

# **Report**

## **Alternative Report to the Committee on Economic, Social and Cultural Rights**

### **China: 'At A Critical Stage' Violations of the Right to Health in the Context of the Fight Against AIDS**

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## 141 organisations

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## La Lettre

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**THE RIGHT TO HEALTH IN CHINA:  
THE EXAMPLE OF AIDS**

This study has been carried out in the perspective of the examination of the initial State report by China under the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In China, the issues relating to the enjoyment of the right to health, enshrined in the ICESCR, are many and varied: the impact of pollution, especially of watercourses, on the health of inhabitants; the response to the Severe Acute Respiratory Syndrome (SARS) crisis and the declining access to health care and social security cover for most of the population. However, FIDH has decided to focus this study on the issue of AIDS due to the fact that violations of the Covenant are particularly evident in its prevention and management and in the access to care for carriers.

This report critically analyses the response of the Chinese Government to the developing AIDS epidemic by assessing this response against China's obligations under ICESCR and other international instruments.

It is based on documentary research and interviews. In particular, it examines the responsibility of the Chinese authorities under ICESCR pursuant to Articles 2 (prohibition against discrimination), 4 (limitations on authorised restrictions to the rights established by the Covenant), 9 (right to social security) and 12 (right to health) of the Covenant. This report has three sections. Section One considers how the Chinese authorities dealt with the HIV/AIDS epidemic from the mid 1980's until the SARS crisis (Section I: A Belated Response by the Government). Section Two considers the AIDS policy adopted by the Chinese government at the end of 2003 (Section II: An Inadequate AIDS Policy). Section Three examines the repression of civil society actors involved in the fight against AIDS (Section III: The Continuing Repression of Civil Society Actors).

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## **INTRODUCTION**

The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by China in 2001, establishes the right to health in Article 12. The United Nations Committee on Economic, Social and Cultural Rights, composed of independent experts, is responsible for supervising the proper application and implementation of the Covenant by States Parties.

According to the Committee, certain illnesses previously unknown such as HIV/AIDS have created new obstacles to the realisation of the right to health<sup>1</sup>. In fact, 'good health cannot be guaranteed by a State, and States can no longer ensure protection against all the possible causes of a human being's ill health'<sup>2</sup>.

Nevertheless, the right to health is dependent on the following inter-dependent and essential elements: availability of public health institutions, the accessibility of these institutions, the adequate availability of health goods and services, acceptability of those goods and services (respect for medical ethics, culture) and quality. FIDH believes that China is failing to meet its obligations in relation to a number of these elements.

On 31 December 2003, there were 62,159 people in China officially registered as HIV positive and 8,742 people living with AIDS, including 1,000 children<sup>3</sup>. 2,359<sup>4</sup> people had already died from the disease. However, on the same date, the total number of HIV carriers was estimated at 840,000, including 190,000 women, and the number of AIDS sufferers at 80,000. According to the Joint United Nations Programme on HIV/AIDS, 10 million Chinese will be HIV/AIDS carriers by 2010<sup>5</sup>.

According to government statistics, 70% of the population affected by the disease is poor and rural. Injecting drugs is still officially the main means of transmitting the disease whilst a considerable number of victims are people who were previously paid for their blood. The official prevalence rate of 0.1%, whilst low, must be considered with reference to the population as a whole, ie. 1.3 billion. Moreover, the victims are concentrated in certain zones: central China inhabited by the former paid blood donors and the frontiers with Myanmar and Vietnam and central Asia, along the drug routes.

Having long denied the existence of AIDS, the Chinese government now appears determined to confront the crisis. For the first time, on World Aids Day on 1 December 2003, the Prime Minister, Wen Jiabao and the Minister for Health, Wu Yi, were photographed at Ditan hospital, in Beijing, shaking hands with victims. This was intended to demonstrate to the Chinese people that it is possible to touch AIDS victims without risk of contracting the disease. In November 2004, the President of the People's Republic of China, Hu Jintao, went through this same ritual at You'an hospital, in Beijing. On 9 February 2005, the Chinese New Year, Wen Jiabao visited the district of Shangcai, in the Henan province, the main source of the contaminated blood epidemic. During this visit, the media published images of the Prime Minister kissing an AIDS orphan.

These meetings with victims underline the political efforts the government has made over the last two years. In December 2003, the authorities launched the 'Four Free and One Care' policy: free HIV tests, free antiretroviral drugs, free school fees for orphans, free prevention of mother-child transmission, and the provision of social relief for HIV patients in difficulty. These first measures were intended for rural victims living in the Henan province. In February 2004, the State Council<sup>6</sup> created a working committee on AIDS responsible for coordinating and implementing the government's AIDS policy. In April 2005, the law on infectious diseases was amended, removing AIDS from the list of diseases requiring mandatory quarantine.

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<sup>1</sup> Committee on Economic, Social and Cultural Rights, General Comment No.14, 11 August 2000, paragraph 10.

<sup>2</sup> Committee on Economic, Social and Cultural Rights, *ibid.*, paragraph 9.

<sup>3</sup> Josephine Ma, 'Children Dying for lack of AIDS Cocktail', *South China Morning Post*, 12 January 2005.

<sup>4</sup> Zhang Fujie, *Progress of the China National Free Antiretroviral Therapy Program*, Chinese Center for Disease Control and Prevention, National Center for AIDS/STD Prevention and Control, 12 January 2004.

<sup>5</sup> UNAIDS, *Report on the Global AIDS Epidemic* (2004).

<sup>6</sup> The State Council, the central people's government, is the supreme executive and administrative organ of the State. It is answerable to the People's National Assembly and keeps it advised of its activities. Its members include the Prime Minister, the Deputy Prime Ministers, Councillors of State, Ministers, Chairmen of Commissions, the Chairman of the Accounts Commission and the Secretary General. The Prime Minister, nominated by the Head of State, is approved by the People's National Assembly. The other members of the State Council are nominated by the Prime Minister, subject to approval by the Head of State and confirmation by the People's National Assembly.

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However, these recent measures are a belated response. AIDS was long regarded as a foreign disease that only affected the so-called 'deviant' elements of society. This infectious disease was a matter of State secrecy and the government's inaction largely contributed to hastening its spread. Moreover, the policies introduced in 2003 seem to be still inadequate and their implementation has been fraught with difficulties. Formerly a matter of state security, AIDS has not yet been completely taken in hand by a public health system damaged by the liberalisation of the health sector. Furthermore, the success of the new policy against AIDS will depend on the evolution of the political system. The central government has difficulty in accepting the contributions of civil society to governance. Authorities, especially local authorities, have not been held adequately accountable for their actions and some provinces are completely closed: journalists, activists and NGOs are barred from entering them.

## **A BELATED RESPONSE BY THE GOVERNMENT**

Three phases can be identified in the spread of the disease in China.

The first period, from the mid 1980's to the beginning of the 1990's, was characterised by a relatively small number of diagnosed cases of HIV/AIDS. The Chinese government strictly limited the entry of foreigners to China and banned the import of blood products in an attempt to prevent the disease from spreading into the country.

Then, from the beginning of the 1990's to the start of 2000, the virus spread through blood banks. Despite warnings, the Chinese government, whilst denying the extent of the crisis, set up a limited policy for supervising drug users and prostitutes and for promoting a 'healthy sexual morality'.

Finally, the SARS outbreak in 2003 forced the authorities to acknowledge the extent of the AIDS epidemic, which by then had affected the whole population, and to start a policy of prevention and care.

### **I. A SHAMEFUL DISEASE**

#### **1- A foreign evil affecting social outcasts**

##### 1.1. A disease from abroad

In the 1980's, AIDS was considered a foreign disease. The first AIDS related death in China was officially announced on 6 June 1985. The Ministry of Health announced in a press release that it was an Argentinian tourist from 'the United States'<sup>7</sup>. At the end of 1987, the health authorities acknowledged there were 11 HIV positive cases. All of them were believed to be linked to abroad including cases of haemophiliacs contaminated by imported blood products<sup>8</sup>.

##### 1.2. "Deviant" elements in society

###### *1.2.1 Homosexuals*

At the end of 1989, the Ministry of Health admitted, for the first time, that a Chinese citizen had contracted the AIDS virus. This man had been imprisoned for homosexual relations, a criminal offence according to the Chinese Penal Code<sup>9</sup>. Homosexuality remained a criminal offence until 1997 and was considered a mental illness until 2001.

###### *1.2.2 Drugs and ethnic minorities*

At the beginning of 1990, the health authorities reported 146 HIV positive cases in the Yunnan province; all persons affected were members of the ethnic Tai community. This minority is traditionally thought of as backward and is readily accused of being 'morally corrupt'. For the first time, the government acknowledged cases of infection that were linked to injecting drugs<sup>10</sup>.

In China, the policy on drugs is particularly harsh, preferring imprisonment to treatment. In terms of Article 7 of the Regulations on the Method of Mandatory Treatment for Drug Addiction, the Public Security Bureau is empowered to place drug users in a mandatory detoxification centre for a period from three to six months. Once a user is so placed, he cannot be kept there continuously for longer than one year<sup>11</sup>. The Public Security

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<sup>7</sup> 'China Says Argentine Died of AIDS', *New York Times*, 30 July 1985.

<sup>8</sup> Edward A. Gargan, 'China Taking Stringent Steps to Prevent the Entry of AIDS', *New York Times*, 22 December 1987.

<sup>9</sup> 'China Discovers First AIDS Virus Carrier', Associated Press, 1 November 1989.

<sup>10</sup> 'China Reports 194 Infected by AIDS Virus', *Xinhua*, 7 February 1990.

<sup>11</sup> 第六条:强制戒毒期限为3个月至6个月,自入所之日起计算。对强制戒毒期满仍未戒除毒瘾的戒毒人员,强制戒毒所可以提出意见,报原作出决定的公安机关批准,延长强制戒毒期限;但是,实际执行的强制戒毒期限连续计算不超过1年。强制戒毒办法, *qiangzhi jiedu banfa*, 'Regulations on the Method of Mandatory Treatment for Drug Addiction', adopted on 12

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Bureau also has the power to send users to a Re-education Through Labor (RTL) camp for a period of up to two years.

In this connection, the United Nations Working Group on Arbitrary Detention has stated that the avenues to challenge placement in RTL institutions do not satisfy international law requirements: all persons placed against their will in a detoxification centre should enjoy an effective judicial remedy<sup>12</sup>. In fact, according to Paragraph 4 of Article 9 of the International Covenant on Civil and Political Rights, which reflects the international customary law, 'anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful'.

As a result, the mandatory detention of addicts in RTL and detoxification centres is contrary to the international standards guaranteeing the right to a fair trial.

## **2- Preventing the spread of the virus in China**

At the beginning of the 1980's, AIDS was regarded as a disease linked with the ideology of capitalism. Commenting on American civilisation in the *Beijing Review* of 4 February 1987, one journalist noted: 'rampant disastrous drug-taking, alcoholism, robbery, homicide, suicide, divorce, prostitution, homosexuality, syphilis, AIDS, and other social ills come from their ideology'<sup>13</sup>.

In 1987, the Minister of Health, Chen Minzhang, announced that AIDS would not spread in China as it was transmitted by homosexuality and promiscuity, evils which were unknown to China<sup>14</sup>. In August 1993, the principal of the National Institute of Health Education was dismissed, after having been accused of using AIDS to promote the rights of homosexuals<sup>15</sup>.

For the Chinese authorities, AIDS was the disease of 'deviant elements' so that the risk of its transmission was small<sup>16</sup>. Because of this, the initial preventative measures were limited to the strict control of the entry of foreigners to China and, in order to prevent the spread of the virus within the country, greater regulation of prostitution and the quarantine of sufferers.

### 2.1. Ban on the import of blood products and control of foreigners

From 3 September 1985, the Ministry of Health banned the import of blood products<sup>17</sup>.

In addition, in 1988, an initial batch of regulations was adopted restricting the entry into China of HIV/AIDS carriers. Under Articles 4 to 9 of the Regulations on the Monitoring and Control of AIDS<sup>18</sup>, any person

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January 1995, Article 6.

<sup>12</sup> Report by the Working Group on Arbitrary Detention, Mission to China, UN Doc. E/CN/2005/6/Add.4, 29 December 2004, p. 3.

<sup>13</sup> Donna Anderson, 'Beijing Daily Cautions Against Western Threats of AIDS, Drugs', Associated Press, 4 February 1987.

<sup>14</sup> 'AIDS Can be Checked in China', Xinhua, 22 July 1987.

<sup>15</sup> Geoffroy Crothall, 'Health Official's Sacking Signals Beijing Attitude to Homosexual Rights', *South China Morning Post*, 15 August 1993.

<sup>16</sup> Rajiv Chandra, 'No Sex Please, We Are Chinese', Inter Press Service, 17 September 1993.

<sup>17</sup> 'China Bans Import of Blood Products', Xinhua, 3 September 1985.

<sup>18</sup> 第五条:来中国定居或居留一年(或来华留学一学年)以上的外国人,在申请入境签证时,须交验所在国公立医院或经过所在国公证机关公证的私立医院的艾滋病血清学检查证明,并经中国驻外使、领馆认证,证明自签发之日起六个月内有效。

由于条件限制,未在本国进行艾滋病血清学检查的外国人,须在入境后二十天内到指定的卫生专业机构接受检查。

第六条:属本规定第二条第(一)项、第(二)项所指的外国人不准入境。

属本规定不准入境但已到达我国国境口岸的外国人,应当随原交通工具或所在国交通工具尽快离境,必要时由我民航、铁路、交通部门安排其离境,离境前由国境卫生检疫机关采取隔离措施。

第七条:外国人在中国居留期间,如被发现属本规定第二条第(一)项、第(二)项所指人员,当地卫生行政部门可提请公安部门令其立即出境。

第八条:定居国外的中国公民和在国外居留一年以上的中国公民(含在外国轮船上工作的中国海员),回国定居或居留一年以上的,须在回国后二个月内到指定的卫生专业机构接受检查。艾滋病监测管理的若干规定3, *aizhibing jiance guanli de ruogan guiding*, 'Regulations on the Monitoring and Control of AIDS', adopted on 14 January 1988 and amended on 13 September 2004, Articles 5 to 8.



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coming into the country must complete a medical form for customs officers. AIDS sufferers are refused entry to the country. Any foreigner settling in the country for one year is obliged to provide the results of an HIV negative test taken in the last 6 months. Chinese nationals living abroad for more than a year must be tested two months after their return.

In Shanghai, work units and residents must warn the Health authorities about any suspected HIV carrier. Foreigners, Overseas Chinese and residents of Hong Kong, Macao and Taiwan must be registered as soon as possible at the frontier health and quarantine office<sup>19</sup>.

These measures remain in force.

### 2.2. Strengthening the fight against prostitution

Since the memorandum by the State Council to the Ministry of Public Security on the Trial Method for the Implementation of Reeducation Through Labor of 1982, prostitutes could be officially sent to a RTL camp<sup>20</sup>. In the autumn of 1987, the Ministry of Health announced that Article 30 of the Law on Public Order Relating to Prostitution, would be rigorously applied to prevent the spread of AIDS<sup>21</sup>. The Decision of the Permanent Committee of the National People's Congress on Prostitution of 4 September 1991 made official the tightening of policy on prostitution<sup>22</sup>.

### 2.3. Isolating sufferers

At the beginning of February 1989, the Ministry of Health announced a new Law on the Prevention of Infectious Diseases<sup>23</sup>. According to Article 14, the classification of AIDS as a category B disease, along with syphilis or even hepatitis, meant sufferers could be placed in quarantine. In addition, this law authorised the authorities to make all Chinese citizens take a mandatory test. In the large cities such as Beijing, Canton or Shanghai, persons working with foreigners were tested as a priority. Sun Xinhua, a member of the Ministry of Public Health said that under the new law 'any Chinese found to be an AIDS sufferer will be quarantined and will not be allowed to continue working or going to school'<sup>24</sup>.

By condemning sufferers to live in isolation for unjustified reasons of public health, this law long fostered public ignorance of the methods of transmitting the virus and, consequently, led to the stigmatisation of sufferers.

## **II. BLOOD TRADING**

In the 1990s, AIDS was spread through the system of blood banks. Since 1985, China has banned the import of blood products as part of its fight against AIDS. In response to domestic demand, blood banks have increased. These blood banks largely depend on the purchase of blood rather than its donation by volunteers, as the Chinese are traditionally reluctant to donate blood. Only the poorest amongst them – migrants, peasants and social outcasts – are attracted by this easy money. Some rural provinces specialise in blood trading.

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<sup>19</sup> 任何单位和个人发现疑似艾滋病病人，应当及时向附近的医疗机构或者卫生防疫机构报告；其中属于外国人、华侨、香港特别行政区居民、澳门地区居民、台湾地区居民的。应当及时向上海出入境检验检疫部门报告。上海市艾滋病防治办法，*shanghaishi aizibing fangzhi banfa*, 'Method for AIDS Prevention and Control in the City of Shanghai', adopted on 30 December 1998 and amended on 2 November 2003, Article 125.

<sup>20</sup> 第十条：对下列几种人收容劳动教养；

（三）有流氓、卖淫、盗窃、诈骗等违法犯罪行为。屡教不改，不够刑事处罚的。国务院关于转发公安部制定的劳动教养实行办法的通知，*guowuyuan guanyu zhuanfa gong'anbu zhiding de laodong jiaoyang shixing banfa de tongzhi*, 'Memorandum by the State Council on the Trial Method for the Implementation of Reeducation Through Labor to the Ministry of Public Security', issued on 21 January 1982, Article 10-3.

<sup>21</sup> Jane McCartney, 'Chinese Authorities Ban Sex with Foreigners to Stop AIDS', United Press International, 29 September 1987.

<sup>22</sup> 卖淫、嫖娼的，依照治安管理处罚条例第三十条的规定处罚。对卖淫、嫖娼的，可以由公安机关会同有关部门强制集中进行法律、道德教育和生产劳动，使之改掉恶习。期限为六个月至二年。具体办法由国务院规定。因卖淫、嫖娼被公安机关处理后又卖淫、嫖娼的，实行劳动教养，并由公安机关处五千元以下罚款。全国人民代表大会常务委员会关于严禁卖淫嫖娼的决定，*quanguo renmin daibiao dahui changwu weiyuanhui guanyu yanji maiyin piaochang de jue ding*, 'Decision of the Permanent Committee of the People's National Assembly on Prostitution', 4 September 1991.

<sup>23</sup> 中华人民共和国传染病防治法，*zhonghua renmin gongheguo chuanranbing fangzhi fa*, 'Law on the Prevention of Infectious Diseases', adopted on 21 February 1989 and amended on 28 August 2004, art. 14.

<sup>24</sup> Kathy Wilhem, 'Law Gives China Broad AIDS-Testing Authority', Associated Press, 22 February 1989.

## **1- Failure to observe standards of adequate sanitation**

### 1.1. Lack of a reliable system for testing blood and the use of non-sterile syringes

In February 1993, an epidemiologist from the Guangdong sanitation authorities, warned that China had not yet established a nation-wide system for testing blood donors for the AIDS virus, thus creating a high risk of spreading AIDS through China's blood supply. Moreover, he condemned the use of non-sterile syringes. At this time, China had identified some 1,000 HIV carriers<sup>25</sup>.

At the end of 1995, the Ministry of Health listed the blood-for-cash system, the limited HIV screening of donated blood and a heavy reliance on migrant blood donors as the primary sources of a probable AIDS epidemic in China. But according to Qi Xiaoqiu, Deputy Director of the Health Ministry's Department of Disease Control, the Ministry of Health had requested that blood screening be done in the big cities since 1993, 'but it is expensive', Qi stated, 'local officials say they don't have a (AIDS) problem so they don't do it'<sup>26</sup>.

In 1998, the official press reported on one of the first cases of a patient contaminated by a blood transfusion in hospital in the Shanxi province. As the patient was suffering from anaemia, the doctors prescribed a transfusion advising his family that they would have to pay for and obtain the blood on their own. The family was referred to a go-between who located a blood vendor. After the transfusion, the patient tested HIV positive. In 1998, of the blood collected for medical use only 10% came from voluntary donation, 40% from "mandatory donation"<sup>27</sup>, and the remainder was purchased blood<sup>28</sup>.

### 1.2. The lucrative trade in plasma : the Henan example

According to Pierre Haski, the start of the 1990's saw the establishment of blood collecting for profit on a scale previously unknown in China<sup>29</sup>:

'The sale of blood is not a new phenomenon in China. It is a common way for poor families to cope with an unforeseen difficulty, illness or death. But it was always considered an exceptional, individual act. Never an industry.'

'The system which has been created now is of a different type and on a different scale : the stations for purchasing blood which are being set up, take plasma for commercial reasons, not for the actual needs of blood transfusions. The products derived from the plasma such as albumin, used for burns and shock, or immunoglobulins, which are necessary for countering infections, or even the concentration of platelets, constitute a veritable market.'

'According to our information, contracts were then concluded with four companies interested by the development of products derived from blood plasma: amongst these, two were connected with the Chinese army, and one was answerable to the Ministry of Health. These were the Institute for Research into Blood Products of the logistics department of the military zone of Jinan-Zhumadian (Henan province) ; the Institute for Research into blood products of the logistics department of the air force at Zhengzhou, the capital of the Henan; Hualan, a blood products company from Lanzhou (Gansu province) and answerable to the Ministry of Health ; and the Henan Institute of biological products, based in the capital of the province'<sup>30</sup>.

Also according to Pierre Haski, the provincial authorities are deeply involved in this trade and the Director of Health for the province, Liu Quanxi, met the health agencies of the Henan in 1993, behind closed doors, with an offer to establish a huge blood bank on their behalf to sell blood to biotechnology companies. The official slogan is 'Glory to the blood donors'.

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<sup>25</sup> 'Expert' Says 'High Risk' of Contracting AIDS in China', *Zhongguo Tongxun She*, 19 February 1993.

<sup>26</sup> Charles Hutzler, 'Blood Problems, Poverty Point to AIDS Outbreak in China', Associated Press, 5 November 1995.

<sup>27</sup> Universities, colleges, administrative departments and even companies are obliged to provide an amount of blood at a rate set by the administration. This system is being replaced by the encouragement of voluntary donation. 'Shanghai Halts Mandatory Blood Donation', accessed at [www.china.org.cn](http://www.china.org.cn), 5 March 2003.

<sup>28</sup> 'China AIDS Found in Shanxi Blood Bank', Xinhua, 14 July 1998.

<sup>29</sup> Pierre Haski, *Le sang de la Chine, Quand le silence tue [China's blood, When silence kills]*, Grasset, publication due in 2005.

<sup>30</sup> Pierre Haski, *ibid*.

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According to the report by Doctor Zhang Ke<sup>31</sup>, a specialist in infectious diseases at You'an hospital in Beijing, between 1993 and 1996 there were up to 300 stations for collecting blood in the villages in the East and South of the Henan. For every three legal stations, it was estimated that there were 20 to 30 illegal ones. These stations, open ten hours a day, had become the most frequented places in the region. The blood collected was passed through a centrifuge to extract the plasma (550 grams per litre of blood). For 400 to 800 cc of blood, the seller received about 40 to 50 RMB. To dispose of the blood after extracting the plasma, the collection centres had persuaded the peasants to be reinjected with this blood for 5 RMB under the pretext that this would combat anaemia or fatigue. But the centres were mixing bloods of the same blood group before reinjecting it, which multiplied the risks of transmission of AIDS. Out of the 40 to 50 RMB on average for the blood sold, after paying 5 RMB for this operation, the transport costs to the collection centre and the meal costs, the seller would be left with only 10 to 20 RMB<sup>32</sup>.

In 1995, the trade in plasma in the legal stations was banned on the order of central government, and the stations flourished illegally in the anonymity of the big cities. In 1996, all the stations for collecting plasma were closed, without any information being sent to the former plasma donors. The collection of blood for transfusion is still continuing (see below).

## **2- A culture of secrecy and denial by the local bureaucracy**

In his report<sup>33</sup>, Doctor Zhang Ke described his first meeting in August 1999 with five former blood sellers who came from the Henan and who had come to see him in Beijing. At first, he could not believe that so many peasants were carriers of the virus. During a weekend in September 1999, he visited the Henan and diagnosed more than 300 sufferers. When he returned to Beijing, the hospital board ordered him not to go any further into his research and he received threatening anonymous phone calls. He paid a visit to the Academy of Sciences where he described what he had discovered. He met Wang Shuping there. Wang Shuping worked in Zhukou in the East of the province in a research institute attached to the Ministry of Health. Since 1994, she had discovered many cases of contamination and had sent a detailed report to the local and central authorities. After being harassed, she took refuge in Beijing<sup>34</sup>.

At the end of October 1996, the Minister of Health, Chen Minzhang, acknowledged that the blood derivatives sold by the company Wolongsong, which was attached to military hospital n°161 in Wuhan were contaminated. The products were destroyed, but no information on the risk of contamination was publicly announced<sup>35</sup>.

The government and the provincial authorities were warned on several occasions. Since 1996, Gao Yaojie, a retired gynaecologist, and later Doctor Gui Xi'en, an epidemiologist at the University Hospital of Wuhan in 1999 produced reports on the discovery of AIDS cases in the Henan. No steps were taken to inform the population and prevent the spread of the virus.

In August 2001, seven years after the warning, the health authorities acknowledged that many of the blood sellers had been contaminated. However, they believed that it was only the illegal blood stations that were the cause and the epidemic was limited to some provinces in central China. On 1 February 2002, a video recording of the evidence of 20 peasants contaminated by the virus was sent to the United Nations, the Minister of Health and the media. This video showed, for the first time, that the villagers had official blood donor record cards issued by the Ministry of Health<sup>36</sup>.

At the end of November 2002, the Health authorities of the neighbouring province announced that Hubei was experiencing a situation similar to that in Henan<sup>37</sup>.

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<sup>31</sup> 张可医生, 河南艾滋病五年调查报告, *Henan aizibing wunian diaocha baogao*, 'Report on the Five Year Inquiry into AIDS in the Henan', 2004.

<sup>32</sup> 张可医生, *ibid*.

<sup>33</sup> 张可医生, *op.cit*.

<sup>34</sup> Pierre Haski, *op.cit*.

<sup>35</sup> Patrick E. Tyler, 'China Concedes Blood Serum Contained AIDS Virus', *New York Times*, 25 October 1997.

<sup>36</sup> 'HIV Scandal Villagers Produce Video Plea to Health Ministry, UN', *South China Morning Post*, 1 February 2002.

<sup>37</sup> 'China's Hubei Province Expects Explosion of AIDS Cases from Blood Sales', *Agence France Presse*, 26 November 2002.

### **3- Measures adopted**

During the 1990s, China did no more than pursue a monitoring policy. After foreigners, the people who were subjected to mandatory testing were mainly drug users and prostitutes. Some measures were introduced to improve the sanitary conditions of blood collection, but they were not extensively applied. Prevention policy still consisted mainly of advocating a 'healthy sexual morality'. In view of the numerous warnings and the amount of information available on HIV/AIDS, the inaction on the part of the Chinese authorities cannot be attributed to incapacity, but rather an unwillingness to act.

#### 3.1. Establishing a monitoring system

In 1995, China attempted to establish a monitoring system at the national and provincial levels. In July 1998, the National Centre for the Prevention and Control of HIV/AIDS was established within the Chinese Academy of Preventive Medicine. In 2002, it was restructured and renamed the Chinese Centre for Disease Control, and the number of monitoring sites was increased from 101 to 158.

At the national level, under the Regulations on the Monitoring and Control of AIDS<sup>38</sup>, it is possible to mandatorily test patients under treatment for infectious diseases, detained prostitutes and drug users, lorry drivers and pregnant women. Although anonymity is guaranteed under Article 21 of the Regulations on the Monitoring and Control of AIDS<sup>39</sup>, it is often not respected. The army does its own testing, of which the results are not communicated to the Chinese Centre for Disease Control.

A large number of local regulations are based on the national Regulations mentioned above, yet they often contain more repressive provisions. Under the Regulations of the City of Beijing for the Implementation of the Control and Monitoring of AIDS, the Civil Affairs, Justice and Public Security offices can impose mandatory testing on prostitutes and 'any person suspected of spreading the AIDS virus'<sup>40</sup>. In Shanghai, mandatory testing is imposed on all those who are in close contact with HIV/AIDS carriers, who are suspected of being HIV/AIDS carriers, who are suspected of having a sexually transmitted disease, prostitutes and drug users, persons who have had a blood transfusion or who use blood products, both members of a mixed couple (Chinese/foreigner) applying for a marriage licence<sup>41</sup>, border personnel or on any person, animal or product suspected by the city health bureau<sup>42</sup>. The regulations issued by the Zhejiang<sup>43</sup> province or the city of Dalian<sup>44</sup> are in similar terms.

In these regulations, AIDS is treated as a state security issue. The emphasis is on the monitoring and isolation of already marginalised sectors of society.

These measures, which are still in force, constitute a violation of ICESCR as they include compulsory testing, no guarantee of confidentiality of the results and discriminatory measures against HIV/AIDS carriers. The United Nations Committee on Economic, Social and Cultural Rights has stressed that the right to health includes the human being's right to control one's health and body and also the right to be free from

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<sup>38</sup> 'Regulations on the Monitoring and Control of AIDS', *op. cit.*

<sup>39</sup> 第二十一条:任何单位和个人不得歧视艾滋病病人、病毒感染者及其家属。不得将病人和感染者的姓名、住址等有关情况公布或传播。', 'Regulations on the Monitoring and Control of AIDS', *op. cit.*, Article 21.

<sup>40</sup> 第八条:民政、公安、司法行政等部门在执行公务时,发现嫖娼、卖淫者或有可能传播艾滋病者,应立即送所在地区、县卫生防疫站进行艾滋病血清学检查。北京市实施艾滋病监测管理的规定, *beijingshi shishi aizibing jiance guanli de guiding*, 'Regulations of the City of Beijing for the Implementation of the Control and Monitoring of AIDS', adopted on 14 September 1990 and amended on 2 November 2003, Article 8.

<sup>41</sup> *ibid.*

<sup>42</sup> 第十五条(艾滋病病毒检测对象)下列对象应当接受艾滋病病毒感染检测:与艾滋病病人或者艾滋病病毒感染者有密切接触者;疑似艾滋病病人;疑似性病病人;卖淫、嫖娼、吸毒人员;曾接受被艾滋病病毒污染的血液、血液制品、人体组织、器官、细胞、骨髓或者精液者;申请涉外婚姻登记的双方当事人;法律、法规、规章规定的出入境人员;市卫生局为控制疫情需要规定的其他人员、动物和物品 'Method for AIDS Prevention and Control in the City of Shanghai', *op. cit.*, Article 15.

<sup>43</sup> 浙江省艾滋病性病防治办法, *zhejiangsheng aizibing xingbing fangzhi banfa*, 'Method of the Zhejiang Province for the Prevention and Control of AIDS and of Sexually Transmitted Diseases', adopted on 29 December 2003, Article 14.

<sup>44</sup> 大连市艾滋病监测管理规定, *dalianshi aizibing jiance guanli guiding*, 'Regulations on AIDS Prevention and Control of the City of Dalian', adopted on 15 June 1996 and amended on 13 July 2004, Articles 15-16.

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interference, including non-consensual medical treatment<sup>45</sup>.

Furthermore, as recalled by Human Rights Watch in 2003<sup>46</sup>, UNAIDS and WHO, in their Guidelines for Second Generation HIV Surveillance, consider that anonymity is 'a basic premise of unlinked anonymous sentinel surveillance'<sup>47</sup>. In addition, the International Guidelines on HIV/AIDS and Human Rights provide that 'public health legislation shall ensure that HIV testing is only carried out with the informed consent of those concerned'<sup>48</sup>.

The Chinese authorities should therefore ensure that testing is on a voluntary basis, and that confidentiality is guaranteed.

### 3.2. Blood collection

It was not until 1998 that a Law on Blood Collection<sup>49</sup> was adopted. The Law establishes the rights and obligations of blood donors and determines the manner in which blood is to be collected. In the absence of any strong political will, however, it is rarely applied. Only in 2000 did the Ministry of Health launch a programme banning the re-use of syringes in hospitals<sup>50</sup>.

### 3.3. The introduction of a prevention policy

1998 saw the launching of the Chinese National Medium and Long-Term Strategic Plan for HIV/AIDS Prevention and Control (1998-2010)<sup>51</sup>. It was extended in 2001 with the Chinese Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2001-2005)<sup>52</sup>. Both placed emphasis on the prevention and control of blood collection. The second plan referred to the spread of AIDS in central China through the selling of plasma, without making any specific reference to the Henan province.

The policy for controlling AIDS is mainly based on promoting 'healthy sexual morality' and strengthening the 'socialist spiritual civilisation'<sup>53</sup>. On 1 December 1999 the Ministry of Industry and Trade banned all television advertising of condoms<sup>54</sup>.

In 2000, the scientific community exhorted the government to take action. Qiu Renzhong, a member of the Academy of Social Sciences stated: 'The central government doesn't seem to realize how serious this is. We have not yet had an effective risk reduction strategy, because some departments are very conservative. They think chastity is more important than condom use. They say that the only way to prevent HIV transmission is to rely on China's traditional values'<sup>55</sup>. In 2001, Zeng Yi, an AIDS specialist, asserted that prevention campaigns should not be restricted to the cities<sup>56</sup>.

HIV/AIDS carriers are stigmatised and systematically subjected to serious discrimination. In 2002, some 300 mid-level officials from around China attended an AIDS symposium sponsored by the Party School of the Chinese Communist Party. Of these officials, 31.2% thought it was necessary to restrict promotion of infected individuals and 19.2% thought it was 'right' for health officials to refuse treatment to AIDS patients<sup>57</sup>.

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<sup>45</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 8.

<sup>46</sup> Human Rights Watch, *Locked Doors: The Human Rights of People Living with HIV/AIDS in China*, August 2003.

<sup>47</sup> World Health Organisation, *Guidelines for Second Generation HIV Surveillance* (2000), accessed at <http://www.who.int/hiv/pub/epidemiology/pub3/en/> at p. 21.

<sup>48</sup> Cf. Directive n° 3, p. 14.

<sup>49</sup> 中华人民共和国献血法, *zhonghua renmin gongheguo xianxue fa*, 'Law on Blood Collection', adopted on 1 October 1998.

<sup>50</sup> 'China Trying to Curb Thriving Market In Second-Hand Syringes', Agence France Presse, 28 August 2000.

<sup>51</sup> 中国预防与控制艾滋病中长期规划 (1998-2010 年), *zhongguo yufang yu kongzhi aizibing zhongchangqi guihua*, 'Chinese National Medium and Long-Term Strategic Plan for HIV/AIDS Prevention and Control, 1998-2010', adopted on 26 October 1998 and amended on 13 September 2004.

<sup>52</sup> 中国遏制与防治艾滋病行动计划 (2001-2005 年), *zhongguo ezhi yu fangzhi aizibing xingdong jihua*, 'Chinese Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2001-2005)', adopted on 2 August 2001 and amended on 2 November 2003.

<sup>53</sup> 加强社会主义精神文明建筑, 'Chinese Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2001-2005)', *ibid.*, Article 1.

<sup>54</sup> 'In a Dramatic about Face, Beijing Bans Condom Ads on China TV', China Online, 1 December 1999.

<sup>55</sup> Elisabeth Rosenthal, 'Scientists Warn of Inaction as AIDS Spreads China', New York Times, 2 August 2000.

<sup>56</sup> 'China Squarely Faces Challenge of AIDS', Xinhua, 15 November 2001.

<sup>57</sup> Pan Haixia, 'Bia Hindering Fight Against Scourge', *China Daily*, 28 August 2002.

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In *Ten Thousand Letters*<sup>58</sup> by Gao Yaojie published in August 2004, there are innumerable testimonies of cases of patients being refused access to treatment and to employment, of children being refused access to schools and of the total indifference of the authorities towards the agony of dying patients.

In 2001, there were some signs of a slight change in the government's approach, with the drafting of the second plan for the prevention and control of AIDS and the recognition, albeit very partial, of extensive contamination due to blood selling.

### **III. THE SARS CRISIS AND THE BEGINNINGS OF AN AIDS CONTROL POLICY**

The Severe Acute Respiratory Syndrome (SARS) crisis in 2003 forced the government to more openly recognise seriousness of the AIDS epidemic in China, and to finally develop a prevention and care policy.

#### **1- The SARS crisis**

After a first period of denial of SARS, the Chinese government, in an abrupt about-face, decided to tackle the crisis more openly. In April 2003, Zhang Wenkang, Minister of Health, accused of having concealed the extent of the epidemic, was replaced by Wu Yi.

Following a political and public health crisis that brought to light the inadequacies of the public health alert system, the Chinese government could no longer continue to underplay the scope of the AIDS epidemic. The Ministry of Health enjoyed increased political and financial authority under Mrs. Wu Yi, Vice-Prime Minister, and Gao Qiang, formerly Head of the Ministry of Finance. The extremely rapid reaction of the Chinese government to the SARS crisis, which directly threatened economic growth, casts into sharp relief the delay with which it tackled the AIDS problem, of which the economic impact would be felt in the medium and long term.

#### **2- Implementation of the AIDS control policy**

##### 2.1. Emergency measures for former blood sellers

In March 2003, the government launched the CARES pilot programme. In the 51 most affected districts, antiretroviral medication was distributed to patients<sup>59</sup>. In April 2004, the Ministry gave official status to these 51 pilot zones where antiretroviral treatment is distributed free of charge to infected persons and where programmes have been introduced to reduce high-risk behaviour, mother-child transmission, and for the provision of support and financial assistance to patients<sup>60</sup>.

##### 2.2. Establishment of a national co-ordination mechanism

In February 2004, the State Council established a Working Committee on HIV/AIDS to replace the Co-ordination Committee on HIV/AIDS and Sexually Transmitted Diseases, which had only met four times between 1996 and 2003. The Working Committee will meet once a year, drawing together high-level officials from 23 ministries and the senior provincial authorities under the chairmanship of the Minister of Health.

##### 2.3. Official recognition of contamination through the government blood collection system

After Henan, a number of provinces announced cases of contamination. At the end of 2003, an official of the Jilin province in north-eastern China announced that 300 inhabitants of the Soudeng village were HIV carriers, among which 62 had died, as a result of having sold their blood to government blood collection units<sup>61</sup>. In March 2004, the Ministry of Health officially announced that in all Chinese provinces contamination had occurred in the middle of the 90s through the official blood collection system, before the

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<sup>58</sup> 高耀洁, 一万封信: 我见闻的艾滋病, 性病患者生存现状, *yiwan fengxin*, 中国社会科学, 2004.

<sup>59</sup> Zhang Fujie, *op.cit.*

<sup>60</sup> 'Health Ministry Announces 51 AIDS Pilot Zones', Xinhua News Agency, 6 April 2004.

<sup>61</sup> 'HIV/AIDS Outbreak in Northeastern China Confirmed, Blood Selling Suspected', Agence France Presse, 30 November 2003.

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collection units were closed down<sup>62</sup>.

Eighteen years after the first case of AIDS was diagnosed in China, the government has decided, drawing the lessons from the SARS crisis, to introduce an AIDS control policy. Despite the declarations of intent, however, the government's policy response remains inadequate and its implementation is highly problematic.

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<sup>62</sup> 'Officials say Most China Provinces Could Have AIDS from Blood Selling', Agence France Presse, 3 March 2004.

## **AN INADEQUATE AIDS POLICY**

Since 2003, the government has considerably strengthened its AIDS control policy. Despite the efforts made in the area of policy, however, the absence of any national legislation on AIDS hinders the nation-wide protection of carriers. The implementation of comprehensive prevention programmes remains restricted to the zones hardest hit by the epidemic, and often it is difficult for a public health approach to take root. Moreover, the still very partial treatment policies are jeopardised by the crumbling state of the public health system.

### **I. AN INCONSISTENT LEGAL FRAMEWORK**

At the end of 2003, during the SARS and AIDS Summit at the Qinghua University in Beijing, Professor Qiu Ren Zong demonstrated the manner in which legislation, by privileging the detention and control of patients over their protection, in fact exacerbates the stigmatisation of patients and the propagation of the virus<sup>63</sup>. Legal reforms are urgently needed. Rather than enacting dedicated legislation relating to AIDS, the authorities merely amended the Law on Infectious Diseases.

#### **1- Revision of the Law on Infectious Diseases**

The Law on Infectious Diseases was amended in April 1989<sup>64</sup>, and passed in August of that year. The amendments meant that HIV/AIDS carriers were no longer subjected to mandatory quarantine measures, and Article 16<sup>65</sup> specified that there should be no discrimination against them, but did not further elaborate on this issue.

Nevertheless, in the Jilin province, under the Regulations on Control and Prevention of Infectious Diseases<sup>66</sup>, persons living with HIV/AIDS can still be prosecuted for refusing isolated treatment, incurring an administrative detention sentence and a fine ranging from 100 to 3,000 RMB.

#### **2- Inconsistent nation-wide protection for persons living with HIV/AIDS**

In the absence of a national law on AIDS providing specific protection for the rights of persons living with HIV/AIDS, there is a legal vacuum in which many provinces are able to adopt discriminatory measures against carriers. In most of the provincial legislation, as in the national legislation, AIDS is subsumed into the more general category of infectious diseases.

##### 2.1 An example of good local legislation

In many respects, the Regulations of the Province of Jiangsu on the Prevention and Control of AIDS<sup>67</sup>, issued in August 2004, are a good example of the type of legislation that could usefully be enacted in other parts of China. For the first time, a legal text deals specifically with AIDS, guaranteeing the rights of HIV/AIDS carriers. Article 6<sup>68</sup> establishes the general principle and the specific rights appear in Article 28: right of access to treatment, to employment, to access to education, and to 'participation in the actions of

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<sup>63</sup> 'Experts Give Legal Suggestions on China's AIDS Problem', Xinhua, 10 November 2003.

<sup>64</sup> 'China Strives to Eliminate Discrimination against HIV/AIDS Patients', Xinhua, 5 April 2004.

<sup>65</sup> 第十六条: 国家和社会应当关心、帮助传染病病人、病原携带者和疑似传染病病人, 使其得到及时救治。任何单位和个人不得歧视传染病病人、病原携带者和疑似传染病病人。 中华人民共和国传染病防治法, *zhonghua renmin gongheguo chuanranbing fangzhi fa*, 'Law on Infectious Diseases', adopted on 21 February 1989 and amended on 28 August 2004, Article 16.

<sup>66</sup> 第二十五条: 违反本条例, 有下列行为之一的, 由县级以上卫生行政部门给予批评教育, 责令限期改正, 并处以一百元至三千元罚款:

(一) 入境人员不能出示艾滋病检疫证明, 又拒绝接受检查的;

(二) 卖淫、嫖娼和吸毒人员拒绝接受性病检查和治疗的;

(三) 艾滋病患者拒绝隔离治疗的。 吉林省性病防治管理条例, *Jilinsheng xingbing fangzhi guanli tiaoli*, 'Regulations of the Province of Jilin on the Control and Prevention of Infectious Diseases', adopted on 7 November 1992 and amended on 2 November 2003, Article 25.

<sup>67</sup> 江苏省艾滋病防治条例, *jiangsusheng aizhibing fangzhi tiaoli*, 'Regulations of the Province of Jiangsu on the Prevention and Control of AIDS', adopted on 20 August 2004.

<sup>68</sup> 第六条: 艾滋病病人及病毒感染者的合法权益受法律保护。全社会都应当关心艾滋病病人及病毒感染者。 'Regulations of the province of Jiangsu on the Prevention and Control of AIDS', *ibid.*, Article 6.



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society<sup>69</sup>. Article 29 stipulates that no work unit or individual has the right to reveal the identity, the address, the place of work or the medical file of a person living with HIV/AIDS<sup>70</sup>. Under Article 31, the right to marriage is guaranteed as long as the HIV/AIDS carrier status is known to the other party and the couple are given medical advice<sup>71</sup>. Sanctions are prescribed for contravention: any person contravening the rights set out in the Regulations or who communicates information regarding the status of a patient is liable to a fine of up to 20,000 RMB.

The wording of the Regulations, which is the only one of its kind in China, is in sharp contrast to the numerous violations of the rights of persons living with HIV/AIDS that are legally sanctioned in other parts of the country.

## 2.2. Violations of Human Rights

### *2.2.1. No access to public baths*

Persons living with HIV/AIDS are not allowed to use public baths or swimming pools in Chengdu<sup>72</sup> and in the province of Jilin<sup>73</sup>.

### *2.2.2. Violation of the right to employment*

Since November 2004, HIV carriers are authorised to sit for civil service examinations. However, persons with AIDS are automatically excluded<sup>74</sup>.

Furthermore, under Paragraph 2 of Article 16 of the Law on Infectious Diseases, any person with an infectious disease, who is diseased or suspected of being diseased, cannot continue in an employment 'which could easily spread the disease' if treatment has not begun or the suspicion of disease persists<sup>75</sup>. Many local regulations use the very vague wording of this Article in order to limit the right to employment of HIV/AIDS carriers, particularly in the service sector.

Article 9 of the Jilin province Regulations stipulates that HIV carriers must cease any employment that could spread the disease<sup>76</sup>. The wording of the paragraph seems to indicate that any HIV/AIDS carrier, even if treatment has begun, can legally be refused access to employment.

In the province of Zhejiang, the local regulations also require persons working in the hotel industry, hairdressing and beauty parlours, discotheques, saunas, massage parlours and swimming pools, to undergo mandatory annual testing. If the test is positive, the person will no longer be allowed to engage in a service activity deemed to be liable to spread the virus<sup>77</sup>. The vague wording also seems to imply that HIV/AIDS

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<sup>69</sup> 第二十八条:任何单位和个人不得歧视艾滋病病人及病毒感染者及其亲属;不得侵犯其依法享有的获得医疗服务、劳动就业、学习和参加社会活动等合法权利。'Regulations of the Province of Jiangsu on the Prevention and Control of AIDS', *ibid.*, Article 28.

<sup>70</sup> 第二十九条:任何单位和个人不得泄露艾滋病病人及病毒感染者的姓名、住址、工作单位和病史等资料。'Regulations of the Province of Jiangsu on the Prevention and Control of AIDS', *ibid.*, Article 29.

<sup>71</sup> 第三十一条:艾滋病病人及病毒感染者登记结婚,应当在登记前向对方说明患病或者感染的事实;告知后双方同意申请结婚登记的,应当到医疗保健机构接受医学指导。'Regulations of the Province of Jiangsu on the Prevention and Control of AIDS', *ibid.*, Article 31.

<sup>72</sup> 第九条:性病病人不得进入公共浴池就浴或进入游泳池游泳。成都市性病艾滋病防治管理条例, *chengdushi xingbing aizibing fangzhi guanli tiaoli*, 'Regulations of the City of Chengdu on the Containment, Prevention and Control of Sexually Transmitted Diseases', adopted on 30 November 2000 and amended on 2 November 2003, Article 9.

<sup>73</sup> 第九条:对性病患者,禁止从事易使性病传播的工作,禁止进入公共浴室和游泳池

(馆)沐浴和游泳。吉林省性病防治管理条例, *Jilinsheng xingbing fangzhi guanli tiaoli*, 'Regulations of the Province of Jilin on the Containment, Prevention and Control of Sexually Transmitted Diseases', adopted on 7 November 1992 and amended on 2 November 2003, Article 9.

<sup>74</sup> Qin Chuan, 'Law Protects HIV Carriers', *Xinhua*, 19 November 2004.

<sup>75</sup> 传染病病人、病原携带者和疑似传染病病人,在治愈前或者在排除传染病嫌疑前,

禁止从事的易使该传染病扩散的工作, 'Law on Infectious Diseases', *op.cit.*, Article 16-2.

<sup>76</sup> 第九条:对性病患者,禁止从事易使性病传播的工作,禁止进入公共浴室和游泳池(馆)沐浴和游泳, 'Regulations of the Province of Jilin on the Containment, Prevention and Control of Sexually Transmitted Diseases' *op.cit.*, Article 9.

<sup>77</sup> 第十六条:公共场所应当设置安全套发放柜。宾馆、饭店、美容美发、歌舞娱乐、桑拿浴室、按摩足浴、游泳场(馆)等经营单位,必须对从业人员做好艾滋病、性病防治知识的宣传,落实预防措施;对可能造成艾滋病、性病传播的公用的物品和器具,必须进行严格消毒。前款所列经营单位的从业人员,应当定期进行包括艾滋病、性病体检项目的健康检查,

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carriers are banned from any service employment.

In Wuhan, persons working in hotels, public baths, hairdressing and beauty parlours and swimming pools must undergo HIV and sexually transmitted disease testing each year. If the test is positive, the person is no longer allowed to engage in service activities that require direct contact with clients<sup>78</sup>.

*2.2.3. Refusals to grant a marriage licence*

On 3 August 2003, the first marriage of HIV/AIDS carriers in the Sichuan was authorised<sup>79</sup>. The event was widely covered in the media. Despite the 2001 revision of the Law on Marriage, infected persons can be refused a marriage licence on medical grounds<sup>80</sup>. Many local laws specifically refuse infected persons the right to marry, for example, in Wuhan<sup>81</sup> and in Chengdu<sup>82</sup>.

In the province of Jilin, marriage is prohibited for persons with sexually transmitted diseases who are not undergoing treatment, a highly restrictive condition in view of the present difficulty in accessing treatment<sup>83</sup>.

*2.2.4. Forced abortion*

In Chongqing, provisions relating to the Protection of the Mother and Child requires that appropriate measures must be taken by pregnant women who are HIV carriers<sup>84</sup>. Doctors therefore have authority to decide whether the pregnancy should be terminated.

In the province of Jilin, pregnant women who have AIDS are subjected to a compulsory abortion<sup>85</sup>.

Generally speaking, provincial regulations focus on the containment and monitoring of patients. And even in provinces where the law is more favourable, HIV/AIDS carriers are subjected to serious discrimination. The response of mere denunciation of this 'shameful disease' befalling 'socially deviant elements of society' for more than ten years has contributed to the prevailing ignorance concerning the modes of its transmission.

Furthermore, persons from the 'AIDS villages', particularly in the Henan, are subjected to collective ostracism: 'Nobody wants to marry a boy or a girl from one of these communities, on the markets nobody will buy their produce, the army no longer recruits there, and when a youth is looking for a job outside his province, he lies about where he comes from...'<sup>86</sup>.

The above restrictions, which are contrary to international human rights law (right to employment<sup>87</sup>, right to marry freely<sup>88</sup>, right of women to chose the number of children and the interval between births<sup>89</sup>),

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并取得健康证明。艾滋病、性病病人和艾滋病病毒感染者不得从事可能传播艾滋病、性病的服务工作。‘Method of the Province of Zhejiang for the Prevention and Control of AIDS and Sexually Transmitted Diseases’, *op.cit.*, Article 16.

<sup>78</sup> 第十四条:旅店业、公共浴室、理发店、美容店、游泳场(馆)等场所应当严格遵守国务院《公共场所卫生管理条例》的规定,对易于传播艾滋病、性病的公共卫 生用品和器具严格消毒。□前款所列公共场所直接为顾客服务的从业人员,每年必须接受包括艾滋病、性病检查项目在内的身体健康检查,患有艾滋病、性病的从业人员不得从事直接为顾客服务的工作。□武汉市艾滋病性病防治管理条例, *Wuhanshi aizibing xingbing fangzhi guanli tiaoli*, ‘Regulations of the City of Wuhan on the Containment, Prevention and Control of AIDS and Sexually Transmitted Diseases’, adopted on 2 April 1999 and amended on 9 July 2004, Article 14.

<sup>79</sup> Juliana Liu, ‘HIV-Positive Couple Make History in China’, Reuters, 4 August 2003.

<sup>80</sup> 第七条:有下列情形之一的,禁止结婚患有医学上认为不应当结婚的疾病。‘Law on Marriage’, *op.cit.*, Article 7.

<sup>81</sup> 第十二条:婚姻登记机关对结婚申请人患有艾滋病、梅毒、淋病的,暂 不予办理结婚登记。‘Regulations of the City of Wuhan on the Containment, Prevention and Control of AIDS and Sexually Transmitted Diseases’, *op.cit.*, Article 12.

<sup>82</sup> 第十二条:对艾滋病、梅毒、淋病病人及感染者未治愈的,民政部门不予输结婚登记。‘Regulations of the City of Chengdu on the Containment, Prevention and Control of Sexually Transmitted Diseases’, *op.cit.*, Article 12.

<sup>83</sup> 第十条:民政部门对男女一方患有性病未经治愈的,不予办理结婚登记。‘Regulations of the province of Jilin on the Containment, Prevention and Control of Sexually Transmitted Diseases’, *op.cit.*, Article 10.

<sup>84</sup> 第二十四条:对患有艾滋病和梅毒的孕妇,应按《中华人民共和国母婴保健法》的规定采取相应的措施。重庆市预防控制性病艾滋病条例, *Chongqingshi yufang kongzhi xingbing aizibing tiaoli*, ‘Regulations of the City of Chongqing on the Prevention and Control of AIDS and Sexually Transmitted Diseases’, adopted on 28 March 1998 and amended on 13 July 2004, Article 24.

<sup>85</sup> 第十一条:患艾滋病、梅毒的孕妇应中止妊娠。‘Regulations of the province of Jilin on the Containment, Prevention and Control of Sexually Transmitted Diseases’, *op.cit.*, Article 11.

<sup>86</sup> Pierre Haski, *op. cit.*

<sup>87</sup> International Covenant on Economic, Social and Cultural Rights, Article 6.

<sup>88</sup> Universal Declaration of Human Rights, Article 16.

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discriminate against HIV/AIDS carriers. They are a flagrant violation of Article 2 of the Covenant, which specifies: 'The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth **or other status**'. A similar provision is found in the Universal Declaration of Human Rights.

Furthermore, 'the least restrictive option must be chosen when several types of limitation (on the exercise of rights protected by the Covenant) can be imposed'<sup>90</sup>. The abovementioned discriminatory practices are therefore also contrary to Article 4 of the Covenant, which envisages admissible limitations to the rights embodied in the Covenant. The present restrictions are clearly not 'imposed in the interest of legitimate goals, solely with a view to fostering general well-being in a democratic society'.

The Committee also stressed that a number of measures aimed at eliminating all forms of discrimination in matters of health can be introduced at very little cost, through the adoption, modification or repeal of legislation or the circulation of information.

In view of the persistence of serious discrimination against persons living with HIV/AIDS, it is imperative that specific legislation banning such practices be enacted without delay.

## **II. HIV/AIDS: REPRESSION, OR A PUBLIC HEALTH APPROACH?**

The penal code and traditional morals are hindering the government's recent efforts in the area of prevention. The Chinese authorities have just begun to move towards the adoption of a risk-reduction policy, which requires co-operation between the health authorities and the police. This new approach is encountering a number of obstacles, owing to the stigmatisation of patients. In January 2005, Zhou Tao, a movie star recently appointed 'ambassador for the fight against AIDS', stated during a TV show: 'On the one hand we can say we are lucky to be in good health and not to have caught this terrifying disease, and on the other, that we have followed a good life-style, and have not caught these bad habits'<sup>91</sup>. In other words, the disease remains associated with behaviours that are not engaged in by 'good people'.

Added to this, the press is replete with articles associating AIDS with crime. There are supposed to be people who become contaminated on purpose, in order to commit crimes with total impunity, as the police release such criminals for fear of contracting the disease<sup>92</sup>. Others engage in blackmail in public places in order to extort a ransom from passers-by. In the city of Wenzhou and the province of Zhejiang, it has therefore been decided to build prison-hospitals for infected criminals, in order to solve this law and order problem<sup>93</sup>.

### **1- Risk-reduction programmes**

China has just embarked upon a risk-reduction programme. At the end of 2004, for the first time, the Working Committee on AIDS Control and Prevention<sup>94</sup> called for candidates to run needle exchange programmes for drug users, promote the use of the condoms and inform the homosexual population<sup>95</sup>.

It is still however very difficult to gain access to the high-risk groups, due to their severe marginalisation. Migrants, the 'floating population' estimated at 120 million, are second class citizens because they do not hold residence permits. Drug addicts and prostitutes are more frequently targeted by the police than by the

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<sup>89</sup> Convention on the Elimination of All forms of Discrimination against Women, ratified by China in 1981, Article 16.

<sup>90</sup> Committee on Economic, Social and Cultural rights, *op. cit.*, paragraph 28.

<sup>91</sup> 焉烈山, « 这样的防艾宣传大使要不得 », *zhongyang de fang'ai xuanchuan dashi yaobude*, 南方都市报, *Nanfang dushi bao*, 27 January 2005.

<sup>92</sup> 艾滋病患者涉嫌敲诈被抓 警察无法关押被迫放人 », *aizibing huanzhe shexian qiaozha beizhua jingcha wufa guanya beipo fangren*, 郑州报, *Zhengzhou bao*, 21 January 2005.

<sup>93</sup> 'More Criminals found HIV-positive', *Shanghai Star*, 27 November 2003.

<sup>94</sup> A Committee set up by the State Affairs Council in February 2004 to carry out and co-ordinate the AIDS prevention and control policy.

<sup>95</sup> 国务院防治艾滋病工作委员会办公室, 2004 年国家艾滋病防治社会动员项目指南, *2004 nian guojia aizibing fangshi shehui dongyuan xiangmu zhinan*, 6 December 2004.

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Ministry of Health. And homosexuality is still largely socially unacceptable.

### 1.1 Promoting condoms

In December 2003, the first television advertisement for condoms appeared on the government channel, CCTV<sup>96</sup>. In some provinces, among the ones most hardest hit by the epidemic, such as Yunnan, hotels and places of leisure are now required to install condom dispensers<sup>97</sup>, and will be fined if they fail to do so. In Shenzhen, pilot projects for prevention among prostitutes were announced in July 2004<sup>98</sup>.

And yet, according to Yang Shaoguang, Professor of Law, lawyer and Advisor to the city of Shanghai, in the eyes of the police possession of a condom is proof of prostitution<sup>99</sup>. In November 2004, the condom dispensers were removed from the two most prestigious universities in China – Beida and Qinghua – on the grounds that they were an incitement to debauchery and jeopardised academic study<sup>100</sup>.

Under the Paragraph 2 of Article 12 of the Covenant, the States parties must adopt the necessary measures for 'the prevention, treatment and control of epidemic, endemic, occupational and other diseases'. According to the Committee, States must therefore abstain from prohibiting or impeding traditional preventive care<sup>101</sup>. They are also required to undertake prevention and education programmes in particular for behaviour-related health concerns such as sexually transmitted diseases, in particular for AIDS<sup>102</sup>. The use of the condom to prevent the transmission of AIDS should be encouraged, rather than being considered as an incitement to debauchery.

In addition, according to the Committee, the obligation to implement the right to health requires in particular that States should carry out information campaigns, especially concerning HIV/AIDS<sup>103</sup>.

### 1.2 Syringe exchange and methadone treatment

There is an ongoing debate in China at present on the need to continue the fight against drugs while at the same time facilitating access to prevention and care. There are at present nine clinics for methadone treatment for the whole of the country. They are concentrated in seven out of 31 provinces, in the south and the west. They have the capacity to receive 1,800 persons, out of a million drug users according to public security figures<sup>104</sup>. Syringe exchange<sup>105</sup>, sometimes free of charge, is beginning to be authorised in certain areas. The Regulations adopted in March 2004 in the province of Yunnan, and in August 2004 in the province of Jiangsu, are steps in that direction<sup>106</sup>.

## **2- Difficulties in programme implementation**

The implementation of these risk-reduction programmes 'is not simple, however. Some officials oppose public health approaches that seem to condone or support illegal activity. To these officials, needle-exchange

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<sup>96</sup> Clifford Coonan, 'First Condom Ads on TV Signal Attitude Change', *South China Morning Post*, 7 December 2003.

<sup>97</sup> 第十三条:宾馆、饭店、旅馆、招待所等提供住宿的公共场所和营业性娱乐服务的公共场所,其经营者应当在营业场所摆放安全套或者设置安全套发售设施。经批准开办戒毒治疗业务或者从事艾滋病、性病诊治业务的医疗机构,应当在其诊疗场所摆放安全套或者设置安全套发售设施。云南省艾滋病防治办法, *Yunnansheng aizibing fangzhi banfa*, 'Method of the Province of Yunnan for AIDS Prevention and Control', adopted 20 January 2004, Article 13.

<sup>98</sup> Yu Ping, 'AIDS Treatment Requires Pragmatic Attitude and Actions', *The Beijing News*, 1 June 2004.

<sup>99</sup> 'Legislation Becomes Urgent Issue in China's HIV/AIDS Prevention', *Xinhua*, 26 March 2004.

<sup>100</sup> 北大清华拒绝公开发放安全套, *beida qinhua jujue gongkai fafang anquantaos*, *Xinhua*, 24 November 2004.

<sup>101</sup> Committee on Economic, Social and Cultural Rights, *op. cit.*, paragraph 34.

<sup>102</sup> Committee on Economic, Social and Cultural Rights, *op. cit.*, paragraph 16.

<sup>103</sup> Committee on Economic, Social and Cultural Rights, *op. cit.*, paragraph 36.

<sup>104</sup> Drew Thomson, 'Injecting Drug Use Fuelling Spread of HIV in China', Population Reference Bureau, August 2004.

<sup>105</sup> Users hand in used syringes to the health authorities and receive in exchange, free of charge or against payment, new syringes.

<sup>106</sup> 第十二条:县级以上卫生行政部门应当会同公安、药监部门有计划地在批准开办戒毒治疗业务的医疗机构中,对注射吸毒人员开展清洁针具交换工作和社区药物维持治疗工作。'Method of the Province of Yunnan for AIDS Prevention and Control', *op. cit.*, Article 12.

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programs and condom distribution may appear to be at odds with the bid to legally crack down on drug dealers and drug users<sup>107</sup>.

According to the Médecins du Monde team in charge of a prevention programme for drug addicts in the Sichuan province since 2002: 'today, in Chengdu, addicts are deprived of medical care owing to restrictions on the use of methadone, a lack of substitution programmes, a lack of education and access to information, the absence of safe syringe programmes. There is no psychological assistance, many addicts are forced to enter compulsory State centres, and those who go to a detoxification centre of their own free will have to pay exorbitant hospital fees for small doses of methadone made from Chinese traditional plants, with intravenous injections 'against dependency' (...) AIDS is not well known, the use of condoms is challenged, there is considerable stigmatism and discrimination, the exchange of used needles and syringes is common, although it is possible to obtain easily and at small cost needles and syringes (0.06 \$). Methadone treatment in hospital is badly prescribed and very expensive: 320 to 380 \$ for a one-week stay, which is more than heroin for the same period (260 \$), there is no psychological support whatsoever, and to cap it all, the policy towards them is repressive'<sup>108</sup>.

In the 746 compulsory detoxification centres and the 168 Reeducation Through Labor camps<sup>109</sup> in China, access to prevention and treatment remains very limited, although the population concerned is subjected to mandatory HIV testing. Frequently the test results are not communicated to the detainees and access to prevention programmes and methods is extremely limited.

As these centres are not financed by the Ministry of Public Security, they have to generate income through fines imposed on the detainees and board and lodging charges. Additional funds are obtained through the sale of articles made by the detainees<sup>110</sup>. This means that the camps have no financial incentive to treat the patients and to engage in AIDS prevention campaigns.

Such structures limit access to prevention and care of patients with AIDS. They are incompatible with the obligations set out in sub-paragraph 2 (d) of Article 12 of the Covenant, which says that the States parties must take measures to ensure 'The creation of conditions which would assure to all medical service and medical attention in the event of sickness'.

These pilot projects are limited to the territories that have been hardest hit by the epidemic, and for the longest period of time: the Yunnan province, and especially the rich east coast of China, Shenzhen and the province of Zhejiang<sup>111</sup>. In vast areas of the country, in the poorest regions, there is no such thing as a risk-reduction policy.

### **III. A BELOW PAR HEALTH CARE POLICY**

A free, but complex health care policy was launched in early 2003 but few patients have benefited from it. In the rural areas, where 70% of the officially known HIV-AIDS carriers live, there are simply not enough hospitals and doctors. The Chinese antiretroviral generic drugs are extremely expensive, considering the average salary, and the quality is poor. State involvement is particularly vital because social welfare support is weak and inadequate, and the disease affects the rural workers who have been left behind by economic modernisation<sup>112</sup>. Furthermore, the detection system is so poor that many people who need treatment are not properly identified; this is another factor that hinders the development of a comprehensive and effective health care policy.

#### **1- Absence of a reliable monitoring system**

Except in the worst stricken regions, covered by the CARES programme, the test for HIV/AIDS is still often sold and the price varies. Even in Henan province, except for the officially counted 'AIDS villages', the test

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<sup>107</sup> Drew Thomson, *ibid.*

<sup>108</sup> Médecins du Monde, 'Responding to the needs of drug addicts in Chengdu', July 2004.

<sup>109</sup> CCM, *op.cit.*, 'HIV/AIDS situation analysis', p. 6.

<sup>110</sup> Drew Thomson, *op.cit.*

<sup>111</sup> Shao Xiaoyi, 'Taking the crime out of drugs', *China Daily*, 26 January 2005.

<sup>112</sup> 陈桂棣 春桃, 中国农民调查, *zhongguo nongmin diaocha*, 'Enquête sur la paysannerie en Chine', 人民文学, 2004.

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is sold for 400 RMB<sup>113</sup>, which is a hefty sum considering the annual average salary of 2,109.50 RMB in the rural areas<sup>114</sup>. Furthermore, the Chinese are not encouraged to take the test voluntarily, confidentiality is rarely respected and access to health care is limited<sup>115</sup>.

Yet, Article 12 of the Covenant indicates that health care facilities, goods and services should be designed in a manner that respects the patients' confidentiality<sup>116</sup>.

The official figures also seem far too low. In the Henan province alone, Dr. Zhang Ke estimates the number of virus carriers at 300,000 out of a population of about 93 million. For China as a whole, on 31 December 2003, the official estimate was a mere 840,000 HIV-AIDS carriers<sup>117</sup>.

### 1.1. Studies are incomplete

Existing studies have failed to gather adequate information and statistics from the most vulnerable groups (prostitutes, detained drug addicts, former blood sellers) and the most severely affected regions.

Further, according to the Chinese Centre for Disease Control itself, the monitoring system is still inadequate<sup>118</sup>: at the local level, the Centres for Disease Control are underfunded and understaffed rendering the national compilation of local data extremely difficult and unreliable.

Further, it is almost impossible to formulate an effective prevention policy without first undertaking a global study on at-risk behaviour.

### 1.2. Weaknesses in the system of recording patients and the provision of care

Official data indicates that only 7.4% of the total number of HIV-AIDS carriers, i.e. 62,000 cases have been officially confirmed and recorded. In certain regions, the difference between the number of cases in the census and the total number in the estimate is even greater: in Hubei, there are 1,300 confirmed cases, i.e. 3.7% of the 35,000 cases estimated for the region<sup>119</sup>. Yet without a diagnosis, no health plan can be proposed and the virus can spread more easily.

After being given the test results, patients are seldom directed to a treatment centre. In Nanning, the French section of Médecins Sans Frontières, (MSF) together with the local centre for disease control, opened a clinic a few steps away from an AIDS detection centre. According to Marie-Hélène Jouve, Assistant Programme Director, patients are rarely told about the possibility of receiving care in the clinic. There is a 'link missing between disease detection and the care on offer'<sup>120</sup>.

In November 2003, Zhang Fujie, Director of the Programme to Control AIDS and Sexually Transmitted Diseases at the Chinese Centre for Disease Control, confirmed this flaw in the monitoring system. He said: 'I really don't know how to decide the budget because I have no idea how many people will need this treatment'<sup>121</sup>. The difficulty in obtaining realistic figures is holding back efforts to prevent the spread of the epidemic.

In relation to Paragraph 2 of Article 12 of ICESCR, the Committee has indicated that States Parties should fully implement and improve the epidemiological monitoring methods and the collection of disaggregated data. The failure to gather reliable, systematic data, disaggregated according to age, sex, and region, fails to meet the standards required by ICESCR.

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<sup>113</sup> 河南省干部的"艾滋病村庄"之行, *henansheng ganbu de aizibing cunzhuang zhi xing*, 南方周末, *Nanfang Zhoumo*, 3 March 2004.

<sup>114</sup> 'China pay more for Medical Services', *People's Daily*, 16 January 2005.

<sup>115</sup> Bates Gille, J. Stephen Morrison, Drew Thompson eds., *Defusing China's Time Bomb, Sustaining the Momentum of China's HIV/AIDS Response*, CSIS, 2004.

<sup>116</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 12.

<sup>117</sup> 张可医生, *op.cit.*

<sup>118</sup> Joint China CDC-U.S.A CDC HIV Surveillance Assessment, 2002.

<sup>119</sup> Bates Gill, J. Stephen Morrison and Drew Thompson, *op.cit.*

<sup>120</sup> Personal interview, 28 February 2005.

<sup>121</sup> Josephine Ma, 'Officials Unsure of Next Step for AIDS Drugs Scheme', *South China Morning Post*, 17 November 2003.

## **2- A health care system broken down by liberalisation**

### 2.1. A health care system beyond the reach of most of the population and inequitably available throughout the country

Between urban and rural areas and from one region to the next, access to treatment is extremely inequitable. In the first nine months of 2004, the average per capita income in the cities was 7,072 RMB (852 USD) as against 2,109.50 RMB (254 USD) in the rural areas<sup>122</sup>. 80% of the medical installations were in the cities, leaving a mere 20% in the rural areas where 70% of both the population and of HIV/AIDS carriers live<sup>123</sup>.

#### *2.1.1. Overly expensive health care*

According to the Ministry of Health, in the beginning of 2005, a medical consultation was out of the financial reach of 49% of the population and 29.6% could not afford hospital care<sup>124</sup>.

In the rural areas, according to the Vice Minister of Health, Zhu Qingsheng, 40-60% of the rural people lapse into poverty following a bout of illness<sup>125</sup>.

#### *2.1.2. Social security: limited and low quality*

On 10 January 2005, the Vice Minister of Health, Gao Qiang, stated that 44.8% of the urban population and 80% of the rural population do not benefit from social security<sup>126</sup>.

The old health insurance system was partly connected to the social economy that fell apart in the 1990s when state enterprises were closed, private sector employment grew and collective farming was abandoned.

Private insurance schemes are supposed to take its place. In the rural areas, the central government is preparing a new – voluntary – insurance system to be introduced in 2010 under which the beneficiary would pay 20 RMB per year and the government, 10 RMB per year<sup>127</sup>.

In the urban areas, the level of reimbursement by private health insurance companies varies greatly. In certain regions such as Liaoning, Guangdong and Beijing, the insurance covers certain antiretroviral treatments, but in order to receive such benefits, the patients have to inform their employer that they are HIV positive<sup>128</sup>. Further, in the urban areas, migrant workers are not generally entitled to the employees' social security benefits.

### 2.2. A sector subject to significant economic pressure

Hospitals are under significant economic and budgetary pressures. Because of financial shortfalls, overprescription of drugs and consultations has become common practice as a means to raise money.

It is not unusual for hospitals to refuse to treat HIV/AIDS carriers<sup>129</sup>. Medical staff often justify their refusal by referring to the risk of transmission and the lack of insurance to cover the risk. In some cases, the hospitals refuse to open specially designated AIDS wards, e.g. Hospital No. 4 in Nanning<sup>130</sup>, out of fear that other patients will boycott the hospital and deprive the hospital of its main source of funding. In Nanning, placing the patients in many different wards is detrimental to their treatment schedule.

According to Marie-Hélène Jouve, China does not offer enough confidential, free treatments. In the clinic run by MSF in Nanning, there is only a trickle of patients. Although when the patients see that the centre offers services that free and truly confidential, they bring in other members of their family<sup>131</sup>.

Since hospitals refuse to treat AIDS patients, the Chinese government decided to work through the network of Disease Control and Prevention Centres to administer the antiretroviral drugs. Unfortunately these centres are usually located at the district level. Distance jeopardises accessibility and, as a result, the quality of the care.

### 2.3 Shortage of qualified personnel

In July 2003, Zhang Fujie, Director of the Programme to Control AIDS and Sexually Transmitted Diseases

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<sup>122</sup> 'China Pay More for Medical Services', *People's Daily*, 16 January 2005.

<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> *ibid.*

<sup>126</sup> 'Health System Faces Up Great Challenges', *Xinhua*, 10 January 2005.

<sup>127</sup> 'China to Invest in Rural Healthcare, Pay Greater Attention to AIDS', *Agence France Presse*, 15 May 2003.

<sup>128</sup> 'Insurance to Cover AIDS Drugs', *China Daily*, 15 July 2004.

<sup>129</sup> CCM, *op.cit.*, 'Goal and Expected Impact', p. 30.

<sup>130</sup> Personal interview, 28 February 2005.

<sup>131</sup> *ibid.*

at the Chinese Centre for Disease Control stated that there were only 100 doctors in China trained to correctly administer antiretroviral treatments<sup>132</sup>. In April 2004, the central health authorities admitted that in many of the district Disease Prevention and Control Centres they visited, 90% for the health care workers were not professionally trained<sup>133</sup>.

The shortage of human and financial resources and the shortage of medical equipment in the rural zones where the highest number of HIV-AIDS carriers live are reducing the effectiveness of treatment programme started in March 2003, even in relation to the administration of antiretroviral drugs. Lack of information on the side effects of the treatment and lack of support often meant that patients dropped out of the programme. By July 2003, 327 of the 2,550 patients in the Shangcai district (Henan) had discontinued the programme<sup>134</sup>. By November, 4,000 of the original 5,289 patients, were still in the treatment programme<sup>135</sup>. According to the most recent results (June 2004), there is a 21% drop out rate among patients in the CARES programme<sup>136</sup>.

#### 2.4 Collecting blood, a continuing problem

At the end of July 2004, the Ministry of Health spokesman, Mao Quan'an, declared that the blood banks and the biotechnology companies are now required to test donated blood for HIV/AIDS. Between 10-20% of the blood used in clinics comes from bought blood, 20-30% from voluntary donations and the rest from 'obligatory donations'<sup>137</sup>.

In September 2004, a new Law on Blood Collection was adopted. According to Article 2, blood may no longer be sold<sup>138</sup>. Obtaining blood is very difficult. Voluntary blood donation is not yet common practice as people fear being contaminated. The system of compulsory donation is gradually being replaced by encouragement to give voluntarily. Workers, students and military personnel are the first to be called to contribute to this national effort<sup>139</sup>.

The authorities recognise the difficulty in implementing this legislation. According to the Ministry of Health spokesman, Mao Quan'an, thirst for profit convinces some officials at blood collection centres and hospitals to ignore the law<sup>140</sup>. In early December 2004, Gao Yaojie said that she discovered that some illegal blood stations still existed in Shandong<sup>141</sup>.

### **3- Partial and insufficient policies**

#### 3.1. Emergency measures

##### *3.1.1 Access to health care*

In the beginning, the CARES programme, launched in early 2003, was only open to some 3,500 patients in four provinces: 200 in Anhui province, 420 in Hubei province, 61 in Sichuan province, and in the Henan province: 2,550 in Shangcai district, 200 in Xincai district and 120 in Xueshan district. This emergency response is an effort to solve the political crisis triggered by the contaminated blood scandal: over 2,800 patients in the programme come from Henan province out of the total number of beneficiaries, i.e. about 3,500<sup>142</sup>.

In November 2003, the programme was expanded to serve 5,000 patients<sup>143</sup>.

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<sup>132</sup> Josephine Ma, 'Officials Unsure of Next Step for AIDS Drugs Scheme', *South China Morning Post*, 17 November 2003.

<sup>133</sup> Zheng Feng, 'Too Few Qualified Healthcare Workers', *China Daily*, 8 April 2004.

<sup>134</sup> 'China Starts Offering Free AIDS Drugs but Lacks Doctors to Administer Them', Agence France Presse, 16 July 2003.

<sup>135</sup> Josephine Ma, 'Officials Unsure of Next Step for AIDS Drugs Scheme', *South China Morning Post*, 17 November 2003.

<sup>136</sup> Zhang Fujie, *op.cit.*

<sup>137</sup> Zhang Feng, 'Suppliers of Blood Under Investigation', *China Daily*, 30 July 2004

<sup>138</sup> 第二条：国家实行无偿献血制度。国家提倡十八周岁至五十五周岁的健康公民自愿献血。“中华人民共和国献血法”，*zhonhua renmin gongheguo xianxuefa*, 'Law on Collecting Blood', adopted on 13 September 2004, Article 2.

<sup>139</sup> 第七条：国家鼓励国家工作人员、现役军人和高等学校在校学生率先献血，为树立社会新风尚作表率。'Law on Collecting Blood', *ibid.*, Article 7.

<sup>140</sup> Zhang Feng, *ibid.*

<sup>141</sup> “高耀洁：山东仍有黑血站”，*Gao Yaojie: shandong reng you heixuezhuan*, 大纪元, *dajiyuan*, 2 December 2004.

<sup>142</sup> 'China Starts Offering Free AIDS Drugs but Lacks Doctors to Administer them', Agence France Presse, 16 July 2003.

<sup>143</sup> "Cheaper 'Cocktail' Therapy Expected to Reach Chinese AIDS Patients", Xinhua, 7 November 2003.



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By end 2004, a number of provinces badly affected by the epidemic, such as Xinjiang and Yunnan, did not have access to the programme. By the end of June 2004, only 10,000 patients were receiving treatment under the government programme out of a population of, according to official estimates, some 840,000 HIV carriers and 80,000 AIDS patients.

*3.1.2. Definition of AIDS orphans*

AIDS orphans are often ostracised because of their ostensible connection to the disease, whether or not they themselves are HIV/AIDS carriers. Even when their families can pay, they are not admitted to the schools, out of fear of contamination.

The local authorities in Henan have created 20 orphanages with an intake capacity of 2,000 children<sup>144</sup> out of some 10,000 orphans, according to an estimate by Aizhi Action Project Association, a non-governmental organisation<sup>145</sup>.

The official definition only recognises children who have lost both parents to AIDS, in other words children who have been abandoned or who only lost one of their parents are not included<sup>146</sup>.

Yet, according to the Committee on Economic, Social and Cultural Rights, 'In all policies and programmes aimed at guaranteeing the right to health of children and adolescents their best interests shall be a primary consideration'<sup>147</sup>.

3.2. Poor quality health care

*3.2.1. Free health care only extends to the provision of antiretroviral drugs*

Patients have to defray the hospitalisation and transportation costs associated with treatment. In Nanning, the most underprivileged patients are sent to the clinic run by Médecins Sans Frontières.

*3.2.2. Poor quality and cost of antiretroviral drugs, when available<sup>148</sup>*

At the end of 2002, China started producing generic drugs for the domestic market. Authorisations were only granted for antiretroviral drugs with expired patents.

Yet according to Article 31 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement signed in 1994 and revised in 2003, China can use the system of compulsory licences. It can authorise production of patented generics for the domestic market either by declaring a 'health emergency' or by proving that negotiations with pharmaceutical laboratories have failed. The fact that China never took advantage of this opportunity has been very prejudicial to the health of its population.

The World Health Organisation recommends 12 antiretroviral drugs for a basic AIDS treatment; only seven of which are available in China. Many pharmaceutical industries have registered these drugs without putting them on the market.

Since the end of 2002<sup>149</sup>, four drugs have been made available in generic form: zidovudine, didanosine, stavudine and nevirapine. Two combinations can be made using these four. The ones most often used – didanosine, stavudine, nevirapine – have serious side effects and are dangerous for many patients who also have Hepatitis B.

In April 2004, the Ministry of Health announced that five antiretroviral drugs were available: zidovudine,

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<sup>144</sup> “求助艾滋经不起等待”, *qiuzhu aizi jing buqi dengdai*, 南方人物周刊, 25 August 2004.

<sup>145</sup> Li Xiaorong, 'The Plight of Children Orphaned by AIDS in Henan', *Human Rights in China*, 20 February 2003.

<sup>146</sup> Jane Cai, 'AIDS Orphans Face Little Sunshine', *South China Morning Post*, 5 January 2005.

<sup>147</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 24.

<sup>148</sup> In relation to this section, see Bates Gille, J. Stephen Morrison, Drew Thompson eds., *op.cit.*

<sup>149</sup> 'China to Localize Production of AIDS drugs', *Xinhua*, 27 November 2003.

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didanosine, stavudine, nevirapine and indinavir. But 3TC 150 mg (lamivudine), a drug produced by GlaxoSmithKline that is essential for first-line treatment, is still not available<sup>150</sup>.

The antiretroviral drugs, despite generic production, are still expensive for the average Chinese person: an annual treatment costs between 3,500 and 4,000 RMB (the average annual salary is 2,109.50 RMB in the rural areas)<sup>151</sup>. In 2003, the State Administration of Taxes at the Ministry of Finance announced that from 1 January 2003 to 31 December 2006, AIDS drugs would be exempt from taxes and VAT, but certain very important drugs, namely, didanosine and zidovudine, are not exempt<sup>152</sup>.

Furthermore, the Chinese generics have not been approved by the WHO. The poor quality of the first-line treatment means that many patients cease treatments; it also enhances the patients' resistance to further antiretroviral treatment. In Nanning, 33% of the patients treated by MSF had already started being treated according to a Chinese generic protocol<sup>153</sup>. Treatments according to international standards are expensive: 'MSF pays ten times more in China than in Africa for the same number of patients and the same treatment'<sup>154</sup>.

According to the Committee on Economic, Social and Cultural Rights, health facilities, goods and services should be scientifically and medically appropriate and of good quality; this requires *inter alia* scientifically approved drugs and hospital equipment<sup>155</sup>. The Chinese authorities need to improve the quality of the Chinese generic antiretroviral drugs so that they qualify for WHO approval.

The right to health also implies economic accessibility (affordability): health facilities, goods and services must be affordable for all, including socially disadvantaged groups<sup>156</sup>. But the cost of the tritherapy is very high, considering the average income level. The seriously impoverished, in other words, the vast majority of the Chinese population, do not have access to HIV/AIDS treatment.

*3.2.3. Absence of paediatric medication and fixed-dose combinations*

None of the eight paediatric antiretroviral formulations patented in China are on the market. According to Zhao Yan, a paediatrician at the Chinese Centre for Disease Control, the 1,000 child HIV carriers, (600 are in Henan province)<sup>157</sup> do not have access to any treatment. In Guangxi, they are systematically sent to the MSF clinic<sup>158</sup>.

Similarly, fixed-dose combinations are not available in generic form in China. According to MSF, they are patent-protected and have to be imported at unaffordable prices. In China, the daily dose is ten tablets instead of two, and any patient who catches an opportunist infection requiring an additional treatment, has to take up to 30 tablets a day. This makes it even more difficult to keep to the treatment, and yet, scrupulous respect for the medication schedule is essential. If the prescription is only partly or irregularly followed, the patient can develop resistance and the treatment may fail<sup>159</sup>.

Legal inconsistency, traditional morality, repressive approaches, a health care system that is falling apart and poor quality antiretroviral drugs are jeopardising the success of the new AIDS campaign, which the government embarked upon in 2003. Much remains to be done from the legal, medical and political fields to remedy these problems. Furthermore, as the following section will discuss, repression of activists, the authorities' limited acceptance of local and international NGOs and unaccountable officials are holding back the development and implementation of an effective prevention and treatment policy.

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<sup>150</sup> First-line treatment is for patients with a non-mutating virus. For patients who have already been treated or who have been contaminated with a resistant virus, second-line treatment is needed. No second-line treatment has been sold in China up to now, and no generic form is available. The treatment is imported, and the price is even higher than the first-line treatment.

<sup>151</sup> 'Price of Retroviral Drugs Drops Sharply', Xinhua, 1 December 2003.

<sup>152</sup> 'China to Exempt AIDS Drugs from Value-Added Tax by the end 2005', Xinhua, 13 November 2003.

<sup>153</sup> Personal interview, 28 February 2005.

<sup>154</sup> Médecins Sans Frontières, 'Chine, Ouvrir la voie aux ARV', 10 July 2004.

<sup>155</sup> Committee of Economic, Social and Cultural Rights, *op.cit.*, paragraph 12.

<sup>156</sup> *ibid.*

<sup>157</sup> Josephine Ma, 'Children Dying for Lack of AIDS Cocktails', *South China Morning Post*, 12 January 2005.

<sup>158</sup> Personal interview, 28 February 2005.

<sup>159</sup> Médecins Sans frontières, 'Rendre les antirétroviraux 3-en-1 accessibles', 8 July 2004.

## **THE CONTINUING REPRESSION OF CIVIL SOCIETY ACTORS**

On March 14, 2004, the Chinese Constitution was amended. Article 33 provides that: 'China respects and protects human rights'<sup>160</sup>. As discussed above, China signed ICESCR in 1997 and ratified it in 2001. Since ratification, it has been noted that there has been an improvement, albeit slight, in prevention and access to HIV treatment policies. In relation to the International Covenant on Civil and Political Rights, although this treaty was signed in 1998, it is yet to be ratified by China.

Frequent violations of civil and political rights in China constitute an obstacle to the proper implementation of policies to combat the AIDS epidemic. Violations of the right to information demonstrate that AIDS is still, to a large extent, considered to be a state secret. Furthermore, the absence of mechanisms for sanctioning government officers and an uncertain justice system prevent victims from asserting their rights. Finally, the dialogue between the state and NGOS remains rather limited.

### **I. A POLITICALLY SENSITIVE SUBJECT**

#### **1- Violations of the freedom of the press**

Although AIDS is now referred to in the media, notably in relation to the International Day Against AIDS on 1 December, it remains a highly sensitive subject. Journalists do not have access to certain provinces, and those that dare to publish articles that do not necessarily present the policies of the Chinese authorities in a favourable light are systematically investigated.

##### 1.1. National media

In the Henan region, all information relating to AIDS is strictly controlled. In the media of the province, to date, no independent report has been published.

In 1999, Zhang Jicheng, journalist with the *Science and Technology Daily of the Henan*, after having discovered the scale of the AIDS epidemic, attempted to have a first report published. This report was however refused by his management. In order to bypass this prohibition, Zhang Jicheng sent his article to newspapers based in other provinces. In the spring of 2000, he was fired when his article was published in a newspaper in the province of Sichuan<sup>161</sup>. He fled to Beijing. At the end 2001, he had still not found work in his profession<sup>162</sup>.

Consequently, it is the national media or that of other provinces that seek to report on the subject. However, the Henan province is closed to journalists and those who breach this prohibition are arrested and deported from the country.

Consequently, in 2001, Chinese journalists were arrested and deported from Chenghuan and from Dongguan to Henan<sup>163</sup>. That same year, the authorities changed the telephone numbers of the inhabitants of a village called Wenlou apparently in order to prevent the media from contacting them<sup>164</sup>.

According to the last report of Reporters without Borders<sup>165</sup>, towards the end of June 2003, the authorities prohibited the publication of articles or images in relation to a police raid carried out in various villages in the province of Henan. Articles in the local press denounced the 'delinquent HIV carriers' and accused them of being 'trouble makers'<sup>166</sup>. In November 2003, a journalist of a public network CCTV was interrogated for several hours by the authorities in the district of Suixian, in the Henan province, and then deported to Beijing. The journalist was preparing a report on an AIDS carrier who was taking in orphans whose parents had died from the epidemic.

Certain journalists manage to bypass the prohibition. The press of the province of Guangdong, known for its relative freedom and coverage of controversial topics, published numerous articles on AIDS in the Henan.

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<sup>160</sup> 国家尊重和保障人权, « 中华人民共和国宪法 », *Zhonghua renmin gongheguo xianfa*, 'Constitution of the People's Republic of China', 14 March 2004, Article 33.

<sup>161</sup> Pierre Haski, *op.cit.*

<sup>162</sup> Reporters without Borders, 'China – Annual Report 2002'.

<sup>163</sup> Elisabeth Rosenthal, 'Spread of AIDS in Rural China Ignites Protest', *New York Times*, 11 December 2001.

<sup>164</sup> Reporters without Borders, *op.cit.*

<sup>165</sup> Reporters without Borders, 'China – Annual Report 2004'.

<sup>166</sup> *ibid.*

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On 30 November 2000, AIDS was the cover story of *Nanfang zhoubao*. The following year, this newspaper published the first photos of Lu Guang of the AIDS villages, for which he received a prize at the World Press reporting competition in Amsterdam in 2004.

In June 2001, Chang Ping and Qian Gang, Information Director and Chief Copywriter respectively of *Nanfang zhoubao*, were sidelined and reassigned to other positions in the newspaper. Qian Gang had himself replaced Jiang Yiping, who had also been removed by the authorities in January 2000 for articles that were considered 'subversive'<sup>167</sup>. In April 2003, Zhang Dongming, a high ranking official of the Propaganda Department of the Communist Party of the Province of Guangdong, was appointed Chief Editor of the press group *Nanfang*, to which *Nanfang dushi bao* also belongs, and Chief Editor of the weekly *Nanfang Zhoumo*. His task is to exert greater control over the editorial contents of the publications in the group<sup>168</sup>.

Moreover, on 22 October 2004, The Chinese Communist Party's disciplinary committee in Canton announced sanctions against Cheng Yizhong. He was dismissed from his post of Editor-in-Chief of the daily *Nanfang dushi bao* and excluded from the CCP. The Party committee within the *Nanfang* press group was not even notified of this decision. He was held without charge from 20 March to 27 August 2004. Chinese law provides a limited period of six months on remand. As a result, the police were required to deliver the results of their investigations prior to 20 September 2004<sup>169</sup>.

Two other Directors of *Nanfang dushi bao*, Yu Huafeng and Li Minying, were convicted of corruption and sentenced to serious penalties in March 2004.

### 1.2. International press

In August 2001, two journalists were questioned for several hours by the police of the Henan province. Harald Maass, correspondent for the daily *Frankfurter Rundschau* and Katharina Hesse, photographer for *Newsweek* were questioned by the police who claimed they did not have the required authorisations to visit the village of Shangcai in the Henan. They were asked to leave the province<sup>170</sup>.

In 2001, the Minister for Foreign Affairs systematically refused requests from international media correspondents for authorisation to visit the Henan province. According to the testimony of one French journalist, the Chinese authorities replied, following every request, that 'the families of the sick did not wish to see journalists', and that there was 'sufficient information in the Chinese press'<sup>171</sup>.

Nonetheless, in 2001, journalists of the BBC, Agence France-Presse, the *New York Times* and *Libération* travelled without authorisation to the villages in the Henan.

In January 2002, whilst preparing a report in the village of Houyang, Pierre Haski, correspondent for *Libération*, was stopped by the police who attempted to make him sign a declaration agreeing not to return to the Henan. Upon his return to Beijing, he was summoned to the Ministry of Foreign Affairs and his translator was subjected to serious coercion by the authorities. During his most recent trip to the province in 2004, he noted that a force of local peasants had been organised to stop the journalists from entering and obtaining information<sup>172</sup>.

The availability of comprehensive information on AIDS in the press is consequently very limited. Few journalists have been able to travel to the field. The first hand testimonies of Pierre Haski of *Libération* or Elisabeth Rosenthal of the *New York Times* are rare and extremely valuable. *Dajiyuan*, a Falungong-related journal published in the US, similarly publishes good articles on the subject as it has a widespread network of people in China who can provide information.

## **2- Individuals and the fight against AIDS: violation of freedom of information and expression**

Individuals who try to pass on information about AIDS in Henan province are subject to significant pressure. Some are even arrested for revealing state secrets, which, in China, is a largely indeterminate legal concept

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<sup>167</sup> Reporters without Borders, 'Nanfang Zhoumo, the weekly, censored again', 25 March 2003.

<sup>168</sup> Reporters without Borders, 'China – Annual Report 2004'.

<sup>169</sup> *ibid.*

<sup>170</sup> *ibid.*

<sup>171</sup> *ibid.*

<sup>172</sup> Pierre Haski, *op.cit.*

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that permits the detention of any person believed to be 'endangering the security of the country'.

2.1. Repression of activists

The retired gynaecologist Gao Yaojie has worked in Henan province since 1996. Using her personal savings she carries out preventive work and provides support to the sick. She has on many occasions alerted local and central authorities to the spread of the illness and condemned the lack of access to medical care for sufferers. In July 2001, the authorities refused to grant her a passport to go to the United States to receive the Jonathan Mann Prize<sup>173</sup>. She was also denied access to Henan province. In August 2003, she was similarly prevented from receiving the Ramon Magsaysay Prize in person in the United States<sup>174</sup>. On 18 December 2003, she obtained an interview with the Minister of Health Wu Yi. She was then recognised nationally for her work in Henan. In August 2004, she published a book of accounts of AIDS sufferers entitled *Ten Thousand Letters*<sup>175</sup>. Despite these improvements, in an interview in December 2004 in *Dajiyuan*, she stated that she no longer wishes to discuss the situation in Henan. 'Telling the truth leaves oneself vulnerable to too many problems and I don't want to lie, so I remain silent'<sup>176</sup>.

2.2. Arrest and detention for revealing state secrets

2.2.1. Wan Yanhai

Wan Yanhai, a former civil servant, is the Co-ordinator of the Aizhi Action Project Association, an NGO that has been operating in the field of AIDS prevention in Beijing since 1994. He was dismissed from his former post at the Ministry of Health for having set up a call-in phone line in 1992 to provide homosexuals with information about AIDS. On 24 August 2002, he was arrested in Beijing for revealing state secrets and accused of having published on the internet an internal report by the Henan authorities on the scandal of contaminated blood<sup>177</sup>. He was finally released on 20 September 2002, due to international pressure, one week before the submission of the Chinese application for funds to the Global Fund to Fight AIDS, Tuberculosis and Malaria.

2.2.2. Ma Shiwen

In August 2003 Ma Shiwen, director of the Henan Center for Disease Control, was detained for revealing state secrets. He was accused of being responsible for anonymously sending an internal report by the Henan authorities on the scandal of contaminated blood to Wan Yanhai, who had himself been arrested for revealing state secrets a year earlier. Ma Shiwen was released without a trial on 20 October 2003, a few days prior to the arrival in China of the United States State Secretary for Health<sup>178</sup>.

Any disclosure about AIDS that is made without official approval is considered as 'revealing state secrets' and offenders are liable to punishment by local and central authorities. AIDS statistics in particular remain a sensitive subject. The same estimate of 840,000 people who are HIV-positive and 80,000 people suffering from AIDS has been in circulation since the end of December 2003 without being updated.

## **II. THE LACK OF LEGAL ACCOUNTABILITY OF OFFICIALS AND THE INCONSISTENCY OF JUSTICE**

Local officials have been accused by the central authorities of having hidden the HIV/AIDS epidemic. It has also been alleged that local officials incompetently implemented government policy. However, at the national level, the likelihood that victims will be able to claim any remedy from the authorities appears very slight indeed. And though a few patients contaminated by blood transfusion or ingestion of blood products have been successful in pursuing legal action, the large majority of victims have been unable to obtain redress for violations of their rights.

### **1- Protest and repression**

Over the past years, Henan has been shaken by a series of protests by sufferers claiming access to medical care. The first deaths from HIV/AIDS in 1999 had gone unexplained. In 2001, sufferers learnt that their 'fever' was called AIDS.

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<sup>173</sup> 'AIDS Crusaders Banned from Entering Henan Provincial Villages', *South China Morning Post*, 12 July 2001.

<sup>174</sup> Antoaneta Bezlova, 'China: Beijing Silent on Award for AIDS Activist', Inter Press Service, 28 August 2003.

<sup>175</sup> 高耀洁, 一万封信, *yiwān fēngxìn*, 中国社会科学, August 2004.

<sup>176</sup> Gao Yaojie: *shandong reng you heixuezhān*, *op.cit.*

<sup>177</sup> Albert Chen, 'The Limits of Official Tolerance: the Case of Aizhixing', China Rights Forum, n°3, 2003, p. 51-55.

<sup>178</sup> Mure Dickie, 'China Frees AIDS Official', *Financial Times*, 20 October 2003.

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1.1 Before implementation of the CARES programme

At the end of November 2001, a group of contaminated rural farmers took a petition to Beijing. When they reached the capital they were taken to hospital, tested and allowed to go after the end of the AIDS conference on 1 December 2001<sup>179</sup>. At the end of 2001, eight sufferers were detained for two weeks for disturbing the public order in the village of Wenlou. They were claiming access to medical care<sup>180</sup>.

In March 2002, sufferers in Wenlou protested in front of government offices in the Shangcai district. They were demanding improved treatment<sup>181</sup>.

1.2. After implementation of the CARES programme

In May 2003, the World Health Organisation sent a team to Henan to investigate SARS. At this time, the government had already initiated the CARES programme. The experts' visit was the focus of an impressive police presence<sup>182</sup>.

In Wenlou, villagers were prevented from meeting delegation members. One of the villagers was beaten by police and detained until the delegation had left the village<sup>183</sup>.

In the village of Xiongqiao in Shangcai district, preparations were made for the arrival of the delegation. After 18 June 2003, patients who came to collect medicine from the clinic were told to return home and were threatened with being taken to the police station if they refused to leave the premises<sup>184</sup>. On 22 June 2003, 500 to 600 police in civilian clothing entered the village. The inhabitants were told to stay at home during the experts' visit. Thirteen HIV-positive people were detained after protesting to demand the construction of a new clinic. They were accused of theft and of attacking government, police and Party buildings<sup>185</sup>. In July 2003, eight of the thirteen farmers arrested were officially placed in detention<sup>186</sup>.

In July 2004, four HIV-positive people were detained in Shangqiu. The first two were arrested following an argument at a clinic.<sup>187</sup> The other two, Wang Guofeng and Li Suzhi, were trying to reach Beijing to present a petition to the Department of Health. According to Pierre Haski, 'locked up for a month in a special open prison for HIV offenders in Zhecheng, the capital of their district, Li Suzhi and Wang Guofeng were put under intolerable pressure. Their ARV treatment, imported from Thailand, was seized on the pretext that it was not allowed in China. Their guards tried to force them to take the medicine 'made in China'. After one month they were given an administrative sentence of one year's house arrest for disturbing public order (...) They were also forced to sign an undertaking not to talk to the press any more'<sup>188</sup>.

As at the end of December 2004, it appeared that they were no longer under house arrest.

According to Pierre Haski, in the summer of 2004, the distribution of medicines in Henan was: 'an organised medical chaos, where no patient receives the correct treatment. There is one exception to this medical chaos - Wenlou, in Shangcai district, the first publicised AIDS village, has become the showcase for government action. Wenlou is the 'Potemkin village' in the fight against HIV/AIDS: everything is organised there, a clinic has been built recently, sufferers are screened, treatment is distributed and so on. It is here that the Health Minister, Ms. Wu Yi, nicknamed the Chinese "iron lady", makes official visits, or that the United States Ambassador is brought to see how international aid money is used. An extremely precise count is kept of the number of HIV carriers: 678 out of the 3,200 inhabitants, of whom 578 have developed the illness.

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<sup>179</sup> Elisabeth Rosenthal, 'Spread of AIDS in Rural China Ignites Protest', *New York Times*, 11 December 2001.

<sup>180</sup> Elisabeth Rosenthal, *ibid.*

<sup>181</sup> 'AIDS Patients Protest Outside Henan Government Office Demanding Medicine', Agence France Presse, 26 March 2002.

<sup>182</sup> 胡佳, AIDS 与 SARS 世界卫生组织考察河南艾滋病村庄纪录, *AIDS yu SARS shijie weisheng zuzhi kaocha henan aizibing cunzhuang jilu*, 'AIDS and SARS: Summary of the WHO Visit to AIDS Villages in the Henan Province', 28 May 2003.

<sup>183</sup> 'SCMP Cites AIDS Patients Denied Access to Visiting WHO Team, Beaten by Police', *South China Morning Post*, 3 June 2003.

<sup>184</sup> 胡佳, 'AIDS and SARS: Summary of the WHO Visit to AIDS Villages in the Henan Province', *op.cit.*

<sup>185</sup> 'Hundreds of Police Storm 'AIDS Village' in China, Arrest 13 Farmers', Agence France Presse, 3 July 2003.

<sup>186</sup> 'Several Villagers Detained in China AIDS Raid Formally Arrested', Agence France Press, 28 July 2003.

<sup>187</sup> 'China Detains Four HIV Positive People Asking for Help', Agence France Presse, 15 July 2004.

<sup>188</sup> Pierre Haski, *op.cit.*

This monitoring contrasts sharply with the vagueness of the figures for the province<sup>189</sup>.

All the evidence concurs. After visiting twenty villages in Henan in December 2004, Wang Changrun, founder of the Beijing Care Youth Education Research Centre, stated 'All the children I met, irrespective of whether they were living with their grandparents or by themselves, were in extreme poverty. In some cases, their remaining parent is also an AIDS patient. In other cases, the parent left them with their grandparents and went away to remarry or become a migrant worker'<sup>190</sup>. In many families, the children were not attending school because there was not enough money to pay the school fees of an average 125 RMB per year. They had not been told that school is now free for children whose parents are affected by the illness<sup>191</sup>.

## **2- Lack of legal accountability of officials**

Because of the nature of the Chinese political system, officials are encouraged to conceal any information that could harm their career development. The provincial authorities initially take the role of regulating the activities of government officials, without imposing specific sanctions. In the case that the social tension arising from a particular situation becomes too great, regulation is dealt with by the central government.

### 2.1. Despatch of external teams of officials

In October 2002 the Minister of Health dispatched a team of officials to Henan to set up an initial health care programme.

The experiment was repeated in March 2004. This time, the government of Henan province sent senior civil servants to take part in implementing a support programme for the sick, known as 'five constructions', set up in February 2004 in the thirty-eight officially recognised AIDS villages. This involves the construction, in each of the villages, of a tarred road, a well, a clinic, a school and an orphanage. According to a report published in the daily newspaper *Nanfang zhoumo*<sup>192</sup>, it was difficult to organise the team. The civil servants selected had no choice regarding their participation in the experiment. The villages prepared for their arrival and the children welcomed them. In Houyang, the new clinic was prepared for the officials to spend the night there.

### 2.2. Statements unsupported by sanctions

Since the end of 2003 the central health authorities have issued multiple statements condemning the behaviour of the local authorities. On 15 August 2003, Mao Quan'an, a senior official of the Ministry of Health, announced that a new draft regulation would be submitted to the State Council to clarify the legal responsibility of the local authorities regarding the treatment of patients and information on the spread of the epidemic. He referred to the events of June 2003 in Xiongqiao as an example of the difficulty of implementing policies at local level<sup>193</sup>. In April 2004, Wang Longde, Vice-Minister of Health, highlighted the lack of awareness on the part of local officials: 'Despite high awareness of the central government, some local officials still cannot understand the threat of AIDS. Some may worry that publicizing the AIDS epidemic will affect the local investment environment and economic growth, and others may think AIDS is still not threat to them.'<sup>194</sup> It has taken media coverage of the Henan blood contamination scandal at the end of 2001 for many provinces to announce that they are experiencing a similar situation: Hubei in November 2002<sup>195</sup>, Heilongjiang in March 2003<sup>196</sup> and Jilin in November 2003<sup>197</sup>.

Despite these statements, no legislation has been adopted at national level to set out the responsibilities of or punish officials who do not carry out their obligations under the government policy to combat AIDS<sup>198</sup>. The confusion between the different levels of power at village, town, district, province and, finally, central government level dilutes the responsibility of the authorities.

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<sup>189</sup> Pierre Haski, *op.cit.*

<sup>190</sup> Jane Cai, 'AIDS Orphans Face little Sunshine', *South China Morning Post*, 5 January 2005.

<sup>191</sup> *Henansheng ganbu de aizibing cunzhuang zhixing, op.cit.*

<sup>192</sup> *Henansheng ganbu de aizibing cunzhuang zhixing, op.cit.*

<sup>193</sup> Mure Dickie, 'Stringent New Rules on AIDS Policy Proposed by China', *Financial Times*, 15 August 2003.

<sup>194</sup> 'More Awareness, Investment Urged in AIDS fight', *Xinhua*, 9 April 2004.

<sup>195</sup> 'China's Hubei Province Expects Explosion of AIDS Cases from Blood Sales', *Agence France Presse*, 26 November 2002.

<sup>196</sup> 'Officials Say Most China Provinces Could Have AIDS from Blood Selling', *Agence France Presse*, 3 March 2003.

<sup>197</sup> 'HIV/AIDS Outbreak in North-eastern China Confirmed, Blood Selling Suspected', *Agence France Presse*, 30 November 2003.

<sup>198</sup> On the other hand, the Yunnan regulations, promulgated in March 2004, provide for sanctions against government officials or doctors who ignore AIDS regulations, fail to monitor HIV/AIDS, refuse to treat patients, disclose personal information or distribute antiretroviral treatment without approval. 'Method of prevention and the fight against AIDS in Yunnan province', *op.cit.*, Article 22.

### **3- Uncertain justice**

#### 3.1. Government officials

No enquiry has yet been undertaken in Henan province into the trade in plasma that originally led to the spread of the virus. According to Pierre Haski, 'the villagers tried to organise legal proceedings against the authorities considered to be responsible for their contamination. A lawyer was contacted but, after taking a lot of money from the farmers, his activity came to nothing. The evidence is also thin: 'The organiser of the village blood transfusion centre one day asked for the farmers' health records supposedly for a trial, and he burnt them. We have no evidence other than the traces of injections on our arms', said Li Suzhi<sup>199</sup>.

Senior civil servants are also implicated. Proceedings have not been commenced against any of them. Some of them have been promoted. For example, Liu Quanxi, formerly Head of the Health Bureau responsible for starting the trade in plasma, retired in February 2003. Shortly before his retirement, he had been promoted to the position of Chairman of the Commission for Health, Education and Culture of the Henan People's Assembly, the provincial parliament. He was even paid public homage for his 'important contribution to the development of the health industry in the province'<sup>200</sup>.

Li Changchun was the Party General Secretary for Henan province from 1992 to 1997. He has been a member of the Permanent Committee of the Political Bureau of the PCC since the autumn 2002.

Chen Kaiyuan, the Henan Party Secretary from 2000 to 2002, was appointed Chairman of the Chinese Academy of Social Sciences in January 2003.

Li Keqiang was present in Henan from 1998 to 2004, firstly as Deputy Governor from 1998 to 1999, then as Governor from 1999 to 2002, and as Party Secretary from the end of 2002. In December 2004 he was appointed Party Secretary in Liaoning province<sup>201</sup>.

These officials are all implicated in concealing the epidemic, repressing the sick and failing to ensure the provision of adequate medical care.

No compensation fund has been established.

Recently a trial was commencing in Inner Mongolia which resulted, for the first time, in convictions against government officials. Li Zhanping, Director of the Health Bureau of Qingshuihe district and Yang Fei, Vice-Director of the Health Bureau, were sentenced to three years imprisonment<sup>202</sup>. They were found guilty of contravening the 1998 law requiring that blood be screened, so causing eleven people to be contaminated, one of whom had since died of AIDS. The government's desire to make this trial an example of justice is open to query since those responsible for 300,000 cases of contamination in Henan have still not been brought before the courts.

#### 3.2. Hospitals and the pharmaceutical industry

##### *3.2.1. The case of the Shanghai haemophiliacs*

In the mid 1990s, around 1,000 haemophiliacs were contaminated by using medicines made from contaminated plasma produced by the state-owned enterprise Shanghai Biological Products Institute<sup>203</sup>. Following a trial held in March 2004, the 54 victims from Shanghai were each awarded 100,000 RMB for the moral damage they had suffered, a monthly grant of 1,000 RMB and free treatment of a monthly value of 3,000 to 5,000 RMB. In spite of this, the responsibility of the state enterprise has not been recognised; the compensation is paid by the municipality so that any victim who does not hold a Shanghai residence permit is excluded. A second trial was held in December 2004 that confirmed the limited scope of the earlier verdict: haemophiliacs who do not live in Shanghai will not receive compensation<sup>204</sup>. The verdict was based on Ministry of Health rulings that the payment of grants and monthly treatment is the responsibility of the

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<sup>199</sup> Pierre Haski, *op.cit.*

<sup>200</sup> Pierre Haski, *op.cit.*

<sup>201</sup> Pierre Haski, *op.cit.*

<sup>202</sup> 艾滋病感染者的生命与官员的命运, *aizibing ganranzhe de shengming yu guanyuan de mingyun*, 中国新闻周刊, *Zhongghuo xinwen zhoukan*, 29 November 2004.

<sup>203</sup> Vivien Cui, 'Time Runs Out for AIDS Scandal Victims', *South China Morning Post*, 1 March 2004.

<sup>204</sup> 'Boosting Rights of HIV victims', *China Daily*, 29 December 2004.



local authorities.

### 3.2.2. Hospitals

Since 2001, a small number of trials have been won by victims of contaminated blood transfusion in hospitals in Hebei province<sup>205</sup> and Jiangsu<sup>206</sup>. All the convictions were based on contraventions of the 1998 law requiring blood to be screened for HIV/AIDS. However no trial has so far been undertaken in Henan.

In Hebei during September 2003, after three years' of legal proceedings, Wang Weijun received compensation of 362,000 RMB for the death of his wife who had received a blood transfusion at the Kangtai hospital in the town of Shahe in August 1997<sup>207</sup>.

However, in the Zhumadian district of Henan, according to a 2003 article in the *Zhongguo xinwen zhoukan*<sup>208</sup>, since 2003, the Gongyi town court has refused to make any investigation into cases of contamination, fearing a flood of complaints were the trial to be successful.

The lack of effective remedies for the large majority of HIV/AIDS carriers and sufferers is contrary to ICESCR. In fact, in accordance with the Committee on Economic, Social and Cultural Rights, the right to health implies that any person or group of victims of a violation of the right to health should have access to effective judicial or other appropriate remedies at both national and international levels. All victims of such violations should be entitled to adequate reparation, which may take the form of restitution, compensation or satisfaction<sup>209</sup>.

## III. THE LIMITED SCOPE OF ACTION FOR NGOs

In China, social issues are mainly the preserve of the State Party. It operates through the large 'government-organised NGOs' organisation that includes The Women's Federation, The Youth League and The Family Planning Association, all of which are offshoots of the Party.

Outside the Party, extremely limited scope exists for the organisation of independent NGOs to deal with issues relating to AIDS. As for international NGOs, they depend principally on the good will and co-operation of the local authorities.

However, according to the Committee on Economic, Social and Cultural Rights, all members of society, including non-governmental and civil society organisations, have responsibilities regarding the realisation of the right to health. States Parties should therefore provide an environment which facilitates discharge of these responsibilities<sup>210</sup>. The accessibility of information comprises the right to research and to receive and disseminate facts and ideas concerning questions of health<sup>211</sup>. As this section illustrates, these elements of the right to health are widely and systematically violated by the Chinese authorities.

### 1- Chinese NGOs

The development of the NGOs is considerably limited by their restricted legal status. In the field of AIDS, it is difficult for them to collaborate with the authorities.

#### 1.1. A restrictive legal status

The status of NGOs is governed by the 1998 Regulations on Social Organisations Registration and Management. This Regulation sets down several limitations on the establishment of NGOs. Under Paragraph 1 of article 10<sup>212</sup>, an organisation must consist of at least 50 members if they work in the private sector or at

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<sup>205</sup> 'Hospital ordered to pay HIV family', Agence France Presse, 9 November 2001.

<sup>206</sup> Mark O'Neill, 'Widower wins pay-out for AIDS-tainted blood', *South China Morning Post*, 4 June 2001.

<sup>207</sup> 'Farmer wins AIDS suit', *Shanghai Star*, 13 May 2004.

<sup>208</sup> Liu Zhiming, 'The chaotic management of blood supplies and the number of Aids-related lawsuits its generated, has already instilled physical and psychological fear of blood transfusion among the Chinese people', *Zhongguo xinwen zhoukan*, 13 August 2003, translation available at [www.china-aids.org](http://www.china-aids.org).

<sup>209</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 59.

<sup>210</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 42.

<sup>211</sup> Committee on Economic, Social and Cultural Rights, *op.cit.*, paragraph 12.

<sup>212</sup> 第十条 :成立社会团体,应当具备下列条件:

(一) 有 5 0 个以上的个人会员或者 3 0 个以上的单位会员;个人会员、单位会员混合组成的,会员总数不得少于 5 0 个. 社会团体登记管理条例, *shehui tuanti dengji guanli tiaoli*, 'Regulations on Social Organisations Registration and Management',

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least 30 members if they are part of a work unit (hence, the public sector). If an organisation consists of individuals from both the private and public sectors, 50 members are required. Put in another way, government officials and retired public servants have a significantly greater capacity to set up an NGO than individuals working in the private sector. According to Paragraph 5 of Article 10<sup>213</sup>, the organisation must maintain a bank account holding a sum of 100,000 RMB for national activities and 30,000 RMB for local activities. Moreover, according to Paragraph 2 of Article 13<sup>214</sup>, an NGO may be refused registration if there is an existing NGO working in the same sector.

The independence of NGOs is extremely limited because they have to gain the support and approval of two bodies. In order to be registered, they must have the support of a work unit to which it must send an activity report every March. Further, the registration must be renewed each year by the Ministry of Civil Affairs or by its decentralised services in the regions which, in May, make their own enquiries about the activities of the NGO<sup>215</sup>. The registration of the NGO can be cancelled on the grounds that the activity does not conform to the initial aims of the association<sup>216</sup>.

The constraints placed on the registration of NGOs cause many of them to opt for business status through registration with the Chamber of Commerce: the procedure takes only one month and costs 10,000 RMB.

## 2.2. A difficult collaboration

### *2.2.1. Coercion and Repression*

Aizhixing is one of the oldest Chinese NGOs working on the prevention of AIDS. Its co-ordinator Wan Yanhai, as discussed above, is a former civil servant. At the beginning of 2002, the association listed online the 170 persons who had died of AIDS in the 2 villages of Henan. In June 2002, UNAIDS report (The United Nations' Aids Report), 'HIV/AIDS: China's Titanic Peril' was published. Based in part on information supplied by Wan, the tone of this report was very critical of the government. Four days after its publication, the Ministry of Civil Affairs asked the Association to demonstrate that it held the 100,000 RMB required for every association conducting activities on a national level. Shortly afterwards, the university which accommodated the NGO and served as its supervising body, Beijing Modern Management College, closed Aizhixing's offices.

From August to September 2002, Wan Yanhai was detained for having divulged State secrets<sup>217</sup>. Once out of prison, Wan had the association registered as a profit-making organisation. In an interview granted to *Dajiyuan* after his liberation, Wan listed the harassment suffered by the association during 2002: '2002 has been a tragic year. Before the arrest, the Chinese government harassed us constantly. Often they would send members of the Ministry of Security to disrupt our work and carry out endless inspections'<sup>218</sup>. Relations between the organisation and the government are still strained. At the beginning of 2004, HIV positive peasants who work for the association were threatened and then encouraged to leave the association to join the Party<sup>219</sup>.

Li Dan began political activity with Aizhixing. In October 2003, he left the association to set up a

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adopted on 25 October 1998, Article 10-1.

<sup>213</sup> 有合法的资产和经费来源，全国性的社会团体有10万元以上活动资金，地方性的社会团体和跨行政区域的社会团体有3万元以上活动资金。'Regulations on Social Organisations Registration and Management', *ibid.*, Article 10-5.

<sup>214</sup> 第十三条：有下列情形之一的，登记管理机关不予批准筹备：

(二) 在同一行政区域内已有业务范围相同或者相似的社会团体，没有必要成立的'Regulations on Social Organisations Registration and Management', *ibid.*, Article 13-2.

<sup>215</sup> 第三十一条：社会团体应当于每年3月31日前向业务主管单位报送上一年度的工作报告，经业务主管单位初审同意后，于5月31日前报送登记管理机关，接受年度检查。工作报告的内容包括：本社会团体遵守法律法规和国家政策的情况、依照本条例履行登记手续的情况、按照章程开展活动的情况、人员和机构变动的情况以及财务管理的情况。'Regulations on Social Organisations Registration and Management', *ibid.*, Article 31.

<sup>216</sup> 第三十三条：社会团体有下列情形之一的，由登记管理机关给予警告，责令改正，可以限期停止活动，并可以责令撤换直接负责的主管人员；情节严重的，予以撤销登记；构成犯罪的，依法追究刑事责任：(二) 超出章程规定的宗旨和业务范围进行活动的；'Regulations on Social Organisations Registration and Management', *ibid.*, Article 33-2.

<sup>217</sup> Albert Chen, *ibid.*

<sup>218</sup> 张丽明，专访万延海：北京爱知行动首次获得官方资助，*zhuanfang Wan Yanhai : beijing aizhi xingdong shouci huode guanfang zizhu*, 大纪元, *dajiyuan*, 29 March 2004

<sup>219</sup> 张丽明, *ibid.*

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community orphanage school in the village of Shuangmiao in the Henan district. The local authorities closed the school in March 2004 on the basis that Li Dan did not have the amount of money legally required to register an association. In vain, the authorities tried to persuade private donors to entrust them with their money. In June 2004, Li Dan had assembled the required sum but the authorities refused to register the association. He managed to get it registered as business enterprise.

On 8 July 2004, the Shuangmiao police allegedly started the rumour that the virus could be spread through mosquito bites and that the presence of HIV positive children constituted a risk to the entire neighbourhood. On 9 July 2004, the school was closed once again and evacuated by more than 100 policemen who had come especially from the Shanghai district. On 9 August 2004, Li Dan met the authorities for final negotiations. On his way to the meeting, he was stopped by the police, beaten and his mobile telephone was confiscated. He was then detained at the police station of Shangqiu for public order offences for having communicated with volunteers of his organisation on the internet<sup>220</sup>.

This was not an isolated case. In February 2004, another community orphanage was closed in the Henan district, with the local official arguing that the protection of orphans was the responsibility of the State, not of NGOs<sup>221</sup>.

*2.2.2. Kept in the background*

At the beginning of December 2004, the Working Committee of the State Council for the Prevention and Treatment of AIDS published a document entitled: 'A call for job applications for national projects to mobilise society in the prevention of AIDS'<sup>222</sup>. This call for applications was not communicated to NGOs such as Aizhixing despite their being very well known and having worked in the field for many years<sup>223</sup>. Nor was it posted on the websites of the Chinese Centre for Disease Control nor of the Ministry of Health.

Moreover, the document placed significant restrictions on NGOs wishing to propose a candidate. It required that the person responsible for the programme have a high level of qualifications<sup>224</sup>, which de facto excludes young people and, in effect, limits candidature to former civil servants.

In 2002, to satisfy the criteria of the International Fund for the Fight against AIDS, Tuberculosis and Malaria, the Chinese Government was obliged to open the Country Coordination Mechanism on AIDS to core NGOs. The Mangrove Support Group was chosen which was founded by a HIV/AIDS sufferer, Xiao Li<sup>225</sup>. Increasingly, the Government is focusing on supporting associations of sufferers, since these groups have very limited independence given the constraints imposed on the registration of NGOs in China.

The repression exerted by the Chinese authorities on individuals and groups engaged in the prevention of and fight against AIDS constitutes a flagrant violation Article 12 of ICESCR. According to the Committee on Economic, Social and Cultural Rights, 'States Parties should respect, protect, facilitate and promote the work of defenders of human rights advocates and other members of civil society with a view to assisting vulnerable and marginalized groups in the realization of their right to health'<sup>226</sup>. What is more, this repression constitutes a violation of the United Nations Declaration on Human Rights Defenders, particularly Article 1 that provides: 'each person has the right, individually or in association with others, to promote the protection and realisation of human rights and fundamental freedoms on the national and international level'<sup>227</sup>.

## **2 - International NGOs**

Until June 2004, China had not enacted any legislation concerning international NGOs. The opening up of

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<sup>220</sup> *qiuzhu aizi jing buqi dengdai, op.cit.*

<sup>221</sup> 王俊秀, 民政部: 关爱之家合情不合法, *minzhengbu: guan aizhijia heqing bu hefa*, Sohu, 25 February 2004.

<sup>222</sup> 国务院防治艾滋病工作委员会办公室, 2004 年国家艾滋病防治社会动员项目指南, *2004 nian guojia aizibing fangzhi shehui dongyuan xiangmu zhinan*, 6 December 2004.

<sup>223</sup> 北京爱知行健康教育研究会, « 对于 2004 年国家艾滋病防治社会动员项目指南的几点意见 », *duiyu 2004 nian guojia aizibing fangzhi shehui dongyuan xiangmu zhinan*, 22 December 2004.

<sup>224</sup> 项目负责人应具有副高级以上技术职称或副处级以上职务

<sup>225</sup> Albert Chen, *op. cit.*

<sup>226</sup> Committee on Economic, Social and Cultural Rights, paragraph 62.

<sup>227</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

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China to international AIDS programmes is a very recent phenomenon.

2.1. Legal status

The Regulations promulgated in June 2004 regarding the registration and management of foundations grant international NGOs legal status in China<sup>228</sup>. This law permits them to open an agency office but they are subject to the same registration rules as Chinese NGOs with the Ministry of Civil Affairs, and must obtain support from a work unit as its supervising body.

In practice, a number of organisations work under a simple agreement with the local authorities. In this way they depend on the good will of the local authorities and their activities can be terminated at any time. They cannot benefit from tax exemptions on imports and they encounter numerous difficulties when opening a bank account and recruiting local personnel.

In December 2003, the French section of Médecins Sans Frontières made an agreement with the Guangxi Centre for Disease Control to set up a clinic in Nanning offering free care to carriers of HIV/AIDS. According to the Assistant Manager of the programme<sup>229</sup>, this opening was made possible by the good relationship which Médecins Sans Frontières maintain with the region. Since 1997, the organisation had worked on a primary health care project in the region. The fact that the French section of Médecins Sans Frontières does not have formal legal status in China has consequences on the work of the clinic. The centre can only open 3 days a week, because personnel from the Centre for Disease Control must be present at all times. Moreover, in 2004, a consignment of antiretroviral medication was stopped at Hong Kong customs on the grounds that the organisation was not registered. It never reached Nanning.

The Belgian section of Médecins Sans Frontières, which opened a clinic offering free care for carriers of HIV/AIDS in May 2003, is now seeking to gain registration as a business in order to maintain its independence.

2.2. Unequal coverage of the population determined by the good will of the regions

International NGOs are spread very unequally throughout the country. The Henan province refused permission to the Belgian section of Médecins Sans Frontières to set up a centre, so they finally elected to commence operations in the neighbouring province of Hubei<sup>230</sup>. Conversely, the Yunnan province has been collaborating since 1998 with numerous international NGOs – including the Australian Red Cross, the Salvation Army Daytop Village, Ford Foundation, Save the Children UK, Futures Group Europe – to implement prevention programmes for high risk groups.

At Chengdu in the Sichuan province, Médecins du Monde has been working since 1998 on a programme of HIV prevention with the migrant population. Since 2002, a project of risk reduction has been undertaken with drug addicts in voluntary detoxification centres. The team has not been able to obtain access to the compulsory detoxification centres.

International NGOs have been authorised to work more on prevention than on treatment and care. At this time, only the French and Belgian sections of Médecins Sans Frontières have set up care programmes and then only for a relatively small number of sick people. In the Belgian section's clinic at Hubei, only 250 people are receiving treatment, whereas for the same programme in Cambodia, 1,500 patients are receiving treatment. In Nanning, the French section's clinic has been able to provide assistance to only 140 patients. Due to Government restrictions, international NGOs have encountered significant difficulties in reaching the sick.

The numerous violations of civil and political rights constitute obstacles to the genuine establishment of a comprehensive and effective public health policy on HIV/AIDS in China. Restrictions on freedom of information, particularly the refusal to gather or divulge of the real number of HIV/AIDS carriers, fuels ignorance of the epidemic and hamper preventative efforts. Repression and discrimination aimed at the sick, the lack of accountability of government officials and a judicial system closely linked to the political sphere,

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<sup>228</sup> 'China Issues New Rules on Public Welfare Foundations', Xinhua, 20 December 2004.

<sup>229</sup> Personal interview, 28 February 2005.

<sup>230</sup> Pierre Haski, *op.cit.*

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prevent sick people from enforcing their rights and accessing care under the policies that are in place. Finally, the quasi-monopoly of the State Party in the social field prevents the development of Chinese NGOs, greater involvement of international NGOs and the participation of the population in defining a comprehensive health care policy.

## **CONCLUSION AND RECOMMENDATIONS**

It is clear, from the foregoing analysis, that the policy response to AIDS has made progress since the end of the 1980's, and in particular since the SARS crisis at the end of 2003. However, there is still a long way to go before China fully respects and implements its international legal obligations under ICESCR.

In fact, despite the first signs of change, the most recent budget allocation for the implementation of the policy on AIDS remains insufficient, according to statements made even by the Ministry of Health<sup>231</sup>. In 2004, the Government allocated 810 millions RMB<sup>232</sup> (97.6 million USD) to combating AIDS, out of a gross domestic product of 13,651.5 billion RMB (1650 billion USD).

The first emergency measures taken by the Chinese government fall far short of the voluntary policy pursued by countries such as Brazil which, in 2004, treated 148,500 sick people<sup>233</sup>. This compares with only 10,000 patients treated in China in the same year<sup>234</sup>. Now China produces 5 generic antiviral drugs compared to 15 in Brazil<sup>235</sup>, which, moreover, is pursuing intensive negotiations with pharmaceutical laboratories to obtain more advantageous tariffs. 'The example of Brazil shows that the distribution of treatments against AIDS is possible in the socio-economic context of the poor countries where a true political will exists'<sup>236</sup>.

China is already the world's largest exporter of raw materials for antiretroviral products, and possesses the knowledge to transform these materials into medication, but the quality of its products is yet to be tested against international standards<sup>237</sup>. The quality of these medicines should be improved. What is more, the Chinese authorities would then be able to use the compulsory licensing system to increase and diversify the production of generic antiretroviral drugs in China.

Furthermore, discriminatory practices and legislation against HIV carriers and those suffering from AIDS constitute a flagrant violation of Paragraph 2, Article 2 of ICESCR. The repressive approach to and restrictions of the rights of these people prevails in a number of provinces. A negative perception is also perpetuated by the media and the authorities. It is a matter of urgency that specific national legislation be adopted, prohibiting discrimination on the basis of HIV/AIDS status.

Information and public awareness campaigns regarding AIDS should also be developed, while methods of preventing the illness - particularly the use of condoms - should be widely encouraged.

Considering the scale of the epidemic, access to treatment must be greatly improved. Adequate medical structures must be set up to provide appropriate care and this should include rural areas and also those held in detention (prisons, compulsory detoxification centres and Reeducation Through Labor camps). Measures should be adopted so that health facilities and services become accessible both to rural populations and migrant workers, whatever their status.

Likewise, it is essential to urgently review the methods of monitoring epidemics, including the relevant statistical tools used for this task, in order to support the development of policy and the allocation of services.

The ban must be lifted preventing journalists from going to Henan, a province particularly affected by the AIDS epidemic. Furthermore, the publication of figures relating to the extent of the epidemic should no longer be considered a State secret. The authorities should immediately put a stop to the repression of individuals and the NGOs fighting against AIDS. Proceedings should be initiated against the civil servants, including those at the highest level, who have been involved, or are currently involved, in the repression of individuals or NGOs working on AIDS or who have concealed the extent of the illness.

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<sup>231</sup> 'More Awareness, Investment Urged in AIDS Fight', Xinhua, 9 April 2004.

<sup>232</sup> 'Human Rights situation improved in China', Xinhua, 12 December 2004.

<sup>233</sup> 'Le Brésil décroche un gros rabais', Action Traitements, 17 January 2004.

<sup>234</sup> Zhang Fujie, *Progress of the China National Free Antiretroviral Therapy Program*, Chinese Center for Disease Control and Prevention, National Center for AIDS/STD Prevention and Control, 12 January 2004.

<sup>235</sup> 'Le Brésil décroche un gros rabais', Action Traitements, 17 January 2004.

<sup>236</sup> Valérie Gas, 'Sauver des vies, c'est rentable', RFI, 16 July 2003.

<sup>237</sup> Cindy Sui, 'China Becomes Major Exporter of AIDS Drug Raw Material to Developing Nations', Agence France Presse, 25 May 2004.

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According to Shen Jie<sup>238</sup>, the Director of the Chinese Centre for Disease Control, heterosexual transmission will be the principal means of AIDS transmission in years to come. Once an illness of the poor and those excluded by modernisation, confined to the least developed provinces of China, AIDS is now spreading in the rich provinces of the South-East through prostitution and the use of injectable drugs. In April 2004, during a national conference on the prevention of HIV/AIDS, Wu Yi, the Deputy Prime Minister and Minister of Health confirmed that China 'is at a critical stage because the epidemic may spread from high-risk groups to normal people'<sup>239</sup>.

The challenge is enormous. It is only by respecting its international obligations, particularly those contained in ICECSR, that the Chinese authorities will be in a position to meet this challenge.

### **Recommendations to the Chinese authorities**

#### Concerning contamination through blood

- to put an immediate end to the impunity of the authorities who have concealed the scale of the AIDS epidemic or who, by negligence or inaction have allowed the transmission of the illness via contaminated blood. This requires the conduct of independent and impartial inquiries and the use of appropriate administrative and legal sanctions against the persons responsible
- to guarantee the right of victims who have contracted AIDS through the government's negligence to adequate compensation, particularly in the form of damages, free treatment and psychiatric care to the extent that resources will allow
- to take proper measures to ensure that legislation prohibiting the sale of blood and providing for the mandatory HIV testing of collected blood is fully implemented

#### Concerning prevention

- to increase the proportion of the State budget allocated to combating AIDS
- as soon as possible to review the methods of monitoring epidemics and establish the relevant statistical tools and processes needed to produce reliable statistics that will enable effective policy planning and resource allocation. These statistics should be disaggregated according to age, sex and region
- to develop information and public awareness campaigns on AIDS and widely encourage the use of means of prevention including the use of condoms

#### Concerning discrimination

- on a national level to adopt a specific law prohibiting all discriminatory practices against carriers and sufferers of HIV/AIDS
- to ensure that health facilities and services are accessible to all, including rural populations and migrant workers, whatever their status

#### Concerning health care

- to repeal measures allowing the official detention of drug addicts in Reeducation Through Labor camps and provide for appeals by persons placed in a compulsory detoxification centres against their will
- to significantly improve access to treatment. Adequate medical structures for care and appropriate treatment should be put in place including in rural areas and for persons held in detention (prisons, compulsory detoxification centres and Reeducation Through Labor camps)
- to guarantee that health care facilities and services are designed in a manner that respects the confidentiality of those involved, including the recipients of HIV tests
- to insure that these tests are, in principle, carried out on a voluntary basis (except when donations of blood and organs are involved), and that confidentiality is respected

#### Freedom of expression, information and association

- to lift the ban on journalists' freedom to conduct research and report on AIDS issues, and in

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<sup>238</sup> 'Heterosexual sex to become major transmission channel for AIDS in China', Agence France Presse, 2 February 2004.

<sup>239</sup> 'Nation in Crucial Period for AIDS prevention', Xinhua, 8 April 2004.

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- particular allow their access to Henan
- to cease considering the dissemination of figures relating to the extent of the epidemic as a State secret and fully respect the freedom of information regarding these statistics, including on the internet
- to put an immediate end to repression of individuals and NGOs working on AIDS issues and to respect their freedom of expression, assembly and demonstration

**Recommendations to the international community**

- to support the efforts of the Chinese authorities towards the full implementation of their obligations under the International Covenant on Economic, Social and Cultural Rights, particularly in relation to the right to health
- during the dialogues on Human Rights with China (especially the EU/China and US/China Dialogues) to raise the violations by the Chinese authorities of the International Covenant on Economic, Social and Cultural Rights in the field of the prevention of and fight against AIDS