

Report on China
4th Round of the Universal Periodic Review – February 2009

This report is submitted by the **Sexual Rights Initiative** (a coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development and Creating Resources for Empowerment and Action-India and others). This report was produced in cooperation with Chinese human rights activists that, due to safety reasons, chose to remain anonymous. Their identities are known by the three organizations mentioned above that are submitting this report. It focuses on the situation of **HIV/AIDS prevention and treatment in China. Marginalized groups, such as sex workers, injecting drug users (IDUs), men who have sex with men (MSM), and ethnic minorities** are highlighted in this report.

Background

1. The People's Republic of China has a population of 1.3 billion, 92% of which is Han majority, 8% of which constitute 55 different ethnic/racial minorities. According to the Constitution of The People's Republic of China, all peoples share equal rights. Regional autonomy is practiced in areas where people of minority nationalities live in concentrated communities. In 2004 China amended its constitution to highlight the importance of human rights under Chinese law, clearly stipulating that "China respects and safeguards human rights."

2. Out of a history of denial, punitive action and neglect, the Chinese government's attitude towards public health changed with the SARS epidemic in 2003. Chinese authorities showed a new willingness to accept overseas assistance, and expressed their will to double the national AIDS budget. In addition, during the United Nations General Assembly Special Session on HIV and AIDS (UNGASS) in 2003, officials from the Chinese Ministry of Health, made a commitment to a policy called "four free, one care"¹, which was implemented nationwide from 2004. On World AIDS Day 2003, Wen Jiabao became the first Chinese Premier to shake hands with HIV positive people. In January 2006, the State Council released the HIV and AIDS Prevention and Control Regulation which was implemented from March 2006--the first legislation on HIV and AIDS in China.

3. There are currently an estimated 700,000 people living with HIV in China². 80.5% of reported HIV positive and AIDS patients reside in Yunnan, Henan, Guangxi, Xinjiang, Guangdong and Sichuan. The AIDS epidemic is serious in minority areas as two of these are ethnic autonomous regions, while two others contain several ethnic autonomous prefectures and numbers of autonomous counties.

4. From January 2007 to October 2007, HIV transmission through heterosexual behaviour amounted for 37.9% followed by injecting drug usage with 29.4%. In addition, HIV infection is highest among young people: 73.5% of those reported HIV positive are 10 to 30 years old; 51.4% of AIDS patients are 10 to 30 years old³.

5. Knowledge about HIV and AIDS among the general public is limited to an "elementary" level even in big

¹ "Four Free, One Care" policy provides free counselling, testing services, ARV treatment, prevention of mother-to-child transmission, and support for children or people living with HIV and AIDS.

² According to the Joint Assessment Report on China HIV and AIDS Prevention and Control in 2007, which was produced together by the State Council HIV and AIDS Prevention and Control Committee Office and UNTG on HIV and AIDS.

³ Ibid

cities like Beijing, Shanghai, Guangzhou⁴.

International Human Rights Obligations

6. China was elected a member of the UN Human Rights Council in 2006. Before that, China was a member of the UN Human Rights Commission. The People's Republic of China has ratified the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of the Child.

7. Relating to sexual and reproductive rights as well as HIV and AIDS prevention and control, the People's Republic of China has also signed on several international standards, which include the Program of Action (PoA) of the International Conference of Population Development (ICPD) in 1994, the Paris Declaration of the AIDS Summit in Paris 1994, the Platform for Action of the United Nations 4th World Conference on Women in 1995, the Millennium Development Goals (MDGs), the Declaration of Commitment on HIV and AIDS as well as the Political Declaration on HIV and AIDS of the UNGASS meeting 2001 and 2006.

AIDS Education

8. In recent years, new guidelines and policy documents have been continually issued to reinforce the need for sexual and reproductive health and AIDS education in **schools**; however, it is unclear how and to what extent local authorities actually implement these new guidelines and policies. In addition, a lack of qualified teachers, standard curricula as well as appropriate teaching materials in minority languages hinder the educational efforts in schools.

9. According to article 15 of the HIV and AIDS Prevention and Control Regulation (hereinafter referred to as the Regulation), local governments should reinforce AIDS education for **migrant workers**, who are estimated to be numbered at around 120 million in China; however, again it is also unclear how and to what extent local authorities actually implement the Regulation. In addition, the diversity and mobility of migrant workers poses an additional challenge.

10. Different kinds of campaigns like conferences, entertainment, interviews with experts, on-site consultations, information, education & communication materials (IEC materials) distribution, etc have been organized around the World AIDS Day in recent years to raise public awareness and eliminate discrimination and stigma against people living with HIV and AIDS. These activities, however, only occur around the World AIDS Day and not throughout the year.

HIV and AIDS Prevention and Control

11. According to Article 23 of the Regulation and the China's National Medium and Long Term Plan for HIV and AIDS Prevention and Control (2006-2010), China implements voluntary HIV counselling and testing; however, there is still forced testing for some groups of people, including people in jail, people in

⁴ According to a research done by Horizon Company in 7 cities in China around the World AIDS Day in 2005. Another research done in 2005 shows that 63% of respondents thought that it would be unsafe to work in the same office as a person infected with HIV, and 74% thought that those living with the virus should be banned from public places such as public swimming pools. In addition, negative perceptions of people with HIV/AIDS were also recorded in this research: 44% of respondents thought that most people with HIV are promiscuous, and 21% felt that they are merely receiving the punishment that they deserve.

the armed services, public service workers, civil servant examinees, some college entrance examinees, immigrants, IDUs, sex workers and their clients, blood donors, organ donors, etc.

12. **Voluntary counselling** services are provided to persons who test HIV positive but not widely provided to HIV negatives, even though people who undergo HIV testing already engage in high-risk sexual behaviour.

13. In general, **HIV testing and counselling** are anonymous, while confirmatory testing requests the legal name; however different areas have different methods. In Yunnan for example, both HIV antibody testing and confirmatory testing require the legal name in order to inform HIV positives in a timely manner and allows for easy follow-up. The disadvantage, however, is the risk for people to be exposed if the process is not confidential. This will decrease the number of people who undergo testing due to fear of exposure and discrimination. However, anonymous HIV testing also has some problems now at the implementation level: to meet quotas, some agencies or departments undertake repeated HIV testing of the same people. In addition, some people provide incorrect contact information and make it impossible for the health department to contact them with the test results.

14. According to article 38 of the Regulation, HIV positives and AIDS patients have an **obligation to inform their HIV status to their sexual partners** and doctors when they seek medical attention. The HIV and AIDS Prevention and Control Regulation in Yunnan Province states that if HIV positives or AIDS patients don't inform their sexual partners of their status, related health departments have the authority to do so in their place, thereby violating their right of privacy as guaranteed by the Chinese Constitution.

15. In October 2007, during the Global Fund to Fight AIDS, Tuberculosis and Malaria council meeting in Kunming, in October 2007, protests by civil society garnered international attention to China's **travel restrictions** against people living with HIV and AIDS (PLWHA), in place since 1986⁵. In November 2007, officials from the Ministry of Health (MOH) made a commitment to try their best to abolish these travel restrictions against PLWHA. During the International AIDS Conference 2008 in Mexico City August 2008, officials from the MOH informed that China will abolish these travel restrictions.

16. The Regulation and the newly released "Law Against Drug Abuse" state that local governments should provide **medical treatment** and other intervention measures (methadone maintenance treatment and needle exchange programs) for IDUs according to the specific situation of the AIDS pandemic at the local level. Since August 2007, 467 Methadone clinics were approved, encompassing 23 provinces, autonomous regions and municipalities. 77,482 patients have since been assisted. The first needle exchange program started in Yunnan 1997. Currently, needle exchange programs are implemented in more than 100 districts and counties.

17. Drug use is illegal in China, and **drug users** run the risk of police arrest. Due to their illegal status and the discrimination and stigma against drug users, there are some inconsistencies among the health department, police department, and the medical department leading to inconsistent policies. Some drug users have the chance to undergo Methadone Maintenance Treatment (MMT) or to join needle exchange programs, while some others are arrested by police at the same time.

18. The government also promotes the "100% Condom Use Program" for **sex workers** to prevent HIV and Sexually Transmitted Diseases (STDs); however, sex work is illegal in China. Sex workers will be detained or arrested once they are found by the police, thereby preventing sex workers from being effectively involved with the 100% Condom Use Program. An official government memo released in 1999

⁵ According to the policy, once foreigners are found to be HIV positive or AIDS patients, they are forced leave the country.

instructed the police to disregard condom as an evidence of prostitution⁶, but it was ignored for the most part. That's also why when one policy was released and regulates that all of the public establishments should set up condom supply equipment, a lot of entertainment establishments didn't want to implement it at the beginning.

Treatment and Care

19. The Law on the Prevention and Control of Infectious Diseases passed in 1989 regulated that AIDS patients should undergo **treatment** in isolation wards. In 2004 that law was revised, and AIDS patients were no longer required to undergo isolated treatment. At the same time, the government, advocating for care for PLWHA indicated that they should receive treatment and help from community and family.

20. Lack of treatment **adherence education** to AIDS patients who undergo ARV treatment is a serious issue. Over 33.95% patients do not take their medicines on time due to lack of treatment adherence education⁷. It is estimated that the total adherence is below 50% in the present situation. Also, the difficult coordination among the several involved pharmaceutical factories and the regular changes in ARV treatment are additional reasons for the low adherence rate which can contribute to increased drug resistance.

21. Currently the Chinese government only provides first-line **ARV treatments** for free, while second-line ARV treatments are not free⁸. Given that second-line ARV treatments are necessary for patients who have developed drug resistance, and the number of patients who are drug resistant is increasing, this failure to provide free second line ARV treatments has impacted the accessibility of effective ARV treatment.

22. According to the Regulation, **PLWHAs in jail** should be provided related prevention and treatment services. However, it is not implemented widely.

23. The Regulation states that no unit or individual can discriminate against PLWHAs and their family⁹. Due to **discrimination** and stigma, implementation of this policy is ineffective. There are still many cases where people are refused care by hospitals; AIDS orphans are rejected by schools.

24. Some places in China like Yunnan and Zhejiang combine the Lowest Living Guarantee Policy-LLGP (welfare for poor people) with the **aid** to PLWHAs, but conflicts with other legislations cause difficulties with this policy implementation. At present, according to related regulations, drug addicts are excluded from the LLGP. In addition, to receive benefits from it applicants need to undergo an in-house visit by a government officer to survey the family's economic status and real living conditions, but HIV positive and AIDS patients risk public exposure, and thus are unlikely to apply for welfare benefits.

Sexual Rights of Specific Groups

25. **Sex workers'** right to personal safety is also threatened especially for those who are the bottom of society and who work on the streets. They seldom seek help from the police because of the illegal nature

⁶ For example, when police carry out its mandate in entertainment establishments, condom is often regarded as evidence of prostitution.

⁷ According to a research conducted among AIDS patients in rural areas in Henan and Anhui

⁸ First line treatment the initial combination of ARVs used to treat HIV infection, which are often available in generic form. If treatment failure has occurred then WHO recommends that the entire drug combination should be changed. The new second line regimen will ideally include at least three new drugs, in order to increase the likelihood of treatment success and minimize the risk of cross resistance. Second line treatments are newer, protected by patent, and more expensive than first line treatment.

⁹ Medical agencies cannot refuse treatment for them; AIDS orphans have the right to get free compulsory education and free or reduced tuition from pre-school education until high school; local governments should provide material aid to poor PLWHAs

of their work and the risk of exposure. In 2007 there were news reports of female sex workers being killed and raped one or two times each week. Research conducted in 2007 on living conditions of female sex workers showed that they were at permanent risk of being robbed, raped and killed. At the same time, the police have extreme difficulties investigating and solving these cases. Once sex workers are killed, it's difficult for a policeman to find out even their legal name¹⁰.

26. Before 2001, according to a memo released by The Ministry of Public Security (TMPS), prostitution meant "an improper sexual relationship based on money or property between female and male". In 2001, TMPS released another memo redefining prostitution as an "improper sexual relationship based on money or property heterosexually and homosexually, including oral practices, masturbation, etc." Police took strong measures to target sexual services between men. In 2006, male entertainment establishments were regularly searched by the police, clients were detained, and condoms were confiscated, all of which placed homosexual sex workers in an even more marginalized position.

27. In China, **homosexuality** has been regarded as unnatural and illegal sexual behaviour¹¹. It is noted from the National HIV and AIDS Prevention and Control (1988-1991) that from 1984, homosexuality is severely forbidden in order to prevent HIV. HIV and AIDS Medium and Long Term Prevention and Control (1990-1992) formulated that homosexuality is illegal in China. In 2001, homosexuality was removed from the list of mental diseases, but this did not make it legal. Homosexual marriage is not supported by Chinese law; homosexual people cannot adopt children. There is no law or policy about same sex sexual harassment and sexual violation. As a result, when their rights are violated, they seldom seek police help. Discrimination and stigma against homosexuals is also serious¹².

28. 36% of the HIV infections in the entire country are amongst the **ethnic minorities** who constitute 8% of the total population. Residing in the frontiers and mountains of China, their living and economic development conditions make them vulnerable to HIV infection. To earn money, some turn to selling drugs. In addition, low education, cultural and language barriers and their low social status also prevent them from communicating and accessing information, education and services related to HIV and AIDS, even if some ethnic minorities migrate to the different cities in China.

29. Vulnerable groups like sex workers, IDUs, MSM, etc, are encouraged by government to be involved in the HIV and AIDS prevention and control projects. They are selected as volunteer and peer educators; however, they cannot yet participate in decision making, and cannot take ownership of the projects, which hinders their efficacy.

NGO's Role on HIV and AIDS Prevention and Control in China

30. Although according to the Constitution of The People's Republic of China, all citizens enjoy freedom of association, NGOs development in China still encounter many restrictions due to the difficulties for NGO registration¹³. Most grassroots NGOs exist in China without registration, which means they cannot accept funds and resources as a legitimate organization.

31. Grassroots NGOs play an important role in HIV and AIDS prevention and control, which cannot be replaced by the government. They can reach a wider range of target groups, conduct AIDS education

¹⁰ Fake names, IDs, places of origins, and even fake backgrounds are common among sex workers.

¹¹ From the 1950s to 1980s, homosexuals were considered "scoundrels," and they were punished by forced labor for re-education.

¹² They are fired from jobs when they are exposed; they enter heterosexual marriage under social pressure; and they cannot express their sexual orientation freely. The Chinese media frequently perpetuates discriminatory ideas about homosexuality.

¹³ NGOs either could register as a GONGO (Government-Organized Non-Governmental Organization), which has to have some institutional link to a government department or register as a for-profit organization.

among migrant workers, involve more IDUs in MMT and needle exchange programs, increase participation of sex workers in the 100% Condom Use Program, help AIDS patients in treatment adherence, as well as help the government better implement policies and programs; however, due to their awkward legal position, they cannot presently achieve the capacity needed to play a better role.

Recommendations

1. To provide comprehensive sexuality education, including HIV prevention, in public schools in China.
2. To provide wide-ranging education to the general public to raise awareness of HIV and AIDS and eliminate discrimination and stigma against PLWHAs, AIDS orphans, sex workers, IDUs, MSM, etc.
3. To train health service providers and medical students to eliminate discrimination and stigma against PLWHAs, AIDS orphans, sex workers, IDUs, MSM, etc.
4. To develop IEC materials taking in consideration the different cultures and languages, and disseminate them to all target groups.
5. To provide voluntary and confidential HIV testing for all people, with their informed consent
6. To provide voluntary and confidential HIV counseling service to all people who undergo HIV testing.
7. To provide more convenient and friendly HIV and AIDS prevention and treatment to target groups in order to improve the efficacy of government policies.
8. To hold the right to privacy paramount and ensure that HIV status is not disclosed to partners, families, co-workers or any other person.
9. To promote multiple-sector-cooperation to provide sex workers, IDUs, MSM, and people in jail with a more supportive environment to access information, education, and services on HIV and AIDS prevention and treatment.
10. To provide free second-line ARVs to people with drug-resistance to first-line ARVs.
11. To streamline and improve pharmaceutical testing and approval processes and ensure that ARVs are available in China
12. To provide social welfare to economically disadvantaged PLWHAs without any discrimination and stigma through an inclusive and accessible application process.
13. To pay more attention to the sexual rights of sex workers, drug users, MSM, ethnic minorities to ensure their sexual and reproductive health. Efforts should be made to de-criminalize drug user, sex worker, homosexuality as well as ethnic minorities, to overcome their marginalized status, and could better benefit from government policies on HIV/AIDS.
14. To involve vulnerable groups such as sex workers, drug users, etc. in decision-making about projects.
15. To consider the possibility of NGO registration for NGOs to play a more effective role.
16. To take all necessary steps, including having a perfect monitoring and evaluation system in place, to ensure that policies are effectively implemented.