

Restrictions on AIDS Activists in China

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I. Summary¹

In recent years, China's government has lifted some of its tight restrictions on the country's long-dormant civil society. Senior Chinese officials have shown a growing awareness about the need to mobilize civil society in order to combat a range of social problems, ranging from humanitarian relief to education and legal defense. As a result, many nongovernmental organizations (NGOs), grass-roots groups, and non-profit websites have sprung up around the country.

But the Chinese state remains deeply ambivalent about these groups, as it does of any institution that is outside of direct state control. Continuing restrictions on civil society, free expression and free association, along with a general lack of accountability for government officials, have hindered the growth of grass-roots groups. Local activists and NGOs are also hampered by the Chinese government's sporadic harassment and detention of activists whose public criticism threatens the interest of some segments of the government. Even as NGO activity generally increases, activists and NGO staff continue to report constant state surveillance, a web of bureaucratic obstacles, and even open harassment in the course of doing their daily work.

The Chinese government seems to have become noticeably more tolerant of nongovernmental activity in the fields of environmental protection and HIV/AIDS. In the latter case, Chinese authorities, who confront a rapidly-escalating AIDS epidemic, seem to be drawing on experience with the AIDS epidemic in many other countries, which has shown that a key ingredient of any successful plan to fight AIDS is the active participation of a vibrant civil society. AIDS tends to strike hardest at those most marginalized by mainstream society: the poor, injection drug users, men who have sex with men, and sex workers. Grassroots activists and NGOs are often best placed to reach persons on the margins of society and to provide them with urgently-needed information and services, whether in person or on the Internet. NGOs can also assist with monitoring how well large-scale government programs are implemented—or not—on the ground. Their experience in living with and combating the epidemic on the front lines can strengthen AIDS policy and law.

¹ This report focuses on AIDS activists and civil society groups, not on obstacles faced by all people involved in addressing the HIV/AIDS epidemic in China. Human Rights Watch has addressed some of the broader problems in detail in its 2003 report, "Locked Doors: The Human Rights of People Living with HIV/AIDS in China," available at <http://www.hrw.org/reports/2003/china0803/>.

While Chinese AIDS activists are playing a leading role in the country's small but emerging independent nongovernmental organization sector, they continue to face institutional obstacles and, in some regions, severe harassment. This report documents such obstacles and traces their consequences for the battle against HIV/AIDS in China.

Testimonies of activists and experts gathered by Human Rights Watch show continuing human rights concerns in four areas:

- Detention and harassment by local authorities in Henan province of AIDS activists who help orphans, speak to the media, or demand access to antiretroviral treatment;
- Harassment of activists working with persons at high risk of HIV transmission, such as injection drug users and sex workers, who are themselves at risk of arbitrary detention;
- Censorship of websites that provide AIDS information to men who have sex with men; and
- A restrictive and outdated set of regulations that create at times imposing obstacles for new AIDS organizations seeking to register or work independently.

These practices have hamstrung China's ability to mobilize citizens to respond to the AIDS epidemic. More broadly, the case material presented here illustrates how continuing obstacles to freedom of association and expression are limiting the development of a civil society that can address emerging social problems. We also provide concrete recommendations about removing particular barriers at various levels of the Chinese bureaucracy that continue to hamper the literally vital work of Chinese AIDS activists.

II. Case Study: The Closure of Orchid Orphanage

The violent closure of the Orchid Orphanage in Henan exemplifies many of the problems discussed in this report:

- the absence in China of the kind of vibrant, multifaceted NGO sector urgently needed to assist and effectively mobilize communities devastated by the AIDS epidemic,
- the failure of some authorities to work with AIDS NGOs that do exist,
- obstacles to the registration of new groups,
- the excessive use of force by rural police and officials against those who protest or otherwise challenge government policies, and
- discriminatory government treatment of people with HIV/AIDS.

In 2003, AIDS activist Li Dan established a small non-profit orphanage in an abandoned temple building in Shangqiu city. He named the school “Eastern Treasure”

[*dongzhen*东珍], which Li Dan said referred to the children; the orphanage was known as the Orchid Orphanage in English. At the time of its closure, the Orchid housed twenty-two children from Henan’s Shuangmiao village between the ages of seven and fourteen, including both orphans and children whose HIV-positive parents were too unwell to care for them.² The school was staffed with four paid teachers and several dozen young volunteers.

Li Dan, himself a member of the Communist Party, tried to register the school formally in October 2003, but ran into a series of difficulties with local officials, some of whom told Li Dan they did not want the facility in the town because it hurt the region’s image and economy.³ At one stage, officials urged Li Dan to turn funds he had raised for the school over to the government and allow them to run it.⁴ Later, officials demanded he pay a registration fee of 1 million yuan [about U.S. \$120,000]; when Li Dan found donors willing to come to Shuangmiao village to pay the fee, police forcibly closed the school, and tried to persuade the donors to donate their money to the local education bureau instead.⁵

² Tan Ee Lyn, “China shuts school for AIDS orphans – activist,” Reuters, July 12, 2004.

³ Philip P. Pan, “China’s orphans feel brunt of power,” *Washington Post*, September 14, 2004.

⁴ Pan, “China’s orphans feel brunt of power.”

⁵ Tan, “China shuts school”; Bian Cheng, “A Graduate Student and Children Orphaned by AIDS,” Chinese Society for Human Rights [online], www.humanrights.cn/zt/magazine/200402004921163841.htm (retrieved May

Like many other would-be NGOs, Li Dan eventually succeeded in registering the school as a commercial enterprise instead of as an NGO. But conflicts with local officials continued, culminating in the school's closure by force in July 2004.⁶

On July 9, 2004, local officials called orphanage staff and told them that the government was closing the orphanage immediately, and would forcibly remove the children to a government facility on that same day.⁷ After some negotiation, staff of the orphanage reached an understanding with local officials that they would leave on the following day. But later that same evening, police and officials attempted to forcibly close the orphanage. An eyewitness reported to Human Rights Watch what happened:

At about nine o'clock in the evening, the government sent a lot of people to surround the building. There were more than a hundred people from the government around the building, most of them...cops. The officials were from the government of the city of Shangqiu and the government of the town of Zhecheng...All the people from the government were divided into more than twenty teams.⁸

Without any [discussion with] the parents...the government said to the children... "Your parents are waiting for you in the cars." They also promised the children, "If you go with us, you can live in [a] hotel and go to school to [continue] learning." Refused by the children, they [attempted] to force the children into the cars. [Staff] were forbidden to speak and leave the room.

The children felt very scared and broke down and wept. Badly shaken, one of the children fell into a faint. One volunteer, trying to protect the children, was pulled into a car by some insolent [government] people....

20, 2005); "Defenders of the Right to Health: Li Dan," Amnesty International, [online] <http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/LiDan> (retrieved May 20, 2005).

⁶ Chen Ying, "Just a misunderstanding? Private school for AIDS orphans is shut down by the local government," *Beijing Today*, March 26, 2004.

⁷ Tan, "China shuts school."

⁸ According to another account, the officials and police officers were not in uniform and did not show proof of their identities. E-mail message from Wang, Chinese AIDS activist, to Human Rights Watch, 2005. To protect their security, all names of those interviewed in China have been changed, and details of the dates and locations of the interviews have been omitted.

The children that were not taken to the cars were very frighten[ed] and ran to the second floor. More than ten officials, coming into the yard, shouted, "There are some children upstairs. Let's take them away." Then a lot of officials rushed onto the second floor. Then the sound of the children's crying, and the officials' shouting came from the second floor.⁹

Family members of the children, hearing what was happening, rushed to the school and began threatening officials and police officers, who withdrew, reportedly fearing HIV infection.¹⁰ That evening, fearing a worse conflict the following day, Orchid staff closed the orphanage and sent the children to stay with relatives in their home village.

As discussed in more detail in this report, fallout continued after the closure of the orphanage. In the wake of the closure, several orphanage staff prepared to raise the issue with national-level ministries and Chinese media. Three were detained for a month, during which time those who were HIV-positive were refused access to their previous course of antiretroviral medications and suffered a decline in health. After the three orphanage staff were released, Li Dan and several other AIDS activists who had raised concerns about these detentions were detained in turn, and report that later they were beaten by thugs who warned them to stop making trouble.

III. Introduction

China faces what could become the largest AIDS epidemic in the world. Official estimates say that 840,000 Chinese men, women and children are now living with HIV/AIDS.¹¹ However, the actual numbers are almost certainly much higher: estimates by some international experts have ranged in the millions.¹² International and official

⁹ E-mail message from Zeng, former Dongzhen volunteer to Human Rights Watch, July 14, 2004.

¹⁰ E-mail message from Zeng to Human Rights Watch, July 14, 2004. Another account of the Orchid crackdown by an orphanage volunteer confirmed most of these details and also reported that four of the police officers were armed. Posted July 15, 2004, www.chinaaidsorphans.org/wangguofeng.asp#topic1.

¹¹ State Council Working Committee on HIV/AIDS and U.N. Theme Group on AIDS in China: *A Joint Assessment of HIV/AIDS Prevention, Treatment and Care in China (2004)* (Beijing, December 2004).

¹² Until 2002, China claimed that only a few thousand of its citizens were living with HIV/AIDS. In 2002, the government increased the estimate to one million. In its 2002 report, UNAIDS estimated up to 1.5 million Chinese people were living with HIV/AIDS. However, in 2003, a few months before announcing plans to offer free antiretroviral treatment, the Chinese government scaled down its estimate to only 840,000 people living with HIV/AIDS, and UNAIDS subsequently endorsed that estimate in the joint report cited above. However, international estimates have been much higher. China's surveillance system has been criticized by many, including Chinese central authorities and the U.N. (see *Joint China CDC-U.S. CDC HIV Surveillance Assessment* (Beijing, China and Atlanta, U.S.A., 2002, p.1-2). Doctors and activists in Henan province still

Chinese experts all say that China will likely have ten million people living with HIV/AIDS by the year 2010.¹³

In the past two years, senior Chinese officials have begun to confront the grave threat posed to China by the AIDS epidemic and have taken steps to combat it. These steps have included the establishment of a high-level State Council AIDS Working Committee, headed by Vice-premier and Minister of Health Wu Yi, and the launching of an ambitious nationwide treatment and care program.¹⁴ The “Four Free and One Care” policy promises to:

- Provide free antiretroviral drugs to persons with HIV/AIDS in rural areas and impoverished persons in urban areas;
- Provide free voluntary counseling and HIV testing;
- Provide free antiretroviral drugs to pregnant women, in order to prevent mother-to-child transmission;
- Provide free schooling to children orphaned by AIDS; and
- Offer care and economic assistance to persons living with HIV/AIDS and their families.¹⁵

In addition, some Chinese ministries have initiated new policies to inform people about HIV/AIDS and to promote the use of condoms.¹⁶ In August 2004, China amended its national law on prevention and control of infectious diseases to explicitly prohibit

estimate that one million people may be HIV-positive in that province alone. Other international experts have expressed skepticism about China's official numbers; some suggest there may be between six and ten million (Anthony Saich, “The Potential of the HIV/AIDS Epidemic,” from “Social Trends in China: Implications for the PLA,” in D. Finkelstein, ed., *Swimming in a New Sea: Civil-Military Relations in China*, forthcoming; E-mail message from Joanne Csete, executive director of Canadian HIV/AIDS Legal Network, to Human Rights Watch.

¹³ National Intelligence Council, *The Next Wave of HIV/AIDS: Nigeria, Ethiopia, Russia, India and China* (Washington, D.C., September 2002) [online], http://www.cia.gov/nic/PDF_GIF_otherprod/HIVAIDS/ICA_HIVAIDS20092302.pdf (retrieved May 21, 2005); “Premier Wen spearheads crusade to dispel discrimination against AIDS victims,” *People's Daily*, December 2, 2003; translated by China AIDS Info [online], <http://www.china-aids.org/english/News/News261.htm> (retrieved May 21, 2005).

¹⁴ State Council and U.N. Theme Group on HIV/AIDS in China, *A Joint Assessment of HIV/AIDS*.

¹⁵ State Council and UNAIDS, *Joint Assessment of HIV/AIDS*, p. 9. In this report, the word “children” refers to anyone under the age of eighteen. The U.N. Convention on the Rights of the Child, ratified by China on April 1, 1992, defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (Article 1). U.N. Convention on the Rights of the Child, G.A. res. 44/25, annex 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/4/49 (1989).

¹⁶ *Joint Assessment*, p. ii.

discrimination against people with HIV/AIDS.¹⁷ In addition, though injection drug users are still subject to arbitrary detention, China has also begun to expand more progressive methadone treatment programs. In 2004, China's premier Wen Jiabao called fighting the AIDS epidemic China's top priority.¹⁸ After many years of government denial about the epidemic, these are significant steps forward that represent real progress.

Senior Chinese officials have shown a growing awareness about the need to mobilize civil society in order to combat a range of social problems, including environmental degradation and AIDS.¹⁹ In response, China's NGO sector, virtually nonexistent a decade ago, has been allowed to emerge. But as this report shows, the Chinese state remains deeply ambivalent about NGOs. China's continuing restrictions on civil society, free expression and free association; the general lack of accountability for government officials; and the state's sporadic harassment and detention of activists whose public criticism threatens the interest of some segments of the government; all combine to severely constrain the growth of a civil society that can effectively join the fight against AIDS.

There are three broad political and social trends driving the current situation: tensions between growing tolerance of NGO activism by senior officials and the more repressive views of local officials; the growing gap between coastal cities and inland rural regions; and the state's harassment, censorship and detention of those most vulnerable to HIV/AIDS.

First, calls for tolerance of NGOs by senior officials exist in continual tension with the Chinese government's chronic institutional discomfort with any initiative not sponsored by the state. This discomfort leads state actors to place numerous obstacles in the path to development of independent nongovernmental organizations and websites.

In the past two years, senior national officials have shown concern about AIDS and tolerance of AIDS activism: China's premier, Wen Jiabao, and the vice premier and director of the Ministry of Health, Wu Yi, together visited people living with HIV/AIDS in Beijing's Ditan hospital on World AIDS Day in December 2003; afterward, Minister

¹⁷ *Joint Assessment*, p. 12. However, the law does not supercede local regulations. Explicitly discriminatory local regulations remain in effect in many provinces and cities around the country, and despite the national law, some regions have continued to enact new regulations that mandate discrimination.

¹⁸ "Fight against AIDS must be China's top priority: PM," Agence France-Presse, July 10, 2004.

¹⁹ "NGOs to play important role in China's AIDS prevention, control," Xinhua, April 13, 2004 [online], <http://www.china-aids.org/english/News/News341.htm> (retrieved May 21, 2005).

Wu Yi had a private meeting with internationally-renowned Henan AIDS doctor and activist Gao Yaojie.²⁰ Minister Wu has also made public statements underscoring the importance of creating an environment that will facilitate mobilizing civil society.²¹ Chinese AIDS activists report that they feel they now have more space to work than they had even a year or two ago. This was evident at the Fifteenth International AIDS Conference in Bangkok in July 2004, where the Chinese government's team of official spokespeople was matched, and sometimes overmatched, by an outspoken group of twenty grassroots NGO representatives.

However, signals of tolerance by Beijing are contradicted in practice by the state's frequent repression of free expression and association rights, and by highly restrictive regulations, written in an earlier era, that continue to constrain the work of grassroots organizations. Statements by senior officials are also frequently in clear tension with the actions of the local officials charged with actually implementing AIDS policies, some of whom see grass-roots activism as a threat to their political control. As UNAIDS and the State Council itself jointly acknowledge, "the core challenge remains that of achieving the effective implementation of these policies at the local level."²² While statements by senior officials have offered hope and encouragement to many frontline AIDS activists, they have done little to loosen the bonds in which many do their day-to-day work.

A second continuing problem is that some of the tension between local and central government authorities arises from the growing economic gulf between China's coastal cities and inland towns and villages. China's cities are developing with lightning speed, especially in coastal areas, while inland provinces and rural areas continue to struggle economically. Most of the new AIDS groups are in more developed and consequently more open cities, such as Shanghai and Beijing. But China's AIDS epidemic is not predominantly an urban one; it mostly affects the rural poor and injection drug users and sex workers in underdeveloped inland regions such as Yunnan, Inner Mongolia, and Xinjiang Uighur Autonomous Region.

The greatest need for social mobilization is in those areas, but those are also areas with the greatest political restraint. AIDS activists in the inland provinces face almost insurmountable difficulties in registering, fundraising, and in relations with the media. In rural areas in particular, the old Chinese saying, *tiangao diyu* ("Heaven is high, and the emperor is far away") often continues to be operative: activists report that national

²⁰ *Joint Assessment*, p. 9.

²¹ *Joint Assessment*, p. 13.

²² *Joint Assessment*, p. iii.

policies on AIDS are unevenly implemented, thanks to entrenched local officials who may have a limited understanding of AIDS and how it is transmitted, who see HIV/AIDS as a sign of moral corruption as well as a health disaster, and who see any public discussion of AIDS as a source of embarrassment that threatens external investment in their impoverished regions.

In some rural areas, public criticism of government authority is treated as a direct political challenge that must be quickly and firmly suppressed; some inland activists have even fled to avoid arrest. This problem is most acute in Henan province, one of the epicenters of the epidemic, and a province with a long and brutal track record of repressing AIDS activism. Henan's vocal AIDS activists and the province's proximity to Beijing have ensured it national and international attention more than other, quieter—and perhaps more successfully repressive—provinces.

The third reason why AIDS organizations and activists face ongoing problems in China has to do with the social marginalization of the people they work with. Those most vulnerable to HIV transmission, namely injection drug users, sex workers, and men who have sex with men, suffer from profound stigma, and in the case of drug users and sex workers, from draconian laws that promote arbitrary detention by police without trial. As a result, activists who work with those persons face a range of risks and hurdles. Government moral rhetoric about the importance of building a “socialist spiritual civilization,” a rhetoric that implicitly blames both Western corruption and persons most vulnerable to HIV for selfish personal “choices” that spread the virus in society, has only further marginalized and stigmatized people who most need government information and support. Official crackdowns on drug users and sex workers and censorship of frank on-line discussions of sex between men who have sex with men, have all closed the space for sharing information and mobilizing marginalized communities, and have limited the activities of activists who aim to inform them.

In response, many activists who work on AIDS, while they report greater freedom than before, continue to live in an atmosphere fraught with anxiety.²³ They engage in constant checking of the political barometer, debating each other and questioning themselves about how far they can go without triggering a government crackdown. Some AIDS activists interviewed by Human Rights Watch reported that they have developed

²³ One notable exception to the rule that AIDS activists in urban areas are relatively free is that of Hu Jia, a prominent Beijing AIDS activist and former director of Aizhixing. Since 2003, Hu Jia has been repeatedly placed under house arrest, largely because of his activism on accountability for the June 4, 1989 massacre, forced evictions, and other issues. In late April 2005, Hu Jia was beaten by Beijing police and was detained for a week before being released without formal charges.

strategies to manage the political risk that surrounds their emerging field. “We haven’t encountered any restrictions on our work,” said the founder of a new group that provides AIDS information to sex workers. “However, we just got started. We just keep it a little quiet, a little underground – we don’t do anything too loudly.”²⁴

Others report that they have learned to engage in self-censorship on certain topics. For instance, many Chinese AIDS activists report harassment by police, but are reluctant to have Human Rights Watch publish this information, even anonymously, for fear of reprisals. As one activist explained,

You can criticize the central government, but it’s different if you offend the local authorities, or some local interest group within the central government. Then you will be in very specific trouble...I am conservative when it comes to talking about the police.²⁵

Other first-hand accounts provided to Human Rights Watch reveal harassment of AIDS training workshops and detention of individual activists, harassment and detention of marginalized population groups that are most at risk of contracting HIV, and general bureaucratic restrictions on the activity of civil society and websites that curtail the ability of those at risk of HIV transmission to share vital information.

In 1996, the U.N. High Commissioner for Human Rights (UNHCHR) and UNAIDS issued the HIV/AIDS and Human Rights International Guidelines, explicitly recognizing the contribution of NGOs toward combating AIDS, and recommending that states ensure, through political and financial support, that community consultation occurs in all phases of HIV/AIDS policy design, program implementation and evaluation, and that community organizations are enabled to carry out their activities, including in the field of ethics, law and human rights, effectively.²⁶

The Chinese government does work with UNAIDS and the UNHCHR. UNAIDS has an office in Beijing and cooperated with senior-level Chinese officials on its 2004 assessment of the AIDS epidemic. In 2000, China signed a Memorandum of

²⁴ Human Rights Watch interview with Hua, gay rights activist, 2004.

²⁵ Human Rights Watch interview with Su, Chinese AIDS activist, 2005.

²⁶ Office of the High Commissioner on Human Rights (OHCHR) and the Joint United Nations Programme on HIV/AIDS, “HIV/AIDS and Human Rights International Guidelines” (from the second international consultation on HIV/AIDS and human rights, 23-25 September 1996, Geneva), U.N. Doc. HR/PUB/98/1, Geneva, 1998, Guideline 2.

Understanding with the UNHCHR in which both parties agreed to undertake a technical assistance program which included workshops on the punishment of minor crimes, human rights education, and China's police.²⁷

The U.N. Guidelines are not binding law, but China is bound to uphold the International Covenant on Economic, Social and Cultural Rights (ICESCR), which commits China to the progressive realization of the right to health. Interpreting the right to health, the Committee on Economic, Social and Cultural Rights calls the right to health:

An inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as...access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.²⁸

The Chinese government has taken a few steps forward in enlisting the help of an emerging civil society in the fight against AIDS, but as this report concludes, there is much yet that needs to be done, and international agencies working on AIDS in China should assist in the effort. As a member of the Information Clearinghouse for Chinese Gays and Lesbians observed,

The government should recognize that grass-roots organizations can be its "right hand" and can be its partners. It should recognize that NGOs are "nongovernmental organizations," not "anti-government organizations."²⁹

Methodology

Human Rights Watch conducted field research for this report in mainland China for a month in 2004. A Human Rights Watch researcher interviewed representatives of about

²⁷ OHCHR, *Technical Cooperation Between the Office of the United Nations High Commissioner for Human Rights and the People's Republic of China: Information note* (Geneva, September 2000).

²⁸ U.N. Committee on Economic, Social and Cultural Rights, General Comment 14, "The right to the highest attainable standard of health," U.N. Doc. E/C.12/2000/04 (2000); Section I paragraph 11.

²⁹ Chen Wenjun, "Shilun Zhongguo aizibing fangzhi NGODE zhunru ji guanlide falu wenti [An exploration of legal questions in the registration and management of Chinese AIDS prevention NGOs]," published by the Information Clearinghouse for Chinese Gays and Lesbians, page 5; paper on file at Human Rights Watch.

a dozen NGOs and grass-roots organizations. Additional interviews were conducted via electronic mail and telephone. Information was also gathered from published reports, published Chinese laws, policies and regulations, academic articles, news reports, and library archives.

The scope of this study is necessarily limited by the constraints imposed on human rights research in China. China is increasingly open to international NGOs working on AIDS, but it remains closed to international human rights NGOs. Chinese activists, lawyers and scholars who speak to or have contact with international human rights groups risk government retaliation. Chinese scholars and activists who travel abroad are often questioned by police on their return.

Human Rights Watch took precautions to protect the identities of witnesses and colleagues who assisted with or spoke to researchers for this report. Interviews were conducted in settings that were as private as possible. All interviews were conducted in Mandarin. In addition, the names of all interviewees have been changed in this report. Identifying characteristics of interviewees have been omitted or altered, as have precise dates and locations of field research. Human Rights Watch looks forward to the day when international human rights groups can work openly with all our colleagues in China.

Because of the security concerns, Human Rights Watch researchers did not request interviews with government officials while in China, but did write to Chinese government representatives in China and in Washington, D.C., to request interviews, but received no response.

IV. Continuing Crackdown in Henan Province

Henan province, the site of one of the world's most disastrous and preventable HIV/AIDS catastrophes, presents all the perils and promises facing AIDS activists in China, often in extreme. Thousands of people, perhaps a million or more, were infected with HIV as a result of a profit-driven blood-selling scheme that operated throughout the 1990s.³⁰ Similar blood-selling schemes operated in a number of other provinces, and

³⁰ Local doctors and activists estimate that at least one million people are living with HIV/AIDS in Henan, and that up to 1.5 million children are affected by AIDS (Chung To, "Social ramifications of AIDS: An update on the orphans of China's Henan province," public presentation at Columbia University, May 6, 2005). Based on research in 2002, Aizhixing Health Education Institute estimated there are up to two million people living with HIV/AIDS in Henan, most of them parents (Cindy Sui, Agence France-Presse, "Chinese NGO that probed village AIDS deaths evicted," July 3, 2002).

Henan's response to the crisis in many ways exemplifies some of the worst problems caused by China's center-local AIDS policy divide.

Local authorities, particularly those in Henan provincial and county health bureaus, were deeply involved in the blood-selling enterprise. Some local health officials enriched themselves and their family members by encouraging thousands of Henan residents, mostly impoverished villagers, to sell their blood to government health facilities. Others sold blood to "underground" or illicit blood banks. As AIDS activist Zhu Jinzhong said to a reporter,

They were all officials from the provincial Health Department or the epidemic control bureau, and their relatives and friends. Without those connections, you could not possibly set up a blood collection centre.³¹

However, the blood collection facilities were poorly run, and did not routinely test for HIV. Blood was collected and pooled, and the lucrative plasma separated out. The remaining pooled blood cells were reinjected into donors to prevent anemia and enable them to donate more often – thus quickly and efficiently spreading the AIDS virus throughout whole villages. Officials even allegedly suppressed studies that emerged while this was happening, showing the extent of the problem.³²

As a result, the populations of entire villages are now dying of AIDS, leaving behind thousands – perhaps hundreds of thousands -- of orphans. To date, no official involved in this catastrophe has been held accountable.³³ In fact, some of the senior officials responsible for the catastrophe have even been promoted. This lack of government accountability has left in place officials who continue to impede efforts to help those affected by the disaster. Some Henan people with HIV/AIDS have called for an investigation.³⁴

³¹ Patrick Brown, "Deadly Secret: AIDS in China," Canadian TV report, April 7, 2004.

³² He Aifang, *Revealing the "Blood Wound" of the Spread of HIV/AIDS in Henan Province*, November 28, 2000, [online] www.usembassy-china.org.cn/english/sandt/henan-hiv.htm (retrieved February 12, 2002).

³³ Since the blood scandal, China has initiated a plan to regulate and certify blood products; see "China HIV/AIDS Containment, Prevention and Control Action Plan, 2001-2005," [online], <http://www.unchina.org/un aids/ekey16.html> (retrieved May 21, 2005).

³⁴ "Gei woguo geji weisheng xingzheng bumende zhaohu xin [An open letter to every level of our country's health and administrative ministries]," signed by ten people living with HIV AIDS in Henan, July 25, 2002; copy on file at Human Rights Watch.

While Beijing has begun to take a more forward-looking stance on the AIDS epidemic, as noted above, some local authorities continue to hamper the development of a national response, and in particular restrict and harass AIDS activists who raise concerns about their management of the epidemic. This is recognized by China's State Council in its 2004 joint report with UNAIDS on the epidemic:

The response to AIDS by different ministries and provinces has been uneven. In many sectors and provinces, policy-makers have limited understanding of [AIDS]...and there is inadequate attention to these issues in the planning, implementation, and evaluation of HIV/AIDS policies, laws and interventions.³⁵

Henan province emblemizes these problems. Before the extent of the AIDS crisis in Henan was known, national and local officials tried to prevent the spread of information about the causes and extent of the blood scandal, often by using China's highly restrictive "State Secrets" law, which can lead to serious criminal penalties for the dissemination of any information deemed – even retroactively – to have been a "state secret."³⁶ In 2002, Beijing police detained Wan Yanhai, director of the Beijing-based AIDS organization Aizhi Action, on suspicion of circulating state secrets; specifically, an internal government report on the epidemic. He was released after an international outcry.³⁷ In 2003, Ma Shiwen, deputy director of Henan's Office of Disease Control, was detained several times on suspicion of circulating state secrets, most likely for sending the report earlier circulated by Wan Yanhai. After another international outcry, Ma Shiwen too was released without charges on October 16, 2003.³⁸ In the 1990s and early

³⁵ *Joint Assessment*, p. 25.

³⁶ China has an extensive system of classification of state secrets. Article 8 of China's State Secrets Law lists seven categories of state secrets:

- secret aspects of major policies,
- secret matters relating to national constructions and military might,
- secret matters relating to foreign policy or foreign matters,
- secret matters relating to economic and social development,
- scientific and technological secrets,
- secrets pertaining to national security activities and criminal investigations,
- and any other national secrets that should be protected.

In practice, courts generally decide retroactively to classify information as secret, so that it is possible for someone to "circulate a state secret" unknowingly.

³⁷ Jacky Wong, "Human Rights Groups, Gay Groups Picket Chinese Consulate in New York," *Sing Tao Daily*, September 20, 2002; "PHR Letter on Behalf of Wan Yanhai," Physicians for Human Rights, September 19, 2002; "Detained AIDS Activist Wan Yanhai Released," Human Rights Watch press release, September 20, 2002; "Human Rights in China Statement on Dr. Wan Yanhai Release," September 21, 2002; "CPJ Welcomes Release of Wan Yanhai," September 20, 2002; "China Frees Prominent AIDS Activist," Canadian HIV/AIDS Legal Network, September 21, 2002.

³⁸ "Arrested Chinese Health Official Released Without Trial," Agence France-Presse, October 20, 2003.

2000s, Chinese and international journalists who visited Henan to document the epidemic were often detained, interrogated, and expelled.³⁹

The massive dimensions of the AIDS crisis and Henan's proximity to the Beijing press corps made it inevitable that the truth would emerge. As the story of this disaster became known in China and abroad, the Chinese government changed its response.

The national government, as well as Henan provincial and county officials, have now promised medical aid and financial support to impoverished villages ravaged by the AIDS epidemic. In September 2003, senior Beijing health officials promised that through the "Four Free and One Care" program, the government would provide free antiretroviral treatment to all those who could not afford it.⁴⁰ In October, China's Ministry of Health announced that it would begin by implementing a "Comprehensive AIDS Pilot Area" project, targeting fifty-four areas in eleven provinces, including several key areas of Henan, for receipt of treatment and care. In particular, those in the pilot areas who contracted HIV through blood transfusions (and sales) were promised free treatment.⁴¹ In February 2004, seventy-six provincial officials were dispatched to the countryside to oversee implementation of the program.⁴²

Furthermore, an official statement about the policy said that "rural residents and AIDS patients [living] in cities and towns, who have never participated in health insurance, or a treatment insurance program, and who are in economic difficulties" could receive treatment and medication at designated public health facilities.⁴³ Henan authorities have added their own promises of support. A "Six Ones" policy commits the province to building:

One road, one water well, one school, one standardized clinic, one orphanage and one education room at villages hit hard by HIV/AIDS,

³⁹ Human Rights Watch, "Locked Doors: The human rights of people living with HIV/AIDS in China," *A Human Rights Watch Report*, vol. 15, no. 7 (C), August 2003, [online] <http://www.hrw.org/reports/2003/china0803/>, pages 28-33.

⁴⁰ "Vice minister vows to fight AIDS," Xinhua, September 23, 2003.

⁴¹ Zeng Pengyu, "220,000 already dead from AIDS in China, those infected by blood transfusions to get free treatment," *Beijing Youth Daily*, October 4, 2003 [online], <http://www.china-aids.org/english/News/News091.htm> (retrieved May 25, 2005).

⁴² "China sends officials to villages to fight AIDS," Reuters, February 16, 2004.

⁴³ "Xinhua Beijing: shenma shi si mian yi guanhuo? [Xinhua Background: What is 'Four Free One Care'?]," December 1, 2004 [online], http://news.xinhuanet.com/newscenter/2004-12/01/content_2281179.htm (retrieved May 21, 2005).

and [to providing] housing, clothes, food, basic health care, and access to schooling for all school-aged children.⁴⁴

The Henan government further pledged to establish orphanages for children orphaned by AIDS, and to provide a small subsidy to families that adopt orphans.⁴⁵

But in practice the Henan response to the AIDS crisis continues to be uneven, and in some cases hostile to efforts by HIV-positive villagers and activists who have formed local NGOs to help provide care, treatment and emotional support to fellow families struggling with the devastating impact of the epidemic. Residents and activists continue to raise concerns about the lack of adequate facilities to meet the overwhelming needs of tens of thousands of children affected by AIDS, the poor quality of the care and treatment provided, the sometimes abusive treatment by local authorities when senior officials come to visit; and about alleged corruption in the administration of internationally and nationally-funded aid programs.

While more information about the harassment of AIDS activists has emerged from Henan than from other provinces, this does not necessarily mean that other provinces are less restrictive; rather, they are subject to less scrutiny. As an AIDS activist explained to Human Rights Watch,

In Henan, there are angry farmers and famous doctors; it is near Beijing, journalists can visit it easily, and the local government cannot cover it up. [Another province with high HIV prevalence] is different. People know little about it, there are not many activists, and it is easy for the government to act less openly. They may appear open to foreigners and AIDS organizations -- that is easy for them to do. But if you get onto the ground and see the grass roots, you will see experiences like that of [an AIDS activist who was hounded out of town by local officials].⁴⁶

Some local authorities, such as those in Yunnan and, more recently, Shanxi, have garnered praise from AIDS activists who see local officials as concerned about and responsive to the crisis.⁴⁷ In Hebei, however, journalists have recently begun to

⁴⁴ *Joint Assessment*, p. 12.

⁴⁵ "Help coming in for AIDS orphans," *China Daily*, June 9, 2004 [online], www.china.org.cn (retrieved May 21, 2005).

⁴⁶ Human Rights Watch interview with Su, AIDS activist, 2004.

⁴⁷ E-mail message from Zhang, AIDS activist, to Human Rights Watch, 2005.

document similar attempts to cover up the state's role in comparable blood scandals by firing a whistle-blower who spoke to media, and suing a newspaper for libel when it reported on tainted blood sales.⁴⁸ The Chinese state has acknowledged similar blood donation scandals in five other provinces.⁴⁹ In this sense, the experience of Henan is instructive.

Detention and harassment of Henan AIDS activists

Henan officials continue to detain those who publicly criticize provincial efforts, or who attempt to disseminate information about the AIDS situation, either through the media or during official visits by high-ranking Chinese and international delegations.⁵⁰ Some authorities have explained their actions by saying that AIDS activism, and even orphanages established for children affected by AIDS, make local officials look bad by drawing attention to the epidemic and discouraging external investment.

China reports that its "Four Free and One Care" program has been a success so far, with 10,388 patients receiving antiretroviral drugs in eighteen provinces and autonomous regions, including Henan.⁵¹ However, grassroots AIDS activists in Henan paint a picture of chaotic and poorly-run healthcare facilities, hampered by poor training of healthcare workers, discrimination, and corruption.

While areas that receive a higher degree of international and domestic attention get resources, such activists say, other equally hard-hit towns out of the spotlight are neglected. One AIDS activist told Human Rights Watch that many local healthcare facilities are unclean and poorly-run, that antiretroviral distribution is uncoordinated and "chaotic," and that many nurses continue to fear physical contact of any kind with HIV-positive people. He also reports the emergence of "medicine scalpers" -- people with good personal connections at local clinics and hospitals who are reportedly getting extra supplies of medicine and re-selling them at a profit.⁵² In another case, a popular doctor

⁴⁸ Chan Siu-sin, "HIV whistle-blower still paying the price," *South China Morning Post*, March 28, 2005; Chan Siu-sin, "Blood center sues newspaper over report it spread virus," *South China Morning Post*, March 28, 2005.

⁴⁹ Country Coordinating Committee, *2003 Proposal to the Global Fund to Fight AIDS, Tuberculosis and Malaria*, June 20, 2003, Section III, p. 13.

⁵⁰ Human Rights Watch interviews with Wu, Henan AIDS activist; Hui, Chinese AIDS activist; Ma, Henan AIDS activist, 2004.; "China: Police Violence Against HIV-Positive Protestors Escalates," Human Rights Watch press release, July 9, 2003 [online], <http://www.hrw.org/press/2003/07/china070903.htm> (retrieved May 20, 2005); "China: Fear of torture or ill-treatment/medical concern," Amnesty International Urgent Action, April 30, 2004 [online], <http://web.amnesty.org/library/index/ENGASA170182004> (retrieved May 20, 2005); Human Rights Watch e-mail communications and interviews with AIDS activists, 2002-05.

⁵¹ *Joint Assessment*, p. 20.

⁵² E-mail message from Wu, Henan AIDS activist, to Human Rights Watch, 2005.

implementing the new free treatment program faced repercussions: in August 2004, Henan authorities detained Zhu Longhua, a popular village doctor, for handing out “too much” medicine, an allegation that was not explained by Henan officials.⁵³ International news reports say that the domestically-manufactured drugs are poor quality, with intense side effects. Because Henan healthcare clinics are short-staffed and often closed, and workers are poorly trained, many patients are not being seen regularly by doctors, and are not being warned about possible side effects. As a result, a number have stopped taking the medication.⁵⁴

Some of these problems appear to relate to scarce resources and others to poor coordination by the healthcare system, problems that are chronic throughout China. However, Henan AIDS activists who try to publicly draw attention to these and related issues can face serious repercussions. The threat to AIDS activists is particularly high during visits to Henan by high level national and international figures. The growing numbers of detentions, and the discriminatory views of many Henan officials, are emblemized by the fact that local authorities have now established a separate prison facility specifically for detainees who are HIV-positive.⁵⁵

Recent cases include the following:

- Henan AIDS activist Zhu Longwei has been repeatedly harassed and detained by local police and officials in connection with his advocacy on treatment access and on the plight of orphans. In October 2004, after returning from a conference on AIDS orphans in Beijing, he was attacked by a local official who has reportedly beaten other AIDS activists in the past. Zhu reported that he fought back to defend himself, seriously injuring the official. Afterwards, Zhu reported the incident to local police and government officials, and met with a lawyer. The following day, a group of five police officers came to Zhu’s home and questioned him about his trip to Beijing. Fearing arrest, Zhu left Henan for several months. In January 2005, Zhu returned to his home, met with police, signed an agreement, and paid a fine of 400 yuan [about U.S. \$50]. In March, police returned to his home and detained him for a few days.⁵⁶
- In a series of incidents between August and October 2004, AIDS activists and journalists report that six volunteers working with the Orchid Orphanage

⁵³ “In brief,” *South China Morning Post*, August 11, 2004; “AIDS activist released in China as village doctor arrested,” Agence France-Presse, August 10, 2004.

⁵⁴ Jim Yardley, “China begins giving free HIV/AIDS drugs to the poor,” *New York Times*, November 8, 2003; Jim Yardley, “AIDS care in rural China now better than nothing,” *New York Times*, November 24, 2003.

⁵⁵ Fang Yuan, “China’s Henan sets up prison for AIDS patients,” Radio Free Asia, April 6, 2004.

⁵⁶ E-mail message from David Cowhig, China AIDS expert, to Human Rights Watch, March 27, 2005.

organization were beaten by officials and by local thugs whom local activists believe were hired by officials.⁵⁷

- In May 2004, Chinese AIDS activists contacted the U.S. ambassador to brief him on the failure of provincial authorities to adequately assist the thousands of AIDS orphans in Henan, and encouraged him to visit. After the ambassador began to plan a visit, a colleague reported that one of the activists was detained for eight days.⁵⁸
- Three men and two women, all HIV-positive, were detained in May 2004 after seeking economic aid to repair their homes that had been publicly promised to HIV-positive persons by the Henan provincial government. As noted above, Henan authorities have promised economic assistance of this kind to Henan residents with HIV/AIDS. Police sentenced the two women to fifteen days' detention.⁵⁹
- In April 2004, police detained a group of eight HIV-positive Henan residents who had traveled to Zhengzhou, Henan's capital, to petition for government assistance promised by the province to people with HIV/AIDS.⁶⁰
- At the same time, two HIV-positive men from another village were detained after traveling to Beijing to ask for economic aid to pay for living expenses, and were released after their village head promised to give some aid.⁶¹
- In late April 2003, Kong Anli, a Henan man with HIV/AIDS who complained to the local health department that anti-retroviral drugs distributed by the department were past their expiration dates, was detained by Henan police in advance of a rumored visit planned by Chinese premier Wen Jiabao.⁶² He and others detained for petitioning the government for aid were released after their cases were raised with Chinese authorities by international HIV/AIDS experts and activists.
- When the World Health Organization visited Henan to investigate the SARS epidemic in May 2002, local officials reportedly ordered two people with HIV/AIDS who were seen as "troublemakers" to leave the area or be taken

⁵⁷ E-mail message from Katie Krauss, director, AIDS Policy Project, to Human Rights Watch, March 5, 2005; Pan, "China's orphans feel brunt of power."

⁵⁸ E-mail message from Huang, 2005.

⁵⁹ E-mail message from Su, AIDS activist, 2004; "At least six AIDS sufferers arrested for seeking government help," Agence France-presse, April 30, 2004. Human Rights Watch was only able to confirm five detentions.

⁶⁰ E-mail message from with Su, 2004.

⁶¹ Ibid.

⁶² "Fear of torture or ill-treatment/medical condition," Amnesty International Urgent Action, April 30, 2004; E-mail message from Su, Chinese AIDS activist, to Human Rights Watch, 2004; Human Rights Watch communication with anonymous international health expert, 2004.

away by police. Yang Nidan, an HIV-positive woman who along with others had previously protested lack of access to healthcare or antiretroviral treatment, was also taken away, and when she resisted, was beaten and injured by police. When Yang demanded to know what law she had violated, police officers threatened to kill her.⁶³

These detentions are not isolated events, but are part of an ongoing pattern in which officials attempt to prevent information about the Henan blood scandal from getting out to the public.

Having restricted access by journalists during the 1990s and early 2000s, Henan authorities today continue to restrict media reporting about the epidemic. Minister of Health Wu Yi has warned that local officials who continue to cover up the epidemic will face “severe punishment.”⁶⁴ However, Human Rights Watch has gathered information about several Henan AIDS activists who were detained or harassed for speaking to or working with domestic and international media. Some activists also allege censorship or overt manipulation of government-run media by other sectors of the government.

Wu told Human Rights Watch that he fled the province in order to avoid being arrested for his contacts with the media:

The government is not letting the media report about AIDS in Henan...In some areas near our village, they won't let reporters in, so we [AIDS activists] go out and meet them, and we take them into the village ourselves. After I brought some reporters in, the government's attitude towards me became very bad. The government wants to organize any media reporting themselves.

The reporters get to the next village, and we organize people for them to interview. Then the Henan government puts pressure on them and the reports don't come out. From July up to now, you won't find a single news report on our village....If the media report on our village, they are supposed to leave out the name of the village [by agreement with local officials]....In August [2004], CCTV [China's official television station]

⁶³ E-mail message from Huang, Chinese AIDS activist, to Human Rights Watch, 2003; “*AIDS yu SARS: Shijie weisheng zuzhi kaocha Henan aizibing cun jilu* [AIDS and SARS: A record of the WHO's investigation of a Henan AIDS village],” Chinese newsletter published by Loving Source, May 27, 2003.

⁶⁴ Jim Yardley, “China unveils plan to curb rapid AIDS spread,” *New York Times*, May 10, 2004.

went to Henan, they interviewed people, and when the reporter went back to Beijing, they were not allowed to air it. The reporter felt very bad, but he said there was huge pressure, just no way to do it.

In August [2004], one time, I helped to bring in a group of over ten reporters. I let them in [the village], I took them around, and the government was extremely unhappy. After the media left, they found ways, they found excuses – this is their method.

Then they were about to detain me. I heard this from some of my relatives in the village. So I came here [outside Henan]. They would have found an excuse. I have been here for two-and-a-half months. My wife is concerned about my safety here because I'm doing a lot of interviews.⁶⁵

The local authorities do not always have to rely on fear or force to stop the spread of information about their ongoing mismanagement of the AIDS crisis in Henan. In some cases, local authorities resort to overt manipulation of the media to maintain a responsive public image. AIDS activist Wu reported information he had received from other activists about official attempts to manipulate media coverage:

On November 20th [2004] or so, a bunch of people from my village went to the county government to protest, to Shangqiu city. It was really a petitioning activity. There were over fifty people, and they went to request the cost-of-living support that the government had previously promised us. [On August 17], the government officials...brought [Hong Kong and other] media to our village. They paid three people with HIV to say [to media] that they had each received 160 yuan [U.S. \$19] for cost-of-living support. Those people were paid to say lies.

So we went to protest because we hadn't gotten this cost-of-living support. I wasn't there but I spoke to people on the phone who were. They were there for about four hours. The city officials called our county government to come and get them. They sent a lot of cars and

⁶⁵ Human Rights Watch interview with Wu, Henan AIDS activist, 2004.

convinced everyone to go back to their village in the cars. But we still haven't gotten the money.⁶⁶

Each incident of harassment of AIDS activists has a chilling effect on those who attempt to assist the people of Henan. As one volunteer who witnessed the crackdown on the Orchid Orphanage reported:

The volunteers cannot protect their [own] lives....They came to Henan in order to help these AIDS orphans, but only received bad treatment from the government. After consideration, they decided to go back home.⁶⁷

Another Henan activist asked by Human Rights Watch about detentions of AIDS activists in his town, said, "They do this to us all the time." He declined to speak further because of security concerns.

The mistreatment of activists helping AIDS orphans

According to official Chinese figures, there are one hundred thousand children orphaned by AIDS nationwide; activists working in Henan estimate there are in fact one hundred thousand children orphaned by AIDS in that province alone.⁶⁸ In an impoverished region where the epidemic is severely stigmatized, the presence of children orphaned or otherwise affected by the AIDS epidemic poses a significant challenge to local authorities.

International standards generally recommend that institutional care for children be used only as a last resort, and prominent Henan AIDS advocate Gao Yaojie has also recommended establishing a foster care system.⁶⁹ While this would be a wise long-term policy, the urgency of the current catastrophe in Henan requires swift action. Currently, widespread discrimination against people with HIV/AIDS in China, and the poverty faced by many rural Henan families, make institutions the first and virtually only solution

⁶⁶ Human Rights Watch interview with Wu, 2004.

⁶⁷ Human Rights Watch correspondence with Zeng, former volunteer with Dongzhen, July 14, 2004.

⁶⁸ Beijing Aizhixing Institute of Health Education, "Children/orphans and HIV/AIDS in China," April 2003 [online], www.aizhi.org (retrieved May 20, 2005); Li Dan, "The situation of Chinese AIDS orphans," [online], www.chinaaidsorphans.org/en_version/intro/intro.htm (retrieved June 21, 2003).

⁶⁹ Gao Yaojie, *Yi wan feng xin: Wo suo jianwende aizibing, xingbing huanzhe shengcun xianzhuang* [Ten thousand letters: What I have seen and heard about the living conditions of people with AIDS and STDs]. (Beijing: Zhongguo shehui kexue chubanshe, 2004), p. 236-7.

for children whose families are unable to care for them. The tens of thousands of Henan children who have lost their parents due to complications related to AIDS, or whose parents are HIV-positive, are often turned away by local schools.⁷⁰ While the government has promised free tuition to children orphaned by AIDS, it has made no provisions for those who have lost one parent, even where that parent may have been the sole wage-earner. Schools do not uniformly implement the government's free tuition policy, and many children affected by AIDS leave school because their families can no longer afford to pay school fees.⁷¹

The Convention on the Rights of the Child in article 20(1) provides that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."⁷² The Convention on the Rights of the Child specifically obliges states parties to take "all appropriate" measures to protect children from trafficking, being separated from parents against their will, and economic exploitation, hazardous labor, involvement in drug trafficking, sexual exploitation and abuse, and any other form of exploitation.⁷³ Regarding children orphaned by HIV/AIDS, the Committee on the Rights of the Child noted that states must provide assistance "so that, to the maximum extent possible, children can remain within existing family structures," that where this is not possible, states should provide, "as far as possible, for family-type alternative care (e.g. foster care)," and that "any form of institutionalized care for children should only serve as a measure of last resort."⁷⁴

China has signed and ratified the Convention on the Rights of the Child.⁷⁵ However, China's national laws and regulations on HIV/AIDS lack clear guidelines on the care of orphans and children affected by AIDS.⁷⁶ Doctors and activists note that children

⁷⁰ Zhu Jing, "Li Dan: *Wo suan shi xianshide lixiang zhuyizhe* [Li Dan: I am a realistic idealist]," *Nanfang Zhoumo*, February 19, 2004; "Beijing hotels, schools turn away 'AIDS orphans'," Agence France-Presse, August 10, 2004; for more on broader discrimination against people with HIV/AIDS in China, see Human Rights Watch, "Locked Doors."

⁷¹ Li Xiaorong, "Social stigma, official indifference: The plight of children orphaned by AIDS in Henan," paper on file at Human Rights Watch.

⁷² Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989) entered into force September 2, 1990, art. 20.

⁷³ Convention on the Rights of the Child art. 9, 11, 32, 33, 34, 35. ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999) defines the worst forms of child labor.

⁷⁴ Committee on the Rights of the Child (CRC), General Comment 3, "HIV/AIDS and the Rights of the Child," paras. 34-35.

⁷⁵ China signed the CRC on August 29, 1990, and ratified it on March 2, 1992.

⁷⁶ "Assisting Children Orphaned by HIV/AIDS in Rural Henan, China: A Concept Paper," Beijing Aizhixing Institute of Health Education [online], www.aizhi.org (retrieved May 20, 2005). Regulations on the registration of

affected by AIDS in China are becoming vulnerable to exactly the problems warned of by the Convention. As Gao Yaojie observes,

These orphans are plunged into such difficulties that boys enter easily into child labor while girls are vulnerable to sexual abuse. They are ripe for exploitation and need assistance... Without due care, some of them develop twisted personalities and hold grudges against everyone. If they are not placed in safe hands and given a normal education, they might end up as a threat to society.⁷⁷

While the Henan government has begun initiatives to educate children affected by AIDS, AIDS activists and doctors working in the province say that the small number of government orphanages are “overloaded” and unable to meet the need.⁷⁸

Thus, activists began several grass-roots initiatives in Henan to fill the gaps left by the state. The Henan government’s response to these efforts has been mixed at best. Some authorities encourage them, but others are resistant to any initiatives that are not government-controlled.⁷⁹ Henan authorities have sometimes dealt harshly with these activists.⁸⁰

The forcible closure of the Orchid Orphanage in July 2004 (discussed above) was one example of this harsh treatment. After the closure, activists working with the orphanage decided to travel to Beijing to petition the national health department and contact media to raise the issue. Wang Guofeng, who with his wife Li Suzhi⁸¹ had acted as the orphanage’s liaison with the government, were reluctant to abandon the orphanage. On July 11, police in Shangqiu city detained Wang Guofeng, Li Suzhi and two other AIDS activists who were all preparing to leave for Beijing, on suspicion of inciting trouble.⁸²

private orphanages are also lacking. While some existing laws and regulations on the management of charities may be applicable, they do not clearly address the issue of private not-for-profit charities.

⁷⁷ “Focus: Seeking help for AIDS orphans,” *China Daily*, September 26, 2003.

⁷⁸ “Focus: Seeking help for AIDS orphans.”

⁷⁹ For instance, Xinmi district in Henan has regulations specifying that charities caring for children “can only be initiated by the government.” E-mail message from Wang, AIDS activist, to Human Rights Watch, 2005.

⁸⁰ In addition to the two cases discussed here, Taiwanese activists report the closure in 2004 of a third orphanage run by the Harmony Home Association in Henan. This case was reportedly associated with controversy about management of the Taiwan-based organization.

⁸¹ Li is a common surname in China. Li Suzhi is no relation to Li Dan.

⁸² Message posted to Dongzhen message forum, www.chinaaidsorphans.org/wangguofeng.asp#topic1, July 15, 2004. There have been conflicting media reports of the date of detention.

Wang Guofeng, who himself was HIV-positive, had already expressed fears that his local prominence and his connection with the controversial orphanage would lead soon to his arrest.⁸³ Wang and his wife Li Suzhi had long been outspoken, often sought by Chinese journalists researching AIDS in Henan, and this media work often brought them into conflict with local authorities. One Henan AIDS activist told Human Rights Watch, “The government didn’t like Wang Guofeng before [the Orchid crackdown]. Reporters were always going to see him, and that gave him ‘face.’”⁸⁴

In response to Wang and Li Suzhi’s detention, Li Dan engaged in negotiations behind the scenes with local officials, while Chinese and international organizations and experts criticized the detention and signed a petition calling for their release.⁸⁵ After nearly a month in detention, Wang Guofeng and Li Suzhi were released on August 7, but were sentenced to house arrest on charges of fraud and disrupting social order.⁸⁶ They were reportedly required to sign agreements promising not to have further contact with Orchid or with the media.⁸⁷ Four other AIDS activists detained for conflicts unrelated to the case were also released on that date.⁸⁸

However, colleagues of the six activists said that the month-long detention, combined with poor nutrition, had serious health effects on some of the HIV-positive detainees. In particular, Li Suzhi reportedly suffered some deterioration of her health because she was not allowed to continue on the course of imported antiretroviral medications she had been on until her detention, and instead was required to switch to a different and inferior course of medications produced in China.⁸⁹

Further detentions followed. Police detained Li Dan and a colleague on Sunday, August 8, 2004, as they prepared to visit Shuangmiao village to visit AIDS activists who were still in detention, and to plan a protest by people with AIDS in the village.⁹⁰ Li Dan and the other AIDS activists were all released on August 9. Li Dan reported that while waiting at a train station in Shangqiu city just hours after his release, he was attacked by two young men who told him, “You know why we are beating you.” He told a reporter,

⁸³ E-mail message from Zeng, AIDS NGO volunteer, to Human Rights Watch.

⁸⁴ Human Rights Watch interview with Wu, AIDS activist, 2004. “Face” (*mianzi* 面子) is a Chinese term that refers to public stature.

⁸⁵ “Fear of torture or ill-treatment/medical concern,” Amnesty International Urgent Action, July 14, 2002.

⁸⁶ Josephine Ma, “Activist alleges intimidation bid,” *South China Morning Post*, August 10, 2004.

⁸⁷ E-mail message from Su, AIDS activist, to Human Rights Watch, August 8, 2004.

⁸⁸ E-mail message from Su to Human Rights Watch.

⁸⁹ *Ibid.*

⁹⁰ “China: Another AIDS activist goes missing in China,” Agence France Presse, August 9, 2004.

“I guess the local government is anxious about our lobbying for AIDS patients.”⁹¹ In March 2005, he reported that from August to October 2004, six members of his organization had been beaten by local officials “or villagers hired by local officials.” He added,

One of our volunteers was beaten and injured by an HIV-positive person hired by local officials, and received cuts from the beating. Now he has developed psychological issues, worrying that he has contracted the HIV virus, and developed severe depression. However, the local police have not yet started processing these assault cases.⁹²

While the closure of Orchid Orphanage case gained international attention because of the harshness of official treatment of the orphans and the orphanage staff, other orphanages run by nongovernmental groups have also faced serious official obstacles. Another emblematic case, highlighting the use of institutional barriers, occurred in early 2004, when Henan province authorities closed the Loving Care Home, a privately run not-for-profit orphanage, and appropriated the donations in order to establish a new state facility.

Like many others, Henan farmer Zhu Jinzhong contracted HIV by selling his blood at a blood collection center run by the local government. In February 2003, Zhu Jinzhong began to take care of children in his village whose parents had died of AIDS, housing and feeding over fifty of them.⁹³

In December 2003, Chinese media began to report widely on Zhu Jinzhong’s “Loving Care Home,” and nearly 1.34 million yuan [U.S. \$162,000] in donations flooded in to support his work, including a donation of one million yuan from CCTV, China’s official television network. Most donations were sent to the local Zhecheng county government to be passed on to Zhu.

However, in January 2004, Zhecheng County ordered Zhu to close his orphanage and transfer the children to the Sunshine Garden Home, a county facility that was still under

⁹¹ Ma, “Activist alleges intimidation bid.”

⁹² Human Rights Watch communication with Katie Krauss, director, AIDS Policy Project, March 5, 2005.

⁹³ Pierre Haski, “Mort [Deceased],” *Liberation*, January 20, 2005.

construction.⁹⁴ One AIDS activist involved with orphan projects in Henan raised concerns about the segregated nature of the state orphanage.⁹⁵

The new facility has refused to accept any new orphans, despite the tremendous need for assistance in Henan. According to media reports, the new facility refused to accept new orphans when other families asked for help with the care of children; director Yang Jiafeng said that he would only accept the children from Zhu Jinzhong's orphanage because those children "came with the money."⁹⁶

Li Dan told Chinese journalists of similar comments from officials in relation to the closure of the Orchid Orphanage:

The officials told me the local government has established the Sunshine Home orphanage so it's unnecessary for us to find another one. But the children now staying at [our] orphanage are from Zhu Jinzhong and our school. What about other AIDS orphans?

Just before the bureau came to our school, we had decided to admit nine more students. After the orphanage took the eighteen students, we asked them to accept the nine others. But they refused.⁹⁷

A Henan official justified the closure of Zhu Jinzhong's home to the news media by claiming that Zhu had run afoul of government regulations, and, more revealingly, by citing his HIV-positive status as evidence of his lack of fitness to care for the children:

Zhu Jinzhong did not get approval from the local government agency, and his caring for a large number of children, while admirable, is not legal. Moreover, Zhu Jinzhong himself is HIV-positive, and to let him be the caregiver for AIDS orphans is definitely not beneficial to the children's development.⁹⁸

⁹⁴ Hou Mingxin and Zeng Pengyu, "Custody Conflict," *Beijing Today*, February 13, 2004.

⁹⁵ Human Rights Watch interview with Zhou, AIDS activist, April 2004.

⁹⁶ Hou and Zeng, "Custody Conflict."

⁹⁷ Chen Ying, "Just a Misunderstanding?"

⁹⁸ "Minzheng bu: 'Guanai zhi jia' heqing bu hefa [Government Agency: Loving Care Home is fair but not legal]," February 25, 2004 [online], www.sohu.com (retrieved May 20, 2005).

The official did not account for the fact that donations to Zhu's orphanage had been not only channeled through the county government but kept by it. In fact, this practice violates China's own national Donation Law, which stipulates that donations "should be used in a manner respecting the wishes of the donor, and conforming with the end purpose of public welfare. Donated property may not be diverted to other purposes."⁹⁹ The law also bars government work units from seizing donations intended for public welfare organizations.¹⁰⁰

Many local activists believe that the orphanage was closed because its existence embarrassed the government by pointing out their failure to provide for local orphans, and because authorities wanted the money.

Zhu Jinzhong was unable to re-establish the orphanage. In January 2005, while traveling home from a trip to Beijing, he contracted a rapidly-progressing pulmonary infection and died at the age of thirty-seven, while still urging his family members to find a way to help the children he had cared for.

* * * *

A state-organized system of foster care, combined with strong protections against discrimination in public schools, might offer the best long-term solution for Henan orphans and children affected by AIDS. Considering the urgent need right now, however, Henan and other affected provinces can ill afford to wait, leaving thousands – perhaps hundreds of thousands – of children without adequate care or education. Beijing's promise through its "Four Free and One Care" program to provide free education, medication, and other assistance to AIDS orphans has not been sufficient in Henan; the province does not yet have enough facilities or services for children affected by AIDS in that region. NGOs that wish to establish institutions for the care of these children should be encouraged, and should be governed by reasonable regulations that establish clear standards of care and education. The state should not discriminate against HIV-positive persons who wish to establish such facilities. In fact, people who are living with the virus themselves may be very well positioned to help children cope with the traumatic effect of the epidemic. The state's top priority in this catastrophe, for which it still bears a heavy responsibility, should be ensuring that children have their basic needs met, not jailing those who aim to help them.

⁹⁹ *People's Republic of China Public Welfare Donation Law*, passed by the tenth meeting of the Standing Committee of the Ninth National People's Congress, June 28, 1999, to be implemented on September 1, 1999, article 5. Translation by China Development Brief, www.chinadevelopmentbrief.org.

¹⁰⁰ *Donation Law*, article 7.

V. Harassment of Activists Working with Persons at High Risk of HIV Transmission

As China rapidly develops economically, the country is beginning to confront major social problems linked to growing economic inequality, such as the growing number of rural injection drug users and the parallel growth of the sex industry. One of the challenges posed to many countries by the AIDS epidemic is that it tends to hit hardest those who are most marginalized by mainstream society. The more that injection drug users, sex workers and men who have sex with men are stigmatized and driven underground, the less likely they are to step forward for HIV testing or to be in contact with government programs that offer information, preventive services and treatment.

One key to preventing the spread of AIDS is therefore protecting the rights of those on the margins; as lesbian and gay studies scholar Zhang Beichuan observes, in the context of AIDS, “Protecting the rights of vulnerable persons is equivalent to protecting the rights of the great majority of people.”¹⁰¹ The ability of injection drug users, sex workers, and men who have sex with men to defend themselves against the epidemic depends on their having space to mobilize collectively, to share information and compare experiences, and to do so in a way that protects their confidentiality.

Chinese officials have taken some steps toward greater understanding: China removed homosexuality from the official list of psychological diseases in 2001, and has begun providing methadone treatment and needle exchange services to drug users in some provinces, with plans to expand these programs nationwide.¹⁰² At the same time, other Chinese policies take a contradictory approach, by targeting large numbers of injection drug users and sex workers for administrative detention, and censoring lesbian and gay websites as part of nationwide campaigns against Internet pornography. These policies obstruct the work of AIDS activists working in those communities.

As China confronts rapid social change, Party officials often refer to an urgently felt need to “wipe out social evils.” This moral rhetoric fuels popular fears and stigmatization of men who have sex with men, sex workers and drug users; and in turn increases the fears these persons have of police and other authorities. At times, concerns about “social evils” and the need for “socialist spiritual civilization” are linked to notions

¹⁰¹ “Zhang Beichuan fangtan lu [Record of interview with Zhang Beichuan],” *Southern Weekend*, April 18, 2002 [online], www.southcn.com/weekend/tempdir/200204180025.htm (retrieved May 20, 2005).

¹⁰² “Growing tolerance towards homosexuals in China,” *China Daily*, December 10, 2004; “Methadone clinics established to help addicts,” *China Daily*, November 18, 2004.

of corruption by the West. In 2002, the amended Constitution of the Communist Party of China declared itself to be:

leading the people in their efforts to build spiritual civilization as well as material and political civilizations, and to combine ruling the country by law with ruling the country by virtue....It is essential to...imbue the Party members with the lofty ideals of communism, resist corrosion by decadent capitalist and feudal ideas, and wipe out all social evils, so that our people will have lofty ideals, moral integrity, a good education and a strong sense of discipline.¹⁰³

At other times, official statements refer to “social evils” as lingering from China’s “feudal” past, and refer nostalgically to the elimination of drug use and sex work through draconian measures in the 1950s. In a 2000 government white paper on human rights, the State Council asserted that

Prostitution, drug trafficking and addiction, and gambling are social evils left over from old China.... [T]he people's government, on [the] one hand mobilized the masses to struggle against and punish drug producers, drug traffickers, and gambling rings, and on the other it did extensive publicity work so as to enhance the consciousness of the masses, and reform drug addicts and gamblers. After two to three years of efforts, these social plagues...were basically wiped out.¹⁰⁴

An internal debate appears to be underway between Chinese health officials and public security officials about the merits of harsh criminal penalties for drug users and sex workers, versus more tolerant policies that protect their rights.¹⁰⁵ Meanwhile, injection drug users and sex workers continue to suffer arbitrary detention and face stigma and harassment from officials, law enforcement agencies, and the wider society in China. Police conduct regular “sweeps” of social “undesirables,” putting both drug users and sex workers in administrative detention centers, which differ little from prisons. Police censorship of Internet sites with frank discussions of sex between men who have sex

¹⁰³ *Constitution of the Communist Party of China*, amended and adopted at the 16th National Congress of the Communist Party of China, November 14, 2002, *Documents of the 16th National Congress of the Communist Party of China (2002)*, Foreign Language Press, Beijing 2002, p. 82.

¹⁰⁴ “Fifty years of progress in China’s human rights,” Information Office of the State Council of the People’s Republic of China, June 2000 [online], <http://www.china.org.cn/e-white/3/3.1.htm> (retrieved May 20, 2005).

¹⁰⁵ “Drug users get the point,” *Beijing Review*, April 18, 2004 [online], <http://www.bjreview.com.cn/200418/Forum.htm> (retrieved May 20, 2005).

with men are also closing the few public spaces where lesbians and gay men can mobilize to share information. All these campaigns drive underground persons who are most in need of state and NGO assistance in the AIDS crisis.

In the U.N. HIV/AIDS and Human Rights International Guidelines, the U.N. explicitly warns of the problems that can arise from associating law enforcement with public health measures:

HIV prevention and care programs with coercive or punitive features result in reduced participation and increased alienation of those at risk of infection. In particular, people will not seek HIV-related counseling, testing, treatment, and support if this would mean facing discrimination, lack of confidentiality and other negative consequences. Therefore, it is evident that coercive public health measures drive away the people most in need of such services and fail to achieve their public health goals of prevention through behavioral change, care, and health support.¹⁰⁶

Activists working with injection drug users and sex workers

China is now confronting escalating problems with drug addiction and with an exploding sex industry, and these issues pose major challenges for China's response to the AIDS epidemic. Both injection drug users and sex workers are detained for extended periods without trial, and are subject to mandatory HIV testing without their consent. The ever-present risk of detention combined with harsh police treatment of both groups has created severe obstacles for AIDS activists working with them.

Individuals infected via the blood scandal discussed above still probably form the majority of those living with HIV in China, but most were infected with HIV prior to 1996; the main HIV transmission route today appears to be via injection drug use.¹⁰⁷ According to an official estimate, in some areas of south China, HIV prevalence is reported to be between five and ten percent of sex workers, and official reports say the

¹⁰⁶ OHCHR and UNAIDS, "HIV/AIDS and Human Rights International Guidelines," Second International Consultation on HIV/AIDS and Human Rights, Geneva, September 23-25, 1996; New York and Geneva: 1998; "International human rights obligations and HIV/AIDS," paragraph 74.

¹⁰⁷ *Joint Assessment*, p. 3.

majority do not use condoms.¹⁰⁸ Other scholars estimate that 22 percent of Chinese sex workers are HIV positive.¹⁰⁹

In response, China has recently initiated policies that will offer methadone treatment to injection drug users and clean needle exchange programs.¹¹⁰ As Min Xiangdong, deputy director of the Yunnan Province Center for Disease Control explains:

Fighting against drug addiction should begin from the root cause, but to those who cannot give up the addiction right now, there is no harm to take a step back. What we need to do is not only replace their dirty syringes for clean ones, but also try to influence them through awareness in order to eliminate their dangerous habit.¹¹¹

At the same time, Yunnan continues to imprison injection drug users by the thousands.

In China, drug users are rounded up by local police, often as part of sweeps of “undesirables” before holidays or political meetings.¹¹² In accordance with the *Methods of Forced Detoxification*,¹¹³ a State Council policy that is enforced by police as if it has the force of law, local police stations can consign drug users from three to six months to a forced detoxification center, without trial. In 2002, Human Rights Watch visited a forced detoxification center and interviewed drug users who had been detained in other, smaller camps, as well as NGO staff who had visited similar facilities.¹¹⁴ Human Rights Watch research found that such camps are militarized, with “re-education” consisting largely of rote repetition of slogans, marching in formation, and repetitive drills such as doing squats while shouting off numbers. Interviewees described conditions of poor sanitation, poor and inadequate food and drinking water, and serious overcrowding. Human Rights Watch observed inmates forced to work without pay. For former detainees, the overriding message is one of marginalization from mainstream society and distrust of those in authority. As a result, injection drug users and sex workers seek to minimize any

¹⁰⁸ *Joint Assessment*, p. 6.

¹⁰⁹ Joan Kaufman, public presentation at panel, “The rising peril of HIV/AIDS in China: Sex work, human rights, and the challenges facing public policy,” Skidmore College, March 24, 2005.

¹¹⁰ *Joint Assessment*, p. ii.

¹¹¹ “Drug users get the point.”

¹¹² In 2001, police reported detaining 247,000 drug users. “Police-monitored reform centers improving efficiency,” *People’s Daily*, March 30, 2001 [online], http://english.people.com.cn/english/200103/29/eng20010329_66359.html (retrieved May 20, 2005).

¹¹³ State Council, *Qiangzhi jiedu banfa* [Methods for Forced Detoxification], January 12, 1995.

¹¹⁴ Human Rights Watch, “Locked Doors,” p. 42-49.

interaction with government authorities, or any organized gathering, that could subject them to “reeducation through labor.”

Sex workers face similar forms of detention. Estimates of the number of sex workers nationwide range widely, between three and six million.¹¹⁵ The sex industry is exploding in China, both in cities and in impoverished rural regions, where brothels and karaoke lounges have sprouted up along major highways and near construction sites and mines. A significant number of sex workers work through massage parlors and hair salons, which are fronts for brothels.¹¹⁶ Police also have wide latitude to sentence sex workers to administrative detention without a hearing or trial in re-education through labor camps. The broad leeway granted police in their treatment of sex workers means that police can extort confessions and bribes with impunity. In recent years, growing attention to police abuse by Chinese media has brought to light some cases of police abuse of sex workers, including cases of extorted confessions, rape and sexual abuse, and even murder.¹¹⁷

Fear of government reprisals limits the ability of civil society groups to work with drug users or sex workers.¹¹⁸ For instance, in northwest China, where over fifty percent of injection drug users are HIV-positive and the government maintains tight political control, authorities have sometimes clashed with AIDS activists who are former drug users.¹¹⁹ A doctor running an outreach program for sex workers in Guangxi told a reporter that initially few sex workers participated in the program because of fears of detention.¹²⁰ Organizers told Human Rights Watch that a series of conflicts between AIDS activists and local authorities culminated in a police raid on a workshop on AIDS and law in November 2004 that was attended by seventeen people with HIV/AIDS, including some former drug users.¹²¹ Soon after, one of the organizers heard that he was at immediate risk of arrest and fled the region.

¹¹⁵ Zhao Xiaojian and Zhu Xiaochao, “AIDS looms large,” *Caijing (English)*, April 20, 2004, retrieved at <http://www.caijing.com.cn/english/2004/040420/aids.htm>; “HIV/AIDS Policy Issues in China,” <http://www.casy.org/policy.htm>. Police reported detaining 53,000 people “involved in prostitution and pornographic activities” in 2000 (“Police-monitored reform centers improving efficiency,” *People’s Daily*, March 30, 2001).

¹¹⁶ “Report cites China prostitution,” Associated Press, June 9, 1999.

¹¹⁷ Yang Lingqing, “*Xingxun bigong duoci jianwu nuyou* [Coerced confession and multiple rape of girlfriend],” *Beijing Qingnian Bao*, February 20, 2004; “*Guniang can zao feiren zhemo: Hebei ye pu ‘chunu piaochang an’* [Girl tragically encounters inhuman treatment: Hebei also exposes ‘virgin whore case’],” December 2, 2002, [online] www.sohu.com (retrieved May 20, 2005); “*Guangxi Luan yi paichusuo zhang yanxing bigong* [Police station chief in Luan, Guangxi seriously coerced confession],” Xinhua, September 22, 2003.

¹¹⁸ Human Rights Watch has documented other instances in which authorities have targeted individuals from high-risk groups who participate in AIDS outreach programs. See Human Rights Watch, “Locked Doors,” p. 30.

¹¹⁹ *Joint Assessment*, p. 2.

¹²⁰ “Anti-AIDS campaign spotlights sex workers,” Xinhua, May 4, 2005.

¹²¹ Human Rights Watch interview with Su, AIDS activist, 2004.

Xu, an organizer of the workshop, had repeatedly clashed with local authorities during 2003 and 2004 because of his AIDS activism. According to a colleague, Xu publicly criticized local authorities for failing to deliver on their public promises of free antiretroviral treatment. In retaliation for this public embarrassment, authorities asked Xu to leave a provincial AIDS organization with which he had been affiliated. Xu in turn went over the heads of the provincial authorities, and appealed to a national government agency to intercede. Beijing authorities reportedly did so, inviting Xu to set up a new AIDS support group. Once affiliated with the new support group, Xu began again to be outspoken in his criticisms of local authorities to Chinese press and in international meetings.¹²²

Because of Xu's frankness and outspokenness, members of Xu's new group began to fear for their safety. As a result, Xu and his colleagues convened their AIDS and law workshop in a comparatively low-profile hotel conference room instead of in an official meeting hall, and met without any official government affiliation or political approval. They invited a lawyer and a group of people with HIV/AIDS to discuss laws on intentional transmission, divorce and family law, discrimination against people with HIV/AIDS, and other issues. A person living with HIV/AIDS for nine years who volunteered with Xu's group described what happened next:

The police came in the door and told us to put our hands on the tables. There were eight police officers. They said, "Don't touch anything," – we had pens to take notes, and they told us not to even pick up our pens. I said [to myself], I'm not using [drugs], so I have nothing to fear.

We all went downstairs and there was a big van, and they took us all away. At the station...they registered our names and identity numbers, addresses, phone numbers. Then we took drug tests....We were there from noon until six p.m. We had no food, no water. At six...they let us go. As a result [of the tests], they knew we were HIV positive. They did detailed records of each of us. Not one person tested positive for drugs.¹²³

¹²² Human Rights Watch interview with Su, 2004.

¹²³ Presentation by HIV-positive volunteer in AIDS program, Shanghai legal conference center, December 13, 2004.

After the raid, Xu heard from friends that he was at immediate risk of arrest. He fled to another province to wait until the controversy blew over.¹²⁴

The ever-present fear of police retaliation also silences activists working on behalf of sex workers. For instance, when Human Rights Watch approached several Chinese organizations representing sex workers, they said they were reluctant to discuss the issue of police mistreatment because they feared reprisals.

* * * *

Given the contentious relationship between Xu's group and local authorities over AIDS activism, it is not clear whether police raided the workshop because they believed they would find drug users there, or in order to intimidate and undermine a group that had been a thorn in the side of local government. In either case, such raids are not wise AIDS policy. The Chinese state should not use coercion to detain drug users in forced detoxification centers in the first place, and there is no legitimate basis for conducting raids of this kind to ascertain whether or not participants are users. Moreover, conducting raids on AIDS workshops such as this one for any reason will only discourage people at risk from publicly identifying themselves and getting together to share information. Testing people at risk of HIV/AIDS without informed consent, especially given China's lack of protections of confidentiality and widespread problems with discrimination, will also drive them underground and away from government and independent AIDS outreach programs.

A related concern for injection drug users and sex workers is testing by police and prison officials for HIV without informed consent of those tested; the lack of anonymity in China's testing systems is especially worrying in the context of the almost total lack of protections against discrimination for people with HIV/AIDS. Non-consensual medical procedures violate the right to the highest attainable standard of health, enshrined in Article 12 of the International Covenant on Economic, Social, and Cultural Rights.¹²⁵ In the context of conducting surveillance testing and other research on HIV/AIDS, Guideline 5 of the U.N. HIV/AIDS and Human Rights International Guidelines calls upon states to "ensure privacy and confidentiality and ethics in research involving human subjects." Guideline 3 states that "public health legislation should ensure that

¹²⁴ Human Rights Watch interview with Su, AIDS activist, 2004.

¹²⁵ CESCR, General Comment 14, para. 8.

HIV testing of individuals should only be performed with the specific informed consent of that individual.”¹²⁶

Restrictions on AIDS information for men who have sex with men

In China, men who have sex with men are highly vulnerable to the spread of HIV/AIDS, and Chinese behavioral studies say that a high percentage still does not use condoms.¹²⁷ The State Council and UNAIDS have called for greater outreach to Chinese men who have sex with men with HIV education and prevention programs.¹²⁸ However, social mores and legal restrictions have made it difficult to provide information about AIDS to this group. China has no laws prohibiting discrimination against or harassment of lesbians and gay men.¹²⁹ Chinese scholars and activists say that homophobia and discrimination are common.¹³⁰ Zhang Beichuan has conducted research indicating that thirty-eight percent of men who identify themselves as gay have experienced incidents of violence and verbal abuse based on their sexual orientation.¹³¹ Many men who have sex with men also do not publicly identify themselves as gay or *tongzhi*.¹³² According to official statistics, eighty percent of gay men are married or will marry.¹³³

Even for those who choose to identify as gay or *tongzhi*, meeting collectively can pose difficulties. According to one gay rights activist, Dalian gay bars have in the past been targeted by police for harassment and men coming out of them have been detained and compelled to pay fines.¹³⁴ In 2002, a group in Dalian invited over one hundred lesbian and gay rights activists to a national conference in the northern city of Dalian. Learning of the conference and calling it an “illegal assembly” because it was not hosted by a government agency or approved by one, police halted the conference and told

¹²⁶ U.N. HIV/AIDS and Human Rights International Guidelines, Guidelines 3 and 5.

¹²⁷ *Joint Assessment*, p. 6.

¹²⁸ *Joint Assessment*, p. 18.

¹²⁹ In 2001, Chinese authorities removed homosexuality from the official list of psychological diseases, but it can be diagnosed as a mental illness under certain circumstances.

¹³⁰ Jia Ping, *Tong (shuang) xinglian*; “*Tongxinglian: Qishi haishi ‘shehui zhichi’* [Homosexuals: Discrimination is still ‘socially supported’],” *Chen Bao*, August 6, 2004 [online], http://www.huash.com/gb/hscb/2004-08/06/content_1176253.htm (retrieved May 20, 2005).

¹³¹ “*Zhang Beichuan fangtan lu* [Record of interview with Zhang Beichuan],” *Southern Weekend*, April 18, 2002 [online], www.southcn.com/weekend/tempdir/200204180025.htm (retrieved May 20, 2005).

¹³² *Tongzhi*: literally “comrade”, a socialist term that had largely fallen into disuse until it was appropriated by Chinese lesbians and gay men to describe themselves.

¹³³ “China’s gays ‘expected’ to enter hetero marriages,” 365gay.com, January 2, 2005, [online] <http://www.365gay.com/newscon05/01/010205china.htm> (retrieved May 20, 2005).

¹³⁴ Human Rights Watch interview with Tong, Chinese gay rights activist, 2005.

participants to return home.¹³⁵ As Chinese scholar Zhang Beichuan says, “The [societal] exclusion of homosexuals makes it difficult for them to receive scientific information.”¹³⁶

Internet censorship

In this climate, the Internet has emerged as a critical means of disseminating AIDS information. But as a result of government regulation of pornographic materials on the Internet—which in China, by definition, include lesbian and gay websites—Chinese activists face restrictions on their efforts to publish HIV/AIDS information aimed at men who have sex with men.

Cao, the manager of one lesbian and gay website, explained the role of the Internet as a forum for disseminating AIDS information:

We support people changing their behavior [to protect against AIDS], and to do that, people need to be able to get information. Chinese *tongzhi* don't have the right to free speech, and we can't run our own media. So our site has become a publishing center for information around the country. People come to us to publish their information and they expect us to report their news. We're really a service center -- “*wei tongzhi fuwu*” – “Serve the comrades” – and we do it all for free.¹³⁷ We have about thirty volunteers, and they all work out of idealism.¹³⁸

In China, the Internet is governed by a wide array of laws, regulations, and official news agency guidelines. National regulations, including the Methods for the Management of Computer Information Network International Internet Safety Protection, forbid the publication of obscene (*yinhui* 淫秽) or sexual (*seqing* 色情) information.¹³⁹ The

¹³⁵ “*Zheige wangzhan cengjing bei chachu duo ci* [This website has already been investigated and sanctioned many times],” *Dalian Xinshang Bao*, August 26, 2003. This article was later picked up by China's official Xinhua agency and circulated widely. Aizhixing Health Education Institute issued a statement stating that as the conference was to be held in a privately-owned bar, China's laws on illegal assemblies should not have applied. “Statement about New China News Agency reports on ‘Dalian comrade net’ and gay commercial sex work [Guanyu Xinhua she baodao ‘Dalian tongzhi wang’ he tongxinglian xingjiaoyide shengming],” September 8, 2003, paper on file at Human Rights Watch.

¹³⁶ “*Zhang Beichuan fangtan lu.*”

¹³⁷ The speaker was making a pun: *Wei renmin fuwu*, or “serve the comrades,” is a Communist Party slogan.

¹³⁸ Human Rights Watch interview with Cao, website manager, 2004.

¹³⁹ *Jisuanji xinxi wangluo guoji lianwang anquan baohu guanli banfa* [Methods for the Management of Computer Information Network International Internet Safety Protection], ratified by the State Council on December 11, 1997, published by the Ministry of Public Security on December 30, 1997, article 5. Quoted in Jia Ping, *Tong*

Regulations on Management of Publishing, which have been interpreted as applying to the Internet, also prohibit publishing or “promulgating” obscene materials.¹⁴⁰ These regulations do not define obscenity, and in practice, local authorities have wide discretion in how they implement these regulations, and have broad authority to determine what may or may not be obscene.

One of the few national regulations to define the term “obscene” is the Temporary Regulations on the Establishment of Obscene and Sexual Publications, issued in 1988 and still in force. These regulations define an obscene publication as any publication whose content “arouses peoples’ sexual feelings sufficiently to result in the corruption and degeneracy of ordinary people, and that also lacks artistic or scientific value.”¹⁴¹ Under these regulations, same-sex activity is by definition obscene. Article 6 of the Temporary Regulations states that material may be considered obscene if it includes: “Perverted (淫褻性) and specific descriptions of homosexual sexual behavior or other abnormal behavior, or specific descriptions of abnormal energy, ill-treatment, or humiliating behavior.”¹⁴²

Other regulations go even farther. For instance, the Regulations on the Severe Statement on Prohibition of Obscene Publications Regulations, which exclude materials used for scientific purposes from the category of “obscenity” or pornography, nevertheless allow censorship of much information necessary for protection against AIDS. These regulations note that:

Even those publications that are not obscene, but that have prominent sexual content, and that seriously harm the physical and mental health of young people, without exception may not be published, copied, sold, rented, or hidden.¹⁴³

(*shuang*) *xinglian xiangguan falu wenti zongshu* [Summary of homosexual/bisexual legal questions], Beijing: Beijing Aizhixing jiankang jiaoyu yanjiusuo, April 2005; p. 40.

¹⁴⁰ *Chuban guanli tiaoli* [Regulations on the Management of Publishing], ratified by the State Council on December 12, 2002; implemented on February 1, 2002; article 26 (7). Quoted in Jia Ping, *Tong (shuang) xinglian xiangguan falu wenti zongshu*.

¹⁴¹ *Guanyu rending yinhui ji seqing chubanwude zanxing guiding* [Temporary regulations on establishing obscene and sexual publications], published in official news media, December 27, 1988; article 2. Quoted in Jia Ping, *Tong (shuang) xinglian*, p. 47-48.

¹⁴² *Ibid.*

¹⁴³ Paragraph 2, *Guanyu zhongshen yanqi yinhui chubanwude guiding* [Regulations on the severe statement of prohibition of obscene publications], published by official news organs on July 5, 1988.

Lesbian and gay rights activists who spoke to Human Rights Watch cited a case in Dalian in August 2003 as a major incident that demonstrated the government's broad authority to shut down lesbian and gay websites without warning, on the charge that they publish obscene materials and corrupt youth. Police in the city of Dalian closed a "Dalian *tongzhi*" website without notice after a local newspaper reported in a series of articles that members of the website were using the site to make dates for casual sex. Although China has no legal minimum age of consent for lesbian or gay relationships, the article raised fears that site users under the age of eighteen were being corrupted by adult lesbians and gay men.¹⁴⁴ The article was immediately picked up by national news media. The following day, Dalian police closed the site and initiated a criminal investigation of the site managers.¹⁴⁵

One gay rights activist reported to Human Rights Watch that in the weeks following the Dalian case, other lesbian and gay websites that included AIDS information were temporarily blocked.¹⁴⁶

On July 16, 2004, Zhou Yongkang, the head of China's Ministry of Public Security, appeared on national television and called on every region and every ministry in the country to join in a national campaign to shut down all pornographic websites on-line "for the sake of development of the Internet."¹⁴⁷ Eleven days later, police reported that nearly 700 "obscene" or sexual websites had been shut down.¹⁴⁸

The 2004 crackdown temporarily closed dozens of lesbian and gay websites around the country, including many that provided AIDS information. According to Cao, a manager of a lesbian and gay website:

This past July, all of the *tongzhi* sites were shut down. People who tried to open them were bounced to a government site that said, "This is illegal information." This was part of the government's big cleanup of

¹⁴⁴ "Dalian *tongzhi wang' rang jizhe xinjing* ['Dalian comrade net' shocks reporter]," *Dalian Xinshang Bao*, August 25, 2004.

¹⁴⁵ "Zheige wangzhan cengjing bei chachu duo ci [This website has already been investigated and sanctioned many times]," *Dalian Xinshang Bao*, August 26, 2003.

¹⁴⁶ Human Rights Watch interview with Su, AIDS activist, 2004.

¹⁴⁷ "Zhou Yongkang: Dayichang weijiao yinhui seqing wangzhande renmin zhanzheng [Zhou Yongkang: The people's battle to strike out and conquer obscene and sexual websites], Ministry of Public Security website, July 16, 2004, [online] <http://202.100.100.169/ad/zhuanti/weijiao/news03.htm> (retrieved May 20, 2005).

¹⁴⁸ "Quanguo dadun yinhui seqing wangzhan qude jieduan xing shengli [First phase of national crackdown on obscene and sexual websites is victorious]," Ministry of Public Security website, July 27, 2004, [online] <http://202.100.100.169/ad/zhuanti/weijiao/news01.htm> (retrieved May 20, 2005).

the web, where they swept everything away. They shut down everything, very broadly.¹⁴⁹

An activist running a non-profit website whose purpose is to provide AIDS information aimed at men who have sex with men said,

We opened one site, it was shut down, and now we're trying to get permission again. We've been doing AIDS and sexuality education for a long time. Our goal is to give people health information.¹⁵⁰

Zhang Beichuan reported that authorities shut down the message board on his self-run website, which provides AIDS information targeted to men who have sex with men. The message board on his site was used for exchanges about many topics, including questions about AIDS and sexually transmitted diseases, while some sex workers used the message board to advertise. As part of the nationwide crackdown on pornographic websites, authorities ordered it shut down in January 2005.¹⁵¹

Some activists told Human Rights Watch that the pervasive threat of government censorship of lesbian and gay websites and the jailing of webmasters had created a chilling effect on efforts to share HIV/AIDS information on the Internet, which naturally often includes sexually explicit information.¹⁵² Cao, whose website provides a question-and-answer column about HIV/AIDS and sexually transmitted diseases, said that China's obscenity laws prevented her from talking frankly about HIV prevention on the website. "We changed our materials as a result of the sweep," she said. "If you have 'yellow' [sexually explicit] materials, you will have trouble."¹⁵³ She added that her website has now eliminated much of its sexual content, especially photographs and drawings, and that she now censors submissions by website users.

Chinese lesbians, gay men, and bisexuals have internationally-guaranteed rights to non-discrimination, to free expression, to free association and to information about

¹⁴⁹ Human Rights Watch interview with Cao, website manager, 2004.

¹⁵⁰ Human Rights Watch interview with Yu, AIDS activist, 2004.

¹⁵¹ *Zhang Beichuan geren shengming* [Individual statement by Zhang Beichuan], January 2005, [online] <http://friend.qdeol.com.cn> (retrieved May 20, 2005).

¹⁵² During this period, Xiao Wu, the manager of a lesbian and gay website in Shenzhen, "Make friends in Shenzhen," was also arrested for having sexually explicit gay films for rent on his site, and was sentenced to a year in a re-education through labor camp. Human Rights Watch interview with Cao.

¹⁵³ *Ibid.*

HIV/AIDS.¹⁵⁴ China is bound by its constitution to uphold free expression, and has signed but not yet ratified the International Covenant on Civil and Political Rights, which includes in free expression the right to “seek, receive and impart information and ideas of all kinds.”¹⁵⁵ While obscene material is not protected under international law, regulation of speech must be precise enough to avoid suppressing or inducing self-censorship of material that may be controversial, but permissible. China’s failure to define “obscenity” in a way that makes clear that sexually explicit information on HIV/AIDS directed at sexual minorities is permissible is a problem. Likewise, China’s closure of some websites without giving warnings or opportunity to identify and correct material deemed to violate the law also infringes on these rights.

China is also a state party to the International Covenant on Economic, Social and Cultural Rights, whose treaty body has interpreted the right to health to include the right to “access to health-related education and information, including on sexual and

¹⁵⁴ The U.N. HIV/AIDS and Human Rights International Guidelines notes,

The key human rights principles which are essential to effective State responses to HIV/AIDS are to be found in existing international instruments...Among the human rights principles relevant to HIV/AIDS are, *inter alia*:

The right to non-discrimination, equal protection and equality before the law;

The right to life;

The right to the highest attainable standard of physical and mental health;

The right to liberty and security of person;

The right to freedom of movement;

The right to seek and enjoy asylum;

The right to privacy;

The right to freedom of opinion and expression and the right to freely receive and impart information;

The right to freedom of association;

The right to work;

The right to marry and to found a family;

The right to equal access to education;

The right to an adequate standard of living;

The right to social security, assistance, and welfare;

The right to share in scientific advancement and its benefits;

The right to participate in public and cultural life;

The right to be free from torture and cruel, inhuman or degrading treatment or punishment.

OHCHR and UNAIDS, “HIV/AIDS and Human Rights International Guidelines,” “International Obligations,” paragraph 80.

¹⁵⁵ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316(1996), 999 U.N.T.S. 171, entered into force March 23, 1976, article 19. China signed the ICCPR in October 1998. Article 18 of the Vienna Convention on the Law of Treaties provides that signatory states are “obliged to refrain from acts which would defeat the object and purpose of a treaty.”

reproductive health.”¹⁵⁶ The state’s sweeping restrictions on lesbian and gay websites violate these basic rights and hamstring China’s response to the AIDS crisis.

VI. Institutional Barriers to AIDS Organizations

Recognizing the severity of the AIDS problem facing China, and of the important role that civil society groups can play combating the epidemic, some senior Chinese officials have begun to acknowledge the need for NGOs. Speaking with the World Health Organization on the occasion of the launch of a new AIDS program that planned to include NGOs, Hao Yang, a senior Ministry of Health official, pledged that the Chinese government would strengthen cooperation with NGOs, would provide financial support to them, and would begin “encouraging more NGOs to participate in AIDS prevention and control work.”¹⁵⁷ The number of NGOs has recently grown in China, and today there are over 800,000 officially registered NGOs. However, most of these are government-organized NGOs (GONGOs) that are closely tied to, if not outright controlled by, government agencies.¹⁵⁸

Myriad bureaucratic obstacles face any activist who wishes to establish a new NGO. The central government has left in place national regulations that grew out of older government efforts to control civil society, and that continue to severely limit the establishment and growth of independent NGOs. While these outmoded national regulations affect all NGOs equally, their vagueness and the broad powers awarded local governments to implement them have enabled some local authorities to prevent the establishment and growth of groups arbitrarily. Because of the continuing stigma of HIV/AIDS in China, these restrictions have inevitably hampered many AIDS groups.

In addition, because of the large role government plays in regulating NGOs, authorities retain the ability to use regulations to harass independent NGOs or to create obstacles to their growth.

¹⁵⁶ CESCR, General Comment 14, “The right to the highest attainable standard of health,” paragraph 11.

¹⁵⁷ “NGOs to play important role in China’s AIDS prevention, control,” Xinhua, April 13, 2004; translated by China AIDS Info [online] www.china-aids.org.

¹⁵⁸ “NGO Summary,” Congressional-Executive Commission on China, [online] www.cecc.gov/pages/virtualAcad/rol/ngosumm.php (retrieved May 25, 2005).

NGO registration and management laws

Chinese NGOs face three key problems: a restrictive system of registration, a requirement that government agencies administer and police their daily work, and a requirement that funding be routed through government agencies, creating opportunities for corruption.

Chinese NGO registration laws continue to limit the growth and activity of local NGOs by requiring new NGOs to obtain a government sponsor before they can register.¹⁵⁹ Sponsoring agencies then submit the application to the Ministry of Civil Affairs.¹⁶⁰ However, both sponsoring agencies and the Ministry of Civil Affairs can easily refuse applications for a range of reasons, or without providing clear reasons at all.

China's 1998 *Regulations for Registration and Management of Social Organizations*, which apply to many NGOs, stipulate that the registration and management agency may refuse registration to organizations for lack of adequate membership (the NGO must have more than fifty individual members or more than thirty institutional members) or lack of adequate funds (a minimum of 100,000 yuan [U.S. \$12,000] is required).¹⁶¹ These provisions place NGOs in a difficult situation: because Chinese authorities widely restrict freedom of assembly, these restrictions award NGO status only to those groups which already have close enough government ties that they can mobilize large groups of people without having conflicts with the police. Many new NGOs, in particular AIDS groups, are likely to start with a few active members or staff and to develop and grow over time; some may function best if they are not mass, membership-based organizations. The unreasonably high funding requirement effectively limits NGO status to a wealthy few. The annual per capita income of farmers in China in 2004 was 1,345 yuan [U.S. \$163].¹⁶² Even in Beijing, the nation's capital, average annual per capita income in 2004 ranged only from U.S. \$890 to \$3,600.¹⁶³

According to the same regulations, the sponsoring agency can also refuse an NGO registration if there is another organization in the region engaged in a similar area of

¹⁵⁹ "Regulations for registration and management of social organizations," State Council order no. 250, published September 25, 1998; translated by Zhang Yu and Nick Young, China Development Brief, www.chinadevelopmentbrief.org.

¹⁶⁰ "NGO Summary," Congressional-Executive Commission on China, [online], www.cecc.gov/pages/virtualAcad/rol/ngosumm.php (retrieved May 20, 2005).

¹⁶¹ "Regulations for...social organizations," article 10.

¹⁶² "Farmer's per capita income up 16.1% January-June," Embassy of the People's Republic of China, September 20, 2004, [online] <http://www.china-embassy.org/eng/gyzg/t159432.htm> (retrieved May 20, 2005).

¹⁶³ "Income gap grows wider in Beijing," *China Daily*, February 22, 2005 [online], <http://english.sohu.com/20050222/n224372380.shtml> (retrieved May 20, 2005).

work.¹⁶⁴ However, the government has given no explanation of why there should only be one NGO working on an issue in any given region; in fact NGOs may well develop best where there is a community of activists who can pool their knowledge and resources and coordinate their efforts.

This system also permits local authorities to refuse to sponsor an NGO without offering any clear reason at all. Local government authorities who do not wish to see NGOs emerge can refuse an application for registration outright with only minimal explanation, or can embroil the NGO in a Catch-22, with each agency saying that their approval is conditional on the approval of other government agencies.¹⁶⁵ AIDS activists have reported that local authorities may require them to register with a local health bureau that refuses to even read their registration application.¹⁶⁶ The administrator of a lesbian and gay website said that when they tried to register as an NGO they were refused, because “the government bureau did not want to take responsibility for us.”¹⁶⁷

Some rural AIDS activists report that registering their organization at all requires arduous lobbying of multiple government bodies at once. “I remember in 2003, when we raised the issue of registering with the county, they refused us in a word, and when we went to the city, they also refused us with one word,” says a Henan community AIDS activist; but:

Now we have applied to every related government agency for registration, and every agency has already signed off and has conducted an investigation of our qualifications. We have already been in contact with the county AIDS Prevention office, with the county health bureau, and [name deleted] village government has investigated our credentials. Now we’re going through the county personnel bureau’s investigation. Other personnel bureaus have investigated and reported to the county government, and once the county has approved [our application] they will report to the city and the province.¹⁶⁸

¹⁶⁴ “Regulations for...social organizations,” article 13.

¹⁶⁵ Human Rights Watch interview with Hua, gay rights activist, 2005; electronic communication with Tang, Henan AIDS activist, 2005; electronic communication with Li, health rights activist, 2003.

¹⁶⁶ Human Rights Watch interview with Wen, HIV-positive volunteer in AIDS program, 2004; Chen Wenjun, “An exploration of legal questions,” page 6; “*Dui 2004 nian guojia aizibing fangzhi shehui dongyuan xiangmude zhaozhi zhinande jidian yijian* [Several suggestions invited and facilitated by participants in the 2004 national AIDS prevention community forum program],” December 22, 2004, [online] www.aizhi.net.

¹⁶⁷ Human Rights Watch interview with Cao, website manager, 2004.

¹⁶⁸ E-mail message from An, Henan AIDS activist, to Human Rights Watch, January 2005.

In addition to the burdensome registration process, NGOs must be administered, or “work under the leadership of” a government department that supervises all decisions made by the NGO, policing every aspect of its day-to-day work. Any work activities carried out without approval by the government agency place NGO leaders at risk of criminal sanctions.¹⁶⁹

This gives the government broad leeway to close down NGOs for a variety of reasons, including political reasons. In one of the best-known examples, the Ministry of Civil Affairs threatened to close down Friends of Nature, China’s first and most prominent environmental NGO, if it did not remove Wang Lixiong, a prominent critic of Chinese policy in Tibet, from its board of directors.¹⁷⁰

Government agencies can and have shut down AIDS NGOs for being too outspoken or critical of government policy – precisely the outcome warned of by the U.N. Guidelines.¹⁷¹ One of the most prominent examples is that of the Aizhi Action Project, which was based at Beijing University until government officials pressured the university to shut the group down because of advocacy on behalf of people with AIDS in Henan.¹⁷²

Because of the restrictive role stereotypically played by mothers-in-law in traditional Chinese families, many activists call this the “mother-in-law” system.¹⁷³ Again, this restriction affects all Chinese NGOs, but especially so the work of AIDS activists, one of whose chief functions is often to explicitly criticize the national Ministry of Health and local health bureaus, the very agencies that may be required to approve their daily work. As one Chinese AIDS activist put it,

When you’re preparing to choose a “mother-in-law,” you have to think first about whether or not you are likely to ever criticize that department and what they do. If you are, then you had better find another agency.¹⁷⁴

¹⁶⁹ “Regulations...social organizations,” article 35.

¹⁷⁰ “NGO Summary.”

¹⁷¹ “Awards for Action on HIV/AIDS and Human Rights: 2002 International Recipient, Wan Yanhai,” Canadian HIV/AIDS Legal Network [online], <http://www.aidslaw.ca/Maincontent/awards/internationalrecipient.htm> (retrieved May 20, 2005).

¹⁷² “Awards for Action.” Aizhi was subsequently registered as a commercial enterprise and re-opened.

¹⁷³ Chen Wenjun, “An exploration of legal questions,” page 4.

¹⁷⁴ Human Rights Watch interview with Su, AIDS activist, 2004.

Last but not least, the “mother-in-law” system gives local officials tremendous authority – and opportunity – to misuse their control of funding for AIDS NGOs. In response to China’s AIDS crisis, and because domestic sources of funding for NGOs are scarce, international aid donors are beginning to increase their aid to Chinese NGOs that work on HIV/AIDS, and to encourage the development of new NGOs in areas of high prevalence. This is creating a flood of new funding. The European Union, U.S., British, and Australian government aid programs are some of the only sources of funding for Chinese NGOs, but funds from overseas are viewed with suspicion by some government officials as a sign of foreign interference in Chinese internal affairs.¹⁷⁵ As a result, “mother-in-laws” sometimes prevent Chinese NGOs from raising funds from international donors. Furthermore, putting NGOs under the supervision of state sponsors places corrupt government officials in positions where they can easily appropriate domestic and international funds intended for NGOs.

China continues to face widespread problems with corruption: in a recent State Council conference on the issue, Premier Wen Jiabao said the fight against corruption continues to be “an arduous task.”¹⁷⁶ The current regulations also create opportunities for official corruption: NGOs must route any funds raised through their “mother-in-law” agency or through the local government, which may appropriate some of the funds for itself. In some cases, as one Yunnan AIDS activist told Human Rights Watch, authorities keep the funds and tell the AIDS activist, “We don’t need you to manage this [AIDS work]; we’ll take care of it ourselves.”¹⁷⁷

Some AIDS activists report that local authorities simply skim off part of the funds for their own purposes.¹⁷⁸ Some international NGOs report that they are aware that this happens, but that they are reluctant to speak up about it for fear of jeopardizing their programs.¹⁷⁹ An activist with a program funded by AusAid, the Australian government aid agency, reported that local authorities kept a portion of the funds intended for cost-of-living support for people with HIV/AIDS:

We didn’t get all the promised funds from [an international aid donor].
All the funds were supposed to be used directly for people with

¹⁷⁵ Chen Wenjun, “An exploration of legal questions,” page 5.

¹⁷⁶ “Premier Wen calls for greater efforts to curb corruption,” *News Guangdong*, February 28, 2005, retrieved at <http://newsgd.com/news/china1/200502280008.htm>. See also Transparency International, *Global Corruption Report 2005* [online], <http://www.globalcorruptionreport.org/download.html> (retrieved May 20, 2005).

¹⁷⁷ Human Rights Watch, “Locked Doors,” p. 27.

¹⁷⁸ Human Rights Watch, “Locked Doors,” p. 27.

¹⁷⁹ *Ibid.*, p. 30.

HIV/AIDS but they were not. The funds were intended for training, for living expenses, for food in cafes, for meetings, and for private events. But as an example, if we were supposed to have fifty yuan per day for each person with HIV/AIDS, instead we got maybe thirty to forty.¹⁸⁰

An AIDS activist in Henan who has attempted to hold local authorities accountable for what his group believed was misuse of aid funds designated for medical care for people with HIV/AIDS reported getting this response from county health officials:

They say, “What has been spent is the Communist Party’s money, what does it have to do with you? If [people with HIV/AIDS] don’t get good medical care today, there’s always tomorrow, and we’re not going to give the money to you for asking for it; stop nosing into other people’s business, or we’ll take care of you – we’ll charge you with the crime of inciting social unrest,” and so on...so HIV-positive people feel furious but don’t dare to speak.¹⁸¹

NGOs are critically important sources of information when it comes to monitoring the disbursement of funds intended for humanitarian aid. UNAIDS and the State Council have acknowledged the need to improve management of financial resources.¹⁸²

Registering as a commercial enterprise

In order to circumvent the obstacles described above, growing numbers of Chinese civil society groups take advantage of a legal loophole that permits them to register as small commercial enterprises. One of the first of these was the AIDS organization Aizhixing; when closed down by the university where it was originally registered, Aizhixing registered as a commercial enterprise and continues to function as one. Others have since followed suit. “We registered as a commercial enterprise,” said the founder of a group that does outreach work with gay male sex workers. “Originally we wanted to apply as an AIDS NGO, but we got turned down.”¹⁸³

But according to one Chinese NGO, registering as a commercial enterprise, while creating a way out of the legal bind, can create its own problems:

¹⁸⁰ Human Rights Watch interview with Wen, HIV-positive volunteer in AIDS program, 2004.

¹⁸¹ E-mail message from Wu, to Human Rights Watch, 2005.

¹⁸² *Joint Assessment*, p. 29.

¹⁸³ Human Rights Watch interview with Hua, gay rights activist, 2004.

Because of the regulation requiring that NGOs apply for a managing agency, and because many grass-roots organizations cannot find a managing agency and have no way to register and establish themselves, and moreover, because many other non-profit organizations have no way to register with government agencies, they have no choice but to register as commercial enterprises. They then must pay taxes, which seriously hampers the development of grass-roots organizations.¹⁸⁴

As this writer notes, the tax requirement is particularly onerous for small, struggling NGOs and can lead to financial difficulties if international donors, who support most of the financing for civil society AIDS groups in China, do not permit their funds to be used to pay taxes.¹⁸⁵ Registration as a for-profit enterprise also makes Chinese NGOs ineligible for international grant programs, and there are many that require aid recipients to show non-profit status.¹⁸⁶

While the commercial enterprise loophole has enabled some small NGOs to register and begin their work, it is not a long-term solution; it effectively restricts their ability to raise funds and develop capacity, and leaves them vulnerable to interference by the state.

Bureaucratic harassment

Because the state plays such an active role in the registration and management of NGOs in China, local authorities can use these regulations to harass NGOs.

On March 21, 2005, Chinese authorities issued new regulations requiring all organizations registered as commercial enterprises to report to civil affairs bureaus for review and approval. Those with the words “social science,” “research center,” or “research institute” in their names – in effect, many organizations that would have been registered as NGOs were they permitted to do so – were specifically identified, suggesting they would come under particularly close scrutiny.¹⁸⁷ Following on these orders, the Beijing Industry and Commerce Administration Management Bureau wrote to Aizhixing Health Education Institute and other NGOs and instructed them to change their name, removing words such as “Health Education” and “Institute” from their title.

¹⁸⁴ Chen Wenjun, “An exploration of legal questions,” page 5.

¹⁸⁵ Human Rights Watch communications with Su, AIDS activist, 2004.

¹⁸⁶ Human Rights Watch interview with Su, 2004.

¹⁸⁷ Qiu Xin, “China curbs civil society groups,” *Asia Times*, April 19, 2005.

At the same time, Aizhixing was also informed that another company had registered with the name “Aizhixing” and that they would be required to change that, also.¹⁸⁸

Obligations under international law

Some Chinese authorities have themselves acknowledged that the current legal framework for NGO registration is out of date. As early as August 2000, the deputy director of China’s Nongovernmental Organizations Administrative Bureau publicly admitted,

The legal system is unsound....A disconnect exists between policies and regulations and the objective, practical requirements. The legal system is lagging behind and that definitely affects the smooth development of China’s NGOs.¹⁸⁹

International law and China’s own constitution obligate China to uphold the right to freedom of association. According to the ICCPR, which China has signed but not ratified, the right to freedom of association may only be restricted when “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others...”¹⁹⁰ Any restrictions should be interpreted narrowly, and be proportionate to the reasons for them; a government should use no more restrictive means than are absolutely required. In addition, article 5 of the U.N. Human Rights Defenders Declaration states that all people have the right to assemble peacefully, to form, join or participate in NGOs, and to communicate with NGOs.¹⁹¹ While the state has the right to ensure that NGOs are honest and transparent, legal requirements should be minimal, clear, and attainable, permitting maximum flexibility for NGOs to establish themselves and perform their daily work. They should be enforced without discrimination.

As the U.N. HIV/AIDS and Human Rights International Guidelines point out, community consultation is a critical element in designing strong AIDS policies.¹⁹² NGOs are one way to channel community opinion into policy design. They face numerous

¹⁸⁸ Vivien Cui, “AIDS group told to change name or close,” *South China Morning Post*, March 27, 2005.

¹⁸⁹ Guangyao Chen, “China’s nongovernmental organizations: status, government policies, and prospects for further development,” *International Journal of Not-for-Profit Law*, vol. 3, issue 3, March 2001.

¹⁹⁰ ICCPR, article 22.

¹⁹¹ 9 December 1998, U.N. General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.”

¹⁹² “HIV/AIDS and Human Rights International Guidelines,” guideline 2.

obstacles in China, however, where the rights to freedom of association and expression are frequently violated in practice.¹⁹³ While the Constitution upholds the right to freedom of association and the right to “criticize and make suggestions to any state organ or functionary,” and growing numbers of Chinese activists promote the Constitution in an effort to give it the status of law, the Constitution is not currently justifiable.¹⁹⁴

The right to freedom of association is particularly relevant to the work of civil society groups working with and on behalf of people suffering from the impact of HIV/AIDS. Reflecting experience from around the world, the experts gathered at the Second International Consultation on HIV/AIDS and Human Rights in 1996 pointed out that the basic right to freedom of association, enshrined in Article 20 of the Universal Declaration of Human Rights,

[H]as been frequently denied to non-governmental organizations working in the field of human rights, AIDS service organizations, and community-based organizations...with applications for registration being refused as a result of their perceived criticism of Governments or of the focus of some of their activities, e.g. sex work...In the context of HIV/AIDS, the freedom of assembly and association with others is essential to the formation of HIV-related advocacy, lobby and self-help groups to represent interests and meet the needs of various groups affected by HIV/AIDS, including [people living with HIV/AIDS]. Public health and an effective response to HIV/AIDS are undermined by obstructing interaction and dialogue with and among such groups, other social actors, civil society and Government.¹⁹⁵

Under international and domestic law, and as a matter of practical impact, the Chinese government should allow HIV/AIDS activists to work without undue restrictions in order to face the country’s burgeoning public health crisis.

¹⁹³ For more information, see Human Rights Watch 2005 World Report chapter on China, [online] <http://hrw.org/english/docs/2005/01/13/china9809.htm>.

¹⁹⁴ *Constitution of the People’s Republic of China*, adopted December 4, 1982, english.peopledaily.com.cn/constitution/constitution.html; article 35 (freedom of association) and article 41 (right to criticize state organs).

¹⁹⁵ OHCHR and UNAIDS, “HIV/AIDS and Human Rights International Guidelines,” commentary on freedom of assembly and association, paragraph 117.

As China's own State Council and UNAIDS have jointly observed, one key challenge in China's response to the AIDS epidemic will be "improving the environment for NGOs to operate, including the policy and legal framework."¹⁹⁶ In place of the commercial enterprise registration loophole, China would be better served by reformed regulations on NGO registration that promote the growth of civil society. In October 2004, the vice director of the Chinese Ministry of Civil Affairs announced that it was considering revising the existing NGO structure, eliminating the requirement that NGOs be attached to government agencies.¹⁹⁷ Such moves are urgently needed and should proceed quickly.

VII. Conclusion

As China begins to tackle its AIDS crisis, it should learn from the experience of other countries. Some of the most effective responses to the crisis in many parts of the world have been led by people living with HIV/AIDS, and their families, friends, and partners. In countries such as Uganda, openness on the part of governments to civil society involvement in the AIDS struggle has led to diverse, vigorous and often successful anti-AIDS efforts.

China has begun to permit a small number of NGOs to provide frontline services in the AIDS epidemic, but the government still does not view NGOs as a resource from which it can draw expertise and insight into positive policies and laws to combat AIDS. Community organizations have historically been excluded from high-level policy and legal debates in China's top-down system, although AIDS organizations and grass-roots groups formed by persons vulnerable to HIV infection are beginning to successfully call for more opportunities to share their input.¹⁹⁸ For instance, in April 2005, over eighty Chinese AIDS organizations publicly called for more input by grass-roots organizations into the Country Coordinating Mechanism, the Chinese committee that allocates funds from the Global Fund to Fight AIDS, Tuberculosis and Malaria.¹⁹⁹ Some authorities, at the local as well as the national levels, have responded positively to these moves. Authorities in Shanghai and Chengdu have at times invited input by NGOs into AIDS policy discussions.²⁰⁰ In a welcome move in November 2004, the State Council invited

¹⁹⁶ *Joint Assessment*, p. iii.

¹⁹⁷ Amanda Cui and Adam Jung, "Possible changes on NGO registration," Global Village of Beijing newsletter, October 2004.

¹⁹⁸ Chen Wenjun, "An exploration of legal questions," page 6; "Dui 2004 nian guojia aizibing fangzhi shehui dongyuan xiangmude zhaozhi zhinande jidian yijian [Several suggestions invited and facilitated by participants in the 2004 national AIDS prevention community forum program]," December 22, 2004, [online] www.aizhi.net.

¹⁹⁹ Vivien Cui, "Grass-roots groups seek more say on AIDS cash," *South China Morning Post*, April 26, 2005.

²⁰⁰ In drafting new regulations for the city of Shanghai in 2004, the city invited a group of international experts and some Chinese NGOs to share suggestions; and the Chengdu Gay Community Care Organization reports

public comment on proposed regulations for health exams, and reportedly received 3,162 letters in response, an indication of the high degree of public interest in health policy.²⁰¹

Despite such positive moves, the Chinese government's overall strategy regarding cooperation with civil society in the fight against HIV/AIDS remains muddled. As recently as April 2005, China blocked another popular website that provided information and support about HIV/AIDS to the gay community.²⁰² Again and again, the government's lingering suspicion about the role of non-governmental groups seems to trump the public health imperative of working with civil society. This official confusion hinders the work of activists and NGOs, and thus undercuts the Chinese government's efforts to combat the country's AIDS epidemic.

China's halting acceptance of the work of AIDS activists throws into even sharper focus the serious restrictions imposed on the country's civil society. In fact, the Chinese government is more tolerant of groups working on HIV/AIDS than of non-governmental groups working in many other fields. Many activists and civil society groups in China face even greater official obstructions and harassment than that documented in this report; even worse off are groups trying to protect or preserve the rights of ethnic or religious groups.²⁰³

The Chinese government's treatment—or harassment—of AIDS activists is thus significant not just because of its potential impact on the country's AIDS epidemic, but also because it sheds light on the government's tolerance for the growth of civil society in general. So far, the outlook remains uncertain. If China is to benefit from the energy and talents of its citizens, the Chinese government should stop impeding the activity of nongovernmental groups and instead embrace them as partners in making and implementing policies. The threat posed by the AIDS epidemic is only the sharpest reminder of the urgency of changing the Chinese government's attitude toward activists and civil society groups.

that they have input into public policies on AIDS prevention and care (brochure produced by Chengdu Gay Community Care Organization).

²⁰¹ *Gongwuyuan luyong tixian shizhun xiugai* [State Council Employee Hire Medical Inspection Criteria], Xinhua, November 16, 2004, [online] http://news.xinhuanet.com/newscenter/2004-11/16/content_2223012.htm (retrieved May 20, 2005).

²⁰² Cindy Sui, "China blocks popular website for homosexuals," Agence France-Presse, May 18, 2005.

²⁰³ See for instance the systematic mistreatment of Muslim Uighur groups (Human Rights Watch and Human Rights in China, "Devastating Blows: Religious Repression of Uighurs in Xinjiang," *A Human Rights Watch Short Report*, vol. 17, no. 2, February 2005) and Tibetan groups (Human Rights Watch, "Trials of a Tibetan Monk: The Case of Tenzin Delek," *A Human Rights Watch Short Report*, vol. 16, no. 1, February, 2004).

VIII. Recommendations

To the government of the People's Republic of China:

On civil society:

- Revise national regulations to remove burdensome restrictions that limit the registration and growth of NGOs. In particular, eliminate membership and minimum funding requirements; eliminate requirements that limit the number of NGOs working on the same issue in the same region; and eliminate requirements of supervision by a government agency of NGOs' day-to-day work. Allow donors to fund NGOs directly without funneling financial assistance through a local government agency.
- Bring national and local laws and regulations on the Internet into compliance with China's commitments under its own constitution and international law to respect the right to free expression and principles of non-discrimination. In particular, eliminate any requirements that websites be registered with the government, and order the Ministry of Public Security to cease censorship and shutting down of websites providing AIDS information or websites that respond to the needs of minority communities.
- Invite grassroots organizations to share their input on policy and legal reform, and to monitor implementation of programs relevant to their organizational mandates.

On HIV/AIDS policy:

- Enact and enforce national legislation prohibiting discrimination against people living with HIV/AIDS and their families in health facilities, schools, places of employment, and other institutions. Protections from discrimination should include mechanisms for victims and their guardians to lodge complaints and receive rapid redress; these mechanisms should be publicly communicated.
- The Ministry of Public Security should hold AIDS training programs in each province, and train police to work with provincial AIDS organizations to ensure that AIDS workshops are able to proceed without interference. They should investigate cases where AIDS workshops have been disrupted by security forces without a legitimate law enforcement objective.
- The State Council Committee on HIV/AIDS should direct provincial authorities to respect the rights of AIDS and LGBT activists to freedom of assembly and association, and provide recommendations on avoiding interference with activists' work.

- The State Council should issue a statement calling on the Ministry of Health, the Ministry of Public Security and local bureaus under their direction to investigate local policies and regulations that restrict the activities and free expression of AIDS organizations and AIDS activists.
- Create regulations that allow the establishment of non-profit orphanages and care facilities for children affected by AIDS.
- For the sake of the integrity and success of future AIDS prevention and control programs in Henan province, the State Council should authorize a full, independent and impartial investigation into the involvement of Henan authorities in the transmission of HIV through blood and plasma collection. If this cannot be accomplished, the United Nations or other credible international body should be authorized to conduct such an investigation.
- The investigation should also examine the Henan government detentions of AIDS activists, responses to protests by people living with AIDS, corruption in the administration of funds intended to benefit people living with AIDS in Henan, restrictions on domestic and international media, police abuse, and the state's closure of nongovernmental AIDS orphanages.
- Authorities should take appropriate action, including dismissal, against any officials determined to have been responsible or negligent in the blood scandal, or who were involved in the cover-up.
- The Ministry of Education and state education bureaus should ensure that no children are excluded from school or discriminated against in school because of their or their caregivers' HIV status. All schools should receive guidelines on preventing discrimination before it occurs and responding to individual cases, and protocols for enrolling HIV-positive children that address maintaining the confidentiality of the child's HIV status, addressing the parents' concerns, and accommodating any special needs the child may have. States should monitor schools' compliance.
- The Ministry of Health and state health departments, with assistance from international donors, should ensure that children living with HIV/AIDS receive all available medical care, including antiretroviral treatment, and use all possible means to remove barriers to their receiving care. In particular, they should prohibit government hospitals from discriminating against people living with HIV/AIDS, set guidelines for maintaining the confidentiality of HIV status of persons using health services, and explore ways of better regulating the private sector. They should also ensure that medical staff have the means to protect themselves from hospital-based HIV transmission, including protective clothing and post-exposure prophylaxis. In implementing the government's antiretroviral drug program, they should ensure that services are offered in a way that

maintains the confidentiality of participants' HIV status and that the program reaches marginalized children, including street children, children in orphanages and those in other residential institutions.

- The Ministry of Civil Affairs, the Ministry of Public Health, and their provincial counterparts should all require orphanages and other institutions that they license to accept qualifying children when there is space available for them.
- The Ministry of Education and state education bureaus should ensure that all students, at the earliest possible level, receive age-appropriate information on preventing HIV/AIDS, keeping in mind the low numbers of children, especially girls, who enroll at the secondary level. This would be in accord with the recommendations of the 2002 U.N. General Assembly Special Session on Children. HIV/AIDS education should cover the correct and consistent use of condoms as the most effective way to prevent HIV transmission during sexual intercourse, including in long-term unions.

To the Henan provincial government and other local authorities in China:

- Release all AIDS activists currently in detention for protesting or advocating for access to treatment and care. Promulgate regulations prohibiting discrimination against people living with HIV/AIDS in access to care.
- Establish training programs for healthcare workers in HIV/AIDS treatment and universal precautions.
- Establish training programs for public security officers in HIV/AIDS and human rights.
- Cease restrictions on communication by people with HIV/AIDS with Chinese or international media.

To the Global Fund to Fight AIDS, Tuberculosis and Malaria and other international donors to HIV/AIDS programs in China:

- All donors should advocate for transparency, access to information for AIDS activists and vulnerable populations.
- Donors should condemn the detention of AIDS activists generally, especially when such detentions are done for the purpose of hiding those persons from donors.
- Other donors should consider adopting the Global Fund's new guideline that NGOs participating in their AIDS programs should be demonstrably

organizations that legitimately represent a real community, and not be “government-organized” NGOs.

- Bilateral aid agencies should set aside a pool of funding targeted to grass-roots Chinese organizations that can be applied for with a minimal application procedure.
- Examine restrictions on application for funding by small commercial enterprises in China, and develop new ways to facilitate their ability to apply for funds.
- Advocate for revisions of the Social Organizations Regulations to eliminate burdensome registration and management requirements.
- When AIDS activists or lesbian, gay, bisexual or transgender activists are detained, raise public or private concerns with Chinese colleagues and press for their release.
- Assist Chinese AIDS activists in danger of arrest for their AIDS outreach work to find temporary safe haven.

To U.N. Office of the High Commissioner for Human Rights:

- Support technical assistance programs to give provincial police extensive human rights and AIDS awareness training.
- Provide training for Chinese AIDS and lesbian and gay rights NGOs on human rights monitoring and reporting.

To the U.N. Theme Group on HIV/AIDS, UNAIDS and other U.N. agencies with AIDS programs in China:

- As part of regular evaluations on China’s progress in combating the AIDS epidemic, evaluate China’s compliance with the U.N. HIV/AIDS and Human Rights Guidelines.
- Translate the Guidelines into Chinese, distribute them to Chinese government officials and to local NGOs in China, and make them available on the UNAIDS China website.
- Press the Chinese government to uphold the Guidelines, and to engage in regular consultation with community organizations on design of AIDS policy and law.
- Support the immediate passage of strong antidiscrimination legislation that protects the rights of people living with HIV/AIDS and their families.
- Consider a high-level summit or strategy meeting on protecting the rights of children affected by HIV/AIDS in China.

To international partners in bilateral rights dialogues with China:

- Inform Chinese and Henan officials that detention of any AIDS activists in advance of a diplomatic visit to Henan will result in a public response.
- Raise the issues above with Chinese dialogue partners.

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