



ASIA CATALYST SUBMISSION

TO THE

**SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE
HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

September 26, 2008

Summary

In its attempt to ensure a successful and peaceful Olympic Games, the authorities of the People's Republic of China intensified repression of HIV/AIDS activists in the year preceding and during the event. This crackdown affected human rights defenders working on a broad spectrum of issues, especially impacting nongovernmental organizations (NGOs) working on HIV/AIDS, an area where China's civil society has developed rapidly. This was particularly problematic given the already scarce resources for people living with HIV/AIDS in China. Activists and organizations were forced to cease operations, access to information was blocked, and AIDS advocates were detained, questioned, placed under house arrest, and subjected to other forms of harassment.

While the Olympics and attendant international press attention were a key cause of the repression during 2007-08, there are two other important factors that are causing an increase in the urgency and frequency of protests. One is the lack of second-line AIDS medicines. In especially hard-hit regions, such as Henan province, perhaps thousands of people have built up a resistance to first-line medications provided by the government; second-line drugs, however, are expensive and rare. Growing numbers of people living with HIV/AIDS are beginning to grow ill and die, and this is spurring more protests and petitioning at the grassroots level.

A second important factor is the government's continuing failure to provide compensation to the thousands infected with HIV/AIDS through hospital blood transfusions and through the state-sponsored blood collection program in the 1990s, which spread HIV to thousands who sold their blood (for more information, see Asia Catalyst's report, *AIDS Blood Scandals: What China Can Learn from the World's Mistakes* (September 2007), www.asiacatalyst.org). Courts in Henan province and elsewhere have refused to accept cases, and without a systematic government response to the problem, the protests and unrest in Henan province is likely to continue.

During the year leading up to and during the Beijing Olympics, Asia Catalyst has documented numerous incidents of rights violations, including:

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- Arbitrary detention, arrest, harassment and intimidation of AIDS activists such as Hu Jia, who was charged with “incitement to subvert state power” and sentenced to three and a half years’ imprisonment;
 - Cancellation of AIDS-related events, including conferences and meetings hosted by China Network of People Living with HIV and AIDS, Asia Catalyst, and China Orchid AIDS Project.
 - Internet censorship, including the repeated closure of websites providing information on Hepatitis B and AIDS, as well as a warning to a leading AIDS organization to remove “illegal information” from its website;
 - Forced closure of offices and organizations, including two offices of the China Orchid AIDS Project in Henan Province, which provide support and services to children affected by HIV/AIDS; and
 - Police violence against citizens and activists exercising their rights to petition local and central authorities, and to take legal recourse on AIDS-related matters.

Below, we have included information on the basis of these violations in domestic policy and international human rights law. Lastly, a chronology of events is provided to demonstrate the sustained patterns of abuse from July 2007 to August 2008.

Though the Olympics are over, the situation has not improved. Asia Catalyst has recently received additional information indicating that the crackdown in Henan province, a region especially hard-hit by the epidemic, has continued and arguably intensified after the Olympics ended.

We request that the Special Rapporteur take up these issues with the Chinese government, and request that the Special Rapporteur conduct a mission to China to investigate the lack of access to second-line medications, the lack of compensation to those infected with HIV through the state-run health system, and the continuing restrictions on HIV/AIDS advocates.

Basis of Violations in International Law and Domestic Policy

These incidents are examples of regular citizens and activists attempting to exercise their freedom of expression and association, in advocating on the problems faced by people living with HIV/AIDS. They are advocating for the right to health, as guaranteed by international and domestic law.

Chinese officials have repeatedly committed to promoting the role of NGOs in the fight against AIDS. In 2006, Zhang Weiqing, Minister of the National Population and Family Planning Commission of China, said, "The Chinese government and the NGOs in China

should cooperate like the two wheels of a car and the two wings of a bird. And, in HIV/AIDS prevention, NGOs would play an even greater role." Article 18 of the Regulations on AIDS Prevention and Control (艾滋病防治条例), in effect as of March 1, 2006, state that local people's government and relevant departments should take measures to encourage and support relevant organizations and individuals to carry out educational communication, counseling, and supervision on AIDS prevention and treatment [地方各级人民政府和政府有关部门应当采取措施, 鼓励和支持有关组织和个人对有易感染艾滋病病毒危险行为的人群开展艾滋病防治的咨询、指导和宣传教育].¹

As both the Committee on Economic, Social and Cultural Rights,² and the Special Rapporteur on the Right to Health³ have articulated, the right to health includes both freedoms and entitlements, which "include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health." The harassment of AIDS NGOs by government officials—including official and informal measures—have prevented Chinese citizens from accessing their fundamental rights, as enumerated in the International Covenant on Economic, Social and Cultural Rights (to which China is a State Party), the International Covenant on Civil and Political Rights (to which China is a signatory), the International Guidelines on HIV/AIDS and Human Rights, the UN Political Declaration on HIV/AIDS, and the Declaration on Human Rights Defenders.

Chronology of Incidents

July 2007

- Conference canceled: Asia Catalyst and Beijing-based China Orchid AIDS Project plan an international HIV/AIDS conference in Guangzhou for August 2. On July 26, the organizations are informed that the conference venue had been instructed by the Guangzhou Public Security Bureau to cancel the event. Officials tell organizers that a conference involving AIDS, law, and foreigners is "too sensitive" and cannot be held so close to the official launch of the countdown to the Beijing Olympics on August 8.⁴

¹ State Council of the People's Republic of China [中华人民共和国国务院], The Regulations on AIDS Prevention and Control [艾滋病防治条例], promulgated on January 29, 2006, effective on March 1, 2006, available at: <http://www.chinalaw.gov.cn/jsp/contentpub/browser/contentpro.jsp?contentid=co1630909982>.

² General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, para. 8, E/C.12/2000/4.

³ Report of the Special Rapporteur on the right of Everyone of the Highest Attainable Standard of Physical and Mental Health, Feb. 13, 2003, E/CN.4/2003/58.

⁴ Personal communication with Asia Catalyst (July 2007).

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- Activist detained and questioned: Also on July 26, national security agents detain Li Dan, the director of China Orchid AIDS Project, and hold him for 24 hours. He reports that officials warned him to stop planning the conference.⁵

August 2007

- Conference canceled: The Beijing-based China Alliance of People Living with HIV and AIDS announces that it will hold a meeting in Kaifeng on August 19-20 with representatives of 30 organizations of people living with HIV/AIDS from around Henan. The meeting will be in conjunction with a Henan-based organization of people living with HIV/AIDS. On August 14, the Kaifeng police tell the group to postpone the meeting indefinitely.⁶
- Office closures and threats to activists: On August 15, China Orchid AIDS Project reports that, police ordered the group to shut down its offices in Kaifeng and Ruanjia, Henan. Both Henan-based offices provide support and services to children affected by AIDS. China Orchid AIDS Project is told that their Kaifeng office is illegal, despite the fact that the organization is legally registered with the government and has been working in Henan for many years. They are informed that if the office is not shut down by August 17, office director Zhu Zhauhua will be in personal danger. Police oversee the removal of staff and their belongings, and physically threaten the staff, ordering them to leave the city. Police also shut down the office in Ruanjia village, and five student volunteers and a professor working there are detained and then expelled from Henan.⁷

November 2007

- Activist detained: On November 27, police detain AIDS activist Wang Xiaoqiao of Henan while petitioning the provincial government in Zhengzhou, Henan. She is charged with “extortion.” Wang has been a petitioner and AIDS activist since 2003.⁸
- Website closures: Beijing Yirenping, a health and welfare organization, reports that the Beijing Communications Administration has ordered the shutdown of its website, “In the Hepatitis B Camp Network of China.” The website is a forum in which registered users share information, including information concerning fake hepatitis B medication sometimes sold in China.⁹ Lu Jun, Yirenping’s director, later reports that an official told him that the suspension was due to the Olympic Games.¹⁰

December 2007

⁵ Personal communication with Asia Catalyst (July 2007).

⁶ Human Rights Watch, “Harassment of HIV/AIDS Activists Intensifies”, <http://hrw.org/english/docs/2007/08/20/china16708.htm> (August 2007).

⁷ Personal communications with Asia Catalyst (August 2007)

⁸ “Detained AIDS Activist Quietly Sentenced After Long Delay.” Chinese Human Rights Defenders (Aug. 23, 2008)

⁹ “China: Expanding Crackdown on Health Websites.” Asia Catalyst Press Release (March 6, 2008)

¹⁰ Kwong, Robin. “Group Warns China on Web Crackdown.” The Financial Times (June 25 2008)

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- Activist charged after extended house arrest: On December 27, police detain prominent human rights activist Hu Jia and charge him with “incitement to subvert state power.” Hu Jia had already been under house arrest for more than 200 days. Hu Jia began his career as an AIDS activist in 2001. He is the co-founder of a prominent grassroots organization that helps children living with HIV/AIDS, and former staff of the Beijing Aizhixing Institute of Health Education and Loving Source. Hu Jia has been an outspoken critic of China’s policies regarding HIV/AIDS. His wife, Zeng Jinyan, and their baby both remain under unofficial house arrest, and Zeng Jinyan is no longer able to post to the blog where she chronicled their harassment by police.

January 2008

- Activists physically assaulted: On January 26, activist Li Xige reports that more than 10 people living with HIV/AIDS in Shahe City, Hebei Province, who had been petitioning the local hospital for access to their medical records as evidence that they were infected through tainted blood supplies, are assaulted and beaten by hospital staff and police.¹¹

February 2008

- Two websites suspended: Two websites hosted by AIDS activist Chang Kun, “AIDS Museum,” an AIDS news site, and “AIDS Wiki,” a collaborative site through which AIDS advocates shared news and drafted articles, are shut down by the authorities.¹²

March 2008

- Activists threatened and censored: Several prominent AIDS activists report to Asia Catalyst in personal communications that they have been contacted by the police and warned not to speak about Hu Jia’s case or human rights in general during the Olympics.¹³
- Website censored for “illegal information”: On March 5, the Beijing Aizhixing Institute of Health Education, one of China’s leading independent AIDS organizations, is warned to remove “illegal information” from its website. In a public statement Aizhixing suggests that its website problems could be linked to reports on their site concerning the Hu Jia case.¹⁴
- Websites restored after international attention and protest: After international news reports on the situation, the “AIDS Museum” and “In the Hepatitis B Camp Network of China” websites are allowed to go back online.^{15 16}

¹¹ E-mail statement by Li Xige (January 26, 2008)

¹² “China: Expanding Crackdown on Health Websites.” Asia Catalyst Press Release (March 6, 2008)

¹³ Multiple personal communications between activists and Asia Catalyst (March, 2008)

¹⁴ “China: Expanding Crackdown on Health Websites.” Asia Catalyst Press Release (March 6, 2008)

¹⁵ “The most popular commonwealth website ‘In the Hepatitis B Camp Network of China’ succeed in getting register.” Beijing Yirenping Center (March 19, 2008)

April 2008

- Activist sentenced after unfair trial: On April 3, Hu Jia is sentenced to three and a half years in prison for “inciting state subversion.” Hu Jia’s lawyers allege that the trial was plagued with irregularities.¹⁷ His wife, Zeng Jinyan, is returned to house arrest. International NGO Chinese Human Rights Defenders reports that during Hu Jia’s detention, he was subject to almost fifty lengthy interrogations, some as long as 14 hours, and most of them occurring at night.¹⁸
- Petitioners beaten and arbitrarily detained: Beijing Aizhixing Institute reports that on April 5, police beat eleven people living with HIV/AIDS and their families in Hebei Province. According to Aizhixing, the persons involved heard that Premier Wen Jiabao was visiting Shahe City in Hebei, and they appeared at Shahe’s city hall to explain to the Premier how they were infected by blood transfusions from a local hospital and that their claims for compensation and treatment had not been answered. The petitioners were then beaten by the municipal police, some using electric prods. Witnesses also describe the arrival of a group of unidentified men in white coats, who sprayed the petitioners with a white substance that rendered them unconscious, before removing them from the scene in ambulances. Several of the petitioners were released three days later, but were kept under police surveillance and warned not to discuss what had happened to them.¹⁹

May 2008

- Activist and nun detained: On May 1, Beijing Aizhixing Institute reports that AIDS activist Li Xige and Buddhist nun Miaojue Cizhi are detained in Henan. Li Xige had been advocating for compensation and treatment for people who have contracted HIV/AIDS through blood transfusions since 2004. She had been under house arrest since 2006. Miaojue is a Buddhist nun who had recently launched a campaign of hunger strikes by Chinese activists to protest Hu Jia’s arrest. According to Aizhixing, police first came to Li Xige’s home at 11:30 p.m. on April 30 and asked to inspect Miaojue’s identification, which she refused. At least ten police returned to the home at 3 a.m. on May 1, broke down the door, and detained both women.²⁰
- Activists warned against speaking to U.S. delegation: During a visit of US Congressional leaders to Beijing for a U.S.-China human rights dialogue, Wan Yanhai, Director of the Beijing Aizhixing Institute, reports that police officers from the Beijing Public Security Haidian District Branch arrive at his home on the

¹⁶ Personal communication between Chang Kun and Asia Catalyst (March 11, 2008)

¹⁷ “China: Trial of Leading Activist is a Sham.” Human Rights Watch (March 17, 2008); Yardley, Jim.

“China Dissident Loses Chance to Appeal in Subversion Case.” New York Times (April 18, 2008)

¹⁸ “Hu Jia, Found Guilty for Criticizing Pre-Olympic Abuses, Sentenced to 3 years and 6 Months.” Chinese Human Rights Defenders (April 3, 2008)

¹⁹ “Hebei: Unknown Substance Used to Stop AIDS Petitioners, 11 Arrested.” Beijing Aizhixing Institute (April 10, 2008)

²⁰ “AIDS Activist Li Xige and Buddhist master Miaojue was detained.” Beijing Aizhixing Institute (May 1, 2008)

morning of May 24 and warn him against meeting the delegation. He is followed by the police for several days.²¹ Li Fangping, the lawyer who represents Hu Jia, is similarly warned and followed by the police at this time. The Congressional-Executive Committee on China also reports that Zeng Jinyan, activist and wife of Hu Jia, and Human rights lawyer Zhang Xingshui both say they have been warned by authorities not to meet with the US delegation.²²

June 2008

- Website blocked: Beijing Yirenping issues a press release on June 12 claiming that its website, “In the Hepatitis B Camp Network of China,” which had been moved to an international server, had its IP address blocked on May 29 and was unavailable in China. Yirenping assigned a new IP address to the site which was blocked again on May 31.²³ Director Lu Jun speaks to international press in Hong Kong and describes the multiple shutdowns of their website.²⁴
- Activist threatened before trip to the U.S.: AIDS activist Chang Kun, preparing to travel to New York to participate in the UN High Level Meeting on AIDS, reports that he has received threatening text messages from someone claiming to be a security agent.²⁵
- Activists hide during Olympics: Several prominent AIDS activists report to Asia Catalyst that they plan on going into hiding in the countryside until after the Olympics.²⁶
- Family of PLWHA detained: Aizhixing Institute reports that on June 16, State Security police place an AIDS activist surnamed Zhang under administrative detention in Manchi county, Henan. Ms. Zhang’s son had been infected with HIV at the Manchi County Peoples Hospital several years earlier, and Ms. Zhang was a member of a group of families filing suit against the hospital in the provincial court. The Henan provincial court agreed to hear their case, but Ms. Zhang and others were stopped by local government officials from attending court in provincial capital Zhengzhou on June 2. The local officials informed the petitioners that the government would investigate the complaint and respond by June 16. On June 5, one of Ms. Zhang’s fellow activists, surnamed Nie, was accused of being the “ringleader,” and was subsequently detained and held for 51 hours without charge. On June 16, Zhang and representatives of 8 other families arrive at the Manchi County health department. They are told to wait at a local hotel. Later that day, a large number of police arrive at the hotel. Zhang is

²¹ Personal communications from Wan Yanhai. (May 2008)

²² “Harassment of Beijing-based Activists During the US-China Human Rights Dialogue.” Congressional Executive Commission on China Newsletter (June 2008)

²³ “An open letter to national ministry of industry and information industry complaining that the most popular Hep B patients rights defending website in China was blocked.” Beijing Yirenping Center (June 12, 2008)

²⁴ Kwong, Robin. “Group Warns China on Web Crackdown.” *The Financial Times* (June 25 2008)

²⁵ Personal communication between Chang Kun and Asia Catalyst. (June 2008)

²⁶ Multiple communications between activists and Asia Catalyst. (June 2008)

designated the “ringleader” of the “disturbance,” and she is taken to a local detention center and told she will be held for seven days.²⁷

July 2008

- Activist detained at customs: After returning to China from Hong Kong on July 3, Beijing Yirenping director Lu Jun contacts friends and colleagues and informs them he has been detained by customs authorities in Guangzhou. He is held and questioned for four hours.²⁸

August 2008

- Activists denied permission to leave country: Li Xige and Zhu Bingjin, two Henan AIDS activists offered summer fellowships at Malaysian PT Foundation by Asia Catalyst, report to Asia Catalyst that Henan authorities had refused to release their passports and told them that they were not allowed to leave the country.
- Activist is detained and has personal materials confiscated: On August 5, an Asia Catalyst researcher reported that an activist colleague was detained and had materials taken from him. The activist, who uses the pseudonym Raven, of Blue Skies, a Henan-based support group for people living with HIV/AIDS, had agreed to assist Asia Catalyst with a research project concerning access to treatment by children living with HIV/AIDS. However, when he arrived at the train station in Henan Province police stopped him, accused him of speaking to a foreign journalist, and forced to hand over informational materials. Raven later reported to the researcher that he suspected his email had been interfered with and that the officials had previous knowledge of his plans.²⁹
- Activist taken into detention from house arrest: On August 9, Chinese Human Rights Defenders reported that all contact had been lost with Zeng Jinyan, activist and wife of Hu Jia, since August 7.³⁰ It is later reported that she is returned to her home by the police sixteen days later. She had been removed from her home by police, taken to see her husband at the prison where he is held, and then detained in a hotel in Dalian.³¹
- Activist sentenced: Chinese Human Rights Defenders reports that AIDS activist Wang Xiaoqiao was convicted on extortion charges and sentenced to one year in prison on August 12.³²

²⁷ “Manchi AIDS patients families detained by Public Security Department.” Beijing Aizhixing Institute (June 17, 2008)

²⁸ Personal communications from Lu Jun. (July, 2008)

²⁹ E-mail communication between Raven and Asia Catalyst (August 2008)

³⁰ “Beijing Activist Zeng Jinyan Disappeared on Eve of Olympics Opening Ceremony.” Chinese Human Rights Defenders (August 9, 2008)

³¹ “Return of Zeng Jinyan to Beijing/Ongoing Arbitrary Detention and Ill Treatments of Mr. Hu Jia” World Organization Against Torture (August 26, 2008)

³² “Detained AIDS Activist Quietly Sentenced After Long Delay.” Chinese Human Rights Defenders (August 23, 2008)

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- Petitioners detained: Nineteen people living with HIV/AIDS from Henan's Shangqiu City are detained en route to Beijing, where they plan to petition. A Zhecheng County, Henan Province-based AIDS group reports that on August 14, Shangqiu City State Security officials detained the group and held them at Shangqiu City's Pingtai Prison. Reports of the detention began to spread when family members of the nineteen individuals were contacted and told to send bedding and toiletries to the prison.³³
 - Activist detained at customs and placed under surveillance: On August 16, AIDS activist Duan Jun leaves Hong Kong, where he had been working at Hong Kong-based NGO AIDS Concern, and returns to Shenzhen to renew his travel documents. When he did not return as scheduled, he spoke to friends and informed them that he had been detained by customs for six hours and not allowed to return to Hong Kong. Duan Jun is the founder of AIDS Care Home, an organization in Henan Province providing support to children affected by AIDS. He has also been a representative to the NGO sub-group of the Country Coordinating Mechanism of the Global Fund to Combat AIDS, Tuberculosis and Malaria.³⁴
 - Blood transmission case postponed until after the Olympics: Korekata AIDS Law Center, a project of China Orchid AIDS Projects, filed suit in early 2008 on behalf of a Henan child infected with HIV/AIDS and hepatitis through a hospital blood transfusion. The court refused to accept any cases on HIV/AIDS, so Korekata filed instead on the issue of transmission of hepatitis. In August, the court informed Korekata's legal counsel that there would be no decision on the case until well after the Olympics.

September 2008

- Police harassment of AIDS activists in Henan: In the wake of the Olympics, restrictions remain tight in Henan province. AIDS activist Duan Jun reports that he is repeatedly visited and questioned by police, sometimes several times in one day, and says that Zhu Longwei and Li Xige are facing similarly intense harassment. He says that his email account shows signs of interference.
- Activist is detained and harassed: On September 21, Li Xige says in a public statement that she has come under such intense political pressure that she is contemplating suicide. Li says that she had received an invitation to the NGO meeting for the Country Coordinating Mechanism of the Global Fund in Shenyang City, Liaoning Province beginning on September 18. On the afternoon of the eighteenth, numerous local police and health officials arrived at her house and prevented her from leaving. Her repeated efforts to file suit on behalf of herself and her daughter, infected with HIV through a hospital blood transfusion, have repeatedly been blocked by courts. She reports that six police have been

³³ Personal communication to Asia Catalyst. (August 16, 2008)

³⁴ "China: Free Detained AIDS Activist." Asia Catalyst Press Release (August 28, 2008)

guarding her twenty-four hours a day since August. Her internet and phone lines have been cut off and she has not been permitted to leave her house.³⁵

- NGO representatives blocked from meeting AIDS advocate: On September 22, Wang Long, secretary of the National Association of Chinese Popular AIDS Organizations reports that a group of police surrounded Li Xige's house and prevented him and AIDS advocate Sun Ya from visiting her. According to Wang, police then detained them and forced them to leave the province.³⁶

³⁵ Public statement via e-mail from Li Xige (September 21, 2008).

³⁶ Wang Long, "Henan Ningling Travel Diary", e-mail communication (September 22, 2008).