

A Joint report by four organizations on

**<Human Rights of People Infected by HIV/AIDS  
through Blood Transfusion or Blood Selling in China>**

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**Summary:**

According to the 2011 China HIV epidemic report, released by China's Ministry of Health, UNAIDS, and WHO, it is estimated that by the end of 2011, the number of people living with HIV/AIDS (PLWHIV/AIDS) will have reached approximately 780,000 (620,000-940,000). Among them, around 51480 people were infected via such channels as blood selling, blood transfusion, and use of blood products. The estimated number of PLWHIV/AIDS in four Provinces (Henan, Anhui, Hubei, and Shanxi) accounted for approximately 92.7% (n=47,722) of all estimated number of PLWHIV/AIDS in the nation. The actual number of PLWHIV/AIDS might be higher than estimated by the official agencies. These 4 Provinces are called Central areas. This report is based upon the living conditions of PLWHIV/AIDS that reside in Central areas; in addition, it aims to investigate how the policy of "Four Frees and One Care" is implemented in these regions.

**Keyword:**

people infected by HIV/AIDS through blood transfusion or blood selling

"Four Frees and One Care"

rights to seek legal protection

rights to personal freedom

privacy protection

rights to receive medical care

rights to know

children's rights to health care

children's rights to education

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## **Introduction**

According to the 2011 China HIV epidemic report, released by China's Ministry of Health, UNAIDS, and WHO, it is estimated that by the end of 2011, the number of people living with HIV/AIDS (PLWHIV/AIDS) will have reached approximately 780,000 (620,000-940,000). Among them, around 51480 people were infected via such channels as blood selling, blood transfusion, and use of blood products. The estimated number of PLWHIV/AIDS in four Provinces (Henan, Anhui, Hubei, and Shanxi) accounted for approximately 92.7% (n=47,722) of all estimated number of PLWHIV/AIDS in the nation. The actual number of PLWHIV/AIDS might be higher than estimated by the official agencies. These 4 Provinces are called Central areas. This report is based upon the living conditions of PLWHIV/AIDS that reside in Central areas; in addition, it aims to investigate how the policy of "Four Frees and One Care" is implemented in these regions.

### **I. Rights to seek legal protection from the State for people infected with HIV/AIDS via blood selling/blood infusion/use of blood products**

A daunting number of people were infected with HIV/AIDS via blood selling, blood transfusion, and use of blood products. Relevant parties, such as blood station, hospitals, and public service departments, should be responsible for their negligence and malpractice, which caused many innocent people to be infected with HIV/AIDS, Hepatitis B and C. Nevertheless, victims do not receive any legal protection from the State, nor do they have the rights to appeal to the court.

For instance, in 2008, many people from regions near Henan Province who were infected with HIV/AIDS via blood selling/blood transfusion/use of blood products appealed to local courts and tried suing local medical facilities for their illegal collection of blood samples. However, staff at local judicial courts refused to take their cases when they were informed of the nature of these cases. Staff stated that the government ordered Henan Province not to accept cases relating to PLWHIV/AIDS. Moreover, the staff noted that the leaders in the Central Government think PLWHIV/AIDS have received financial aids and these cases should not be taken by Chinese courts.

Until now, the local judicial courts in Hunan Province have used the same excuse to refuse to establish cases for these victims. The issue of “getting-HIV/AIDS-via-blood selling” has existed for over 20 years but the hospitals/medical staffs were not held accountable for their unethical and illegal malpractice.

Suggestion: It is strongly suggested that courts should follow Civil Procedures Law to protect victims who were infected with HIV/AIDS due to blood selling, blood transfusion, and use of blood products. These victims should have the rights to appeal and seek legal justice. Secondly, governmental officials should not obstruct victims from seeking legal justice. Thirdly, relevant parties who are held accountable for victims’ cases should be investigated. Last but not least, victims should be compensated for living expenses and fees associated with medical treatment.

## **II. Rights to personal freedom**

Local judicial courts in Henan Province and other surrounding Provinces refuse to take cases relating to people who were infected with HIV/AIDS due to blood selling, blood transfusion, and use of blood products. These litigants have to appeal to different courts around the country with the hope that some court would take their cases. Unfortunately, their cases were rejected everywhere. These experiences re-traumatize people living with HIV/AIDS, add to fiscal costs, and violate social justice.

The local authorities retaliate against PLWHIV/AIDS, including the police department, judicial courts, and governmental agencies. For instance, in 1995, a nine-year-old boy, Xi tian, was infected with HIV, Hepatitis B and C due to blood transfusion in a hospital, Hunan Province. He appealed to numerous sources for help, such as local judicial courts, state courts, supreme courts, China State Council, the China’s Ministry of health and so forth. However, he did not hear anything back from these courts; instead, he was charged with vandalism and thus sentenced for one year in 2010. He was released in August 2011 and closely monitored by the police.

Two ladies from Ningling County, Henan Province experienced similar situations. These two ladies were infected with HIV due to blood transfusion in local women's hospital. They have been persistent in appealing to Supreme courts in Beijing to protect their rights over the past decade. In Aug 2009, local government in Henan Province initiated compensating 9,000 RMB for their loss. However, after the ladies received money, local courts in Ningling County and Shangqiu County immediately charged these two ladies with blackmail and sentenced them to 2 years.

By the end of February 2012, more than ten people living with HIV/AIDS from Lingying County Henan Province have appealed to China Ministry of Health, Ministry of Civil Affairs, and China Supreme Court in Beijing. However, police from Henan Province used force to take litigants back to their hometown and warned them not to Beijing again. Their identification cards were also taken away. Another example: One local couple that was infected with HIV/AIDS was arrested and charged with blackmail immediately upon them receiving 20,000 stipends that local government promised to give. Similar cases like this occur frequently. The police illegally arrested other PLWHIV/AIDS.

Suggestion: First of all, the local and national governments should guarantee PLWHIV/AIDS have the rights to appeal. Secondly, stop prosecuting PLWHIV/AIDS because of their HIV/AIDS status and treat them equally. Last but not least, make sure to implement policies such as Regulation for HIV/AIDS Prevention and Treatment.

### **III. Privacy protection and confidentiality**

Regulation for HIV/AIDS Prevention and Treatment, issued by the China State Council, has come into enforcement since 1<sup>st</sup> March 2006. It states that PLWHIV/AIDS and their families should not be discriminated. In addition, it notes that the rights of PLWHIV/AIDS should be protected and confidentiality should be guaranteed.

However, Beijing set up a committee named "Committee for Comprehensive Society Governance" in order to enhance local community/state capacity building and better manage the Chinese society as a whole. Within this committee, a "Task for Special Groups" was established to closely monitor people with incarceration, disabled people, substance user, people with mental problems, PLWHIV/AIDS, and people vulnerable to HIV/AIDS infection.

Under the leadership of the China Public Security Department and local offices, Committees for Comprehensive Society Governance-Tasks For Special Groups have been set up throughout the country. Ai ying,

Wu, the national director of this national committee, proposed that Tasks For Special Groups should focus on four main aspects: 1. Strengthen education for residents in the correction facilities; 2. Helping people with incarceration reintegrate into the society; 3. Strengthen rehabilitation work for drug users; and 4. Strengthen the prevention work with people that are vulnerable to psychotic breakout and HIV/AIDS.

It is a discriminatory practice to call vulnerable populations dangerous groups. Grouping HIV/AIDS into the same category as people with incarceration, drug user, and people with mental illnesses adds an additional layer to the discrimination PLWHIV/AIDS have faced. What's worse, this discriminatory practice intrudes on PLWHIV/AIDS's privacy.

Suggestion: first of all, HIV/AIDS is a public health issue. The government needs to take control of HIV/AIDS instead of policing PLWHIV/AIDS. The human rights of PLWHIV/AIDS should be guaranteed. Secondly, PLWHIV/AIDS should not be closely monitored by the China public security department nor police departments. Last but not least, PLWHIV/AIDS should have the rights to privacy and personal freedom.

#### **IV. Barriers for the rights to privacy under the current medical system**

PLWHIV/AIDS's privacy has been seriously violated due to the policy that requires them to be closely monitored. PLWHIV/AIDS's identity and HIV/AIDS diagnosed might be exposed when they seek employment, medical care, and social security welfare.

China State Council released a policy titled China Containment and Control of AIDS "Five-Year" Action Plan on January 13, 2012. The "opt-out" HIV voluntary testing has been discussed and should be widely applied. However, it lacks legal protection mechanisms for PLWHIV/AIDS in China. Informed consent is not well practiced. What's more, PLWHIV/AIDS are not rights-conscious.

Procedures for getting social security welfare: PLWHIV/AIDS who apply for social security welfare have to show necessary documents to get financial aids. Their HIV/AIDS diagnosis can be easily exposed to unnecessary parties.

Confidentiality within medical facilities: the China Ministry of Health has adopted an electric system to document patients' information without taking into consideration of patients' privacy, especially information regarding HIV/AIDS and other sensitive diagnosis. Lack of protection of sensitive information often subjects PLWHIV/AIDS to discrimination when they seek medical assistance/treatment. Besides, when PLWHIV/AIDS

file claims with their medical insurance, employers and other governmental agencies might have access to their HIV/AIDS diagnosis.

Suggestion: First of all, advocate for the importance of privacy protection. Secondly, enforce privacy protection on the Regulation for HIV/AIDS Prevention and Treatment. Last but not least, ensure medical providers' responsibilities for patient's confidential information.

## **V. Rights to receive medical care**

It is stated in the article 41 of Regulation for HIV/AIDS Prevention and Treatment, effected in 2006, that medical facilities should provide counseling, prevention, diagnosis, and treatment for any health concerns that PLWHIV/AIDS bring, including but not limited to HIV/AIDS. However, PLWHIV/AIDS has limited access to medical care.

In April 2011, UNILO and China CDC released a report on the discriminations PLWHIV/AIDS receive under medical systems in China. Medical facilities often refuse to provide medical/surgical care for PLWHIV/AIDS. Similar cases occur frequently. Such issues as side effects of ART medicines and lack of the variety of ART medicines are of concern to PLWHIV/AIDS.

In addition, people who were infected with hepatitis C through blood donation, blood transfusion, and use of blood products were also infected with HIV/AIDS via similar transmission channels.

According to a report released by AiZhi Institute on case laws regarding HIV infections through blood transfusion and use of blood products, 58 cases are found relating to infection of both HIV and Hepatitis C. Despite the passage of 1998 Blood Donation Law in China, collecting blood through illegal avenues still exists. For instance, 2001 witnesses that 64 people were infected with Hepatitis C via the use of contaminated blood products by the People's Hospital at Ping Tang County, Guizhou Province. February of the year 2012 witnesses another incident that 120 people were infected with Hepatitis C due to medical staff's misuse of a contaminated needles in Donggang County, Liaoning Province.

In June 2004, the China's ministry of Health estimated that people with Hepatitis C reached 38,000,000; and among them, 50 percentage carried virus. The spread of Hepatitis C virus has posted a serious threat to the public health and added to fiscal burden. Based upon a 2012 report on survey findings of the economic burden of people with Hepatitis C, on average it costs 8212.20 RMB for a person who were infected with Hepatitis C to receive one

treatment from the hospital. This average cost accounts for 34.25 percentages and 117.70 percentages of annual revenues for city residents and country residents respectively.

Suggestion: First of all, increase the variety of ART medicines that are available to PLWHIV/AIDS. Secondly, increase the opportunities for PLWHIV/AIDS and people with Hepatitis C to receive treatment. Thirdly, ensure that patients with financial difficulties will also receive treatment.

## **VI. Rights to know—lack of transparency**

According to Statistics from China CDC, over the period of 2003-2007, Central Financial Department, local financial offices, international monetary aids invested 36.5, 20.3, and 18 Million RMB respectively in the discourse of HIV/AIDS prevention. However, the general public has no clue as to how this money was spent. It lacks transparency as to how money was budgeted and spent on issues related to public health concerns.

On 23rd April 2010, AiZhi Institute made a request for the China Ministry of Civil Affairs to open its governmental information to the general public regarding its policies on improving social welfare for children living with HIV/AIDS, specifically addressing how the government allocated funds and services for this population and how supportive the government has been of NGOs' HIV/AIDS advocacy work. However, no response has been received yet.

On March 28th 2012, Beijing AiZhi made a request for 31 governmental Health Bureaus across 31 Provinces to open its budgeting and settlement allocated to HIV/AIDS prevention/treatment. According to the Open Governmental Information Law, governmental Bureaus must open the information to which the public requested to have access within a certain period of time. However, only 12 Bureaus responded in writing and one by phone but without addressing the information AiZhi requested.

Suggestions: Ministry of Health at all levels should share with the general public information regarding how budget was spent in HIV/AIDS prevention and ensure that the general public has rights to know. Take into considerations voices from different parties, including PLWHIV/AIDS, medical facilities, NGOs and other appropriate stakeholders, when it comes to budgeting for HIV/AIDS prevention. It is suggested that the government release its information regarding implementation of policies on improving social welfare for children living with HIV/AIDS.

## **VII. Children's rights to health care**



In March 2009, China Ministry of Civil Affairs proposed the Recommendations for Improving the Welfare for Children living with HIV/AIDS (article no.26, 2009). It states that orphan children living with HIV/AIDS should receive at least 600 RMB per month from society security system. In addition, children whose parent(s) was/were infected with HIV/AIDS or whose parent(s) died from HIV/AIDS should receive welfare stipends. These children living with HIV/AIDS should receive additional stipend for nutrition/medical care in addition to the basic 600 RMB financial aids.

However, discrepancy exists in terms of the implementation of this policy throughout the country. Some regions do not implement this policy at all, thus adding hardship to life of children living with HIV/AIDS. Failure to implement this policy also leads to protests by families whose members are living with HIV/AIDS.

Take Zhengzhou County, Henan Province for example. In 2011, parents whose children living with HIV/AIDS disclosed that orphan children living with HIV/AIDS only receive 200RMB per month; and children living with HIV/AIDS in a single parent unit only receive RMB 100 per month. The amount of stipend these children receive is far below the standard stated in the policy.

According to the 2010 official report from the government, the number of children orphaned by HIV/AIDS reached 2,891, 5,878 children lost one parent to HIV/AIDS, and 2,153 children were infected with HIV/AIDS. In total, the number of children living with HIV/AIDS is roughly 40,000. Families with children living with HIV/AIDS suffer from severe economic difficulties and protested on many occasions. Large scales of protests occurred to ensure the implementation of the Recommendations for Improving the Welfare for Children living with HIV/AIDS over the past two years (e.g., Nov. 2010, July 2011, Nov 2011, April 2012, Aug 2012, and Oct 2012). However, these protests did not work; instead, people who participated in the advocacy/protests were prosecuted. Suggestions: China Ministry of Civil Affairs and local offices should enforce the implementation of article no. 26, 2009 to make sure every child living with HIV/AIDS receive enough financial aids and medical treatment. Additionally, the privacy of family whose children live with HIV/AIDS should be protected. Last but not least, make available for the public the information regarding budgets/spending for children living with HIV/AIDS.

### **VIII. Children's rights to education**

Children living with HIV/AIDS have difficulties gaining access to education due to discrimination associated with PLWHIV/AIDS. For instance, a six-year-old girl living with HIV, whose parents died from AIDS in February

2012, was declined from having access to school due to her HIV status. This story happened in Weifang County, Shandong Province.

What's more, many children living with HIV/AIDS were segregated and sent to an isolated school that was set especially for children living with HIV/AIDS. The third People's Hospital, located at Linfen County, Shanxi Province, established a Lingen Ribbon School for children living with HIV/AIDS in 2003. In the beginning, the school received 3 children and the number has grown to 23 as to November 2012. Staff from various NGOs started questioned that this approach of setting a separate school for children living with HIV/AIDS would cause psychological damage and lacks sustainability.

In the meanwhile, other issues might surface as these children grow up, such as higher education, employment, and so forth. The high costs of receiving higher education pose a tremendous burden to families whose children are infected with HIV/AIDS. Ironically, policies on Improving Social Welfare for Children Affected with HIV, released by China ministry of Civil Affairs, state that all children living with HIV/AIDS that are eligible for admission to elementary school, high school, vocational school, and higher education should be treated equally and receive financial aid to help them succeed academically. They also state that children living with HIV/AIDS should be sponsored until they finish their schooling, whether they are above 18 or not. However, according to PLWHIV/AIDS in Henan Province, seldom has a child that is supposed to benefit from this policy received any aid.

Suggestions: China Ministry of Health, Civil Affairs, Education, and Fiscal Departments should collaborate to protect the rights of children living with HIV/AIDS to education, allocate necessary financial budget to support their intellectual pursue, and ensure that privacy and confidentiality is guaranteed.

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