

# **Executive Summary**

## **Research on Occupational Discrimination against People living with HIV/AIDS**

**Chulalongkorn University Social Research Institute**

### **1. Introduction**

People living with HIV/AIDS (PHAs) were first detected in Thailand in 2004. Since then number of people infected with HIV virus and people went ill with AIDS has been increasing until now. Bureau of Epidemiology, Department of Disease Control, Ministry of Public Health, reported that on 15<sup>th</sup> November 2011, Thailand had had 376,690 PHAs of which 98,721 have already died. The largest age group of PHAs is the group of people aged 30-34 years old at 24.94 per cent of all PHAs, followed by people in the age group of 25-29 and 35-39 at 21.73 and 18.19 per cent respectively. Most of them, nearly half, work as general hired hands at 45.48 per cent, followed by farmers and unemployed persons at 19.49 and 6.06 per cent respectively. In summary, it was found that most of PHAs are 20-44 years old and are important labour force of the country.

In the early years, Thai society was panic, fearful of the HIV epidemics because people in the society lacked factual information, knowledge and understanding about HIV/AIDS. The state, private sector and civil society sector therefore had tried to do public relations campaign widely to the people in general, with focus on the so-called high risk groups, such as customers of sexual service, gay men and drug addicts who share syringes. Moreover, people in general still had negative attitudes towards PHAs, viewing that PHAs had inappropriate sexual behaviours or were drug addicts, giving an image that PHAs were bad people and thus were shunned by the society. These attitudes resulted in PHAs having difficult daily living in terms of their physical health, mental health, living conditions, works and social status. They were disliked, despised and separated from other people in society. Any people known to be HIV infected were often disliked, rejected or forced of their work, resulting in PHAs dared not reveal themselves to society, dared not visit physicians for medical treatment, and dared not consult, seeking advice from experts, fearing that they would be disliked by family members, neighbours, colleagues, employers and other related persons, and might affect people close to them, such as spouses and children.

These problems affected way of life, living, life quality and human dignity of PHAs and people close to them, importantly because society, officials and related personnel lacked correct knowledge and understanding about

HIV/AIDS, and lacked recognition of human rights and human dignity provided in the Constitution of the Kingdom of Thailand B.E. 2550 (2007), Universal Declaration on Human Rights, and Declaration of Commitment on HIV/AIDS which states that “basic human rights and liberties for everyone is necessary for reduction of risk to HIV/AIDS and to eliminate all forms of discrimination in order to guarantee that all infected persons and people with risk are respected of their basic human rights and liberties to access education, employment, health and social service, disease prevention, assistance, information, and legal protection with respect to their privacy and personal secret, and to eliminate PHAs’ shamefulness and separation from society.

Because of this reason, Office of the National Human Rights Commission of Thailand therefore agreed to have Chulalongkorn University Social Research Institute being consultant in a research project on “Occupational Discrimination against People with HIV/AIDS”, so that there would be a research to find out causes and situations of occupational discrimination against PHAs, so that they would be legally protected concretely by laws and according to human right principles, and also to come up with policy recommendations and/or suggestions for improvement of law to be sent to responsible agencies later.

### **Objectives**

- (1) To study problems of occupational discrimination against PHAs.
- (2) To study and analyse regulations, proclamations, state policies, legal measures, guidelines for actions, and operation of agencies related to protection of rights to occupation of PHAs.
- (3) To propose forms of protection of PHAs’ human rights in occupation and propose appropriate ways and measures to protect rights in occupation of PHAs who face a problem of occupational discrimination, and summarize them as policy recommendations and/or suggestions for improvement of laws proposed to responsible agencies.

### **Research Concepts**

#### **Stigma and Discrimination**

Stigmatization and discrimination are connected, especially stigmatization of PHAs. When they are stigmatized by any society, they would be discriminated or hindered by that society and could be violated in term of

human rights. In many countries, there are reports of PHAs being denied their right to medical service, education and freedom to movement.<sup>1</sup>

Stigmatization means “conditions of which individual or group of persons in a society define what are the differences between persons. What are characteristics of desirable or undesirable persons? Characteristics that are different from majority people would be considered deviance, resulting in persons with such characteristics having lost reputation, becoming untrustworthy or being shameful, and making the persons feel that their values have diminished in the eyes of the society. Stigmatized persons would feel that “they have undesirable difference from other people.” Characteristics that would be stigmatized depend on social and cultural context of which a large number of people in that society have power to define. Meaning of stigma focuses on perspectives of society referred from social norms moulded together into feelings that identify “difference” or “deviance,” resulting in these persons being opposed by society; stigmatized persons would be seen by other people in society as persons with “spoiled identity.”<sup>2</sup>

A person tends to be stigmatized from society by three characteristics, that are **physical abnormality**, such as physical disability or poor physical capability, **cultural deviance or deviation from social rules and standards**, such as mental abnormality, drug addiction or homosexuality, and **differences in terms of race, nationality, class and religion**, such as being minority people.

Stigmatization is to give social definition that negatively affects people’s awareness. This awareness could be tangible or intangible. Persons who have desirable characteristics would feel that they are superior, while persons who have undesirable characteristics would feel inferior. Stigmatization process is therefore an outcome of social comparison that causes segregation and devaluation. Stigmatization is thus a source of discrimination that follows.

#### Causes of discrimination and stigmatization against HIV-infected persons

Richard Parker et al. points out that important causes of stigmatization and discrimination against PHAs, apart from being considered as abnormal, both in terms of sexual behaviours that are different from other people in general, race (such as a racial myth about sexual behaviours of black people) and class (poor people have higher risk to be infected than rich people), there are also **fear of being infected and symptoms of the disease**. These causes of

---

<sup>1</sup>UNAIDS. HIV/AIDS-related Stigma, Discrimination and Human Right Violation: Cases Studies of Successful Programme, 2005 [online] available at [http://data.unaids.org/publications/irc-pub06/jc999-humrightsviol\\_en.pdf](http://data.unaids.org/publications/irc-pub06/jc999-humrightsviol_en.pdf)

<sup>2</sup>Erving Goffman. Stigma : Note on the Management of Spoiled Identity. Harmondsworth: Penguins Book, 1963 referred to in NihafisaHayiwangoh, Attitudes towards AIDS and Social Stigmatization: Case Study of Muslim Communities in Pattani Province, MA Thesis, Human and Social Development (Multidisciplinary), Graduate School, Chulalongkorn University, B.E. 2555 (2012), Page 18-19.

stigmatization and discrimination often connect to and affect each other, and increasingly deepen the roots of stigmatization and discrimination problems. This is called the vicious circle of stigma and discrimination which occurs continuously one after another. In the **first stage**, as HIV infection is often related to individuals or groups that have different behaviours from majority people in society. Infected persons are often assumed to be marginalized people and could be stigmatized to be what they have never been. For example, sometimes men may be afraid of revealing that they are HIV infected because they would be seen as homosexual. Women, on the other hand, may not want to reveal the infection because they are afraid that they could be seen as promiscuous or sex worker. In the **second stage**, stigmatization and discrimination would repeat symptom of infected persons who would have more risks and they are consequently more stigmatized and hindered.

### **Research Methodology**

Research on occupational discrimination against people with HIV/AIDS is a **participatory research** which gives stakeholders opportunities to co-produce knowledge, using **stakeholder's workshop No.1** as a stage to set up research questions and develop research tools together.

Apart from enabling researchers to collect data in depth and all round, another participatory research's strong point is to give stakeholders who participate in the research opportunities to strengthen their knowledge.

As mentioned above in the previous section, an important cause of stigmatization and discrimination is the lack of correct knowledge and understanding about HIV propagation. This research team therefore designed this research to contribute to development of knowledge and understanding of research team and stakeholders together at the same time in order to come up with recommendations that really solve the problem of occupational discrimination against people with HIV/AIDS.

To achieve this objective, the research team therefore used several types of data collection methods and adapted several data collection tools as follows:

#### **1. Document research.** Document research has two continual stages:

1.1 Studying concepts about the principles of occupational equality, human rights principles, universal principles and standards related to protection of PHAs' right to occupation from laws in Thailand and other countries, universal declaration, international covenants and conventions, academic documents, books, textbooks, related research reports in Thailand and other countries, and comparative studies of measures in at least three other countries, paying attention to countries that had been successful in

protection of PHAs' rights. Examples of **countries that have different forms of law that forbids discrimination** include the Commonwealth of Australia, which could be an example of country with liberal measures to protect PHAs' occupational right. United Kingdom and Commonwealth of Australia may be examples of country with social welfare policy. A country in South East Asia, such as the Philippines, can be an example for developing countries.

1.2 Analyzing the Royal Thai Government's directions and policies to solve stigmatization and discrimination problems to protect occupational right of PHAs by studying regulations, proclamations, state policies, legal measures, guidelines for actions and operations of agencies involved.

**2. Studying conditions of PHAs' occupations in various dimensions, causes and factors of the problems, and impacts in human rights dimension of occupational discrimination against PHAs.** This study is based on qualitative data collection which pays attention to in-depth understanding and data interpretation from viewpoints of insiders, and collection of in-depth information from key informants who can give clear information, resulting in outputs of this studies solid and trustworthy, different from quantitative studies that emphasize generalization, resulting in a need to pay attention to number of examples that can represent the population. Quantitative data collection, however, cannot clearly show some specific problems, especially discrimination.

Data was collected from six groups of stakeholders with the following methods:

Groups	Methods	Numbers of Persons
People with HIV/AIDS - those with jobs	In-depth interview together with deliberative focus group, covering urban-rural areas and types of workplace	10 – 12
- those who used to be rejected / dismissed		
People close to PHAs		15 – 20
Employers/owners of workplaces	In-depth interview together with deliberative focus group, covering state's workplaces / state enterprise / private business, especially those in food and continual business, service business together with studying of case studies	8-10
Employees in workplaces and	Deliberative focus group	8-10

Groups	Methods	Numbers of Persons
representatives of trade unions		
Government officials, personnel in private business, staff of non-governmental organizations whose works are related to PHAs	In-depth interview together with deliberative focus group	8 – 10
HIV/AIDS experts	In-depth interview	1-2

Focus group used in this research is not focus group in general, but is a method developed from Deliberative Polling designed by James Fishkin that pays attention to discussion of which participants have enough information and can weigh various suggestions emerged in the group. Quality of consultation depends on completion of issues proposed from all parties, information that is precise in term of reason, and conscientiousness.

In general, selection of participants for the deliberative focus group was random, taking into consideration differences in terms of areas, population and backgrounds are covered. Process of deliberative focus group consists of focus group discussion conducted by an experienced facilitator, information giving by experts in the plenary where participants can ask questions, and a survey of participants' opinions in the final stage. In principle, participants in the process have opportunities to review what they heard from the plenary before making decisions to reply the survey. Providing participants with all round information is therefore important. In some cases, information is provided to participants beforehand as an advanced preparation.<sup>3</sup>

As for this research, form of opinion survey was adjusted to be deliberate focus group. From selection of participants for the focus group, selection of specific persons was used in order to have persons who could provide clear information on that matter (while in deliberative focus group, participants are selected randomly). In the focus group, there are steps as follows:

- Firstly, preliminary questions are asked about problems, causes of the problems and factors that contribute to occupational discrimination against PHAs and their impacts;

---

<sup>3</sup> James Fishkin and Cynthia Farrar, . Deliberative Polling: From Experiment to Community Resource. In Gastil, John and Levine, Peter. eds. The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the Twenty-First Century. pp. 68-79. San Francisco: Jossey-Bass, 2005.

- Provide correct information about HIV distribution and infection, and international standards for protection of occupational discrimination against PHAs;
- Reverse the steps back, asking the participants to contemplate and discuss the original questions and reply again;
- Develop together proposals that are solutions to the problem of occupational discrimination against PHAs.

Apart from collecting the above mentioned information, research team decided to have addition studies with case studies, especially best practices in activities that there is no discrimination, paying special attention mainly to issues related to factors for changes of guidelines for actions towards PHAs.<sup>4</sup>

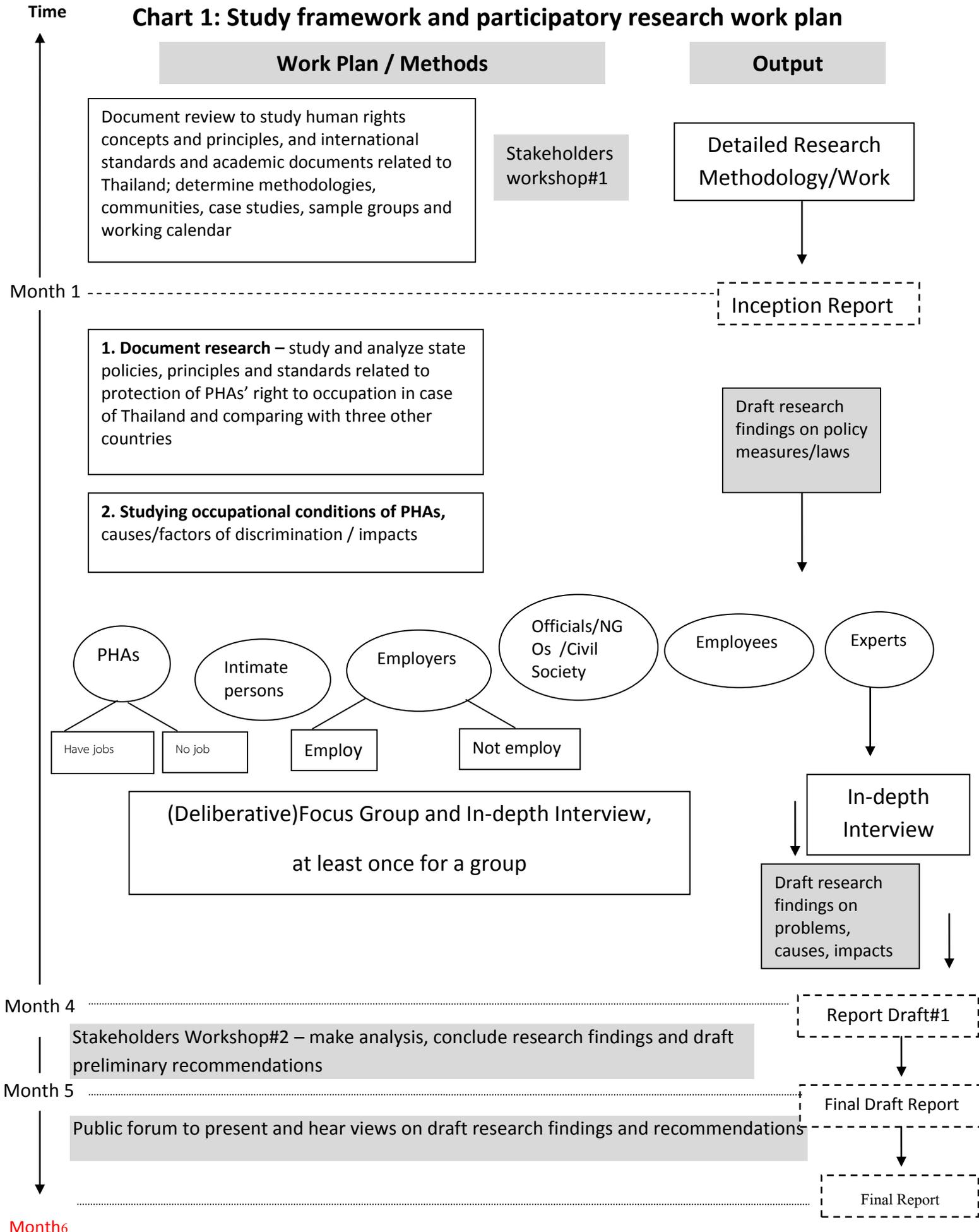
When researchers completely collected data from all groups, they compiled it to draft research findings that show the problem of occupational discrimination against PHAs in Thailand, causes/factors of the discrimination, and impacts, and then summarized and synthesized this information to draft recommendations on policies and laws to protect occupational right of PHAs, and presented this draft report to **stakeholder's workshop No.2** before presenting it at a **public forum** and improve it as the final report to submit to the National Human Rights Commission.

Overview of research framework and stages of the studies can be seen in Chart 1 below.

---

<sup>4</sup>Data collection method added after stakeholder's workshop No. 1

### Chart 1: Study framework and participatory research work plan



## 1. Research findings

### 1.1 Situation concerning occupational discrimination against PHAs, impacts and causes

#### 1.1.1 Situation concerning the discrimination

Even if the Constitution of the Kingdom of Thailand B.E. 2550 has provisions about equality and non-discrimination in Section 30, Paragraph 3,<sup>5</sup> and National Guidelines concerning AIDS Prevention and Administration in Workplaces issued by the National Committee on AIDS Prevention and Control, it was found from this study, both document review and field data collection, that at present, situation concerning occupational discrimination against PHAs still appears at three levels, that are law/policy level, institutional level and community level which can be briefly detailed as follows:

(1) Discrimination at law level. Discrimination occurs in some organizations' sub-regulations in job application stage, especially in regulations of police officials and judicial officials. However, when compared with situation in other countries, including countries which have anti-discrimination law such as the Commonwealth of Australia and United Kingdom, these countries still have exceptions in such situation, that is the **Principle of Characteristics that are essential for certain types of work in a High Court Judgment in the case of *X v Commonwealth of Australia***. It is the case of doing duties as military personnel of which strong health is essential, or in **case of exceptions not to follow discrimination law in the United Kingdom which gives exception not to enforce the law for some occupations, such as being military or police officials, and professional organizations, such as the Bar Association** (see details in Chapter 2).

Although there have been attempts to improve these two regulations in Thailand, they appeared to be unsuccessful. Discrimination at law level in Thailand is thus the most difficult one to rectify. However, as for PHAs already working in these organizations in Thailand, such as those affiliated to the Royal Thai Police, there is a written recognition that PHAs would be supported and allowed to work as usual.

---

<sup>5</sup>Constitution of the Kingdom of Thailand B.E. 2550, Section 30, Paragraph 3: Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, disability, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

(2) Discrimination at institutional level. It is the level with widest range of problems, especially recruitment policy in several types of work (see details in Table 3). However, from lessons learned by the mechanisms that contribute to PHAs' rights promotion and protection, solving discrimination problem at this level appears to be more hopeful, especially when they can create common understanding with employers and cause policy changes in these organizations. Attempts to solve discrimination problems at institutional level, whether by ASO THAILAND or sub-committee of the National AIDS Committee and organizations in civil society sector, however, were often successful for particular cases. Only few cases could be used to advocate policy changes in those organizations.

(3) Discrimination at community level. Discrimination at this level also has wide range of impacts and repeatedly affects PHAs who have left job in the formal sector and returned back to live in community. Discrimination at this level, however, seems to be the easiest one to solve, especially when PHAs are capable to create understanding with people in their own community which would enable them to leave normal life.

This can be shown in Table 1 below:

**Table 1: Situation of occupational discrimination against PHAs**

Level of Discrimination	Types of agencies and types of discrimination
Law/policy level	<u>Government agencies</u> <b>Compulsory HIV test is a condition for recruitment</b> appears in <ul style="list-style-type: none"> <li>- the Royal Thai Police's regulation on application and examination of graduates for enrollment as noncommissioned police officers B.E. 2551 (2008)</li> <li>- Court of Justice Judge Committee's regulation about diseases that persons who have are forbidden to be judicial officials, B.E. 2545 (2002)</li> </ul> <b>Compulsory blood test to detect HIV for persons who wish to be ordained as a Buddhist monk</b>
Institutional level	<u>Agencies in private sector</u> <b>Compulsory HIV test is a condition for recruitment in</b>

Level of Discrimination	Types of agencies and types of discrimination
	<p><b>private businesses</b></p> <ul style="list-style-type: none"> <li>- Hotel</li> <li>- Food shop and bakery</li> <li>- Car business</li> <li>- Retail business where food is sold</li> <li>- Banking business</li> <li>- Frozen food business</li> <li>- Ceramic industry</li> <li>- <i>Household Appliance company</i><sup>1</sup></li> </ul> <p><b>Dismissed from job because of HIV infection</b></p> <ul style="list-style-type: none"> <li>- <i>Food shop</i><sup>1</sup></li> </ul>
<i>Community Level</i> <sup>2</sup>	<ul style="list-style-type: none"> <li>- People do not buy food from PHAs because they are afraid of being infected from that food, and dislike PHAs' physical conditions.</li> <li>- Customers do not buy mushroom from PHAs because they are afraid that mushroom could be contaminated with HIV while being collected.</li> <li>- People in community do not hire PHAs as labour because they view that PHAs have weak health.</li> <li>- Thai masseuse left Thai massage shop when she knew that she was infected. When her health improved, she opened her own massage shop without informing customers in general that she was a PHA. Even though she told some customers who were well acquainted, some of them did not believe.</li> <li>- A man who wishes to be ordained as a Buddhist monk would be forced by the Sangha Supreme Council.</li> </ul>

**Remarks:**

1. *Business in Italic is the one which used to have discrimination policy, but the policy has been changed now.*
2. *Discrimination at community level is an experience that PHAs would have in the early stage when they reveal themselves. Later when the community has correct understanding, discrimination problems at community level could be solved.*

However, important issues concerning discrimination are not restricted to situation and severity in solving the problems. Previous research findings also indicate that channels for making complaints in order to solve the problem of discrimination against PHAs that are easier accessed and more successful are often those provided by civil society organizations which have limited resources. Although there are channels for making complaints to organizations in state sector and organizations established according to the Constitution, these channels are difficult to access. The National Human Rights Commission, for instance, have duties that cover wide range of human rights issues; it takes a long time to solve any problems. Important issues that should be considered next are how to advocate for organizations that have direct responsibilities to protect PHAs' occupational right more effectively and how to support civil society organizations involved to have more resources for operation, so that they could work to promote and protect rights of PHAs continuously and sustainably.

### **1.1.2 Impacts of the discrimination**

Research findings indicate that when PHAs face occupational discrimination, impacts on them are both direct and indirect as follows:

#### Direct impacts

- Loss of job and source of incomes; in some cases, PHAs feel that the status of being PHAs also has impacts on advancement of their career.
- Compulsory blood test in recruitment process results in PHAs have less choice for occupation, and lack opportunities for career advancement and for income boosting.

#### Indirect impacts

- Increasing self-stigma or internal stigma of PHAs. PHAs accept view of people surrounding them that being infected with HIV is a guilt, a sin, and detesting. They then see that being discriminated against by other people is correct and appropriate. Therefore, they choose not to disclose their information, live their lives being afraid that others would know their real status all the times. In many cases, PHAs decided to reveal their status and receive treatment too late, resulting in they lost their lives prematurely.
- In case that PHAs unwillingly disclosed their status to people around them and people in their community, they have to face great difficulties in

their living, not only for themselves but also for their family and acquaintance who would be stigmatized and disliked by other people in the community.

- Occupational discrimination is a starting point that leads to more violation of PHAs' other human rights, such as being forced to receive medical treatment, including blood test to look for HIV, detention, being detained for disease test, being abandoned, being segregated, receiving consultation service that is not well rounded, being forced to reveal results of blood test, being pressured to disclose infection status, and being discriminated when going to receive medical treatment, such as being put at the end of queue when visiting dentist or checking for cervical cancer.

- Economic impacts as a whole. When the National Health Insurance Office opened services under the Universal Health Insurance Project, it covered retroviral medicine for PHAs, so that they would be healthy and could live normal lives as usual. In practice, however, there was occupational discrimination against PHAs, resulting in a part of labour force regrettably disappearing from the formal sector.

### **1.1.3 Causes of occupational discrimination against PHAs**

It was found from research findings that main causes of occupational discrimination are as follows:

- People in society in general lack correct knowledge about HIV infection, resulting in employers in business related to food and services being fearful and dislike.
- Lack of knowledge about law concerning rights and discrimination in Thai laws, both for employers and PHAs. This cause results in many employers still have discriminating policy while many PHAs do not know their rights and accept being discriminated.
- Lack of knowledge and understanding about progress of technology for treatment of AIDS which enables PHAs to live normal life, resulting in many people still understand that PHAs would have poor health. A number of employers therefore do not hire PHAs because they are afraid employees who are PHAs would not worth the expense and they would actually have more expenses.
- People in society in general still have prejudice against PHAs, seeing them as persons who have undesirable behaviours, and thus they should not associate with PHAs.

These lack of knowledge, incorrect understanding and prejudice are results of campaign to prevent spread of AIDS in the early decades that employed scaring tactics, embedding myths in the mind of people, making AIDS and HIV a scary thing. Government policy for management of AIDS problems was to reduce risk behaviours in order to prevent spread of HIV to other people. This policy which was under influence of epidemiology concept restricted views towards AIDS, preventing approach to AIDS in other dimensions and repeating stigmatization and discrimination.

It was found from studying related situations and the problem of occupational discrimination against PHAs in Thailand that under current legal framework, even if Thailand still has no specific law to eliminate discrimination against PHAs, Thailand's Constitution has provisions about equality and non-discrimination. There are also provisions about fair discrimination that is used as measures to protect groups of people that are different in different situations. PHAs benefit from these provisions as well. When Section 30, Paragraph 3 of the Constitution of the Kingdom of Thailand B.E. 2550 is taken into consideration, one would find that occupational discrimination, such as compulsory blood test to look for HIV in job applicants or employees, whether it is in stage of job placement, recruitment or employment, and refuse or dismiss them because they are PHAs is an act that is against the Constitution. Apart from being an act that is against the Constitution, it was found that some employers' actions, such as getting access to health information of their employees without consent, or requesting hospital to inform them results of health examination and blood test is considered to be violation of right to privacy and is an offence according to the Criminal Code and Civil Code.

Even if the Constitution of the Kingdom of Thailand recognizes and protects individual persons from discrimination, it was found that structural problems of the existing complaint mechanisms under the Constitution which have complex process and stages, and may need longer time than necessary because several organizations involved have overlapping scopes of authority. For instance, individual persons whose rights and liberties recognized by the Constitution are violated can only use their rights through the Constitution Court to have judgment in case that any legal provision is opposing or against the Constitution when they have used all other available channels (Section 212), such as submitting complaint through the Ombudsman (Section 245),

National Human Rights Commission (Section 257) or court (Section 211). This requirement has become an important obstacle for individual persons whose rights are violated have problems in accessing complaint mechanisms and being remedied from discrimination because they do not want to enter into process of the existing mechanisms. Consideration should therefore be taken to develop complaint mechanism that is consistent with needs of PHAs.

In addition, it was found that activities to promote access to involved agencies' complaint mechanisms in state sector and civil society sector are still not clearly integrated in various dimensions, such as joint management of database, guidelines for creating referring mechanisms, and effective monitoring and evaluation system, affecting planning or strategy for systematic promotion of access to protection mechanisms.

## **2. Recommendations from this study**

To propose appropriate forms of actions to solve the problem of occupational discrimination against PHAs, the research team divides their recommendations into two types. The first type is **policy recommendations related to laws** which come from reviewing the main concept of equality in occupation, human rights principles and international standards related to protection of PHAs' occupational right by synthesizing them together with results from studying conditions and causes of occupational discrimination against PHAs in the context of Thailand. The second type is **recommendations on directions and measures appropriate for protection of PHAs' occupational right by using other measures**. Details of these recommendations are as follows:

### **2.1 Policy recommendations and recommendations concerning improvement of laws to eliminate occupational discrimination against PHAs**

Even if the Constitution of the Kingdom of Thailand B.E. 2550 has provisions to protect individual persons from discrimination as appears in Section 30, Paragraph 3, laws used to protect rights of persons who face the problem of discrimination are still scattered around, such as in the Criminal Code and Civil Code. Moreover, persons who face the problem of discrimination cannot directly access right protection mechanisms according to the Constitution. It is therefore necessary to consider enacting discrimination eliminating law that establishes clear norms for protection in case of

discrimination that both government agencies and private agencies need to follow. This would be one way to solve discrimination problems that occur in regulations of various agencies, including to create mechanisms/process for protection of rights of persons whose rights are violated that they can directly access. Therefore, **it is necessary to advocate a law for elimination of discrimination or a law for equality as a whole in the same manner as the equality law in the United Kingdom, and to reduce repeated discrimination and strengthen law delivery. This law does not have to be specific law for PHAs, but have to be synthesized together with discrimination problems faced by other groups of people, such as people with disabilities, integrating other target groups who face discrimination problems as well, by:**

- (1) The National Human Rights Commission: Directly advocate by proposing policy recommendations and recommendations concerning improvement of laws and rules with content about elimination of discrimination to the National Assembly or Council of Ministers to promote and protect human rights of persons in risk of discrimination according to authority of the National Human Rights Commission in Section 257 (3) of the Constitution of the Kingdom of Thailand B.E. 2550<sup>6</sup> by devising them to have content that covers elimination of discrimination against PHAs, persons affected by HIV/AIDS, and other target groups that face discrimination problems. Enactment of these laws must be:
  - rights based,
  - gender responsive,
  - paying attention to forms of complaint mechanisms, remedy methods and characteristics of organizations working to receive complaints and do monitoring, evaluation and reporting.

As for legal provisions to eliminate occupational discrimination, they must:

- promote roles of employers, employees' organizations and civil society organizations for promoting protection of PHAs' rights in job placement, recruitment and employment.

---

<sup>6</sup>The Constitution of the Kingdom of Thailand B.E. 2550 in Section 257 (5) "to propose to the National Assembly or the Council of Ministers policies and recommendations with regard to the revision of laws and by-laws for the purpose of promoting and protecting human rights".

- have penalties, both criminal and civil, that are clear and strong enough for occupational discrimination, violation of the right to privacy and disclosure of confidential information to prevent discrimination.
- promote protection of PHAs' rights in forms of tax rate concessions, or tax exemption, or financial supports, or corporate social responsibility. Employers who play roles to promote protection of PHAs' rights is an issue that should be considered in the enactment of laws.

(2) The National Human Rights Commission: Indirectly advocate by supporting or working with other agencies that have already been taking actions, such as the Law Reform Committee and Disabled People Network by having content that covers discrimination against PHAs and people affected by HIV/AIDS in the same direction as in (1).

## **2.2 Recommendations on directions and measures appropriate for protection of PHAs' occupational right by using other measures**

It was found from studying situation of discrimination and attempts to solve the problem of occupational discrimination against PHAs in part that is not legal measures that even if there were initiatives to protect PHAs' occupational right as appeared in the **Guidelines for AIDS Prevention and Management in Workplaces** of which Department of Labour Welfare and Protection put into effect in 2005 (amended in 2011) and the **National Guidelines on AIDS Prevention and Management in Workplaces** of which then National Committee on AIDS Prevention and Control put into effect in 2009, it appears that both guidelines cannot be effectively enforced because there is still a number of workplaces that have occupational discrimination policy against PHAs. The National Committee on AIDS Prevention and Control, which is a mechanism for cooperation between government sector and civil society sector, on the other hand, came up with a National Strategy for AIDS Prevention and Control B.E. 2555-2559 (2012-2016) with a target to reduce the problem of discrimination against PHAs, but its lack of resources to continuously support its operation is an obstacle that obstruct it from effectively reducing discrimination problem.

While accessing mechanisms in the state sector is difficult and it is rare that these mechanisms did solve the problem in practice, mechanisms that PHAs can access most and can advocate for solutions to immediate problems most are mechanisms in civil society sector. Civil society sector mechanisms,

which focus on working to reduce discrimination by promoting correct understanding among entrepreneurs, on the other hand, have limitations in their work because of limited resources and personnel. Therefore, it is necessary to consider ways and measures appropriate for protection of PHAs' occupational right apart from legal approach and state mechanisms.

Analysing context of PHAs' rights protection in Thailand, an appropriate form of protection for PHAs' occupational right is therefore **promotion of PHAs' occupational right in civil society sector** by supporting and strengthening mechanisms in civil society sector that have already been working to protect PHAs' occupational right to have enough resources for operation, so that they can outreach to persons who face the problem more widely and strengthen PHAs to have capacity to mutually protect each other's rights in sustainable way. Ways to protect PHAs' occupational right under these recommendations are as follows:

- (1) **The National Human Rights Commission** should have clear measures to support operation of human rights NGOs and persons affected by discrimination and human rights violation in this issue. Ways to promote human rights in civil society sector may be considered by **establishing a fund for promotion of human rights protection**, including making recommendations to the government to establish a **fund to promote protection of PHAs' human rights through the National Committee on AIDS Prevention and Control** to reduce gaps in the state sector's work to protect PHAs' occupational right by recognizing and supporting cooperation with civil society sector and strengthen civil society organizations and persons who face the problem in sustainable way. This can be considered as using its authority according to Section 257 (7) of the Constitution of the Kingdom of Thailand B.E. 2550 and Section 24 of the National Human Rights Commission Act B.E. 2542 (1999)<sup>7</sup>.
- (2) The National Human Rights Commission must pay attention to solve the problem of occupational discrimination against PHAs at the root

---

<sup>7</sup>Section 257 (7) of the Constitution of the Kingdom of Thailand B.E. 2550 states about authority of the National Human Rights Commission as follows: "to promote co-operation and co-ordination amongst Government agencies, private organisations, and other organisations in the sphere of human rights," and Section 23-24 of the National Human Rights Commission Act B.E. 2542 mentions roles of private organizations in the field of human rights as mechanisms to work with the National Human Rights Commission.

cause, that is lack of knowledge and understanding about infection and rights of PHAs. It is therefore necessary to pay attention to measures to create knowledge and understanding in order to solve rights violation problems, promote correct knowledge and understanding among the public about HIV infection and progress in the care and treatment of PHAs in order to eliminate myths that are important cause of discrimination. In its campaign to provide knowledge for human rights promotion and protection, the National Human Rights Commission should integrate contents that cover rights of PHAs, necessarily including knowledge about HIV infection and progress in the methods for PHAs treatment in order to eliminate myths that are the main cause of discrimination, and must necessarily provide knowledge to agencies involved, so that they would have correct knowledge and understanding about protection of PHAs' human rights as well.

- (3) The National Human Rights Commission must rush to check and propose measures to solve the problem in case that there is a complaint about discrimination against PHAs, whether it is about occupation or education which would influence occupation in the future, so that PHAs have speedy access to human right protection. And in case that the National Human Rights Commission cannot solve the problem of occupational right against PHAs, it should consider proposing the case to other mechanisms in the judicial process according to provisions in the Constitution<sup>8</sup> that are the Constitution Court (Section 257 (5)) or Administrative Court (Section 257 (4)) in case that rights violation was committed by the state. The National Human Rights Commission would be plaintiff to sue the case in the

---

<sup>8</sup>Constitution of the Kingdom of Thailand B.E. 2550, Section 257

(2) to refer the matter, together with an opinion, to the Constitutional Court in the case where it agrees with a complaint addressed by a complainant that any provision of law affects human rights and begs a question of constitutionality, in accordance with the Organic Act on Procedure of the Constitutional Court;

(3) to refer the matter, together with an opinion, to the Administrative Court in the case where it agrees with a complaint addressed by a complainant that a by-law, order or any other administrative act affects human rights and begs a question of constitutionality or compliance with the law, in accordance with the Act on Establishment of Administrative Courts and Administrative Court Procedure;

(4) to file a lawsuit to the Court of Justice on behalf of the injured person when a request is made by the injured person and it is deemed appropriate to find a solution to violation of human rights *vis-à-vis* the public at large, as provided by law

court of justice in case that rights violation was committed by private sector (Section 257 (5)) or to be joint plaintiff to sue the case together with the injured person to create norm of non-discrimination and protection of PHAs' occupational right in the future.

- (4) The National Human Rights Commission should recommend the government by the Ministry of Labour to **pay attention to the issue of occupational discrimination against PHAs, conduct campaign to make the public recognize importance of the discrimination problem more and advocate to make existing measures to prevent discrimination effective in practice**, especially the National Committee on AIDS Prevention and Control's National Guidelines on AIDS Prevention and Management in Workplaces and Ministry of Labour's Guidelines for AIDS Prevention and Management in Workplaces according to provisions about examination of human rights violation in Section 28 (2) of the National Human Rights Commission Act B.E. 2542.<sup>9</sup> The commission should promote tripartite negotiation to look for common agreement and guidelines for elimination of occupational discrimination and promotion of PHAs' right protection in employment policy of various workplaces according to authority provided in Section 257 (7) of the Constitution of the Kingdom of Thailand<sup>10</sup> by paying attention to the following issues:
- Measures to prevent spread of HIV, such as giving correct knowledge to labour
  - Measures to prevent occupational discrimination and right violation, such as concealment of private information, provision of necessary services to PHAs, provision of shelter and appropriate forms of work.

---

<sup>9</sup> National Human Rights Commission Act B.E. 2542, Section 28 (2) states that "In setting forth the remedial measures under paragraph one, the Commission may require a person or agency to perform his or its duties by appropriate methods to prevent a recurrence of similar human rights violation."

<sup>10</sup> Constitution of the Kingdom of Thailand B.E. 2550, Section 257 (7): "to promote co-operation and co-ordination amongst Government agencies, private organisations, and other organisations in the sphere of human rights."

- Remedy and rehabilitation measures, such as compensation money and early retirement, for example.

These measures include ASO Thailand standards which have no incentives for employers to participate in the project. It is necessary to recommend responsible agencies, that are Department of Labour Welfare and Protection and the Thai Business against AIDS, to work together directly with stakeholders, especially employees or PHAs to play a role to do more advocacy together.

- (5) The National Human Rights Commission should recommend government agencies that have authority and duties to protect rights and liberties of the people, whether it is occupational right or human rights as a whole, such as Department of Labour Welfare and Protection, Department of Social and Welfare Development, and Department of Rights and Liberties Protection, create correct knowledge and understanding about HIV/AIDS, so that these organizations could really protect rights of the people and PHAs.
- (6) The National Human Rights Commission should recommend Ministry of Public Health and other related agencies to strictly enforce existing laws that protect PHAs, such as using mechanisms according to the Nursing Home Act B.E. 2541 (1998) with medical establishments that provide HIV test and reveal results of the test to other persons, for example.