is arranged under contracts signed with the national target program on HIV/AIDS prevention and control or with financial supports of domestic or foreign organizations and individuals.	
Article 13. HIV/AIDS prevention and control in the family	<p>1. Families shall be responsible for conducting communication and education on HIV/AIDS prevention and control and proactively taking measures to prevent HIV transmission.</p> <p>2. Voluntary HIV testing shall be encouraged for couples before getting married or having a baby and for pregnant women.</p> <p>3. Families of HIV-infected people shall be responsible for rearing, caring and providing moral support to HIV-infected people so as to help them live in the integration with their families, community and society; and for collaborating with agencies, organizations and communities in HIV/AIDS prevention and control.</p>	<p>See UN general comment on terminology</p> <p>The UN recommends that countries must ensure social protection measures recognize and respond to the needs of HIV-positive women and women whose husbands have died of AIDs and that labour laws, social protection and health services respond to the needs of women who take on caregiving roles in HIV-affected households.</p> <p>The UN also recommends that government should ensure women legal capacity such as divorce, inheritance, child custody, property and employment rights, as well as reinforce the ban on gender-based violence to minimize risk of HIV infection²⁵.</p> <p>Prevention of gender-based violence in family is unneglectable for HIV prevention. With limited information and health services access, women and girls are often unable to negotiate safer sex or to avoid HIV related consequences of the sexual practices of their husbands or partners as a result of social and sexual subordination, economic dependence on a relationship and cultural attitudes.</p>
Article 14 HIV/AIDS Response at workplace	<p>1. The employer shall be responsible for:</p> <p>a) Organizing propaganda and education on HIV/AIDS prevention and control measures and anti-stigmatization and anti-discrimination against HIV-infected people in the agency, organization or people's armed force unit;</p> <p>(b) Arranging jobs that are suitable to the health and professional qualification of the employees living with HIV</p>	<p>The UN recommends removing Clause 1 b) as it is inappropriate and impossible to define "suitable job" and this clause maybe be interpreted differently and trigger unnecessary disclosure of HIV status or unequal distribution of tasks or job position in the workplace.</p> <p>In relation to HIV Testing, Privacy and Confidentiality, ILO Recommendation No. 200 (2010)²⁶ recommends that the results of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement. Workers, including</p>

²⁵ See Human Rights of Women , P.85-86 from OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). United Nations: Geneva, June 2006. Available at <https://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

²⁶ ILO (2010). R200 - HIV and AIDS Recommendation, 2010 (No. 200). Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:P12100_ILO_CODE:R200

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	<p>c) Facilitating employees' participation in HIV/AIDS prevention and control activities;</p> <p>d) Other responsibilities related to HIV/AIDS prevention and control according to the provisions of law.</p> <p>2. The employer shall not be allowed to:</p> <p>a) Terminate the labor or job contract of an employee or cause difficulties to this person in his/her work on the ground that such person is infected with HIV;</p> <p>b) Force a physically fit employee to change the job he/she has been doing on the ground that such person is infected with HIV;</p> <p>c) Refuse to give a salary raise to or to promote an employee, or fail to ensure his/her legitimate rights or benefits on the ground that such person is infected with HIV;</p> <p>d) Request a job applicant to have an HIV test or produce an HIV test result, or refuse to recruit a person on the ground that such person is infected with HIV, except for the case specified in Clause 3 Article 28 of this Law.</p>	<p>migrant workers, jobseekers and job applicants, should not be required to disclose HIV-related information about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the ILO code of practice on the protection of workers' personal data, 1997, and other relevant international data protection standards.</p> <p>In relation to Discrimination and Promotion of Equality of Opportunity and Treatment, Recommendation No. 200 provides that <u>real or perceived HIV status</u> should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities consistent with the provisions of the Discrimination (Employment and Occupation) Convention, 1958. Real or perceived HIV status should not be a cause for termination of employment.</p> <p>Recognizing that Clause 2 was included in the HIV law at a time when HIV treatment was very limited and that it is now widely available but still require, for most patient, monthly medical visits for drug prescription often requiring people to take absence from work, the UN guidance is that with regard to temporary absence from work because of illness or caregiving duties related to HIV or AIDS, ILO Termination of Employment Convention, 1982 recommend that they should be treated in the same way as absences for other health reasons.</p>
Article 14 HIV/AIDS Response at workplace (cont.)	Add Clause 3 3. The Government stipulates the financial mechanism to implement HIV/AIDS activities at workplace	ILO Code of Practice on HIV/AIDS and the World of Work ²⁷ underlines the general rights and responsibilities of the government and their component authorities., “Governments, where possible, in consultation with the social partners and other stakeholders, should estimate the financial implications of HIV/AIDS and seek to mobilize funding locally and internationally for their national AIDS strategic plans including, where relevant, for their social security systems” Also, for Conditionalities for Government Support, it says “When governments provide start-up funding and incentives for national and

²⁷ See Part 5.1 Governments and their Component Authorities, P.4-5. ILO (2001). Code of Practice on HIV/AIDS and the World of Work. Available at https://www.ilo.org/aids/Publications/WCMS_113783/lang--en/index.htm

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		international enterprises, they should require recipients to adhere to national laws and encourage recipients to adhere to this code, and policies or codes that give effect to the provisions of this code.”, which can be also considered as one of the finance measures for HIV response in workplace.
Article 15. HIV/AIDS prevention and control in education establishments within the national education system	<p>1. Education establishments shall be responsible for organizing education for students and learners on HIV/AIDS prevention and control integrated with sex and reproductive health education, and for conducting other HIV/AIDS prevention and control activities at their establishments.</p> <p>2. Education establishments shall not be allowed to:</p> <p>a) Refuse to admit a student or learner on the ground that such person is infected with HIV;</p> <p>b) Discipline or expel a student/learner on the ground that such person is infected with HIV;</p> <p>c) Separate, limit or forbid a student or learner from participating in the establishment’s activities or services on the ground that such person is infected with HIV;</p> <p>d) Request a student, learner or a candidate to have HIV tested or produce an HIV test result.</p>	<p>The UN recommends that governments should ensure that both children, adolescents, youth and adults living with HIV are not discriminatorily denied access to education, including access to schools, universities, scholarships, and international education or subject to restrictions because of their HIV status²⁸.</p> <p>There is no public health rationale for such measures since there is no risk of transmitting HIV casually in educational settings.</p> <p>As important, States should, through education, promote understanding, respect, tolerance and nondiscrimination in relation to persons living with HIV and promote comprehensive sexuality education as a critical prevention approach to reduce new HIV, STI infections and reduce unwanted pregnancies.</p>
Article 16. HIV/AIDS prevention and control among mobile population groups	<p>1. People's Committees of communes, wards or townships shall be responsible for organizing propaganda about HIV/AIDS prevention and control among new residents coming from other areas.</p> <p>2. Owners and managers of accommodation service business establishments, parking lots, bus and coach stations, ports and other tourist and cultural, social service establishments shall be</p>	

²⁸ See Right to Education , P.96-97 from OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). United Nations: Geneva, June 2006. Available at <https://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

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	<p>responsible for collaborating with local agencies in charge of HIV/AIDS prevention and control to conduct propaganda about HIV/AIDS prevention and control and to implement appropriate harm reduction intervention measures to prevent HIV/AIDS transmission for their service users.</p> <p>3. Heads of medical quarantine offices at border gates shall be responsible for organizing propaganda about HIV/AIDS prevention and control for people on entry, exit or in transit.</p> <p>4. Agencies and organizations engaged in sending Vietnamese people to work or study abroad shall be responsible for regularly organizing propaganda and education on HIV/AIDS prevention and control for every laborer and trainee.</p>	
Article 17. HIV/AIDS prevention and control in communities	<p>1. People's Committees of communes, wards or townships shall be responsible for:</p> <p>a) Organizing HIV/AIDS prevention and control activities in the communities, education on care and support for HIV-infected people, developing good traditions of the family, the clan, the home village and the cultural identity of Vietnamese people;</p> <p>b) Organizing care and support for HIV-infected people and their family members, facilitating HIV-infected people to integrate into the community and society;</p> <p>c) Promoting the role of heads of street population groups, heads of residential clusters, village patriarchs, heads of villages or hamlets, heads of Front working boards, heads of clans, religious dignitaries, elderly people and prestigious people in the community in the mobilization of the population in HIV/AIDS prevention and control;</p> <p>d) Formulating and developing models of cultured family and street population groups, residential clusters, hamlets and villages in connection with HIV/AIDS prevention and control;</p>	See UN general comment on terminology

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	<p>e) Organizing propaganda about anti-stigmatization and anti-discrimination against HIV-infected people.</p> <p>2. Street population groups, residential clusters, hamlets and villages shall be responsible for:</p> <p>a) Conducting propaganda about, mobilization and education for families in the area to participate in and implement regulations on HIV/AIDS prevention and control;</p> <p>b) Integrating HIV/AIDS prevention and control activities into public campaigns, sports, cultural and art events in the community and other social activities;</p> <p>c) Fighting stigmatization and discrimination against HIV-infected people and their family members.</p> <p>3. The State encourages relatives, neighbors and friends of HIV-infected people to provide moral support for, take care of, assist and facilitate HIV-infected people to integrate into the community and society.</p>	
Article 18 HIV/AIDS prevention and control in the compulsory educational establishments, reformatories, drug compulsory	<p>1. The managers of the compulsory educational establishments, reformatories, drug compulsory detoxification centers, drug voluntary detoxification establishments and social relief establishments and the detention and prison superintendents shall be responsible for organizing communication on HIV/AIDS management, care, counselling, testing, treatment for people living with HIV and performing HIV prevention at their establishments</p> <p>2. The Prime Minister, MOH and MOLISA shall stipulate the HIV management, care, counseling, testing and treatment of people</p>	<p>The UN (12 agencies) has jointly called on States to close compulsory drug detention and rehabilitation centres and implement voluntary, evidence-informed and rights-based health and social services in the community²⁹</p> <p>Joint UN agencies Comprehensive Package for Providing HIV Prevention, Treatment and Care in Prisons and Other Closed Settings³⁰ states the guiding principles: First, Prison health is a part of public health; Second, human rights approach and principle of equivalence of health in prisons. Key interventions should include drug dependence</p>

²⁹ UN Joint Statement calls for the closure of compulsory drug detention and rehabilitation centers (12 UN entities, 2012). Available at : http://files.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf

³⁰ UNODC, ILO, UNDP, WHO and UNAIDS (2013). HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions. United Nations: Austria, June, 2013. Available at https://www.who.int/hiv/pub/prisons/interventions_package/en/

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<p>detoxification centers, drug voluntary detoxification establishments, social relief establishments, detention and prisons</p>	<p>living with HIV and the HIV prevention at the establishments being specified in Clause 1 of this Article</p>	<p>treatment, opioid substitution therapy and needle and syringe programmes.</p> <p>Basic Right to Health-care Service Access (Rule 24), Quality Health-care Service (Rule 25), Confidentiality (Rule 26), Responsibility of Clinical Decision (Rule 27) for health services for people in closed settings are guaranteed and stated clearly in the UN Standard Minimum Rules for the Treatment of Prisoners also known as the “The Nelson Mandela rules”³¹.</p> <p>It is recommended to reduce incarceration of people who use drugs and people with mental health problems. Problems created by HIV infection, drug use and mental health issues in closed settings may be reduced if:</p> <ul style="list-style-type: none"> • Non-custodial alternatives to imprisonment are implemented in the community; • Drug laws are reformed to reduce incarceration for drug use and for possession of drugs for personal use; • Evidence-based services, including drug and mental health treatment, are accessible in the community. <p>The UN recommends that comprehensive harm reduction and HIV services be implemented in any closed settings³² — including needle-syringe programmes, opioid substitution therapy, naloxone and safe consumption rooms—on a scale that can be easily, voluntarily and confidentially accessed by all people who use drugs, including within prisons and other closed settings.</p> <p>All people likely to witness an overdose—such as health workers, first responders, prison staff, enforcement officials, family members and peers—should have access to naloxone to enable timely and effective</p>

³¹ United Nations General Assembly. United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela rules). A/RES/70/175. United Nations; 2015. Available at https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf

³² UNAIDS (2019). Health, rights and drugs — Harm reduction, decriminalization and zero discrimination for people who use drugs. Available at: https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		prevention of deaths from opioid overdose among people who use drugs.
Article 19 Participation of social organizations in HIV/AIDS prevention and control	The State shall facilitate religious, non-governmental and other organizations to establish humanitarian and charity establishments to care for and treat HIV-infected people and carry out other HIV/AIDS prevention and control activities	<p>See UN general comment on terminology</p> <p>The UN recommends that beyond HIV services, the clause should institutionalize the community full participation in HIV related policy dialogue, including planning, implementing and monitoring HIV and STIs testing, prevention and treatment activities and enabling environment including to reduce stigma and discrimination with sufficient state and other budget and resources support.</p> <p>States should ensure, through political and financial support, that community consultation occurs in all phases of HIV policy design, programme implementation and evaluation and that community organizations are enabled to carry out their activities, including in the fields of ethics, law and human rights, effectively.</p> <p>According to the principle of Greater Involvement of People Living with HIV (GIPA)³³, actions for governments are advised to:</p> <ul style="list-style-type: none"> • Support the creation and strengthening of organizations of people living with HIV in addressing infrastructure, governance, management, resource mobilization, accountability and staff skill building needs. • Strengthen the capacity of people living with HIV who volunteer for leadership in public speaking and communication skills, in organizing and conducting policy advocacy, dialogue and negotiation, in programme design, and in monitoring and evaluation at the international, regional, national and local levels. <p>Mechanisms for financing NGOs/CBOs can be stipulated, such as social contracting. See UNDP, Guidance Note for NGO Social Contracting Mechanisms, 2019.³⁴</p>

³³ UNAIDS (2007). Policy Brief: The Greater Involvement of People Living With HIV (GIPA). Available at: http://data.unaids.org/pub/briefingnote/2007/jc1299_policy_brief_gipa.pdf

³⁴ https://www.eurasia.undp.org/content/rbec/en/home/library/hiv_aids/guidance-for-ngo-social-contracting-mechanisms.html

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
		<p>Community Systems Strengthening (CSS) framework by Global Fund³⁵ states that there are six main components:</p> <ol style="list-style-type: none"> 1. Enabling environment and advocacy 2. Community networks, linkages, partnerships and coordination 3. Resources and capacity building 4. Community activities and services delivery 5. Organizational and leadership strengthening 6. Monitoring and evaluation and planning <p>Currently, more funding is available for service delivery than for other interventions (such as advocacy and research). UNAIDS Guidance for Partnerships with Civil Society, Including People Living with HIV and Key Population³⁶ stresses that it is crucial that all components of community response are resourced. Securing adequate financing for communities to contribute effectively can include social contracting, forward granting, resources mobilization and community led financing initiatives. Mobilization of sustainable state domestic funding is necessary to be stipulated in the legal framework in order to secure resources for active and long-term involvement of the communities in HIV responses.</p>
Article 20. Participation of HIV-infected people in HIV/AIDS prevention and control	<ol style="list-style-type: none"> 1. HIV-infected people shall be entitled to participate in HIV/AIDS prevention and control activities. 2. The State encourages and facilitates HIV-infected people to participate in: <ol style="list-style-type: none"> a) Peer education groups, clubs and other forms of activities organized by HIV-infected people in accordance with the provisions of law; 	<p>See UN general comment on terminology</p> <p>The UN strongly recommends guaranteeing the right of persons living with HIV to participation in political and cultural life. Realization of the right to take part in the conduct of public affairs, as well as in cultural life, is essential to guaranteeing participation by those most affected by HIV in the development and implementation of HIV-related policies and programmes³⁷.</p>

³⁵ The Global Fund (2014). Community Systems Strengthening Framework. Available at https://www.theglobalfund.org/media/6428/core_css_framework_en.pdf

³⁶ UNAIDS (2011). UNAIDS Guidance for Partnerships with Civil Society, Including People Living with HIV and Key Population. Available at https://www.unaids.org/sites/default/files/media_asset/JC2236_guidance_partnership_civilsociety_en_0.pdf

³⁷ See Right to Participation on Political and Cultural Life , P.99-100 from OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). United Nations: Geneva, June 2006. Available at <https://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	b) Propaganda activities and harm reduction intervention measures to prevent HIV/AIDS transmission; c) Activities of supporting and caring for HIV-infected people; d) Contributing ideas for the formulation of programs, policies and laws concerning HIV/AIDS; e) Other HIV/AIDS prevention and control activities.	More about people-center services can be found in the report of <u>Communities At The Centre</u> (UNAIDS, 2019)
Article 21 The Target Audiences and Harm Reduction Intervention Measures for HIV Prevention	1. The harm reduction intervention measures for HIV prevention include: a) Distribution of condoms and instruction for condom use; b) Distribution of clean needles and syringes and instructions for use; c) Opioid addiction substitution therapy and other drug dependent treatment. d) HIV pre-exposure prophylaxis (PrEP) 2. Harm reduction intervention measures to prevent HIV/AIDS transmission shall be implemented among target groups with risky behaviors through programs and projects suitable to socio-economic conditions.	See UN general comment on terminology The UN recommends a comprehensive package of services be included. UNAIDS recommend ³⁸ that Harm Reduction Package include needle and syringe programmes; opioid substitution therapy; HIV testing and counselling; HIV care and antiretroviral therapy for people who inject drugs; prevention of sexual transmission; outreach (information, education and communication for people who inject drugs and their sexual partners); viral hepatitis diagnosis, treatment and vaccination (where applicable); and tuberculosis prevention, diagnosis and treatment. UNAIDS recommendations on Health, Rights and Drugs (2019) ³⁹ suggest fully implement comprehensive harm reduction and HIV services—including needle–syringe programmes, opioid substitution therapy, naloxone and safe consumption rooms—on a scale that can be easily, voluntarily and confidentially accessed by all people who use drugs, including within prisons and other closed settings. Enabling legal environment for communities and for PWUD shall be developed so they can access to noncoercive and evidence-informed harm reduction services without fear of intimidation, threat, harassment or reprisal.

³⁸ UNAIDS (2015). UNAIDS Terminology Guidelines. Available at https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf

³⁹ See Recommendations, P.6-7 from UNAIDS (2019). Health, Rights and Drugs: Harm Reduction, Decriminalization and Zero Discrimination for People Who Use Drugs. Available at https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		As per new UN global guidelines and Viet Nam's adoption in 2019 of new Guidelines of Intervention for Amphetamine-type Stimulant Use, the package of interventions should also be included under this article.
Article 21 The Target Audiences and Harm Reduction Intervention Measures for HIV Prevention (cont.)	<p>3. The drug addicted people who are on treatment that follows the harm reduction intervention measures for HIV prevention as stipulated in (c) of Clause 1 of this Article shall not be made records for requesting to apply education measures at the commune/ward level or shall not be prepared the records for applying the measure of being referred to the drug compulsory centers ; except for the cases that do not conform to clinical procedures on drug addiction treatment ; or to have acts of violating assets of an individual, organizations, health, dignity of citizens and foreigners ; violations of social order and safety.</p> <p>4. The Government stipulates specific implementation of the harm reduction intervention measure for HIV prevention.</p>	<p>See UN general comment on terminology</p> <p>The UN strongly recommends ending all compulsory detoxification centers and criminalization of drug use, stated firmly in Joint Statement by United Nations in 2012⁴⁰. Compulsory detention has long been confirmed by world-wide literature data as an ineffective measure in addressing drug abuse and associated problems from all health, socioeconomic and security angles. All people who suffer from drug related disorders including dependence, communicable diseases, mental health issues and other morbidities should have full access to prevention, treatment and care services that are aligned with internationally acceptable options on a voluntary basis.</p> <p>UNAIDS recommendation on Health, Rights and Drugs (2019)⁴¹ states that an enabling legal environment for communities and PWUD shall be provided to free them from stigma and fear. The law shall protect and promote the human rights of PWUD by treating them with dignity, providing equal access to health and social services, and by decriminalizing drugs.</p> <p>Where drugs remain illegal, the state should adapt and reform laws to ensure that people who use drugs have access to justice (including legal services) and do not face punitive or coercive sanctions for personal use, and that policing measures encourage people to access harm reduction and health services voluntarily. The principle of proportionality should be applied for drug-related crimes, and put in</p>

⁴⁰ UNAIDS (2012). *Joint UN Statement calls for the closure of compulsory drug detention and rehabilitation centers*. Available at :

http://files.unaids.org/en/media/unaids/contentassets/documents/document/2012/JC2310_Joint%20Statement6March12FINAL_en.pdf

⁴¹ See Recommendation, P.7 from UNAIDS (2019). *Health, rights and drugs — Harm reduction, decriminalization and zero discrimination for people who use drugs*. Available at:

https://www.unaids.org/sites/default/files/media_asset/JC2954_UNAIDS_drugs_report_2019_en.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		<p>place public health-based alternatives to incarceration, administrative penalties and other forms of corrective action.</p> <p>UNAIDS and UNDP International Guidelines on Human Rights and Drug policy (2012)⁴² underlines that the state should guarantee the availability and accessibility of harm reduction services by excluding drug use from the scope of criminal offences, or other punitive laws, policies, or practices, also ensure that criminal conspiracy laws do not capture people using drugs together for this purpose, together with the carrying and distribution of equipment, goods, and information intended for preventing or reducing the harms associated with drug use.</p> <p>More international guidelines related to Drug Use and HIV control can refer to “Recommendations related to People Who Use Drugs”⁴³ in Global Commission on HIV and the Law (2012).</p>
Article 22. Counseling on HIV/AIDS prevention and control	<ol style="list-style-type: none"> 1. Everyone shall have the right to access HIV/AIDS prevention and control counseling services. 2. Medical establishments shall be responsible for providing counseling on HIV/AIDS prevention and control in accordance with regulations of the Minister of Health. 3. The State encourages organizations and individuals to set up HIV/AIDS prevention and control counseling organizations. The Minister of Health shall issue regulations on conditions for the establishment of HIV/AIDS prevention and control organizations and the contents of their operation. 4. Pre- and post-test counseling on HIV/AIDS prevention and control shall be provided in accordance with the provisions of Article 26 of this Law. 	

⁴² See 1.1 Harm Reduction, P. 8 from UNAIDS and UNDP (2019). *International Guidelines on Human Rights and Drug Policy*. Available at https://www.undp.org/content/dam/undp/library/HIV-AIDS/HRDP%20Guidelines%202019_FINAL.PDF.

⁴³ See Part 3.1: People Who Use Drugs, P. 29-35 from UNDP (2012). *Global Commission on HIV and the Law: HIV and the Law: Risks, rights and health*. Available at <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights---health.html>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
Article 23. Integration of HIV/AIDS prevention and control activities into socio-economic development programs	<ol style="list-style-type: none"> 1. HIV/AIDS prevention and control shall be one of the prioritized objectives of socio-economic development programs. 2. The Government shall direct ministries, branches and local administrations to integrate HIV/AIDS prevention and control activities into hunger eradication and poverty alleviation programs, vocational training and employment generation programs, tuberculosis prevention and control, reproductive health, sexually transmitted infections prevention and control, and other socio-economic development programs. 	<p>The UN recommends adding ‘social protection’ under clause 2</p> <p>Useful references on integrating HIV services include:</p> <ol style="list-style-type: none"> 1. WHO, Transitioning to Integrated Financing of Priority Public Health Services in the Western Pacific, 2018⁴⁴ 2. USAID, Integrating the HIV Response at the Systems Level, 2018⁴⁵
Article 24. HIV/AIDS epidemiological surveillance	<ol style="list-style-type: none"> 1. HIV/AIDS epidemiological surveillance includes HIV testing and HIV sentinel surveillance, aiming to identify HIV prevalence rates and HIV/AIDS infection distribution in population groups, to monitor temporal trends of HIV prevalence, to identify groups at high risk of HIV infection in order to identify changes in forms of HIV transmission and predict the HIV infection situation. 2. The Minister of Health shall issue detailed regulations on procedures and methods of HIV/AIDS epidemiological surveillance. 	
Article 25. HIV/AIDS sentinel surveillance	<ol style="list-style-type: none"> 1. When conducting HIV/AIDS sentinel surveillance, competent medical establishments may conduct HIV tests of target groups according to regulations of the Minister of Health. 2. In HIV/AIDS sentinel surveillance, HIV tests must be conducted by anonymous HIV-testing method. 3. HIV-testing staff and establishments shall be responsible for keeping confidential test results and only using test results for HIV/AIDS epidemiological surveillance and scientific research purposes. 	

⁴⁴ <https://iris.wpro.who.int/handle/10665.1/14223>

⁴⁵ <https://www.hfgproject.org/integrating-the-hiv-response-at-the-systems-level-experience-of-four-countries-in-transition/>

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Article 26. Pre-test and post-test HIV counseling	<ol style="list-style-type: none"> 1. Counseling shall be provided to all cases of HIV testing before and after testing. 2. HIV-testing establishments shall be responsible for organizing pre-test and post-test counseling. 3. Only staffs who have been trained in counseling on HIV/AIDS prevention and control shall be allowed to provide pre-test and post-test counseling. 	The UN recommends adding ‘Voluntary and confidential’, before ‘Counselling’, in clause 1
Article 27 Voluntary HIV Testing	<ol style="list-style-type: none"> 1. HIV testing shall only be conducted on the basis of voluntariness of persons to be tested. 2. Persons who voluntarily seek HIV testing must be full 16 years or older and have full civil act capacity 3. HIV testing of persons less than 16 years old or persons who have lost their civil act capacity may only be conducted when there is written consent of his/her parent or guardians 	<p>Regarding HIV testing and counselling (HTC) for adolescents, the UN recommends that, in all epidemic settings, voluntary and confidential HTC is accessible and acceptable HTC must be available to adolescents and provided in ways that do not put them at risk.</p> <p>The state is encouraged to reduce age-related barriers to access and uptake of HTC and to linkages to prevention, treatment and care following testing as per WHO Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations (2016)⁴⁶. Young people should be able to obtain HTC without parental or guardian consent or presence. Providing a comprehensive package of Interventions⁴⁷, the legislation should consider young people’s rights to confidentiality and to consent to testing and treatment, independent of their parents. The legislation should also address the circumstances in which consent may be provided without the consent of a parent or guardian.</p> <p>Sexually active young people should be provided confidential and independent access to health services so as to protect themselves from HIV, stated in UNDP Global Commission on HIV and the Law (2012)⁴⁸. Therefore, countries must reform laws to ensure that the age of</p>

⁴⁶ See HIV Testing and Counselling: Adolescents from Key Populations, P.53 from WHO (2016). Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations. Available at <https://www.who.int/hiv/pub/guidelines/keypopulations-2016/en/>

⁴⁷ UNODC, ILO, UNDP, WHO and UNAIDS (2013). Policy Brief: HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions. United Nations: Austria, June, 2013. Available at https://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf

⁴⁸ See Chapter 5: Their Whole Lives to Live: Children and Youth, P. 70-75 from UNDP (2012). Global Commission on HIV and the Law: HIV and the Law: Risks, rights and health. Available at <https://www.undp.org/content/undp/en/home/librarypage/hiv-aids/hiv-and-the-law--risks--rights--health.html>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		consent for autonomous access to HIV and sexual and reproductive health services is equal to or lower than the age of consent for sexual relations. Young people who use drugs must also have legal and safe access to HIV and health services.
Article 28 Compulsory HIV testing	<p>1. Compulsory HIV testing shall be conducted in the case that there is an official request for judicial appraisal or a decision of an investigative body, a people's procuracy or a people's court.</p> <p>2. The Minister of Health shall issue regulations on compulsory HIV testing in certain necessary cases for diagnosis and treatment purposes.</p> <p>3. The Government shall issue regulations on compulsory HIV testing in certain necessary cases for recruitment of occupations and professions.</p> <p>4. Cost of HIV test in the cases mentioned in Clause 1 of this Article shall be covered with the state budget.</p>	<p>The UN strongly recommends that HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants⁴⁹. ILO HIV and AIDS Recommendation No.200 (2010) stipulates that the result of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement. Testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent.</p> <p>The ILO Brief Note (2016)⁵⁰ reaffirms that: <i>Disadvantages of Imposing Mandatory Testing</i></p> <ul style="list-style-type: none"> • There is no evidence that mandatory HIV testing during recruitment can prevent the spread of the disease or help people living with HIV/AIDS get access to healthcare and other HIV-related services. • Mandatory testing for employment, usually accompanied by a lack of adherence to confidentiality or counselling, is a direct violation of an individual's rights to dignity privacy, work and freedom from discrimination. • People living with HIV usually live with the HIV virus for many years without experiencing symptoms or posing any threat of transmission to their peers. Mandatory testing and screening would lead to the loss of qualified members of the labour force and an increase in unemployment <p><i>Principles of HIV Testing in Employment</i></p> <ul style="list-style-type: none"> • HIV testing should be voluntary, encouraged and supported.

⁴⁹ ILO (2010). R200 - HIV and AIDS Recommendation No. 200, 2010. Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R200

⁵⁰ ILO (2016). on From Mandatory HIV Testing for Access to Work to Voluntary Testing and Counselling at Work Brief Note. Beijing; International Labor Organization, August 2016. Available at https://www.ilo.org/beijing/what-we-do/publications/WCMS_532909/lang--en/index.htm

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		<ul style="list-style-type: none"> • HIV screening for the purpose of employment decisions is not allowed. • Workers should enjoy the protection of their privacy, including confidentiality relating to HIV/AIDS. <p><i>Recommendation on the elimination of mandatory HIV testing</i></p> <ul style="list-style-type: none"> • Revise relevant medical standards for recruitment in the public service that contain discriminative clauses, especially mandatory HIV testing • Establish social dialogue between or tripartite partners as well as other relevant government ministries, to disseminate awareness of HIV/AIDS as a workplace issue and compare Viet Nam’s experience with international practices • Develop specific laws banning direct and indirect discrimination in employment and occupation <p>UNAIDS recommendation about AIDS and Military (1998)⁵¹ also sheds light on acceptance and care of HIV-positive military staff. HIV-positive individuals should be given every opportunity to carry out the tasks for which they have been trained and which they are still fit to perform. Finally, armed forces should prepare to provide care and support for those who live with HIV and AIDS, including continuity of care for them and their families as they return to civilian life. This may include provision for home-care services and support of widows and orphans in places where civilian social services are inadequate.</p>
Article 29 Notification of HIV positive testing results	<p>1. Only the HIV-testing labs which have been recognized by the appropriately authorized agencies to be eligible for confirming the HIV positive cases shall have competence to confirm the HIV positive cases and take responsibility before law for the test results.</p> <p>2. The Government shall stipulate specific conditions, procedures and sequences to recognize the HIV testing labs that are eligible for confirming the HIV positive cases</p>	The UN highly recommended countries to require that all testing services performing HIV testing for surveillance purposes at all levels (e.g. national reference laboratory, hospital laboratories, private laboratories, and testing services outside the traditional laboratory setting) operate within the principles of Quality Assessments. There is more detailed information about Laboratory Quality Assurance and Safety (Chapter 6) in Guidelines for Using HIV Testing Technologies

⁵¹ UNAIDS (1998). Aids and the Military. Geneva; UNAIDS, May 1998. Available at http://data.unaids.org/publications/irc-pub05/militarypv_en.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		in Surveillance: Selection, Evaluation, and Implementation from WHO (2009) ⁵² .
Article 30 Notification of HIV positive testing results	<p>1. Positive HIV test results shall only be informed to the following persons:</p> <p>a) Tested persons;</p> <p>b) Spouses of tested persons, parents or guardians of tested persons who are minor or have lost their civil act capacity;</p> <p>c) Staffs who are assigned to directly provide counseling and inform HIV positive test results to tested persons;</p> <p>d) Persons who are responsible for providing care and treatment for HIV-infected people at medical establishments, including heads of medical departments or wards or chief convalescence workers at the establishments where the HIV-infected people are being treated, health workers in medical establishments who are assigned to directly provide treatment and care for HIV-infected people;</p>	<p>See UN general comment on terminology</p> <p>Regarding the notification HIV status of adolescents, same as the aforementioned recommendations for Article 27 on young people's rights for autonomous access to HTC, the state should also include consideration of young people's rights to confidentiality, independent of their parents. Legislation can include the age of consent of HIV status exposure to parents or guardians in order to provide legal protection for young people's privacy.</p> <p>WHO guidance on HIV and Adolescents (2013)⁵³ raises legal considerations regarding adolescents' disclosure of HIV status. In context that non-disclosure of HIV status is criminalized or notification to parents or guardians is compulsory, young people perceive that the safest legal defence is ignorance of one's own serostatus, consequently, young people are deterred to access HTC in order to avoid legal repercussion or accusation from family members.</p> <p>Therefore, adolescents should be counselled about the potential benefits and risks of disclosure of their HIV status and empowered and supported to determine if, when, how and to whom to disclose, to assure the young people with protection from discrimination and other adverse consequence following disclosure.</p> <p>The UN recommends that disclosure be voluntary. See notes on Article 4, above.</p> <p>Art 30 (d) and (e) are overly broad. There is no medical necessity for all these people to be informed about one's HIV test results.</p>

⁵² See Part 6.0: Laboratory Quality Assurance and Safety, P.30-33 from WHO (2009). Guidelines for Using HIV Testing Technologies in Surveillance: Selection, Evaluation, and Implementation. Available at https://www.who.int/hiv/pub/surveillance/hiv_testing_technologies/en/

⁵³ World Health Organization (2013). HIV and Adolescents: HIV Testing and Counselling, Treatment and Care for Adolescents Living with HIV. Geneva: WHO, 2013. Available at http://www.youngpeopleandhiv.org/files/HIV_Testing_guideline.pdf

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		<p>Practices of other countries⁵⁴:</p> <p>In the Philippines Republic Act No. 11166, Section 46, If the patient is below fifteen (15) years old, an orphan, or is mentally incapacitated, the result may be to disclose to either of the patient's parents, legal guardian, or a duly assigned licensed social worker or health worker, whichever is applicable</p> <p>In Fiji HIV/AIDS Decree 2011, it provides that a person under 18 years can consent to an HIV test (without involvement of parent or guardian) if the person is, in the opinion of the person providing the pre-test information, capable of understanding the meaning and consequences of an HIV test.</p> <p>In Papua New Guinea, HIV/AIDS Management and Prevention Act, it provides that consent to an HIV test may be given by a parent or guardian only if the person is aged 12 years or less and is not capable of understanding the meaning and consequences of an HIV test.</p>
Article 30 Notification of HIV positive testing results (cont.)	<p>e) Heads, health workers and healthcare workers assigned to directly take care of HIV-infected people in compulsory detoxification establishments, compulsory education establishments, reformatories, social protection establishments, prisons, detention camps;</p> <p>f) Heads and authorized persons of agencies defined Clause 1, Article 28 of this Law.</p> <p>2. Subjects having access to information on HIV-infected people</p> <p>a) Subjects defined in Clause 1 of this Article.</p>	<p>See UN general comment on terminology</p> <p>OHCHR and UNAIDS and International Guidelines on HIV/AIDS and Human Rights (2006)⁵⁵ state the legislation guideline for confidentiality protection.</p> <p>Guideline 3: Public Health Legislation</p> <ul style="list-style-type: none"> Public health legislation should ensure that HIV and AIDS cases reported to public health authorities for epidemiological purposes are subject to strict rules of data protection and confidentiality. Public health legislation should ensure that information relative to the HIV status of an individual be protected from unauthorized collection, use or disclosure in the healthcare and

⁵⁴ See Law Reform: Rights of Young People, P.43 from UNDP (2013). Legal protections against HIV-related human rights violations: Experiences and lessons learned from national HIV laws in Asia and the Pacific. Bangkok, UNDP, 2013. Available at <https://reliefweb.int/sites/reliefweb.int/files/resources/HIV-2013-legal-protections-against-hiv-related-human-rights-violations.pdf>

⁵⁵ OHCHR and UNAIDS and (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). Available at <https://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf>

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	<p>b) The head, assessment, payment and information management agency of the health insurance agency where the HIV-infected patient pays health insurance</p> <p>c) The head of the head of each HIV / AIDS prevention and control agency at all levels, HIV/AIDS health workers are tasked to monitor the HIV / AIDS epidemic and to care for and support HIV-infected people in the Community.</p> <p>3. Persons defined in Clause 2 of this Article shall keep confidential information of HIV-infected people, except for the case specified at Point a, Clause 1 of this Article.</p> <p>4. The Minister of Health shall specify the responsibilities, order of notification of HIV-positive test results and access to information on HIV-infected people. ”</p>	<p>other settings and that the use of HIV-related information requires informed consent</p> <ul style="list-style-type: none"> Public health legislation should require that health-care workers undergo a minimum of ethics and/or human rights training, including HIV-related issues such as confidentiality and the duty to provide treatment. <p>Guideline 5: Anti-Discrimination and Protective Law</p> <ul style="list-style-type: none"> General confidentiality and privacy laws should be enacted. HIV-related information on individuals should be included within definitions of personal/medical data subject to protection and should prohibit the unauthorized use and/ or publication of HIV-related information on individuals. Privacy legislation should enable an individual to see his or her own records and to request amendments to ensure that such information is accurate, relevant, complete and up to date. <p>Guideline 10: Development of Public and Private Sector Standards and Mechanisms for Implementing These Standards</p> <ul style="list-style-type: none"> States should require or encourage professional groups, particularly health-care professionals, and other private sector industries (e.g. law, insurance) to develop and enforce their own codes of conduct addressing human rights issues in the context of HIV. Relevant issues would include confidentiality, informed consent to testing, the duty to treat, the duty to ensure safe workplaces, reducing vulnerability and discrimination and practical remedies for breaches/misconduct. <p>In WHO and UNAIDS on Guidance on Provider-initiated HIV Testing and Counselling in Health Facilities (2007)⁵⁶, it provides “Supportive social, policy and legal framework” and includes:</p> <ul style="list-style-type: none"> Training must emphasize that health care providers have a responsibility to maintain the confidentiality of HIV test results.

⁵⁶WHO and UNAIDS (2007). Guidance on Provider-initiated HIV Testing and Counselling in Health Facilities. Available at <https://www.who.int/hiv/pub/vct/pitc2007/en/>

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		<ul style="list-style-type: none"> • Medical records, including test results, should only be shared with health care professionals who have a direct role in the ongoing management of the patient. These principles apply to both verbal and written communications. <p>In UNAIDS on Guidance note: Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations (2013)⁵⁷:</p> <ul style="list-style-type: none"> • Internal referral systems should also be established to allow for the review of decisions to investigate or prosecute HIV cases. Because of their critical role in investigations, police should also be provided with clear protocols for dealing with complaints, arrests, confidentiality and other sensitive issues relating to HIV <p>Practices of other countries: The Philippines <i>Confidentiality Measures Done By Philippine Health Insurance Corporation (PhilHealth)</i> ⁵⁸:</p> <ul style="list-style-type: none"> • To ensure patient's rights to confidentiality, all claims for the OHAT Package shall be enclosed in concealed envelope, marked "CONFIDENTIAL" and submitted to the PhilHealth Regional Office • Employees who will be directly involved in the processing of claims for HN /AIDS shall sign a confidentiality agreement to further ensure patients' right to confidentiality. <p><i>The Philippines Republic Act No. 11166</i>⁵⁹, Section 45:</p> <ul style="list-style-type: none"> • It lists exceptions to the mandate of confidentiality: Reportorial requirements of the national active passive surveillance system of the DOH; When informing other health workers directly

⁵⁷ UNAIDS on Guidance note: Ending overly broad criminalization of HIV non-disclosure, exposure and transmission: critical scientific, medical and legal considerations Available at https://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf

⁵⁸Philippine Health Insurance Corporation (2015).Philhealth's Commitment To Ensure The Security Of Members' And Their Dependents' Personal Information . Accessed from <https://www.philhealth.gov.ph/circulars/2015/circ029-2015.pdf>

⁵⁹ Republic of the Philippines (2018). *Republic Act No. 11166*. Manila: Congress of the Philippines, 2018

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		<p>involved in the treatment or care of a PLHIV; When responding to a subpoena duces tecum and subpoena ad testificandum issued by a court with jurisdiction over a legal proceeding where the main issue is the HIV status of an individual</p> <p>US, New York State <i>New York State HIV/AIDS Confidentiality Law: Article 27-F, Public Health Law (§§ 2780-2787) & Title III of Article 21, Public Health Law (§§ 2130-2139)</i>⁶⁰, Section 63.6 “Confidentiality in Reimbursement and Insurance”:</p> <ul style="list-style-type: none"> • (9)-(10) regulates the authorization of disclosure to third party reimbursement agents, if the insurance institution acquire a dated and written authorization that health care providers, health facilities insurance institutions and other persons are authorized to disclose information of the protect individual, which has to be signed by (i) the protected individual; (ii) person authorized if the protected individual is deceased. <p><i>Section 63.8 “Health Care Provider and Health Facility Policy and Procedures</i></p> <ul style="list-style-type: none"> • (c) Before being allowed access to any HIV-related information about clients, all employees [and specify others as appropriate, e.g., interns, students, volunteers] will receive training on the New York State HIV confidentiality law and the HIV Confidentiality Policies and Procedures of this agency.
Article 31. Safe blood transfusion	<ol style="list-style-type: none"> 1. All blood bags and blood products must be tested for HIV before use, even in emergency cases. 2. HIV screening must be conducted using registered diagnostic bio-products permitted by the Minister of Health for circulation. 3. The Minister of Health shall issue detailed regulations on HIV/AIDS screening, filing of test results, and storage and 	

⁶⁰ New York Codes, Rules and Regulations (2017). *Part 63- HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information*. Accessed from <https://regs.health.ny.gov/volume-1a-title-10/1878016220/part-63-hivaids-testing-reporting-and-confidentiality-hiv-related>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	disposal of HIV-infected blood samples, blood bags, blood products and pathological materials.	
Article 32. Prevention and control of HIV transmission in medical establishments	<p>1. Medical establishments shall be responsible for complying with the Health Ministry’s regulations on disinfection, sterilization and waste disposal when performing operations, surgical procedures, injection and acupuncture so as to prevent HIV transmission.</p> <p>2. The Minister of Health shall issue detailed regulations on regimes of disinfection, sterilization and waste disposal related to HIV/AIDS.</p>	
Article 33. Prevention and control of HIV transmission in social service establishments	Social service establishments that use percutaneous (skin and mucous membrane) injection devices and other devices with risks of causing bleeding in service users shall be responsible for complying with the Health Minister’s regulations on disinfection and sterilization.	
Article 34. Prevention and control of sexually transmitted diseases	<p>1. HIV/AIDS prevention and control shall be conducted in combination with prevention and control of sexually transmitted diseases.</p> <p>2. The Minister of Health shall issue detailed regulations on monitoring of sexually transmitted diseases and the responsibilities of medical establishments for collaboration in controlling HIV transmission through sexual routes.</p>	
Article 35 Prevention and control of mother-to-child HIV transmission	<p>Change Clause 1 from:</p> <p>1. Pregnant women who voluntarily have HIV tested shall be provided free HIV test</p> <p>To either of these 2 options:</p> <p>Option 1: Pregnant women should be encouraged to get tested for HIV (not preferred)</p>	<p>See UN general comment on terminology</p> <p>The UN recommends that all pregnant women be offered and be encouraged to get tested for HIV, Syphilis and Hepatitis B as per Viet Nam’s adopted Triple Plan for the Elimination of the HIV, Syphilis and Hepatitis B. The UN recommends that when a woman does not have or, for any reason, cannot use Social Health Insurance to cover the test and treatment, the State covers the related costs and treatment.</p>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	<p>Option 2: Pregnant women who voluntarily have HIV tested, the cost of the test shall be either covered by the state or the health insurance</p> <p>2. HIV-infected women shall be facilitated to have access to measures to prevent mother-to-child HIV transmission.</p> <p>3. HIV-infected women who are pregnant or breastfeeding shall be provided with counseling on HIV/AIDS prevention and control.</p> <p>4. Medical establishments shall be responsible for conducting supervision and providing treatment for HIV-infected pregnant women and taking measures to reduce mother-to-child HIV transmission.</p> <p>5. The Minister of Health shall issue detailed regulations on the care for and treatment of HIV-infected women during pregnancy and delivery, and on measures to reduce mother-to-child HIV transmission.</p>	<p>UNICEF and WHO guidance on MTCT (2007)⁶¹ recommends to:</p> <ul style="list-style-type: none"> • Provide HIV testing and counselling to women as a routine component of the package of care in all antenatal, childbirth, postpartum and paediatric care settings. • Develop supportive social, policy and legal frameworks and competencies to support the implementation of provider-initiated HIV testing and counselling for all women attending antenatal care, childbirth and postpartum health care services and their infants and children. This should include developing and/or strengthening community or social services and efforts to decrease the incidence and risk of social stigma, discrimination and violence against women. <p>The Global Commission on HIV and the Law (2012)⁶² suggests countries to remove legal barriers that impede women’s access to sexual and reproductive health services. The state must ensure Health care workers provide women with full information on sexual and reproductive options and ensure that women can provide informed consent in all matters relating to their health. The law must ensure access to safe contraception and support women in deciding freely whether and when to have children, including the number, spacing and methods of their children’s births.</p> <p>WHO and UNAIDS Guidance on Provider-initiated HIV Testing and Counselling in Health Facilities (2007)⁶³ states that HIV testing and counselling should be recommended to all women of unknown HIV status in labour or, as soon as possible after delivery in the postpartum period, preferably early in this period, to enable them to receive HIV-related services for themselves and the infant, including infant feeding counselling and support, and diagnosis of the infant, if applicable.</p>

⁶¹ See Institutionalizing Provider-initiated HIV Testing and Counselling in Maternal, Newborn and Child Health Settings, P.20 from UNICEF and WHO (2007). Guidance on Global Scale-Up of the Prevention of Mother-To-Child Transmission of HIV. Available at https://www.unicef.org/aids/files/PMTCT_enWEBNov26.pdf

⁶² Global Commission on HIV and the Law (2012), *HIV and the Law: Risks, rights and health*, available at: <https://hivlawcommission.org/>

⁶³ WHO and UNAIDS (2007). Guidance on Provider-initiated HIV Testing and Counselling in Health Facilities. Available at <https://www.who.int/hiv/pub/vct/pitc2007/en/>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		<p>OHCHR and UNAIDS International Guidelines on HIV/AIDS and Human Rights (2006)⁶⁴ suggest that most HIV programmes targeting women mostly emphasize coercive measures towards transmitting HIV to the foetus, such as mandatory pre- and post-natal testing followed by coerced abortion or sterilization. Yet, empowering to prevent perinatal transmission by prenatal prevention education and an available choice of health services and overlook the care needs of women cannot be neglected as well.</p> <p>Practices of other countries:</p> <p><u>Malaysia</u> <i>Malaysia Law Antenatal HIV screening in 1998: Fees Act 1951, Act 209</i>⁶⁵</p> <ul style="list-style-type: none"> • all fees for antenatal and postnatal care are exempted in government facilities <p><u>Singapore</u> <i>Opt-Out Antenatal HIV Screening</i>⁶⁶</p> <ul style="list-style-type: none"> • All medical practitioners should implement HIV screening using the opt-out approach as a standard of care for all antenatal patients • Doctors were asked to make appropriate notation of the counselling process, as well as patients’ decision not to undergo testing • Antenatal patients who had already undergone HIV testing elsewhere earlier in the course of their pregnancy were exempted from repeat testing but doctors were to document the date and place of testing as well as the test results. <p><u>Thailand:</u></p>

⁶⁴ OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). United Nations: Geneva, June 2006. Available at <https://www.ohchr.org/EN/Issues/HIV/Pages/InternationalGuidelines.aspx>

⁶⁵ WHO (2018). Malaysia eliminates mother-to-child transmission of HIV and syphilis. Available at <https://www.who.int/reproductivehealth/congenital-syphilis/emtct-validation-malaysia/en/>

⁶⁶ ASEAN Secretariat (2016). *HIV in the ASEAN Region: Second Regional Report on HIV & AIDS 2011-2015*. Jakarta, ASEAN Secretariat, 2016. Available at <https://asean.org/storage/2016/11/08ASEAN-Regional-Report-on-HIV-AIDS-1dec.pdf>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
		<p>The benefits package for HIV–positive pregnant women and their families, and support agencies include: HIV testing of pregnant women – Twice during pregnancy VDRL, HbsAg, thalassemia – First ANC visit HIV DNA PCR for infant diagnosis – At birth, 1 – 2 months and 4 months HIV antibody test (infants)– 12 and 18 months</p> <p>Suggest that also considering including couples counselling: Guidelines in Thailand recommend that All health facilities shall provide quality pre and post – test counselling where couple counselling is encouraged. Test results shall be treated confidentially and disclosed only to person who received HIV testing.</p> <p>Suggest also considering the engagement of Community Health Workers in PMTCT. This has been a major success factor in strengthen referrals between communities and the health care facilities. Sharing below the guidance which you can draw from and adapt to context in Vietnam:</p> <ul style="list-style-type: none"> -Early antenatal care initiation (before 12 weeks) among pregnant women is promoted through hospitals/ health promoting hospitals and Community Health Volunteers (CHVs). -Motivate volunteer in village to seek for pregnant women for early antenatal care initiation by using incentives or certificate -Encourage couple counselling for HIV testing -Strengthen HIV testing service system for faster test results and early treatment -Strengthen HIV care and treatment system for better adherence -Strengthen referral information among wards within hospital for effective follow up and in some case it should be extended to the communities -Extend HIV care system to connect with communities for active case finding among Thai and non-Thai babies born to parents who pass away and yet to know their HIV results

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		-Establish monitoring and surveillance system and utilize information for development
Article 36 (a) HIV Pre-Exposure Prophylaxis (PrEP) Treatment	<p>Add 36 a</p> <p>1. The HIV pre-exposure prophylaxis (PrEP) treatment shall be provided for the target audiences being specified in Clause 2, Article 11 of this Law.</p> <p>2. The Government encourages individuals and organizations to provide the services of HIV pre-exposure prophylaxis treatment</p> <p>3. The Minister of Health provides guidelines for implementing HIV pre-exposure prophylaxis treatment services.”</p>	<p>To minimize any risk of incorrect information on and use of PrEP which may lead to drug resistance, the UN recommends the text ‘qualified’ be added under clause 2 to read as follows: The Government encourages qualified individuals and organizations to provide the services of HIV pre-exposure prophylaxis treatment</p> <p>Following publications can be used as reference to develop the corresponding policy framework:</p> <ul style="list-style-type: none"> • WHO Guideline on When to Start Antiretroviral Therapy and on Pre-exposure Prophylaxis for HIV (2015)⁶⁷ • WHO Policy Brief on Who Expands Recommendation on Oral Pre-exposure Prophylaxis of HIV infection (PrEP) (2015)⁶⁸ • WHO implementation tool for pre-exposure prophylaxis of HIV infection (2017)⁶⁹ • WHO Technical brief: What’s the 2+1+1? Event-driven oral pre-exposure prophylaxis to prevent HIV for men who have sex with men: Update to WHO’s recommendation on oral PrEP (2019)⁷⁰
Article 36 HIV Post-exposure Prevention (PEP) (cont.)	<p>1. The HIV-exposed persons shall be provided with counseling and guidance on prophylactic treatment to prevent HIV infection</p> <p>2. Those who have been exposed to HIV due to occupational accidents shall be provided with counseling and prophylactic treatment being stipulated in Article 46 of this Law.</p>	<p>Following publications can be used as reference to develop the corresponding policy framework:</p> <ul style="list-style-type: none"> • WHO Guidelines on Post-Exposure Prophylaxis for HIV and The Use of Co-Trimoxazole Prophylaxis for HIV Related Infections among Adults, Adolescents and Children (2014)⁷¹

⁶⁷ WHO (2014). Guideline on when to start antiretroviral therapy and on pre-exposure prophylaxis for HIV. Available at <https://www.who.int/hiv/pub/guidelines/earlyrelease-arv/en/>

⁶⁸ WHO (2015). Policy Brief on Who Expands Recommendation on Oral Pre-exposure Prophylaxis of HIV infection (PrEP). Available at <https://www.who.int/hiv/pub/prep/policy-brief-prep-2015/en/>

⁶⁹ WHO (2015). WHO implementation tool for pre-exposure prophylaxis of HIV infection. Available at <https://www.who.int/hiv/pub/prep/prep-implementation-tool/en/>

⁷⁰ WHO (2019). WHO Technical brief: What’s the 2+1+1? Event-driven oral pre-exposure prophylaxis to prevent HIV for men who have sex with men: Update to WHO’s recommendation on oral PrEP. Available at <https://www.who.int/hiv/pub/prep/211/en/>

⁷¹ WHO (2014). Guidelines on post-exposure prophylaxis for HIV and the use of co-trimoxazole prophylaxis for HIV-related infections among adults, adolescents and children. Available at https://www.who.int/hiv/pub/guidelines/arv2013/arvs2013supplement_dec2014/en/

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	3. The Minister of Health shall stipulate specifically to define HIV exposure status and provide HIV post-exposure prophylaxis treatment to the persons being specified in Clause 1 of this Article.	<ul style="list-style-type: none"> • WHO Updated recommendations on first-line and second-line antiretroviral regimens and post-exposure prophylaxis and recommendations on early infant diagnosis of HIV (2018) ⁷² • WHO Guidelines on postexposure prophylaxis for HIV: recommendations for a public health approach (2015) ⁷³ <p><u>Thailand:</u> The new PMTCT guidelines (2018) provide guidance on how to manage the cases of HIV-seronegative pregnant women who are with HIV-infected partner. The guideline recommended Pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP) as a part of the combination prevention package for serodiscordant couples whose pregnant woman is uninfected and living with HIV positive partner</p>
Article 37. Research, trial and production of HIV/AIDS vaccines, bio-products and medicines	<ol style="list-style-type: none"> 1. The State encourages and facilitates researches, trials and production of HIV/AIDS vaccines, bio-products and medicines. 2. People who voluntarily participate in trials of HIV/AIDS vaccines, bio-products or medicines shall have their legitimate rights and benefits ensured according to the provisions of law. 	
Article 38. Responsibilities in providing treatment for HIV-infected people	<ol style="list-style-type: none"> 1. Medical establishments shall be responsible for providing medical examination and treatment for HIV-infected people; in case of treatment with ARVs, they must satisfy all the conditions set by the Ministry of Health. 2. Medical practitioners and health workers shall be responsible for providing treatment for HIV-infected people and make them understand HIV/AIDS so that they can take care of their own health and prevent transmission of HIV to other persons. 3. HIV-infected people who have opportunistic infections or other HIV/AIDS related illnesses shall receive treatment at the medical 	See UN general comment on terminology

⁷² WHO (2018). Updated recommendations on first-line and second-line antiretroviral regimens and post-exposure prophylaxis and recommendations on early infant diagnosis of HIV. Available at <https://www.who.int/hiv/pub/guidelines/ARV2018update/en/>

⁷³ WHO (2015). World Health Organization Guidelines on postexposure prophylaxis for HIV: recommendations for a public health approach . Available at <https://www.who.int/hiv/pub/prophylaxis/pep-supplement-02/en/>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	<p>department specializing in the type of their infections or illnesses or at a separate department, and shall be treated equally as other patients.</p> <p>4. The Minister of Health shall issue guidelines for treatment using ARVs.</p>	
Article 39 Access to ARVs	<p>1. HIV-infected people shall be facilitated by the State to have access to ARVs through programs and projects suitable to socio-economic conditions. People living with HIV who are on ARV treatment should be continuously on treatment.</p> <p>2. People who have been exposed to or infected with HIV due to occupational accidents, people who have been infected with HIV due to risks of medical technique, HIV-infected pregnant women and HIV-infected under six children shall be provided ARVs free of charge by the State.</p> <p>2. People living with HIV who participate in health insurance shall be reimbursed the costs of ARVs by the Health Insurance Funds as being stipulated.</p>	To avoid legal repercussion and to optimize adherence to ART, a combination of feasible programme-level of interventions should be implemented following the newly amended legislation. For examples, (1) avoiding imposing out-of-pocket payments at the point of care; (2) using fixed-dose combination regimens for ART; and (3) strengthening drug supply management systems to reliably forecast, procure, and deliver ARV drugs and prevent stock-outs. ⁷⁴ .
Article 39 Access to ARVs (cont.)	<p>3. ARVs paid with the state budget or sponsored by domestic and foreign organizations and individuals shall be provided free of charge to HIV-infected people at HIV/AIDS treatment establishments in the following priority order:</p> <p>3. The Government shall provide free of charge ARVs for the following cases who do not have their health insurance:</p> <p>- Children who were born of the mothers living HIV;</p>	The UN recommends adding flexibilities for the State to cover ARV for people who might not be able to enroll SHI or to use it (eg. due to lack of ID documents, migrant, after release from detention etc.) For the use of ARVs, especially for children, following publications and guidelines can be used as reference to develop the corresponding policy framework: <ul style="list-style-type: none"> • WHO Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection (2016)⁷⁵ • WHO Diagnosis of HIV infection in infants and children (2010)⁷⁶

⁷⁴ See Part 9.2: Adherence to ART, P.176-181 from WHO (2013). Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection. Available at <https://www.who.int/hiv/pub/guidelines/arv2013/download/en/>

⁷⁵ WHO (2016). Consolidated guidelines on the use of antiretroviral drugs for treating and preventing HIV infection. Available at <https://www.who.int/hiv/pub/arv/arv-2016/en/>

⁷⁶ WHO (2010). Diagnosis of HIV infection in infants and children. Available at <https://www.who.int/hiv/pub/paediatric/diagnosis/en/>

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
	<p>- Pregnant women living with HIV or who has reactive to HIV test;</p> <p>- Woman living with HIV who is breastfeeding until 24 months;</p> <p>- Children under 6 years old living with HIV;</p> <p>- The persons being exposed to HIV, or being infected with HIV due to occupational accidents or due to risks of medical technology;</p> <p>- The persons living with HIV who are in prisons, detention centers, compulsory educational establishments, and reformatories;</p> <p>- The people living with HIV who have actively participated into HIV/AIDS prevention and control activities.</p> <p>4. The Government shall issue detailed regulations on the management, distribution and use of ARVs for the persons who are defined in this Article.</p> <p>5. The Prime Minister shall provide the regulations on the necessary measures to meet the requirements for ARVs in an emergency case”.</p>	<ul style="list-style-type: none"> • WHO Antiretroviral therapy for HIV infection in infants and children (2010)⁷⁷ • WHO Antiretroviral drugs for treating pregnant women and preventing HIV infection in infants (2010)⁷⁸ <p>Also, OHCHR and UNAIDS on International Guidelines on HIV/AIDS and Human Rights (2006)⁷⁹, Guidelines for State Action, Guideline 8: “Women, Children And Other Vulnerable Groups” states that “States should support the implementation of specially designed and targeted HIV prevention and care programmes for those who have less access to mainstream programmes due to language, poverty, social or legal or physical marginalization, e.g. minorities, migrants, indigenous peoples, refugees and internally displaced persons, people with disabilities, prisoners, sex workers, men having sex with men and injecting drug users”.</p> <p>It also states that “states should ensure the access of children to adequate access to confidential sexual and reproductive health services, including HIV information, counselling, testing, prevention and treatment measures”. States should regulate efforts of educating children information relating HIV prevention and care, inside and outside school, which is tailored appropriately to age level and capacity enabling them to know the rights of persons, including children living with HIV.</p> <p>UNODC, WHO and UNAIDS on HIV Testing and Counselling in Prisons and Other Closed Settings Technical Paper (2009)⁸⁰ underlined the state should ensure prisoners’ access to evidence-based HIV preventions, treatment, care and support. There should be uninterrupted provision of antiretroviral therapy (ART) when available in the community for prisoners living with HIV and, where clinically</p>

⁷⁷ WHO (2010). Antiretroviral therapy for HIV infection in infants and children. Available at <https://www.who.int/hiv/pub/paediatric/infants2010/en/>

⁷⁸ WHO (2010). Antiretroviral drugs for treating pregnant women and preventing HIV infection in infants. Available at <https://www.who.int/hiv/pub/mctc/antiretroviral2010/en/>

⁷⁹ OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). United Nations: Geneva, June 2006. Available at <https://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf>

⁸⁰ UNODC, UNAIDS & WHO (2009). HIV Testing and Counselling in Prisons and Other Closed Settings. United Nations; New York, 2009. Available at https://www.who.int/hiv/pub/idu/tc_prison_tech_paper.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
		indicated, treatment of other sexually transmitted infections, viral hepatitis, tuberculosis and other opportunistic infections.
Article 40 Medical insurance for HIV-infected people	<p>1. Medical insurance participants who get infected with HIV shall have their medical examination and treatment expenses covered by the medical insurance fund</p> <p>2. The Minister of Health shall issue the list of ARVs to be paid by the medical insurance fund.</p> <p>(Have to review further with Health Insurance Law)</p>	See UN general comment on terminology
Article 41 Care for HIV-infected people	<p>(Delete wordings of “state-run”)</p> <p>1. HIV-infected people shall be taken care of in their families and state-run medical establishments.</p> <p>2. Abandoned HIV-infected children and HIV-infected people who have no source of reliance or have lost their working capacity shall be taken care of and reared at state-run social relief establishments.</p> <p>3. Religious, non-governmental and other organizations may establish establishments to take care of HIV-infected people.</p> <p>4. The People's Committees at all levels shall be responsible for mobilizing communities to participate in organizing community-based care for HIV-infected people.</p> <p>5. The Government shall stipulate regimes for care of HIV-infected people mentioned in Clauses 2 and 3 of this Article.</p>	See UN general comment on terminology
Article 42 Application of criminal law and criminal procedure law to or administrative handling of	<p>Abolish Article 42</p> <p>1. If a person who is being investigated, prosecuted or tried has full blown AIDS, he/she shall be granted suspension of investigation or suspension of the criminal case according to the provisions of law on criminal procedures.</p> <p>2. If a person who has been sentenced by a court has full blown AIDS, he/she shall be granted remission of the serving of the</p>	The UN supports the deletion of this article

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments (Note: HIV Law text in English is an informal translation)	UN recommendations as per International guidance
full-blown AIDS patients	<p>penalty, reduction of the penalty serving term or postponement or suspension of the serving of the imprisonment sentence according to the provisions of law on criminal offenses, criminal procedures and serving of imprisonment sentences.</p> <p>3. If a person who is subject to a decision on the application of the measure of confinement to a medical treatment establishment, an educational establishment or a reformatory has full-blown AIDS, he/she shall be granted postponement or remission of the serving of such decision or postponement, suspension or remission of the serving of the remaining term according to the provisions of law on handling of administrative violations.</p> <p>4. The Ministry of Health shall assume the prime responsibility for, and coordinate with the Ministry of Public Security, the Ministry of Justice, the Supreme People's Procuracy and the Supreme People's Court in, issuing detailed regulations on recognition of full-blown AIDS patients according to the provisions of Clauses 1, 2 and 3 of this Article.</p>	
Article 43. Resources for HIV/AIDS prevention and control	<p>1. Annually, the State shall allocate an appropriate budget for HIV/AIDS prevention and control.</p> <p>2. The State encourages domestic and foreign organizations and individuals to provide financial and technical supports for HIV/AIDS prevention and control.</p>	<p>+ See recommendations for Article 6</p> <p>See UN general comment on terminology</p>
Article 44. The fund for support, treatment and care for HIV-infected people	<p>1. The fund for support, treatment and care for HIV-infected people shall be set up and operate in accordance with the provisions of law to provide support, treatment and care for HIV-infected people.</p> <p>2. The fund's financial sources shall be raised from contributions and financial donations from domestic and foreign agencies, organizations and individuals.</p>	
Article 45	People who directly perform HIV testing, management, care and treatment for people living with HIV and opioid addiction	WHO, UNAIDS and UNODC HIV Testing and Counselling in Prisons and Other Closed Settings Technical Paper (2009) ⁸¹ recommends

⁸¹ UNODC, UNAIDS & WHO (2009). HIV Testing and Counselling in Prisons and Other Closed Settings. United Nations; New York, 2009. Available at https://www.who.int/hiv/pub/idu/tc_prison_tech_paper.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
Regimes and Policies for the People who directly perform HIV testing, management, care and treatment for people living with HIV and opioid addiction substitution treatment	substitution treatment at the Government’s social relief establishments and public health clinics, reformatories, compulsory educational establishments, drug compulsory detoxification centers, prisons and detention houses shall be given priority in providing necessary equipment and commodities to prevent HIV infection, enjoy occupational allowances and other preferences according to regulations of the Prime Minister	<p>integrating closed setting HIV programmes into national strategic HIV/AIDS plans. Closed setting should be part of the agreed AIDS action framework and monitoring and evaluation system, as well as be involved in all aspects of scale-up. So in parallel with expansion of HIV testing, treatment are care in all closed settings, it is advisable to also provide staffs with HIV prevention or compensation package</p> <p>The ILO Technical and Ethical Guidelines (1998) for Workers Health Surveillance⁸² established the principle that the employer should provide compensation for costs incurred due to illnesses caused or aggravated by workplace exposures.</p> <p>The UNAIDS/OHCHR International Guidelines on HIV/AIDS and Human Rights⁸³ state that “Public health law should require the implementation of universal infection control precautions in health care and other settings involving exposure to blood and other bodily fluids. Persons working in these settings must be provided with the appropriate equipment and training to implement such precautions.”</p> <p>Regarding treatment, care and support, the HIV and AIDS Recommendation, 2010 (No. 200)⁸⁴ provides that: “Programmes of care and support should include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses, with due regard to national conditions.”</p> <p>The Joint WHO-ILO-UNAIDS Policy Guidelines on Improving Health Workers’ Access to HIV and TB Prevention, Care and Support Services⁸⁵ recommend providing a comprehensive compensation</p>

⁸² ILO (1998). Technical And Ethical Guidelines For Workers' Health Surveillance. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_177384.pdf

⁸³ OHCHR and UNAIDS (2006). International Guidelines on HIV/AIDS and Human Rights. Political Declaration on HIV/AIDS (UN Resolution 20/262). Available at <https://www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf>

⁸⁴ ILO (2010). R200 - HIV and AIDS Recommendation, 2010 (No. 200). Available at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R200

⁸⁵ See Establish schemes for reasonable accommodation and compensation, including, as appropriate, paid leave, early retirement benefits and death benefits in the event of occupationally-acquired disease, P.3-4. ILO, UNAIDS and WHO (2011). Joint WHO-ILO-UNAIDS Policy Guidelines⁸⁵ on Improving Health Workers’ Access to HIV and TB Prevention, Care and Support Services. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_149714.pdf

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
		package for health workers addressing occupationally acquired HIV and/or TB that would include information on the following: <ul style="list-style-type: none"> • Immediate post exposure prophylaxis • Treatment for disease, particularly in the initial period • Paid leave for sickness and absence due to the disease • Reasonable accommodation • Early retirement benefits connected to early resignation or medically recommended work stoppage • Death benefits to survivors
Article 46. Regimes for people exposed to or infected with HIV due to occupational accidents	<ol style="list-style-type: none"> 1. People who have been exposed to or infected with HIV due to occupational accidents shall enjoy regimes as provided for by law. 2. People who have been infected with HIV due to occupational accidents shall receive free examination and treatment of opportunistic infections and free ARVs. 3. The Prime Minister shall provide for conditions for identifying people who are exposed to or infected with HIV/AIDS due to occupational accidents. 	
Article 47. Training and retraining of people who engage in HIV/AIDS prevention and control	<ol style="list-style-type: none"> 1. Medical practitioners and health workers who directly provide counseling, conduct HIV tests or provide care and treatment for HIV-infected people must be provided with professional training and retraining. 2. Collaborators, volunteers, teachers, HIV-infected people and their family members participating in HIV/AIDS prevention and control must be provided with training to improve their capabilities. 3. The Ministry of Health shall assume the prime responsibility for, and coordinate with the Ministry of Education and Training and other concerned agencies, organizations and units in, organizing training and retraining for people mentioned in Clause 1 of this Article. 	See UN general comment on terminology

Sections	Law on HIV/AIDS Prevention and Control and VAAC proposed amendments <i>(Note: HIV Law text in English is an informal translation)</i>	UN recommendations as per International guidance
Article 48. International cooperation in HIV/AIDS prevention and control	<ol style="list-style-type: none"> 1. The State shall expand cooperation with other nations and international organizations in the prevention and control of HIV/AIDS on the basis of respect for independence, sovereignty, territorial integrity and mutual benefit. 2. Vietnamese individuals and organizations are encouraged to cooperate with international organizations and foreign organizations and individuals in HIV/AIDS prevention and control. 3. The Prime Minister shall provide for the coordination between ministries, branches and local administrations and equivalent agencies of countries sharing borders with Vietnam in the prevention and control of cross-border HIV/AIDS transmission. 	
Article 49. Implementation effect	<p>This Law shall take effect as from January 1, 2007.</p> <p>The 1995 Ordinance on HIV/AIDS prevention and control shall cease to be valid on the effective date of this Law.</p>	
Article 50. Implementation guidance	<p>The Government shall detail and guide the implementation of this Law.</p> <p><i>This Law was passed on June 29, 2006, by the XIth National Assembly of the Socialist Republic of Vietnam, the 9th session.</i></p>	

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