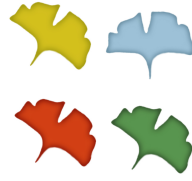




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ASIA PACIFIC DISPUTE RESOLUTION

# **AIDS, HUMAN RIGHTS, AND PUBLIC SECURITY IN CHINA**

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# AIDS, HUMAN RIGHTS, AND PUBLIC SECURITY IN CHINA

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On December 31<sup>st</sup>, 2010, China's State Council issued the *Notice on Further Strengthening AIDS Prevention and Treatment* (hereafter referred to as "Notice"<sup>1</sup>), and on January 13<sup>th</sup>, 2012 the State Council released the *Action Plan of China for the Containment, Prevention and Treatment of AIDS During the Period of the Twelfth Five-year Plan*.<sup>2</sup> This was the third national five-year action plan released in the fight against AIDS in China.

The new five-year plan encompassed the following elements and essential steps: 1. "The public security bureau will continue to crack down on prostitution, debauchery, and other illegal criminal activity"; 2. "Crack down on illegal drug trafficking and drug use according to the law"; 3. "The public security and hygiene bureaus will take regular action against the illegal collection of liquid blood (blood plasma), the manufacture and sale of blood products, and the organized sale of liquid blood (blood plasma)"; 4. "The public security and legislative bureaus, along with other related bureaus, will combat the illegal and intentional transmission of AIDS by carriers of the disease."

In contrast, the "Notice" identified only two problem areas: 1. "Strict crack down on prostitution, debauchery, and other illegal criminal activity"; 2. "Fight in accordance with the law against the illegal and intentional transmission of AIDS by carriers of the disease."<sup>3</sup>

While previous action plans issued by the State Council<sup>4</sup> focused on addressing the illegal collection of blood and the reuse of one-time-use sterile medical equipment, the Notice and new five-year plan place an emphasis on tackling the intentional transmission of AIDS by carriers of the disease.

The focus on the AIDS prevention and treatment strategies outlined above has changed due to new conditions facing AIDS prevention and treatment work in China. These changes include:

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<sup>1</sup> *State Council Notice on Further Strengthening AIDS Prevention and Treatment*, 2010, No. 48, [http://www.gov.cn/zwggk/2011-02/16/content\\_1804536.htm](http://www.gov.cn/zwggk/2011-02/16/content_1804536.htm)

<sup>2</sup> *Circular of the General Office of the State Council on Printing and Issuing the Action Plan of China for the Containment, Prevention and Treatment of AIDS During the Period of the Twelfth Five-year Plan*, 2012, No. 4, [http://www.gov.cn/zwggk/2012-02/29/content\\_2079097.htm](http://www.gov.cn/zwggk/2012-02/29/content_2079097.htm)

<sup>3</sup> See note 1 above.

<sup>4</sup> *Circular of the General Office of the State Council on Printing and Issuing the Action Plan for the Containment, Prevention, and Treatment of AIDS in China* (2001-2005), 2001, No.40, [http://www.gov.cn/gongbao/content/2001/content\\_60908.htm](http://www.gov.cn/gongbao/content/2001/content_60908.htm); *Circular of the General Office of the State Council on Printing and Issuing the Action Plan for the Containment, Prevention, and Treatment of AIDS in China* (2006-2010), 2006, No.13, [http://www.gov.cn/zwggk/2006-03/10/content\\_224306.htm](http://www.gov.cn/zwggk/2006-03/10/content_224306.htm)

1. The epidemic has already reached high levels of prevalence in some areas and among certain populations, yet many carriers of the disease are not yet aware that they have contracted the disease; the methods of AIDS transmission have become increasingly hidden, sexual transmission has already become the main channel for transmission, with a clear increase in transmission among MSM (males who have sex with males); Controlling the spread of the AIDS virus among moving populations and populations exhibit high-risk behavior has become increasingly more difficult.

2. The Global Fund program on AIDS united its efforts and greatly increased the funding allotted to AIDS prevention and treatment work in China. However, due to the Global Fund's own economic difficulties, the funding policy was changed and the Chinese government took control over the resources and put a stop to financial support for the China AIDS program and other programs.

3. In 2010, 2011, and 2012, the expenditure of the Chinese Ministry of Public Security exceeded the expenditure of the Ministry of National Defense. In the name of social management, innovation, and the defense of social stability, the Central Politics and Law Commission of the Communist Party of China (CPC) began to comprehensively intervene in the management and control of AIDS patients. On November 7<sup>th</sup>, 2011, the secretary of the Central Politics and Law Commission of the Communist Party of China, Zhou Yongkang, convened the fourth special topic meeting of the Central Comprehensive Social Management Commission. The aim of the meeting was to strengthen and improve the service and management of special groups which includes people with HIV/AIDS, people with mental disability, drug addicts, ex-prisoners, people in the community corrections, etc. Zhou Yongkang expressed, "With regard to AIDS patients and those populations who are susceptible to contracting AIDS, it is important to persevere in prevention, rescue, treatment, aid, and management to contain the transmission of AIDS."<sup>5</sup>

The new five-year plan also proposes policies related to the sexual transmission of AIDS. For example, there are policies that require pre-marital medical examinations that include HIV/AIDS testing. Employees working in special public places, for example hotels, will receive HIV testing. Carriers and patients of the disease will be encouraged to promptly inform their spouse or sexual partner(s) of their positive HIV status, and HIV/AIDS education in schools will be improved etc. At the same time, the new five year plan has proposed a new principle for Chinese HIV/AIDS testing, "Informed of the situation, no rejection." Requesting "HIV testing become common practice in hospitals and clinics," "providing the necessary HIV testing and counseling services to populations with high-risk behavior, and requesting township hospitals and community health service centers open rapid HIV testing, counseling, and syphilis testing to populations with high-risk behavior." Overall, these policies would strengthen the control and management of carriers and patients of the disease.

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<sup>5</sup> Zhou Yongkang, "Strengthening and Improving Services and Management for Special Populations," *Xinhua News Agency*, November 7, 2011, [http://news.xinhuanet.com/politics/2011-11/07/c\\_111151558.htm](http://news.xinhuanet.com/politics/2011-11/07/c_111151558.htm)

The new five-year plan proposes “strengthening the service and management of carriers and patients of HIV, and comprehensively implementing measures for care.” This chapter will introduce the early history of HIV/AIDS prevention and treatment in China, the human rights situation for carriers and patients of HIV, the aftermath of policies combating the intentional spread of HIV and sexually transmitted diseases, with an emphasis on explaining the policies of the Chinese government on the “service” and “management” of carriers and patients of HIV.

### ***1. AIDS: Resisting a Foreign Problem***

Before the *Regulations on HIV/AIDS Prevention and Treatment* came into effect on March 1<sup>st</sup>, 2006,<sup>6</sup> the Chinese government has viewed AIDS as a primarily foreign disease that must be kept back.

In 1985, Beijing reported China’s first case of AIDS when a foreign traveler died in the Beijing Harmony Hospital. Afterwards, an official from the Chinese Ministry of Health denied the possibility that AIDS could spread within China, claiming traditional morals and a good primary health care system could resist the influx of AIDS, while also claiming homosexuality and drug use did not exist in China. AIDS was considered a foreigners’ disease, arising from the decline and corruption of the bourgeois lifestyle of the capitalist class in the West.

In 1987, Zhejiang province discovered four hemophiliac patients who imported blood products in 1984 and contracted the AIDS virus. In response, the Chinese Ministry of Health adopted the slogan, “Resistance of AIDS to outside country boundaries,” which prohibited both the import of blood products and the entrance of foreign nationals into China. On December 26, 1987, the Chinese State Council ratified the *Provisions on Surveillance and Management of AIDS*.<sup>7</sup>

The Provisions “was established to prevent AIDS from spreading into China from foreign countries or taking hold and spreading within our country and to ensure people’s safety.”<sup>8</sup> It also stipulated: “1. Foreigners classified as, carriers of the AIDS virus and AIDS patients will be denied entry; 2. Foreigners denied entry due to this clause who have already reached our country’s borders, must leave the premises as soon as possible via their original means of transportation, or other means of transportation, thereby requiring the prompt arrangement for their departure by our civil aviation, railway, and transportation bureau; prior to departure, the national boarder

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<sup>6</sup> *Regulations on HIV/AIDS Prevention and Treatment*, Decree of the State Council of the Peoples Republic of China No.457, [http://www.gov.cn/flfg/2006-02/12/content\\_186324.htm](http://www.gov.cn/flfg/2006-02/12/content_186324.htm)

<sup>7</sup> *Provisions on Surveillance and Management of AIDS*, approved by State Council on December 26 of 1987, and published by the Ministry of Health, the Ministry of Foreign Affairs, the Ministry of Public Security, the National Board of Education, the National Tourism Bureau, the Civil Aviation Administration of China, and the National Bureau of Foreign Experts on January 14 of 1988, [http://www.gov.cn/banshi/2005-08/01/content\\_19059.htm](http://www.gov.cn/banshi/2005-08/01/content_19059.htm)

<sup>8</sup> *Ibid*, Article 1.

quarantine health facilities must implement isolated quarantine measures.<sup>9</sup> 3. If foreigners residing in China are found to be carriers of the AIDS virus and AIDS patients, the local health administration bureau has permission to request an order for their immediate departure by the Ministry of Public Security;<sup>10</sup> 4. Strictly prohibit any individual from importing or bringing in foreign products polluted by AIDS or products that have the potential to spread AIDS such as blood and blood products, strains of the virus, biological tissue, animal and other goods; if importing these products is truly necessary, they must be reported to the Ministry of Health for examination and approval.”<sup>11</sup>

## 2. *Isolation Policy*

The *Provisions on Surveillance and Management of AIDS* stipulate that AIDS should be reported as an infectious disease, and health, medical treatment, and health care organizations “must immediately adopt measures for the isolation and transport of infected persons to the Health Administrative Bureau’s designated medical center for treatment.”<sup>12</sup>

Before their forced departure, foreigners with AIDS, who are residing in China, must undergo quarantine measures at the National Border Health Quarantine facility. Clause 24 of the *People’s Republic of China Infectious Disease Prevention and Treatment Law*, which came into effect in 1989, states: “AIDS patients ‘should be given isolation treatment. The time frame of isolation should be determined based on the results of a medical examination. Those who refuse isolation treatment or prematurely remove themselves from isolation treatment without permission, can be sent to the Public Security Bureau Unit for assistance in treatment and prevention, and forced isolation treatment procedures;” “Infectious disease patients, their relatives, related working units, residents, and/or village organizations should implement the above stipulations in a fitting manner.”<sup>13</sup>

The 2004 revised version of the aforementioned law removed the stipulation that AIDS patients must receive isolation treatment, instead ruling that the State Council must implement specific AIDS treatment policies.<sup>14</sup> By that time, the isolation treatment law for AIDS patients had been implemented for 16 years.

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<sup>9</sup> *Ibid*, Article 6.

<sup>10</sup> *Ibid*, Article 7.

<sup>11</sup> *Ibid*, Articles 9 & 2.

<sup>12</sup> *Ibid*, Article 23.

<sup>13</sup> *Law of the People’s Republic of China on Prevention and Treatment of Infectious Diseases*, (Adopted at the 6th Meeting of the Standing Committee of the Seventh National People’s Congress on February 21, 1989, revised at the 11th Meeting of the Standing Committee of the Tenth National People’s Congress on August 28, 2004 and promulgated by Order No. 17 of the President of the People’s Republic of China on August 28, 2004), Article 24, [http://www.npc.gov.cn/npc/ztxw/crbfz/2013-08/26/content\\_1804055.htm](http://www.npc.gov.cn/npc/ztxw/crbfz/2013-08/26/content_1804055.htm)

<sup>14</sup> *Ibid*.

Article 34 of the *Regulations on HIV/AIDS Prevention and Treatment* stipulates: “disease prevention and control institutions should implement medical follow-ups for carriers of the AIDS virus and AIDS patients according to territorial management principles.”<sup>15</sup>

The day the *Regulations on HIV/AIDS Prevention and Treatment* came into effect, the *Provisions on Surveillance and Management of AIDS* were abolished.

In 1989, China implemented the *People’s Republic of China Boarder Health and Quarantine Laws and Implementation Regulations* and in 1986 China implemented the *People’s Republic of China Entry and Exit of Aliens Management Laws and Implementation Regulations*, which both clearly restrict foreigners with AIDS, STDs, and leprosy from entering China.<sup>16</sup>

On April 19<sup>th</sup>, 2010, in its 108<sup>th</sup> administrative conference, the State Council revised and passed the *People’s Republic of China Boarder Health and Quarantine Laws and Implementation Regulations* and the *People’s Republic of China Entry and Exit of Aliens Management Laws and Implementation Regulations*. From this point forward, China disbanded its restrictions on the entry of foreigners with AIDS, STDs, and leprosy.

### **3. *Regulations on HIV/AIDS Prevention and Treatment: Protection of Rights in Name Alone***<sup>17</sup>

The third clause of the *Regulations on HIV/AIDS Prevention and Treatment* stipulates: “It is not permissible for any working unit or individual to discriminate against people living with AIDS, AIDS patients, and their families. Carriers of AIDS, AIDS patients, and their families right to marriage, employment, medical care, and schooling is protected by the law. The 39<sup>th</sup> clause states: “without the person herself or her guardian’s consent, no working unit or individual has the right to openly disclose the person’s name, address, work unit, portrait, medical history or any other information that might disclose the individual’s personal identity. The 41<sup>st</sup> clause states: “medical treatment institutions cannot decline or refuse to provide carriers of the AIDS virus or AIDS patients with treatment for other diseases due to their positive HIV status.”

However, this clause has protected these rights in name only. This is due to contradictory regulations, and the conflicts between various Chinese laws and policies, and the involvement of the Ministry of Public Security. From marriage to employment, discrimination against those

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<sup>15</sup> “Regulations on HIV/AIDS Prevention and Treatment” (People’s Republic of China State Council Decree No.457), Article 34, [http://www.gov.cn/flfg/2006-02/12/content\\_186324.htm](http://www.gov.cn/flfg/2006-02/12/content_186324.htm)

<sup>16</sup> *State Council Decisions regarding the revision of the People’s Republic of China Boarder Health and Quarantine Laws and Implementation Regulations* and the *People’s Republic of China Entry and Exit of Aliens Management Laws and Implementation Regulations*. (Decree of the State Council of the Peoples Republic of China No.574, April 24, 2010, [http://www.gov.cn/zwgk/2010-04/27/content\\_1593743.htm](http://www.gov.cn/zwgk/2010-04/27/content_1593743.htm)

<sup>17</sup> Additionally, for a critical analysis of China’s failure to comply with its international obligations with regard to the right to adequate health care, see Potter, P. & Jacobs, L. 2006. Selective Adaptation and Human Rights to Health in China. *Health and Human Rights* 9(2): 112-134.

infected with AIDS persists. The following examples demonstrate that there is still a huge disconnect between what is said on paper and what is implemented in practice.

### *Marriage Discrimination*

The *Regulations on HIV/AIDS Prevention and Treatment* explicitly protects the right to marry of carriers of the AIDS virus and AIDS patients, yet it contradicts the country's *Mother and Child Health Protection Law*, which postpones marriage requests of patients with sexually transmitted diseases including HIV/AIDS.<sup>18</sup> Furthermore, it contradicts the *Marriage Law*, which says that "having an illness that is medically considered unsuitable for marriage" deems marriage prohibited in this scenario, if "prior to marriage one has an illness that is medically considered unsuitable for marriage, and after marriage it still cannot be cured", the marriage is null.<sup>19</sup>

### *Employment Discrimination*

The *Regulations on HIV/AIDS Prevention and Treatment* has not yet implemented legal protection of HIV-infected persons and AIDS patients and their employment rights.

The 18<sup>th</sup> clause of China's *Civil Service Recruitment Physical Examination Standard (Trial)* stipulates: gonorrhea, syphilis, chancroid, lymphogranuloma venereum, genital warts, genital herpes, and AIDS do not meet health qualifications for employment.<sup>20</sup>

The 8<sup>th</sup> clause of China's *Teacher Qualification Regulations*, issued on September 23<sup>rd</sup> 2000, stipulates that applicants must meet a number of requirements in order to be certified as an instructor. One of the key requirements is that the candidate be free from infectious diseases.<sup>21</sup>

The 13<sup>th</sup> clause of China's *Public Security Bureau Recruitment for the People's Police Physical Examination Program and Standard* stipulates: people with gonorrhea, syphilis, chancroid and lymphogranuloma venereum, non-gonococcal urethritis, genital warts, AIDS and carriers of HIV, cannot be hired.<sup>22</sup>

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<sup>18</sup> *Law of the People's Republic of China on Maternal and Infant Health Care*, (Adopted at the Tenth Meeting of the Standing Committee of the Eighth National People's Congress on October 27, 1994 and promulgated by Order No.33 of the President of the People's Republic of China on October 27, 1994), [http://www.gov.cn/banshi/2005-08/01/content\\_18943.htm](http://www.gov.cn/banshi/2005-08/01/content_18943.htm)

<sup>19</sup> *Law of People's Republic of China on Marriage Law*, (passed by the Third Meeting of the Standing Committee of the Fifth National People's Congress of the People's Republic of China on September 10, 1980, and revised by the Twenty-First Meeting of the Standing Committee of the Ninth National People's Congress of the People's Republic of China on April 28, 2001,) [http://www.gov.cn/banshi/2005-08/21/content\\_25037.htm](http://www.gov.cn/banshi/2005-08/21/content_25037.htm)

<sup>20</sup> *Civil Service Recruitment Physical Examination Standard (Trial)* (Issued by Ministry of Health and Ministry of Human Resources on January 17, 2005, and revised by Ministry of Health and the Ministry of Human Resources and Social Security on March 8, 2010,) <http://www.gjgwy.org/2010/1014/11476.html>

<sup>21</sup> *Implementation Measures of the Teacher Qualification Regulations* (Ministry of Education, issued on September 23, 2000), [http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe\\_420/201005/xxgk\\_88523.html](http://www.moe.gov.cn/publicfiles/business/htmlfiles/moe/moe_420/201005/xxgk_88523.html)

<sup>22</sup> "Public Security Bureau recruitment for the people's police physical examination program and standard" (January 11, 2005, Public Security Bureau)

The Chinese “Infectious Diseases Law” and “Employment Promotion Law” both demand an end to discrimination against patients with infectious diseases or carriers of diseases, yet simultaneously stipulate, patients with infectious diseases should not engage in jobs banned by the legal, administrative regulatory and State Council health administrative department easily allow for the spread of infectious diseases.<sup>23</sup> However, the legal, administrative regulatory and State Council health administrative department have determined that HIV infected persons (including AIDS) involved with “jobs that easily allow for the spread of infections diseases,” if the position is not restricted in nature, then it is lacking in clear instruction, which leads the HIV-infected person and AIDS patient’s employment rights to lack specific protection under the law, administrative regulations and health bureau policy.

The first clause of the 16<sup>th</sup> article of the “Infectious Disease Prevention Law” mentions a regulation against discrimination: “The state and society should care for and help those infected with infectious diseases, carriers of infectious diseases, and those suspected of having an infectious disease, receive prompt treatment. Any work unit or individual should not discriminate against infectious disease patients, carriers of infectious diseases and patients suspected of being sick with an infectious disease.” However, the second clause limits the rights of sick people: “infectious disease patients, carriers of infectious diseases, and patients suspected of being sick with an infectious disease, may not work in legal, administrative regulatory and state council health department positions, or jobs that allow for the easy spread of infectious diseases, prior to being cured or discrediting suspicions of their disease status.”

“Employment Promotion Law” is also self-contradictory. On one hand, the third clause requests, “Servants looking to hire new servants, must not reject someone based on their infectious disease status.” However, at the same time it mentions that those who are “medically diagnosed as carriers of infectious diseases, may not work in legal, administrative regulatory and state council health department positions, or jobs that allow for the easy spread of infectious diseases, prior to being cured or discrediting suspicions of their disease status.”

#### *Discrimination Against the Right to Medical Care*

The right to medical care of HIV-infected people and the “State Council notice on further strengthening AIDS prevention and treatment work” have conflicting views with respect to

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<sup>23</sup> “People’s Republic of China Employment Promotion Law,” Article 30, (passed by the Twenty Ninth Meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on August 30, 2007), [http://www.gov.cn/flfg/2007-08/31/content\\_732597.htm](http://www.gov.cn/flfg/2007-08/31/content_732597.htm)

“People’s Republic of China Infectious Disease Prevention and Treatment Law,” Article 16, (passed by Sixth Meeting of the Standing Committee of the Seventh National People’s Congress of the People’s Republic of China on February 21, 1989, and revised by the Eleventh Meeting of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on August 28, 2004, and revised by the Third Meeting of the Standing Committee of the Twelfth National People’s Congress of the People’s Republic of China on June 29, 2013), <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=206064>



“organizing different levels and kinds of health care mechanisms for actively combating the AIDS virus,” and the new five year plan concerning areas of high prevalence, “county level medical organization will make HIV testing a routine procedure for inpatient and outpatients,” and in mid-range prevalence areas “actively provide necessary HIV examination and counseling services for key technical offices for seeking medical advice and inpatients” there are also conflicts of opinion. As soon as many medical work units discover a patient is HIV positive, they will either refuse to provide the patient with surgical treatment or they will have the patient look to the government to assign a new medical work unit to provide treatment.

### *Discrimination Against the Right to School Admission*

HIV-infected children and young people have sometimes been denied admission to schools. Linfen prefecture, Shanxi, China has established the “red ribbon school,” which harbors HIV-infected children and provides them with an education.<sup>24</sup>

### *Infringement on Privacy Rights*

The privacy rights of Chinese people infected with HIV and AIDS patients have encountered challenges from many angles:

- 1) **AIDS Identification Examination.** Although the “Regulations on HIV/AIDS Prevention and Treatment” does not demand that HIV testing include identification procedures, the Chinese Health bureau and medical treatment agency have consistently implemented the HIV testing with real name. In 2009, the Chinese disease prevention and control center revised the “National Standards for HIV/AIDS Testing Techniques,” by proposing specific demands on the HIV testing with real name.<sup>25</sup>
- 2) **Medical institutions implement forced or unauthorized HIV testing.** The State Council document No. 48 states, “expanding the coverage of the monitoring and testing examinations, and maximizing the discovery of people with HIV.” Requesting, “the organization of different levels and types of medical treatment and health facilities to actively launch HIV and syphilis testing and counseling,”<sup>26</sup> but related policy proposals have the potential to severely infringe on people’s privacy, which leads to discrimination based on HIV status. At the moment, Chinese hospitals provide bedside surgery patients with HIV testing. Prior to inspection they do not provide AIDS

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<sup>24</sup> “Into the Red Ribbon School,” (Xinhua News Agency, November 28, 2012,) [http://news.xinhuanet.com/gongyi/2012-11/28/c\\_124015318.htm](http://news.xinhuanet.com/gongyi/2012-11/28/c_124015318.htm)

<sup>25</sup> “National Standards for HIV/AIDS Testing Techniques,” (revised by Chinese Disease Prevention and Control Center in 2009,) <http://www.yncxcdc.cn/a/falvfagui/weishengfagui/2013/0808/405.html>

<sup>26</sup> “State Council Notice on Further Strengthening AIDS Prevention and Treatment Work” (State Council Issued (2010) No. 48, hereafter referred to as “Notice”), [http://www.gov.cn/zwggk/2011-02/16/content\\_1804536.htm](http://www.gov.cn/zwggk/2011-02/16/content_1804536.htm)

counseling or request the patient's informed consent, but rather perform the HIV testing without consent.

**3) The health bureau's epidemiological investigation and testing mobilization work has adopted the identification system.** Health departments in many different places often use scientific research projects and testing projects on certain populations to mobilize HIV testing. At the moment, the Chinese health department often does not take heed of the principle of informed consent, instead using financial incentives as a way to lure people into accepting HIV testing, registering individual's names and identification information.

**4) Premarital "voluntary" physical examinations including HIV testing, which are not actually voluntary.** The State Council No. 48 document states, "communities where the epidemic situation is severe would like to make the testing counseling examinations a part of the premarital voluntary medical examinations," yet from many angles, premarital physical examinations are not actually voluntary, if one does not consent to the physical examination he or she will not be granted a marital certificate.

**5) Localizing "medical follow-ups" has exposed HIV carriers in their hometowns.** The 34<sup>th</sup> article of the "Regulations on HIV/AIDS Prevention and Treatment" stipulates: "The disease prevention and control agency should follow the principles of the local territory when conducting medical follow-ups for HIV-infected patients and AIDS patients." This method of placing HIV-infected patients and AIDS patients under the jurisdiction of the disease prevention and control agency, and conducting regular medical follow-ups, severely infringes on the privacy and self-decision-making power of the patients, especially for the current "territorial management" system, which is essentially the registered permanent residence health bureau conducting management and follow-ups. In a densely populated society of people who all know each other well, the territorial management principle can leave HIV-infected patients fully exposed in their hometown.

**6) If a carrier of HIV is found voluntarily donating blood, this will lead to the exposure of their HIV status.** People have voluntarily donated blood, and after inspection been found to have HIV, leading the health bureau to notify their work unit, thereby causing the carrier of HIV to lose his or her job. There have also been cases where people have donated blood on moving blood donation cars. However, if the donor has been found to have HIV, he/she is tracked to their place of residence, where a medical follow-up is conducted, and their positive HIV status is exposed.

**7) The government's care and relief work has exposed carriers of HIV and members of their families.** The 34<sup>th</sup> clause of the "Regulations on HIV/AIDS Prevention and Treatment" stipulates: "Orphans left behind by victims of AIDS and minors living with AIDS lead difficult lives and should receive compulsory education, free of miscellaneous charges and textbook fees; for those receiving preschool and high school level education, the tuition and related charges

should be waved.”<sup>27</sup> However, in some places when the Ministry of Education delivers textbooks to orphans of HIV-infected families and children of patients infected with HIV, a mark is engraved on the textbook, thereby exposing the privacy of the child and bringing on discrimination issues. This can also lead children who need help not to take textbooks engraved with markings on them.

The 36<sup>th</sup> clause of the “Regulations on HIV/AIDS Prevention and Treatment” states: “Local governments at the county level and above should provide financial aid to HIV-infected patients and their family members living in difficult straits who meet the social conditions for receiving financial aid.” In doing so, local governments publicize sensitive information in community bulletin boards, which exposes the status of HIV-infected people in his or her community.

**8) Prison and other detainment facilities have implemented forced HIV testing and the isolation system on their inmates, thereby exposing people’s medical status.**

“State Council notice on earnestly strengthening AIDS prevention work” (March 16<sup>th</sup>, 2004) demands: “the public security and legislative bureaus collaborate with related bureaus to strengthen the testing, screening, treatment, and the educational dissemination work of prevention and treatment knowledge of detained and monitored HIV-infected people. Must adopt necessary procedures and set up a special facility for detained and monitored HIV-infected people and patients.”<sup>28</sup>

China currently implements forced HIV testing in prisons and places of detainment on their detainees; immediately after determining an inmate is infected, he or she will be isolated in a “location set up specially for detainees or people being monitored who are infected with HIV.”

**9) The “Resident Health Card” nationwide network has made the exposure of infected people commonplace.** China’s health department is currently implementing the “Resident Health Card” nationwide network and establishing electronic records of medical histories in hospitals. While this network has made it more convenient to receive medical care and submit expenses for refund from afar, it has not taken into account the privacy of AIDS patients and those with other major diseases.

This will not only cause people infected with HIV to regularly receive disdainful looks inside medical facilities, but in the process of submitting medical expenses for refund, the patient’s work unit or medical insurance management organization might become aware of the person’s infected status.

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<sup>27</sup> “Regulations on HIV/AIDS Prevention and Treatment” (People’s Republic of China State Council Decree No.457), Article 36, [http://www.gov.cn/flfg/2006-02/12/content\\_186324.htm](http://www.gov.cn/flfg/2006-02/12/content_186324.htm)

<sup>28</sup> “State Council Notice on Earnestly Strengthening AIDS Prevention and Treatment Work” (State Council Issued (2004) No. 7), [http://www.gov.cn/gongbao/content/2004/content\\_62727.htm](http://www.gov.cn/gongbao/content/2004/content_62727.htm)

#### ***4. Policy in Attack of the Intentional Transmission of HIV And Sexually Transmitted Diseases***

The State Council “Notice” and the Chinese AIDS new five-year plan both promote, “legally backed attacks against the intentional transmission of HIV and the use of one’s positive HIV status to conduct illegal criminal activity.”

The 38<sup>th</sup> clause of the “Regulations on HIV/AIDS Prevention and Treatment” stipulates: “HIV-infected people and patients must not intentionally transmit HIV by any means.” The 38<sup>th</sup> clause also says: “HIV-infected people and patients should fulfill the following obligations: (1) Accept the epidemiological survey and guidance from the disease control and prevention organization or the boarder disease inspection organization; (2) Promptly notify your sexual partner of the fact you are infected and have become sick with a disease; (3) When receiving medical care, notify the doctor providing you with care of your infected status according to the facts; (4) Adopt the necessary protection methods, to prevent infecting other people.”

The health department and the Standardization Administration of China released the “Demands for the Physical Examination of Blood Donors,” which outlines “the responsibilities of high risk behaving people who intentionally donate blood”.<sup>29</sup> It states that “blood donors who donate infectious blood are putting the people receiving this blood in danger, and should take on the moral responsibilities for this.” By intentionally donating blood, high risk donors propagate the dissemination of infectious diseases, and should assume their civil liabilities according to the law; concerning the constituent who committed the crime, determine their penal responsibilities according to the law.”

The 23<sup>rd</sup> clause (the health department claims it is number 89) of the “Methods for the prevention and treatment of sexually transmitted diseases,” which came into effect on January 1, 2013, stipulates: “patients with sexually transmitted diseases must adopt necessary prevention measures to keep from infecting other people, and must not intentionally transmit the STD by any means.”<sup>30</sup>

In the 360<sup>th</sup> clause, which attacks prostitution, China’s “criminal law” stipulates: “prostitutes or visitors of prostitutes who are fully aware that himself or herself is infected with syphilis, gonorrhea and/or other serious STDs, will be placed in a fixed term of imprisonment of five years or less, short detention or placed under surveillance, and fined.” This is the clause on the criminal transmission of STDs in the criminal law, which presents a different view from the stipulations on the intentional transmission of STDs described in, “Methods for the prevention and treatment of sexually transmitted diseases,” and the stipulations on the intentional transmission of HIV described in the “Regulations on HIV/AIDS Prevention and Treatment.” In recent years, following

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<sup>29</sup> “Blood Donor Health Examination Requirements” (GB 18467-2011) (Issued by Ministry of Health and National Standardization Management Committee on December 30, 2011, effective on July 31, 2012,)

<http://www.moh.gov.cn/wsb/pzcyj/201207/55330/files/d91b6b677dc341e08b70e44d5176273e.PDF>

<sup>30</sup> “STD Prevention and Treatment Management Measures”, (Ministry of Health Decree No. 89,)

<http://wsb.moh.gov.cn/mohzcfgs/s3576/201212/cba30083e498409f913515da47cecee7.shtml>

the Criminal Law, various places in China, one by one, have incriminated HIV positive female prostitutes.

### ***5. The “Service And Management” of “Special Populations Special Group” and Infected People and Patients***

On November 7, 2011, the secretary of the Central Politics and Law Commission of the Communist Party of China, Zhou Yongkang, presided over the convention of the central social management comprehensive administration committee’s fourth special conference, to research the deployment, strengthening, and improvement of the service management of special group populations, and the safety and protection work concerning the important facilities of the national economy and people’s livelihood. Zhou Yongkang expresses, “With respect to patients infected with HIV and populations who are susceptible to contracting HIV, we must persistently unite the effort to guard against, treat, aid, and manage them to limit the spread of HIV.”<sup>31</sup>

This symbolizes the poor reputation the Chinese government has placed on people infected with HIV and AIDS, and the start to public security’s comprehensive management and control of them.

On September 16<sup>th</sup>, 2011, Zhou Yongkang, presided over the convention of the central social management comprehensive administration committee’s first plenary conference and talk. At the conference, Hui Liangyu, member of the Politburo of the Communist Party of China, vice premier of the State Council, and deputy director of the Central Comprehensive Social Management Commission of China, read aloud a notice from the General Office of the Central Committee of the CPC and the Office of the State Council concerning the change in name from Central Comprehensive Social Security Commission of China to Central Comprehensive Social Management Commission of China.

The establishment of the Central Comprehensive Social Management Commission of China, implies that the Central Politics and Law Commission of the Communist Party of China has started to intervene in social management, and is no longer focusing its main attention on illegal criminal activity.

The Central Comprehensive Social Management Commission of China established the “Special Populations Special Group,” which manages and controls people infected with HIV, AIDS patients, and the so-called “dangerous population susceptible to contracting HIV.” The special populations special group has labeled people infected with HIV, AIDS patients, physically weak populations susceptible to contracting HIV, and related populations as the dangerous AIDS population, and has grouped the management of AIDS, mental illness, drug abuse, and criminal offenders.

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<sup>31</sup> “Strengthening and Improving Services and Management for Special Populations” (Zhou Yongkang, Xinhua News Agency, November 7, 2011,) [http://news.xinhuanet.com/politics/2011-11/07/c\\_111151558.htm](http://news.xinhuanet.com/politics/2011-11/07/c_111151558.htm)

At the moment, every part of the country, including rural villages and towns, have established a “Comprehensive Social Management Commission” and “Special Populations Special Group.” Working units are led by either the legislative bureau at each level or the office of the Comprehensive Social Management Commission.

Comprehensive Social Management Commission member, Special Population Special Group leader, and the Minister of Justice, Wu Aiyong, points out: special population special group and the four special work groups established below it and each member working unit will “adopt effective measures to truly strengthen the service and management of the special population in four respects,” including: truly strengthening the supervision, education, and assistance work of correction officers, truly strengthening the resettlement work of people who have finished their term of re-education through labour, truly strengthening the work of forced isolation treatment and drug user rehabilitation work, truly strengthening the containment and control of mentally unstable people with tendencies towards causing trouble and the dangerous AIDS population.<sup>32</sup>

From May 31<sup>st</sup> to June 1<sup>st</sup>, 2013, the deepening peace China construction work conference was held in Suzhou, Jiangsu province. Wu Aiyong, presented on the following topic, “implementing special population management and assistance measures,” requesting “truly strengthening the management and treatment of severely mentally ill people and populations susceptible to contracting HIV due to risky behavior. Strengthening the ideological, political, legal, moral and cultural education, giving them an incentive to be aware of and follow the law.” Finally, Wu Aiyong has proposed: “Further advancing the establishment of an information based special population management service. According to the construction of the peace China construction, construct a sturdy information management system for each special population, improving the database for classifying the special populations, construct members unit information public sharing mechanism, achieve the goal of an information based special population management service.”<sup>33</sup>

### *The Impact of The “Special Population Special Group” on the Human Rights of People Infected with HIV and AIDS Patients*

The Comprehensive Social Management Commission, overseen by the central and each level of the Political and Law commission, Special Population Special Groups has classified

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<sup>32</sup> “Take effective measures to strengthen the work on four aspects of services and management of special populations”, (Wu Aiyong, Minister of Justice, head of the Special Population Task Force of the Central Comprehensive Social Management Commission, published in the web site of the Ministry of Justice on August 20, 2012,) [http://www.moj.gov.cn/index/content/2012-08/20/content\\_3779601.htm?node=7338](http://www.moj.gov.cn/index/content/2012-08/20/content_3779601.htm?node=7338)

<sup>33</sup> “Implementing correctional and assistance measures for Special Populations”, (Wu Aiyong, Minister of Justice, head of the Special Population Task Force of the Central Comprehensive Social Management Commission, published in the web site of Legal Daily on June 28, 2013,) [http://www.legaldaily.com.cn/Social\\_management/content/2013-06/28/content\\_4598835.htm?node=35362](http://www.legaldaily.com.cn/Social_management/content/2013-06/28/content_4598835.htm?node=35362)

people infected with HIV and AIDS patients as the HIV dangerous group, making the special population conduct management and provide service, and the influence on people infected with HIV and AIDS patients in nationwide, extensive, and serious.

1) Special population service management work has brought a poor reputation upon people infected with HIV and AIDS patients.

Classifying people infected with HIV and AIDS patients as “HIV dangerous group,” is not only a mistaken and misleading phrase, but also deepens the stigma surrounding the disease. HIV is just a disease, and being infected with it does not represent the moral or legal actions of a person. Furthermore, the use of anti-viral medicine has mitigated the effects of HIV and made the disease manageable, increasingly becoming a chronic illness that people can learn to live with. HIV is not transmitted via contact in daily life. HIV is a disease that everyone can prevent.

2) The actions of the Special Population Special Group management and service have led to severe privacy leakages of people infected with HIV and AIDS patients.

For example, in Beijing, on the eve of the 18<sup>th</sup> year of the Chinese Communist Party, the Capital comprehensive social management commission, city, district, town, and village level began the initial stage of action with regard to service and management of the special population, and the comprehensive inspection of people infected with HIV and AIDS patients, and the inspection of the “five kinds” of important people of the special population, further establishing an electronic standing book, judicial bureau, public security bureau, health bureau, and split the assigned personnel for management work, strict inspection and control, leaving no gaps in their coverage, most greatly restricting anything with the potential to influence the stability of society.

First, the comprehensive management commission at each level of Beijing and the special population special group acquired the private information of people infected with HIV and AIDS patients, thereby violating the Chinese Communicable Disease Prevention and Treatment Law and the “AIDS Prevention Act” with respect to regulations on protecting the privacy of people with HIV and AIDS patients.

Secondly, the comprehensive inspection and follow-up visits, management and control measures, surely lead the infected person and patient’s private information to be widely known at the community level.

3) Actions in the service and management of the Special Population Special Group limit citizens’ personal freedom, creating a hostile and fearful atmosphere.

Prior to the 18<sup>th</sup> national congress of the Chinese Communist Party, security maintenance measures were taken in response to the special population, which comprised of viewing people infected with HIV and AIDS patients and the so-called special population as imaginary enemies, demanding one adopt all measures, not to let the five kinds of people organize, or participate in violent terrorist attacks, political events jeopardizing national security and social stability, collective events, large scale criminal cases and other large events with vile social influences.

For this reason, the five kinds of special population members might secretly be inspected, visited for questioning in their homes, required to fill out various forms that would manage them, and be required not to leave their house for determined periods of time or not to organize and participate in social activities that citizens with rights can participate in.

Special population special group service and management actions limit the citizens personal freedom, and create a hostile and fearful atmosphere.

4) The Comprehensive Management Commission, supervised by the Politics and Law Commission, has led the service management of people infected with HIV and AIDS patients, damaging society's trust.

The spread of HIV has exposed the weakness of human kind. People infected with HIV and the people's privacy is related, involving sex and injecting drug use etc., thereby protecting privacy and having a sense of safety, is necessary for encouraging people infected with HIV and at risk susceptible populations active participation in AIDS prevention and treatment work.

On the contrary, people who worry about contracting HIV may refuse HIV testing, not only delaying one's ability to receive timely AIDS treatment, but also leading the AIDS virus to be unknowingly spread crazily.

The politics and Law commission, public security bureau, judicial bureau has led the service and management of people infected with HIV and AIDS patients, with the amateur's leading the experts, and leading Chinese HIV prevention and treatment work to lose the public's trust and participation, threatening HIV prevention and control work.