



中国血液污染事件及处理建议
**China's Blood Disaster:
The Way Forward**

亚洲促进会
Asia Catalyst

惟谦艾滋法律中心
Korekata AIDS Law Center

2012年3月
March 2012

www.asiacatalyst.org

我是感染者，我老婆也是，那我们2个都是病人，我的小孩谁来抚养？我们家就我这一个儿子，我爸我妈怎么办？我是负责养他的人，我这个监护人没有力量来抚养他。

王，湖北

I'm a person living with HIV/AIDS, my wife is too; so we're both ill, and who's going to raise our child? I'm an only child, so what are my mom and dad supposed to do? I'm the person who's supposed to raise my kid, but I'm too weak to look after him.

Wang, Hubei

中国血液污染事件及处理建议
China's Blood Disaster: The Way Forward

2012年3月
March 2012

目录
Table of Contents

摘要 Summary	4
I 介绍 Introduction	7
II 背景：中国血液污染概况 Background: Origins of China's Blood Disaster	10
III 研究结果 Research Findings	21
IV 政策建议 Policy Recommendations	67
致谢 Acknowledgments	79

摘要 Summary

20世纪90年代，在中国中部的一些省份，比如河南，由于有偿献血和医院输血，数以万计的人感染了艾滋病。在非政府组织和记者的努力下，这场灾难终于公布于众。中国政府也采取行动整顿血液行业，取缔和关闭了大量非法血站，并建立了自愿无偿献血的制度。

In the 1990s, thousands of people in China's central provinces, including Henan, were infected with HIV through state-sponsored, for-profit blood-selling programs and hospital blood transfusions. Once NGOs and journalists brought the disaster to light, the Chinese government worked to bring the situation under control by banning the sale of blood and replacing it with a system of voluntary and unpaid blood donations.

但是，这场灾难给数万名受害者带来身心重创，以及社会、经济等方面的后果，并没有得到解决。因此，在过去十多年中，很多血液污染的受害者们试图寻求公正，包括经济上的赔偿。2011年12月，在北京召开的一个论坛上，一些受害者讲述了自己的痛苦经历。随后，一个由律师和专家组成的工作组起草了一份提案，呼吁政府建立国家补偿基金，为部分受害者提供补偿。

However, the blood disaster in China has created social and economic problems for these thousands of victims that have yet to be fully addressed. For the past decade, many blood disaster victims have sought some public acknowledgment of the harm that was done, as well as financial compensation. In December 2011, many spoke of their suffering at a government forum in Beijing. Subsequently, a group of policy advisors and lawyers drafted a proposal for the government that recommended establishing a national compensation fund to compensate some victims.

本报告展现了受害者的生存状况和需求，希望能够有助于政府制定一个全面的补偿计划。我们发现，受害者很难通过法律或上访等现有的渠道获得补偿，中国急需建立一个补偿基金。

This report provides evidence that may help the government to draft a comprehensive compensation plan. It documents the urgent need for compensation and the failure of existing routes to redress, such as the judicial system and the petitioning system.

本报告根据惟谦艾滋法律中心（以下简称惟谦）2011年4月至10月在中国进行的调查和信息收集而写成，亚洲促进会为本研究提供了培训和技术支持。惟谦的两名研究员前往北京、河北、河南、湖北、山西等地进行了采访和实地调研。我们共采访了37人，包括受害者、专家和非政府组织。此外，惟谦还收集了30个艾滋病相关案件的资料。

The report is based on research conducted in China by Korekata AIDS Law Center, with training and support from Asia Catalyst, from April through October 2011. Two researchers from Korekata conducted field research and interviews in Beijing, Hebei,

Henan, Hubei, Shanxi and other areas. We conducted a total of thirty-seven interviews with victims, experts and NGOs, and drew on Korekata AIDS Law Center dossiers to examine another thirty cases in which people were infected with HIV through the blood disaster.

我们的研究发现，司法系统无法提供救济，受害者也很难通过法律途径获得补偿。一些地方法院拒绝受理艾滋病相关的案件。即使在极少数的情况下，法院受理了案件，在案件审理的过程当中也会出现无法逾越的障碍，使得案件难以进行。这些艾滋病赔偿案件可能会因为外部的压力被中止审理或者搁置，法院也可能拖延数年才做出判决。律师们发现，很难提供有力的证据来证明输血与艾滋病感染之间的因果关系。特别是在一些情况下，医院拒绝提供医疗记录文件。在少数案例中，受害者获得了胜诉，但他们也会发现判决的执行非常困难。通过上访和申诉，一些受害者与医院或政府签订了协议、获得了少量赔偿。

Our research finds that the judicial system is currently not providing redress and compensation to blood disaster victims. Some courts have refused to accept any lawsuits relating to HIV transmission. Even in rare cases where a lawsuit is accepted, it encounters numerous procedural obstacles. Courts may take years to issue a final judgment, if the case is not suspended or postponed due to political pressure from above. Lawyers have found it difficult to provide persuasive evidence of the causal relationship between blood transfusion and HIV transmission, especially in cases where hospitals have destroyed their records. Even in the rare cases where plaintiffs win a case, they have found it difficult if not impossible to implement a judgment. Through petitioning and protesting, some victims are able to sign private agreements with either hospitals or local governments to settle for small sums of compensation without going to court.

正如本报告所示，不同的地方政府和医院在对待受害者的要求方面，政策并非一致。受害者们获得的赔偿是不平等的、任意的。

As this study shows, provinces and hospitals have had inconsistent policies toward victims' requests. Where they have occurred at all, payouts have been arbitrary and uneven.

本报告在访谈和个案研究的基础上，参考了国际法律准则，并借鉴了他国应对类似血液灾难的经验，针对制定国家补偿政策提出了具体的建议。我们的建议包括：

This paper draws on case studies and interviews, as well as international legal standards and the response of other countries to similar blood disasters, to make detailed recommendations for a comprehensive national-level compensation policy. Our recommendations include:

- 对受害者的人数和范围展开全面、独立的调查。调查的对象应当包括有偿献血者、通过输血或血液制品而感染的受害者，以及通过这些受害者而感染的伴侣和儿童；

- 针对基金建立和运行的具体建议，包括申请人的资格、补偿数额，以及公民社会的参与。

- 政府应当向受害者正式道歉。

- A full and independent investigation to establish a reliable estimate of the number of victims, including people who sold blood to state-run facilities, recipients of contaminated hospital blood transfusions, and their children and partners who were infected through secondary transmission;
- Specific and detailed recommendations on the establishment and operation of the fund, including eligibility of applicants, compensation amounts, and civil society participation;
- An official apology to the victims.

我们认为，建立一个全面的补偿基金，解决中原地区的受害者家庭的沉重负担，中国实际上也是在为权利侵害的救济建立新的国际标准，并重新树立自己的全球领导力。

By establishing a truly comprehensive compensation fund, we believe China has the opportunity to exercise global leadership, to set a new international standard for the human right to redress, and to create a path to the future for thousands of families who are living in hardship in the central plains.

I 介绍 Introduction

研究方法

Research Methods

本报告根据惟谦 2011年4月至10月在中国进行的调查和信息收集而写成，亚洲促进会为本研究提供了培训和技术支持。惟谦的两名研究员前往北京、河北、河南、湖北、山西等地进行了采访和实地调研。

This report is based on research conducted in China by Korekata AIDS Law Center from April through October 2011, with support and training from Asia Catalyst. Two researchers from Korekata conducted field research and interviews in Beijing, Hebei, Henan, Hubei, Shanxi and other areas.

惟谦一共访谈了31名血液污染的受害者，其中13人为男性，18人为女性。受害者当中15人是通过医院输血感染艾滋病的受害者，5人是通过有偿献血感染的。另外11人是受害者的家人，这11人中有4人是艾滋病感染者，也是二次传播的受害者。我们在调查中发现，对于血液污染所带来的灾难，受害的感染者及其家庭同样承受了巨大的痛苦。

Korekata interviewed thirty-one victims of the blood disaster, including thirteen men and eighteen women. Fifteen of the thirty-one victims were infected with HIV as a result of hospital blood transfusions, and five as a result of blood donations. The other eleven people were family members of those victims, and four of those family members were also infected with HIV through secondary transmission. In the course of our investigation, we found that the blood disaster brought economic and emotional suffering to both those infected with HIV/AIDS and to their family members, so we consider all those we interviewed to be victims of the disaster.

另外，惟谦还采访了一名学者，两名多年从事血液污染赔偿诉讼的律师，以及两家非政府组织。为了了解政府对这一问题的看法，惟谦采访了一名卫生部的退休官员。惟谦也尝试采访现任官员，但没有成功。

In addition, we interviewed a scholar with expertise on the disaster, two lawyers with many years of experience in litigation of the blood disaster, and two related NGOs. In order to understand the government's perspective, Korekata interviewed one retired government official. Our requests to interview government officials still serving in office did not meet with success.

所有的被访者都被告知研究的目的、访谈的内容、信息的收集以及用途。每个采访都获得了被访者的知情同意，并签署了知情同意书。为了保护被访者，惟谦将所有被访者的真实姓名隐去。除了接受采访，一些被访者还向惟谦提供了文字材料，包括诉讼文书、医院证明、申诉材料等。

All of those interviewed were informed of the research purpose, content of the interviews, method of collecting information, and how it would be used. Each interviewee received and signed an informed consent agreement. In order to protect those interviewed, we removed all names of interviewees. In addition to the interviews, some of those we met also shared documents with us about their cases, including court documents, hospital proof, appeal documents and so on.

除了访谈，惟谦还收集了血液污染受害者的诉讼个案，一共有 30 个。这些资料包括诉讼文书、调解协议、申诉和上访材料等。与此同时，惟谦也收集了关于血液污染及相关案件的媒体报道，共有 67 则。

In addition to its interviews, Korekata AIDS Law Center also reviewed cases from its own files, a total of thirty additional individuals infected with HIV through blood and blood products. These files include court documents, mediation agreements, appeals, and petition materials. At the same time, Korekata collected another sixty-seven cases of individuals reported in the media.

由于时间和资源所限，本研究只访问了血液污染事件比较严重的几个省份。虽然采访的受害者只是众多受害者很小的一部分，但他们来自这一群体，代表这一群体，集中反映了血液污染受害者们维权和生存的状况。我们的研究认为，政府应当对血液污染的影响人数和范围开展独立的调查。同时，惟谦将会在研究结束之后继续收集受害者的维权个案，以便记录和展现这场灾难的全貌，为政府研究该问题和政策制定提供依据。

Due to limited time and resources, we were only able to conduct research in provinces that were seriously affected by the blood disaster. Although the victims we interviewed represent only a small portion of those affected, we found that they represented the rights problems and living conditions of the larger group of blood disaster victims. Based on our research, we find it is critical that the government conduct further research into these issues. Korekata will continue to collect cases from other victims in order to create a more complete record of the disaster, and to enable the government to study the issue and use this data as a basis to formulate new policies.

在本研究中，惟谦和亚洲促进会通过以下方式合作：亚洲促进会为惟谦提供研究和报告撰写的指导，惟谦进行调查并草拟大部分报告，亚洲促进会撰写报告的介绍和国际准则部分，政策建议部分由两个机构在参考中国和国际法律准则的基础上共同撰写。两个机构针对各自撰写的部分相互进行校定。

Our two organizations cooperated in the following ways: Asia Catalyst provided coaching to Korekata AIDS Law Center in research and report-writing skills. Korekata conducted all the field research and drafted most of the report, while Asia Catalyst drafted the introduction, bibliography, and the sections that reference international standards. Our two organizations drafted the policy recommendations together, while consulting Chinese and international legal standards. Each organization edited the sections written by the other.

本报告由亚洲促进会翻译成英文，以飨国际读者。但所有内容以中文为准。Asia Catalyst assisted in translating the report into English for the convenience of international readers. However, in all instances, the Chinese text should be the standard of reference.

II 背景：中国血液污染概况

Background: Origins of China's Blood Disaster

中国在1985年出现了第一例艾滋病，但一直到90年代中期，艾滋病疫情才因为不安全的采血方式而在一般人群中蔓延。在中国中部的一些省份，有数以万计的人通过有偿献血而感染艾滋病。尽管艾滋病毒最初只在有偿献血者当中传播，但受污染的血液和血液制品让病毒迅速在全国蔓延开来。同时，通过母婴传播和性传播，一些受害者的伴侣和孩子遭受了艾滋病毒的侵袭。

Although HIV/AIDS first appeared in China in 1985, it was not until the mid-1990s that risky blood collection practices propelled the epidemic into the general population. Thousands of residents in the central provinces contracted HIV through commercial blood donation. While commercial blood-selling was the initial mode of transmission in this region, HIV quickly spread across the country via the use of tainted blood and pharmaceutical blood products by hospitals, and again through transmission to sexual partners and children who were born to the first group of victims.

这场血祸究竟导致多少人感染艾滋病，至今仍然不清楚。通过血液途径感染艾滋病的受害者绝大多数为农村居民，他们无力持续支付昂贵的治疗费用，以及维持自己和家庭的生活。同时，受害者们在学校、医院或其他公共场所都面临着严重的污名和歧视。

The exact number of individuals who contracted HIV in this blood disaster remains unclear. Most of those who contracted HIV via commercial blood donation were farmers or rural residents who face severe limitations in their ability to support themselves and their families, or pay for treatment. At the same time, they face stigma and societal discrimination in schools, hospitals, and other public spaces.

本章将回顾中国血液污染的缘起和发展，而补偿问题，以及建立补偿基金的迫切需求，则是本报告的重点。

This introduction will provide a brief overview of the origins and the development of the HIV blood transmission disaster, providing the background to the need for compensation and redress, the focus of this report.

灾难的缘起：有偿献血

The Origins of the Disaster: Commercial Blood Donation

血液污染的发生，有其社会和经济因素。改革开放以来，中国确立了以建立社会主义市场经济作为改革目标，全国掀起了发展经济的热潮。经济改革也带动了卫生体制的改革。1989年，国务院转发了《关于扩大医疗服务有关问题的意见》¹，该文件进一步提出通过市场化来调企业及相关人员积极性，从而拓

¹卫生部、财政部、人事部、国家物价局、国家税务局，《关于扩大医疗卫生服务有关问题的意见》。颁布日期：1989年1月15日。

宽卫生事业发展的道路。

In many ways, the blood disaster is the result of colliding social and economic forces. When the “reform and opening” of China’s economic system began, authorities set as one goal of the reform the establishment of a “socialist market economy,” and the country embarked on rapid economic development, and social reforms that included changes to the health system. In 1989, the State Council promulgated Ideas on the Expansion of Medical Services and Related Issues, which further sparked the national shift towards marketization of health services.²

实际上，在改革过程中，政府对医疗卫生支出的比重大幅度下降。从1985年到2002年，政府投入的份额不断下降，17年间减少了23.4%，每年降低近1.4%，其中20世纪80年代后期和90年代前期下降速度最快。因此，绝大多数的公立医疗卫生机构，不得不通过各种“创收”活动来维持自己的运转。³

During this period, the reform process included drastic reductions in government health spending. From 1985 until 2002, the government share of health investment dropped sharply, by twenty-four percent in a seventeen year period, amounting to a reduction each year of nearly 1.4 percent. The period between the late 1980s and early 1990s saw the most rapid reduction of investment. As a result, the majority of public health agencies had no other choice but to engage in income-generating activities in order to survive.⁴

90年代初期，中原地区的卫生部门大规模成立血站，并在经济落后的地区推广有偿献血。由于来钱非常快，这些地区经济拮据的农民积极响应政府的号召，到血站进行有偿献血。⁵他们一般每周卖两次血，而有些人则通过使用假名或者到别的血站，有偿献血的次数会更多。有偿献血者的年龄在20到50岁之间，现有的记录表明，超过60%的献血者为女性。⁶而在一些省份，主要的献血者为男性，男性献血者的数量远远超过女性。有偿献血者通常献800cc的血液，获得的报酬为20至200元之间，而最低报酬仅为8元。⁷

Thus, in the early 1990s, local Chinese health authorities in the central plains area

² Ministry of Health, Ministry of Finance, Ministry of Personnel, State Price Bureau, State Taxation Administration. Views on the Expansion of Health Services. January 15, 1989.

³ 丁宁宁，《经济体制改革与中国的医疗卫生事业——中国医疗卫生体制变化的经济、政治、社会背景》，乌有之乡（网站）。访问日期：2011年10月9日，网址：<http://www.wyzxsx.com/Article/Class4/201107/251016.html>。

⁴ Ding Ningning, “Economic Reform and China’s Medical and Health Industry: The Changing Economic, Political and Social Background of China’s Changing Medical and Health System.” Utopia [website]. Visited October 9, 2011: <http://www.wyzxsx.com/Article/Class4/201107/251016.html>.

⁵ He, Aifeng. “Deadly Secret: AIDS in China,” *CBC News*, 2006年8月1日，访问时间：2007年7月18日，网址：<http://www.cbc.ca/news/background/aids/aids-china.html>。Also Erwin, Kathleen. “The Circulatory System: Blood Procurement, AIDS, and the Social Body in China,” *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159.

⁶ Erwin, Kathleen. “The Circulatory System: Blood Procurement, AIDS, and the Social Body in China,” *Medical Anthropology Quarterly* 20, 2 (2006年6月): 140. 另《我区艾滋病感染者主要是农民 通过血液传播》，《北方新报》2006年11月9日，访问日期：2011年2月4日，网址：

<http://news.163.com/06/1108/23/2VEOH52H0001124J.html>。

⁷ Erwin, Kathleen. “The Circulatory System: Blood Procurement, AIDS, and the Social Body in China,” *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159; Wu, Zunyou, Zhiyuan Liu, and Roger Detels. “HIV-1 Infection in Commercial Plasma Donors in China,” *The Lancet* 346, 8966 (July 1995): 61-62. 在一份关于河南东湖的报告中，这个边缘的小村庄也被这场灾难席卷，每位有偿献血者能挣大约5美元。参看 Cohen, Jon. “An Unsafe Practice Turned Blood Donors into Victims,” *Science* 304, 5676 (2004年6月): 1438-1439.

engaged in large-scale establishment of blood banks, and promoted blood donation in economically-disadvantaged provinces. Lured by the opportunity to earn some quick money, many cash-strapped farmers actively participated in the state-sponsored project of commercial blood collection.⁸ Individuals typically donated twice a week, with some donating more often, either under pseudonyms or by visiting more than one blood collection center. Most donors were between twenty and fifty years of age.⁹ Typically, individuals gave 800 cc of blood, and while some individuals were compensated as little as eight CNY [approx. USD\$1.27], each donation was typically worth twenty to 200 CNY [approx. USD\$31.75].¹⁰

有偿献血者受利益的驱使而卖血，但这同时也是一些地方政府鼓励的结果。在当时的情况下，卫生部认为国内的血液很大程度上是安全的，不像外国的血液那样受艾滋病毒的污染。¹¹

Chinese blood donors were prompted by financial incentives, but also encouraged by some local authorities, who believed that a native blood supply was safe, and would not be tainted by HIV and other blood-borne viruses as foreign blood supplies had been.¹²

90年代早期，中国国内的卫生专家以及世界卫生组织开始提醒中国政府，国内血液供应可能存在危险。¹³但像其他国家一样，中国在回应这些警告时行动非常迟缓。直到1995年，通过血站蔓延的艾滋病疫情无法再掩盖，当局才关闭所有的商业血站，并开始对血浆进行加热处理。¹⁴2005年，中国卫生部颁布了《血站管理办法》，建立了由中央指导和控制的血液采集系统，并对血液收集进行监督和质量控制。而在该办法颁布之前，一些地方政府就已经采取行动规范血液的采集。¹⁵

⁸ He, Aifeng. "Deadly Secret: AIDS in China," *CBC News*, August 11, 2006, accessed on July 18, 2007, <http://www.cbc.ca/news/background/aids/aids-china.html>. Also Erwin, Kathleen. "The Circulatory System: Blood Procurement, AIDS, and the Social Body in China," *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159.

⁹ Erwin, Kathleen. "The Circulatory System: Blood Procurement, AIDS, and the Social Body in China," *Medical Anthropology Quarterly* 20, 2 (June 2006): 140. However, in some provinces, such as Inner Mongolia, HIV-positive men outnumbered HIV-positive women. See "我区艾滋病感染者主要是农民 通过血液传播 [AIDS is Mainly Spread through Tainted Blood among Peasants in this Region]," *Northern Papers*, November 9, 2006, accessed on February 4, 2011, <http://news.163.com/06/1108/23/2VEOH52H0001124J.html>.

¹⁰ Erwin, Kathleen. "The Circulatory System: Blood Procurement, AIDS, and the Social Body in China," *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159; Wu, Zunyou, Zhiyuan Liu, and Roger Detels. "HIV-1 Infection in Commercial Plasma Donors in China," *The Lancet* 346, 8966 (July 1995): 61-62. In a report about Donghu, a remote village in Henan that also suffers from the catastrophe, each blood donation was worth \$5 US dollars. See Cohen, Jon. "An Unsafe Practice Turned Blood Donors into Victims," *Science* 304, 5676 (June 2004): 1438-1439.

¹¹ 亚洲促进会报告，《他山之石：国际血液供应污染事件处理经验》，纽约，2007年。

¹² *AIDS Blood Scandals: What China Can Learn from the World's Mistakes*. New York: Asia Catalyst Report, 2007.

¹³ *Ibid.*, pp.680-1. See also Hutzler, Charles. "Blood Problems, Poverty Point to AIDS Outbreak in China," *Associated Press*, November 5, 1995, summary accessed on July 26, 2007, <http://www.casy.org>; *Associated Press*, November 5, 1995, summary accessed on July 26, 2007, <http://www.casy.org>; "Expert Says 'High Risk' of Contracting AIDS in China," *Zhongguo Tongxun She* (Hong Kong), February 19, 1993, summary accessed on July 26, 2007, <http://www.casy.org>; "To Raise Awareness of AIDS," *Xinhua News Agency*, December 1, 1994, summary accessed on July 26, 2007, <http://www.casy.org>.

¹⁴ Goubran, H.A., T. Burnouf, and M. Radosevich. "Virucidal Heat-treatment of Single Plasma Units: A Potential Approach for Developing Countries," *Haemophilia* 6, 6 (November 2000): 597-604.

¹⁵ 《血站设艾滋病初筛室》，重庆晚报，2004年12月30日，访问日期：2011年2月4日，网址：

In the early 1990s, China began to receive warnings from its own health experts and from the World Health Organization (WHO) about the risk to the blood supply.¹⁶ But like other countries, China was slow to act on these warnings. It was not until the spring of 1995, when HIV infection via blood centers became obvious, that authorities closed all commercial plasma centers and mandated heat-treatment of plasma.¹⁷ In 1998, the Law on Blood Donation went into effect, which prohibits all profit-based blood collection. In 2005, China's Ministry of Health implemented the Regulation on the Management of Blood Stations, mandating a centralized system of blood collection, virus inspection, and quality control; some local governments already had pilot programs in place before the regulation was passed.¹⁸

疾病的蔓延：医院输血

Hospital Blood Transfusions: Spread of the Disaster

不安全的血液采集方法通过两种途径传播艾滋病毒。¹⁹首先，艾滋病毒在血液分馏的过程中传播。采血者主要的目的在于将全血分离出血浆，用于制造血液制品。因为每位献血者的血浆产量不会太高，因此采血者会将多名献血者的血液收集在一起，再一起经过离心机，以分离血浆。如果没有进行筛查，只要有一份血液感染了病毒，就会导致上千份的血液制品污染。而这些血液制品，会输送和售卖至全国的医院和患者使用。

Unsafe collection methods thus facilitated the spread of HIV in two ways.²⁰ First, HIV was spread through the blood fractionation process, in which plasma is separated out from whole blood to create blood products. Since the plasma yield is not high in each individual donation, blood must be pooled from many donors before it can be run through the centrifuge. Without proper screening, one contaminated blood donation can contaminate thousands of units of blood product, which is then used by hospitals.

第二，血站通常会将分离出来的血液回输，这是为了防止献血者贫血，同时也是为了使献血者恢复得更快，能尽快再次献血。²¹由于采血者将收集到的

<http://news.sina.com.cn/o/2004-12-30/03014665105s.shtml>。

¹⁶ Ibid, pp.680-1. Also Hutzler, Charles. "Blood Problems, Poverty Point to AIDS Outbreak in China," *Associated Press*, November 5, 1995, summary accessed on July 26, 2007, <http://www.casy.org>; "Expert Says 'High Risk' of Contracting AIDS in China," *Zhongguo Tongxun She* (Hong Kong), February 19, 1993, summary accessed on July 26, 2007, <http://www.casy.org>; "To Raise Awareness of AIDS," *Xinhua News Agency*, December 1, 1994, summary accessed on July 26, 2007, <http://www.casy.org>.

¹⁷ Goubran, H.A., T. Burnouf, and M. Radosevich. "Virucidal Heat-treatment of Single Plasma Units: A Potential Approach for Developing Countries," *Haemophilia* 6, 6 (November 2000): 597-604.

¹⁸ "血站设艾滋病初筛室 [Preliminary HIV/AIDS Test Facilities Are Established at Blood Stations]," *Chongqing Evening News*, December 30, 2004, accessed on February 4, 2011, <http://news.sina.com.cn/o/2004-12-30/03014665105s.shtml>.

¹⁹ 高耀洁, 《高洁的灵魂: 高耀洁回忆录》, 香港明报出版社, 2010年。

²⁰ Tucker, Joseph D., and Charles C. Lin. "Poverty and the Spread of Bloodborne Disease in Central China," *Journal of Infectious Diseases* 193, 6 (March 2006): 902-903. Also see Gao, Yaojie. 高洁的灵魂: 高耀洁回忆录 [A Virtuous Soul: The Memoir of Dr. Gao Yaojie]. Hong Kong: Mingpao, 2008/2010.

²¹ 更详细的信息请查看亚洲促进会报告, 《他山之石: 国际血液供应污染事件处理经验》, 纽约, 2007年。

血液会一起通过离心机，取走血浆之后再将剩余的成分回输，很多人通过这种危险的方式感染了艾滋病毒。根据很多中国学者的研究，有偿献血者的感染率达到10%—20%。但西方的专家称估计的感染率高达80%。²²

Secondly, blood collection centers often re-injected blood back into donors to reduce the likelihood of anemia, thus enabling them to recover faster and donate blood again.²³ The blood that donors received had been pooled in the centrifuge, and many were infected with HIV through this risky practice. According to some Chinese researchers, the rate of HIV transmission among former paid blood donors ranged from ten percent to twenty percent, but Western experts have estimated rates up to eighty percent.²⁴

受到污染的血液被送往其他地方的医院，使更多的人感染。在中国，医院的经济负担由于中央政府对公共卫生系统的投入不足而被放大。医院，特别是农村地区的医院，必须通过其他方式赚取利润以维持医院的日常运转，比如输血。同时，合法的血液和血液制品供应有限，所以当地医院和诊所会通过“血头”找来有偿献血者，而不经任何检测。²⁵ 医院也会从其他地方购买血液，而这些血液也可能是不安全的。²⁶

The contaminated units of blood and plasma were distributed to hospitals around the nation, infecting thousands of others. In China, the economic burden on hospitals was exacerbated by the central government's underfunding of the public

²² Erwin, Kathleen. "The Circulatory System: Blood Procurement, AIDS, and the Social Body in China," *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159. 一些中国学者也尝试进行统计研究，以测量有偿供血者的感染率。值得注意的是，尽管中国学者报告的感染率远低于西方学者报告的报告数，但他们也承认曾经向血站卖血的人的感染率要比一般人高很多。请看 Ji, Guoping, Roger Detels, Zunyou Wu, and Yueping Yin. "Correlates of HIV Infection among Former Blood/Plasma Donors in Rural China," *AIDS* 20, 4 (February 2006): 585-591; 王百锁、李翔、邢爱华、王敬军、赵强、李玉珍、李月友、刘克辉《某地有偿供血人群HIV感染流行病学调查》，《中国艾滋病性病》2003年03期，134—135页；魏卫、郑锡文、王哲、徐杰、黄石、崔卫国、李晓光、屈建华、汪燕，《豫南某县献血浆人群HIV感染流行病学分析》，《河南预防医学杂志》2003年02期，65—66页；薛芳辉《某地既往有偿供血人群HIV感染流行病学调查分析》《实用预防医学》2006年03期。

²³ For additional details on this process, see: *AIDS Blood Scandals: What China Can Learn from the World's Mistakes*. New York: Asia Catalyst Report, 2007.

²⁴ Erwin, Kathleen. "The Circulatory System: Blood Procurement, AIDS, and the Social Body in China," *Medical Anthropology Quarterly* 20, 2 (June 2006): 139-159. Some Chinese researchers also tried to conduct statistical research to measure prevalence among commercial blood donors. Noticeably, while the HIV prevalence rate is much lower than the rate reported by western researchers, Chinese scholars still recognize that the infection rate is much higher for people who formerly sold their blood to the blood station. See Ji, Guoping, Roger Detels, Zunyou Wu, and Yueping Yin. "Correlates of HIV Infection among Former Blood/Plasma Donors in Rural China," *AIDS* 20, 4 (February 2006): 585-591; Wang, Baisuo, Xiang Li, Aihua Xing, Jingjun Wang, Qiang Zhao, Yuzhen Li, Yueyou Li, and Kehui Liu. "某地有偿供血人群HIV感染流行病学调查 [Epidemiological Survey of HIV Prevalence among Blood donors in One District of Shaanxi Province]," *Chinese Journal of AIDS & STD* 9, 3 (June 2003): 134-135; Wei, Wei, Xiwen Zheng, Zhe Wang, Jie Xu, Shi Huang, Weiguo Cui, Xiaoguang Li, Jianhua Qu, and Yan Wang. "豫南某县献血浆人群HIV感染流行病学分析 [An Epidemic Analysis of HIV Infection among Paid Plasma Donors in One County of South Henan Province]," *Henan Journal of Preventive Medicine* 14, 2 (2003): 65-66; Xue Fanghui. "某地既往有偿供血人群HIV感染流行病学调查分析 [Epidemiological Survey and Analysis of HIV Prevalence among Former Paid Blood Donors in a Certain District of Southeast of Henan]," *Practical Preventive Medicine* 13, 3 (June 2006): 617-618.

²⁵ 高耀洁，《中国艾滋病病—高耀洁医生的最新证言与揭露》，天地图书有限公司，2008。

²⁶ 张建国，《邢台：盖子还能捂多久》，中国医药报，2004年11月29日，访问日期：2011年2月18日，网址：http://www.360doc.com/content/05/1004/21/142_16817.shtml.

health care system. Hospitals, particularly those in rural areas, were required to seek profit-generating procedures, such as blood transfusions, to maintain their daily operations. At the same time, there was a shortage of legal blood and blood products, so local hospitals and clinics used “blood heads,” or blood brokers, who brought in donors off the streets without any prior screening.²⁷ Hospitals purchased blood from other parts of the country that may have also been unsafe.²⁸

第三，一些地方政府部门对疫情的隐瞒导致了灾难的扩大。大部分的血液污染事件发生在二十世纪九十年代，并且很早开始就已经发现有输血感染艾滋病的个案。如果当地医院或卫生部门在发现输血感染艾滋病的时候，能及时告知曾经有过输血或有偿献血经历的人及时检测，那么就能避免受害者在不知道的状况下将病毒传染给其他人，挽救很多生命。

The third factor in the spread of the disaster was the cover-up by some local authorities. The disaster largely took place in the 1990s, and early on, cases came to light that suggested blood transfusions were spreading HIV/AIDS. If local hospitals or health bureaus had told all those who had received blood transfusions to take tests for HIV at the time when they first became aware of these cases, it would have been possible to avoid much of the secondary transmission of HIV to other partners and family members and could have saved many lives.

在一些情况下，医院没有告知输用受污染血液的患者感染艾滋病的危险。在接受我们访问的31名受害者当中，有26名是在病情危急、四处求医无效的情况下才发现是感染了艾滋病。而有些受害者，发现之后甚至没有来得及治疗，就已经去世。

In some cases, hospitals failed to inform recipients of contaminated blood of the risk of their exposure to HIV. Of the thirty-one victims we interviewed, twenty-six were in critical health, having sought medical care from multiple clinics before finally discovering they were HIV-positive. Some victims found out they were HIV-positive so late that they were unable to obtain timely treatment, and died as a result.

接受采访的一名受害者称，当地最早1995年就发现有人在医院因为输血而感染艾滋病，但一直到2008年，当地还有新发现的输血感染受害者。

One person we spoke with in Hubei alleged that as early as 1995, people in the local hospital had contracted HIV through blood transfusions, but because this hospital did not test for HIV or warn patients of the risk, new cases of transmission of HIV through blood transfusions continued to appear as late as 2008.

他说：“如果在我们的镇上已经发现艾滋病的时候，政府马上把所有在这个医院输过血的人，每一家每一户的通知过来检测，那么就不会感染那么多人。

²⁷ Gao, Yaojie. 中国爱滋病祸—高耀洁医生的最新证言与揭露 [Aids Disaster in China: Dr. Gao Yaojie's Latest Testimony and Revelation]. Hong Kong: Cosmos Books, 2008.

²⁸ Zhang, Jianguo. “邢台：盖子还能捂多久 [Xingtai: How Much Longer Can It be Covered],” *China Pharmaceutical News*, November 29, 2004, accessed on February 18, 2011, http://www.360doc.com/content/05/1004/21/142_16817.shtml.

„29

He told us, "When the county first discovered HIV/AIDS, if they had immediately told every single person who had gotten a blood transfusion at the hospital, every family and everyone in it, to go and get tested, not so many people would have gotten HIV."³⁰

距离这场灾难的发生已经过去了十多年，但我们仍然无法获得血液污染范围准确的数据。河南有偿献血导致艾滋病疫情的爆发从20世纪90年代就开始了，但地方政府一直隐瞒疫情。直到2001年，《纽约时报》的一则报道才将世人的目光引至河南艾滋病村。但河南政府一直没有发布可信的受害者人数。Given that the blood disaster took place over a decade ago, obtaining a reliable number of the victims is now extremely challenging. At the beginning of the outbreak in the 1990s, when paid blood donations in Henan sparked the spread of the epidemic, the local authorities attempted to cover it up. In 2001, a series of *New York Times* articles brought the so-called Henan "AIDS villages" to the world's attention. However, the Henan government still did not publish information about the number of victims.

1995年，河南的一名基层医生王淑平就发现了艾滋病疫情在有偿献血人员当中蔓延的趋势。她将情况汇报给了卫生部门，但卫生部门并没有采取相应的措施，而王也被免职。³¹

In 1995, a local physician in Henan, Dr. Wang Shuping, discovered that the AIDS epidemic was spreading among blood donors. She reported on this situation to the health bureau, but the health bureau did not take steps to address the situation, and Dr. Wang was removed from her position.³²

2001年6月，中国政府首次发布了国内经血液感染艾滋病毒的比率，报告经非法采集血浆而感染艾滋病病毒的人数为996例，专家估算实际感染者为3~5万人。³³ 2004年，河南进行艾滋病普查，报告河南省的艾滋病感染者为2.5万人。但这一数字引起了专家们极大的质疑。³⁴ 到2007年，中国卫生部估计现存艾滋病病毒感染者和病人约70万，既往采供血、输血或使用血制品传播占9.3%，约为65100人。³⁵

In June 2001, the Chinese government first published the rates of HIV infection through the blood supply, and stated that 996 people had been infected through

²⁹ 惟谦采访范某，湖北，2011年7月20日。

³⁰ Korekata interview with Fan X, Hubei; July 20, 2011.

³¹ David Bandurski, Martin Hala. *Investigative Journalism in China: Eight cases in Chinese watchdog journalism*. Hong Kong: Hong Kong University Press, p. 41

³² David Bandurski, Martin Hala. *Investigative Journalism in China*, p. 41.

³³ 蓝燕，《我国有3至5万献血员因非法采供血感染艾滋病毒》，《中国青年报》2001年8月26日，访问日期：2011年7月26日，地址：<http://news.sina.com.cn/c/2001-08-26/339417.html>。

³⁴ 张可，《河南艾滋病五年调查报告》，NGOCN.net（网站）。访问日期：2011年11月15日。地址：<http://www.ngocn.net/?action-viewnews-itemid-2605>。

³⁵ 《中国艾滋病防治联合评估报告（2007）》，国务院防治艾滋病工作委员会办公室、联合国艾滋病中国专题组。

illegal plasma sales. At the same time, other experts suggested that the real number could be 30,000 to 50,000 people.³⁶ In 2004, Henan initiated an investigation into HIV/AIDS, and reported that the total number of people living with HIV/AIDS in the province was 25,000. Yet experts were skeptical of this number.³⁷ In 2007, the Ministry of Health estimated that there were 700,000 people living with HIV/AIDS in China. Of this number, they estimated that 9.3 percent had become HIV-positive through blood donations and blood sales, a total of 65,100 individuals.³⁸

由于一些地方政府采取隐瞒不公开的态度，从而错过了计算受害人数的最佳时机。我们认为，真实的受害者人数应当介于政府的估计数和活动家们及医生们的估计数之间。我们认为，政府应当尽快开展专项调查，向公众公布真实的血液污染受害者人数，以此作为未来政策的基础。

However, the closed attitude of some local authorities at the time led to a missed opportunity to calculate the exact number of victims. We believe that the true number of victims is somewhere between the official government estimate and the much higher estimates of doctors and AIDS activists. A more in-depth investigation is needed, with the resulting number of people infected with HIV through the blood disaster made public, as a basis for any future compensation plans.

解决问题，走向未来

Resolving the Problem: A Basis for Moving Forward

前文回顾了中国的改革历程，能够让我们了解这场灾难的社会和经济背景。

Examining the process of China's economic reforms clarifies how social and economic conditions created the disaster.

国务院发展研究中心的专家丁宁宁认为，中国医疗卫生体制改革，具体的医改内容、方式等受经济体制方面的影响过重，很多方案设计都是简单地服从于既有的经济体制框架，而没有充分考虑医疗卫生事业的自身规律。³⁹

State Council Development Research Center expert Ding Ningning observes that the specific reforms of China's health system were shaped in many ways by the economic system, and many of the policy arrangements were simply derived from the economic framework, without a complete analysis of the laws and policies of the medical profession.⁴⁰

³⁶ Lan Yan, "China has 30-50,000 Blood Donors Infected with HIV Due to Illegal Blood Collection," China Youth Daily, August 26, 2001. Accessed July 26, 2011: <http://news.sina.com.cn/c/2001-08-26/339417.html>.

³⁷ Zhang Ke, Investigation Into Five Years of HIV/AIDS in Henan, NGOcn. Net [website]. Accessed November 15, 2011: <http://www.ngocn.net/?action-viewnews-itemid-2605>.

³⁸ State Council HIV/AIDS Working Committee and UN Theme Group on HIV/AIDS in China, *A Joint Assessment of HIV/AIDS Prevention, Treatment and Care in China*. Beijing: 2007.

³⁹ 丁宁宁，《经济体制改革与中国的医疗卫生事业——中国医疗卫生体制变化的经济、政治、社会背景》，乌有之乡网站。访问日期：2011年10月9日，网址：<http://www.wyxsx.com/Article/Class4/201107/251016.html>。

⁴⁰ Ding Ningning, "Economic Reform and China's Medical and Health Industry: The Changing Economic, Political and Social Background of China's Changing Medical and Health System." Utopia [website]. Visited October 9,

惟谦采访了一名卫生部的退休官员。他提到，90年代初到他河南视察工作时，发现地方防疫站把应当用来装疫苗的冰箱去装血浆。⁴¹这也表明了国家卫生机关在当时注重创收的倾向。

Korekata interviewed a retired senior Ministry of Health official, who recalled doing a field trip to Henan health bureaus in the 1990s during which he noticed that the local epidemic prevention center had taken the refrigerator that should have been used for vaccines and was using it to hold plasma.⁴² This is just one example of how national health agencies at the time were focused on income generation.

本文摘要中所提到的那份提案，其建议补偿的人群只包括通过输血或血液制品而感染的受害者。但是，通过上文的分析我们可以看到，国家有关部门以及一些地方政府在这场灾难中是负有责任的。我们认为，那些在受国家监管的血液中心进行有偿献血的人，也应当包含在补偿机制当中。

Current proposals before the Chinese government recommend compensating victims who were infected through hospital blood transfusions, but exclude those who sold their blood. However, because of the unfortunate role described above played by state-run blood-collection facilities and local authorities at an early stage of the disaster, we believe that people who sold their blood to state-supervised facilities do deserve to be compensated.

同时，灾难的发生有其社会和经济因素，我们认为，对于一场跨时如此之长，涉及范围如此广的灾难，没有哪个个人或群体能够承担全部责任。因此，尽管国内一些专家和非政府组织呼吁主事官员应当负刑事责任，我们的建议则是借鉴他国处理血液污染灾难的做法，即由领导人向公众发表声明，并向受害者道歉。

At the same time, the fact that economic and social forces together fueled the blood disaster means that in our view, no single individual or group of individuals can be held criminally responsible for a disaster of this scope and duration. Many people in many regions and at many levels must share that responsibility. Thus, while some Chinese experts and NGOs have called for officials to face criminal charges, we recommend instead following the example of some other countries that have confronted their own blood disasters, in which leaders have made statements of apology to the victims.

中国的经济发展成就举世瞩目，但也付出了昂贵的代价。那些由于有偿献血或输血感染艾滋病的一般民众，他们既是今日繁荣中国的缔造者，也是无奈的牺牲者。制定国家政策为这些受害者提供补偿，不仅能够解决受害者及其家庭所面临的问题，也是符合中国一直努力营造的保护人权、负责任的大国形象。

China's remarkable achievements in economic development have come at a high

2011: <http://www.wyxsx.com/Article/Class4/201107/251016.html>.

⁴¹ 惟谦采访某，北京，2011年8月。

⁴² Korekata interview with X, Beijing; August 2011.

cost. Since paid blood donors and people who paid for hospital blood donations have been a vector of the spread of HIV into the general population, they are both a source of China's prosperity and its victims. By establishing a national compensation fund to enable these victims to build a new future for themselves and their families, China may approach the ideal that all its citizens have worked to realize: a country that upholds human rights, a responsible world power.

III 研究结果 Research Findings

我们的研究发现，血液污染受害者的生存状况很糟糕，他们在争取赔偿时也遇到各种障碍，包括难以获取证据，案件审理被中止或搁置审理，判决执行难，法院拒绝受理案件等。感染者获得的赔偿内容以及数额差异很大。

Our research discovered that the victims of the blood disaster suffer greatly due to their impoverished state, and encounter a variety of obstacles in their efforts to obtain compensation. These include difficulties in obtaining evidence for use in court, cases that were suspended or indefinitely postponed during trial, cases in which implementation of court judgments was difficult, and cases in which courts refused to accept lawsuits. We also found that the amounts awarded in compensation to those victims who were successful in obtaining an agreement were uneven.

最后，有的受害者只能诉诸上访，但上访只能部分解决问题，甚至无法解决问题，反而浪费受害者和政府的资源，导致社会冲突。

Ultimately, many victims turned to petitioning to gain redress, but because petitioning does not lead to a full resolution of their cases, and because it can be a waste of individual and government resources, petitioning can also lead to social conflicts.

本章将会介绍研究的结果。在此基础之上，我们认为政府应当据此进行政策改革，这不仅能够为受害者提供补偿，也是帮助中国走出这场灾难。

This section sets out findings from our research. Based on these, we then make recommendations for policy reforms to help the victims, and China as a nation, to move on from the disaster.

受害者生存现状 Survival of Victims

很多受害者感染的时候正值壮年，年龄段为二十到五十岁。艾滋病不仅垮了他们的身体，昂贵的医疗费也令他们不堪重负。同时，他们还需要承担抚养子女、赡养老人的责任和义务。但多年的疾病，已经使他们无法正常工作和劳动。对于农民或主要靠体力劳动为生的人来说，更是如此。

Many of the victims of the blood disaster are affected in the prime of life, between the ages of twenty and fifty. HIV/AIDS not only attacks their bodies, but also overwhelms them with heavy medical costs. At the same time, many have the responsibility of raising children and caring for elders. But after many years of combating the illness, they may not have the ability to work normally; this is especially true for those who are farmers or who make a living from manual labor.

尤某来自河南，曾经卖过两次血的丈夫将艾滋病毒传染给她。丈夫已经去

世，她独自抚养一个孩子。她说：“我们现在连死的权利都没有。有时候真想一死了之，可是人一死，孩子咋办。现在真是羡慕那些死过的人，人家啥也不想，也不痛苦了，也不受人歧视了。”⁴³

A woman from Henan, named You, contracted HIV after her husband sold blood twice and transmitted the virus to her. When we interviewed her, her husband had already passed away, and she was raising a daughter on her own. She said,

We don't even have the right to die. Sometimes I really wish I could die, but when someone dies, what will their child do? Now I really envy those who have died, they have nothing to worry about, no suffering, and they don't have to confront discrimination by other people.⁴⁴

我们在湖北采访了四名男性受害者，除了一名是因为车祸手术输血感染，其他三名都是因为妻子生孩子输血感染后被传染的，而这三人的妻子都已经去世。其中一名受害者因为诉讼无门，更感煎熬：“我是被害的，为什么就不能给我一个说法呢？我就觉得很憋屈。我想不通。我们被弄得妻离子散，家破人亡。你看，我们这里面，三个死了老婆的。你说我们不是家破人亡吗？都是三四十岁，老婆就死了。”⁴⁵

In Hubei, we interviewed four male victims. One had contracted HIV through a blood transfusion after a car accident, and the other three had all contracted HIV from their wives who had themselves contracted HIV through blood transfusions they received during childbirth, and whose wives had since passed on. One victim who had tried and failed to sue the hospital was even more dispirited, and said, "I am a victim—why can't they give me any response? I feel so frustrated and I can't see a way out of this. We don't understand why we lost our wives and our family members. The three of us here all lost our wives. Our homes have been destroyed—only thirty or forty years old, and already widowers."⁴⁶

另一名受害者说：“我是感染者，我老婆也是，那我们2个都是病人，我的小孩谁来抚养？我们家就我这一个儿子，我爸我妈怎么办？我们的小孩看病都是要花钱的，医生说他是正常人，所以要花钱。但是他是人啊，人也是要生病的啊。我是负责养他的人，我这个监护人没有力量来抚养他。”⁴⁷

Another victim said,

I am living with HIV/AIDS, my wife is too, and we're both sick. Who will look after our little boy? When our son is the only one left, what are my parents supposed to do? If our son gets sick we have to pay for him, the doctor says he's normal, so he has to pay medical fees. But he's a person, people get sick. I'm supposed to be the person who takes care of him, but I don't have the

⁴³ 惟谦采访尤某，北京，2011年7月5日。

⁴⁴ Korekata interview with You X, Beijing; 5 July 2011.

⁴⁵ 惟谦采访范某，湖北，2011年7月20日。

⁴⁶ Korekata interview with Fan X, Hubei; 20 July 2011.

⁴⁷ 惟谦采访王某，湖北，2011年7月20日。

strength to be his guardian.⁴⁸

湖北的吴某2000年住院剖腹产输血感染。她有一儿一女在上学，年迈的父母。“一家6口人生活，全靠丈夫一人在外打工。上有老，下有小，丈夫人力淡薄，没有兄弟姐妹，真是白天做事，晚上流泪。”⁴⁹

Wu, a woman in Hubei, contracted HIV from a blood transfusion during a Cesarean section she had in 2000. She has a son and a daughter in school and elderly parents. She said:

In our home there are six mouths to feed, and all of us have to rely on my husband to get construction jobs. We've got old people, young people, my husband is not healthy either. Neither of us have any brothers or sisters, and we just work all day and cry all night.⁵⁰

湖北李某的儿子生于1984年，1997年住院输血。2002年发病去世时只有19岁。他写到：“我儿正是青春年华的时光.....一个优秀的青年失去了人生生命的权利.....我是一个无知识的农民、地道的农民，当时只知道痛苦。不知道怎么救我儿的生命，不知道求助于法律讨还我儿的公正。不知道呼吁社会责成二医院给我儿的说法和人道的安慰。死去的儿呀，你一去不复返。”⁵¹

Li, a man in Hubei, had a son in 1984 who received a blood transfusion in a hospital in 1997. In 2002, the son became ill and died at the age of 19. Li wrote,

My son was a flower that bloomed in the spring...a good young man who lost the right to life.... I'm an ignorant farmer, a down-to-earth farmer, at the time I only knew suffering. I didn't know how to save my son's life, and I didn't know to turn to the law to get justice for my son. I did not know how to call on society for help or how to call on the No. 2 Hospital to give me some form of comfort. My son who died, you're gone and you'll never come back.⁵²

任何数额的补偿都不可能挽回这些损失，或救活已经逝世的亲人。但对于尚存活的受害者，特别是那些失去工作能力的人来说，他们迫切需要获得补偿以继续生活和维持家庭。尽管不少受害者努力争取补偿，但这些抗争只是使他们陷于长期无望挣扎的泥潭，很少能够有成功的结果。

No amount of compensation could heal the pain of this loss, but victims of the blood disaster, especially those who lose the ability to work, do urgently need compensation in order to survive and to care for their families. Yet their efforts to obtain compensation have led them down long and frustrating roads that rarely end in success.

⁴⁸ Korekata interview with Wang X, Hubei; 20 July 2011.

⁴⁹ 吴某，《申请书》，2009年8月25日。为个人陈述，惟谦艾滋法律中心存档。

⁵⁰ Wu X, "Application", August 25, 2009. Personal statement, on file at Korekata AIDS Law Center.

⁵¹ 李某，《呈报》，2009年9月27日。为个人陈述，惟谦艾滋法律中心存档。

⁵² Li X, "Report", September 27, 2009. Personal statement, on file at Korekata AIDS Law Center.

法院拒绝受理案件

Courts that Refuse to Hear Cases

在一些地方，受害者根本无法在法院进行诉讼，因为法院拒绝受理艾滋病相关的案件。早在2003年，河南就有法院拒绝受理输血感染艾滋病的诉讼，而且这种情况在河南越来越普遍。根据我们的调查，在湖北、江苏、上海、吉林和黑龙江，艾滋病相关的案件也无法在法院立案。

In some places, victims have virtually no way to pursue a case in court, because courts refuse to accept any cases related to HIV/AIDS. As early as 2003, some Henan Province courts began to refuse to accept cases on transmission of HIV through blood transfusions, and this has over time become more common in Henan. Our research found that courts in Hubei, Jiangsu, Shanghai, Jilin and Heilongjiang are now refusing to accept cases related to HIV/AIDS.

法院拒绝立案的理由概括起来有两种情况，一是上级部门的通知或干预，不许立案；二是认为国家已经为感染者提供了救助，应按已有的政策解决。When courts refuse cases, they generally provide one of two reasons: either because of communications or intervention by more senior government offices instructing courts to refuse cases; or because the government has already established programs to provide aid to people living with HIV/AIDS.

一些法院会明确告知，他们因为接到上级通知，无法受理艾滋病的相关案件。惟谦在2007年接到一名河南母亲的求助。她的孩子1岁的时候在当地医院输血，2006年查出来感染艾滋病和丙肝。惟谦和当事人母亲一起到当地法院递交诉状，法院的工作人员没有接受材料，声称这样的案件无法立案。在一再追问下，工作人员告知，法院接到最高院的口头通知，艾滋病有关的案例不能受理。后来惟谦改变策略，以医院输血导致当事人感染丙肝为由起诉，法院才受理了案件。⁵³

Some courts have stated openly that they have received communications from higher levels and that they therefore cannot accept HIV/AIDS-related cases. In 2007, Korekata AIDS Law Center received a request for help from a mother in Henan Province. When her child was one year old, the child had received a blood transfusion at a local hospital, and in 2006 the child tested positive for HIV and hepatitis C. Korekata AIDS Law Center and the mother went together to the local court to file suit, and the court employee refused to accept the paperwork, saying that it was impossible to hear this kind of case. After repeated questioning, the employee stated that their court had received an oral communication from the Supreme Court stating that no HIV/AIDS-related cases could be accepted. Afterwards, Korekata pursued a different strategy, using the hospital's transmission of hepatitis C as a basis for litigation, and the court did finally accept the case.⁵⁴

⁵³ 徐海波，《惟谦河南谢某案件工作报告》，2008年9月。内部报告，惟谦艾滋法律中心存档。

⁵⁴ Xu Haibo, *Korekata AIDS Law Center Work Report on Xie X*, September 2008. Internal NGO case report, on file at Korekata AIDS Law Center.

周斌律师也碰到了类似的情况：“我们在河南安阳地区代理艾滋病患者的起诉，法院方面明确告知：省高院最近发出通知，艾滋病诉讼案件不予立案，由政府协调解决。”⁵⁵

Zhou Wei, a lawyer, said he has encountered similar situations:

We represented a person living with HIV/AIDS who sued in Anyang, Henan Province, the court there openly told us that the provincial high court had issued a communique stating that HIV/AIDS-related cases could not be filed, and that the government should negotiate settlements instead.⁵⁶

在河南一个县城，当地的人民医院在1995年的给病人输用了受污染的血液，导致了很多人感染艾滋病。一名女士接受了我们的采访，她的丈夫是这家医院的输血感染受害者。她在一封申诉信中写到：

In another county in Henan, in 1995 the local people's hospital gave patients transfusions of contaminated blood, infecting a large number of people with the AIDS virus. One woman we interviewed told us that her husband was a victim of this hospital's contaminated blood transfusions. In an appeal letter she wrote, she said,

“为了把女儿养大成人，我们夫妇相依为命。互相鼓励。我们想办法找到了当时住院输血的结算单，诊断书及出院证，但人民法院不予立案。...我们希望政府恢复感染者申诉的权利，人民法院能够给感染者一个公正、公平的赔偿。”⁵⁷

In order to find a way to raise our daughter, my husband and I racked our brains. We managed to find a way to get ahold of the invoices from the time when he was hospitalized and had that blood transfusion, including the clinic statement and hospital release form, but the people's court wouldn't accept the case.... We hope the government will restore our right to appeal and that the people's court will give us people living with HIV/AIDS justice, and fair compensation.⁵⁸

一名湖北妇女在当地医院输血感染了艾滋病。她的丈夫范某先到镇一级的法院去起诉，法院回答说：“你这个案子我们受理不了，我们这个权力有限，你这个（案子）最少属于市中级人民法院才能受理。”⁵⁹范某又把案件递到了市中级人民法院，但之后就由政府的工作人员到他家劝他撤诉。⁶⁰

A woman in Hubei was infected with HIV through a hospital blood transfusion. Her husband, Fan, went to his township court to sue the hospital, and the court officer replied, "We can't take this case of yours because our power is limited. This case of

⁵⁵ 周斌、罗惠如，《输血感染艾滋病群发案件律师代理探讨》，惟谦杂志，2009年3月。总第七期，p.29。

⁵⁶ Zhou Bin and Luo Huiru, "Legal Representation of mass Cases Involving Transmission of HIV Through Blood Transfusions," *Korekata magazine*. Issue 7 (march 2009), p. 29.

⁵⁷ 赵某，《申诉书》，2011年7月3日。为个人陈述书，惟谦艾滋法律中心存档。

⁵⁸ Zhao X, "Application", July 3, 2011. Personal statement on file at Korekata AIDS Law Center.

⁵⁹ 惟谦采访范某，湖北，2011年7月20日。

⁶⁰ 惟谦采访范某，湖北，2011年7月20日。

yours needs to be heard by the Metropolitan Intermediate People's Court at least."⁶¹ Fan took his case to the Metropolitan Intermediate People's Court, whereupon a government employee came to his home and persuaded him to drop the case.⁶²

据媒体报道，江苏有一起输血感染艾滋病的案例被中止审理。当地一份《铜山法院关于审理艾滋病案件情况的紧急反映报告》中称，“根据上级精神：涉及艾滋病的案件法院不再予以立案，已立案的也不再审理，通过政府专项基金解决”⁶³。

According to media reports, a Jiangsu court suspended a trial of a person infected with HIV through a hospital blood transfusion. A publication from the local court, the *Copper Mountain Court Emergency Report on Trials of HIV/AIDS Cases*, said,

According to higher levels, court cases involving HIV/AIDS may not be accepted, and those that have already been accepted cannot be heard; they should be resolved using a government fund established for that purpose.⁶⁴

而在另外一些情况下，法院则以国家已经为艾滋病感染者提供了救助和支持为由，驳回受害者的起诉。

In some courts, the fact that there are national programs to provide support to people living with HIV/AIDS has been used as an excuse to refuse victims' lawsuits.

在一起广受媒体关注的血友病人诉血液制品企业的诉讼中，受害者于 2003 年提起诉讼，但到 2004 年 3 月，法院发出了驳回诉讼的通知书，其中写到：“我们卫生部已针对各地艾滋病病毒感染者和患者的医疗救治以及生活救助问题出台了相关政策……有关艾滋病病毒感染者和患者的生活救助问题，由各地按国家有关政策协调解决，故本案应按有关公共卫生政策予以属地解决。...裁定如下：驳回原告的起诉”⁶⁵。当事人不服一审裁定，向中级人民法院提出上诉，但同样被驳回，维持原裁定。

In a case that has already received extensive media attention, a group of leukemia patients sued a blood products company for transmission of HIV. The victims sued in 2003. After some time had passed, in March 2004, the court issued a communiqué refusing their case, stating:

China's Ministry of Health has already established policies providing medical treatment and financial assistance to people living with HIV/AIDS around the country. [...] In regards to the livelihood needs of people living with HIV/AIDS,

⁶¹ Korekata interview with Fan X, Hubei, 20 July, 2011.

⁶² Korekata interview with Fan X, Hubei, 20 July, 2011.

⁶³ 马永春，耿小勇，《10年前输血感染艾滋病 6 江苏患者赴京维权》，《新京报》。发布时间：2007 年 7 月 19 日。访问日期：2011 年 7 月 19 日，网址 <http://www.chinacourt.org/public/detail.php?id=257346>。

⁶⁴ Hu Yongchun and Geng Xiaoyong, "Ten Years After an HIV-contaminated Blood Transfusion, Six Jiangsu People Living with HIV/AIDS Petition in Beijing," *New Capital Daily*, July 19, 2007. Accessed November 15, 2011: <http://www.chinacourt.org/public/detail.php?id=257346>.

⁶⁵ 清华大学，《区人民法院民事裁定书》，艾滋病模拟立法听证资料，《与艾滋病相关的案件》，北京：福特基金会资助出版，2005 年 11 月；p.102。

each part of the country has policies that should be used to resolve the problems, and the case in question has health policies and should be addressed through these. [...] Thus the court decides to refuse to accept the case filed by the plaintiffs.⁶⁶

The plaintiffs appealed to the intermediate court against the ruling in the first instance, and their attempt to appeal was denied, preserving the original decision.

政府为感染者提供社会救助并不能作为拒绝诉讼的理由。法律的作用在于维护社会公正，政策并不能代替法律的审判。在这些个案当中，受害者申诉的权利明显地被剥夺了。

However, judges cannot use the fact that the government provides social assistance as an excuse to refuse a lawsuit. The purpose of law is to protect social justice, and policies cannot substitute for the legal process. In these cases, the victims' right to redress has clearly been violated.

按照中国的法律规定，法院不予受理案件应当出具《不予受理裁定书》，即给出书面的拒绝受理的文件。但接受我们访问的受害者声称，法院在拒绝受理案件的时候，并没有出具任何文书。而没有这些文书，就意味了受害者无法进行上诉，法律途径也就走到了头。

According to China's laws and regulations, when a court refuses to accept a case, it should issue an Inadmissible Ruling Statement, a document that explains in writing the refusal to hear a case. But the lawyers and plaintiffs we spoke with stated that when courts refused to accept their cases, they did not provide any documentation. Without the documentation, victims have no means to file an appeal, and this cuts off their legal process before it can begin.

我国的《民事诉讼法》规定，只要符合以下四个条件的诉讼就应当受理：

- (一) 原告是与本案有直接利害关系的公民、法人和其他组织；
- (二) 有明确的被告；
- (三) 有具体的诉讼请求和事实、理由；
- (四) 属于人民法院受理民事诉讼的范围和受诉人民法院管辖。⁶⁷

China's *Civil Litigation Law* stipulates that a case must only meet the following four criteria:

1. The plaintiff must be a citizen, legal person or other organization that has a direct interest in the case;
2. There must be a clear defendant;
3. There must be a specific claim as well as specific facts and reasons for the case; and

⁶⁶ Tsinghua University, "District People's Court Civil Ruling," HIV/AIDS Mock Policy Hearing, HIV/AIDS Related Cases. Beijing: Ford Foundation Publication, November 2005; p. 102.

⁶⁷ 第一百零八条，《中华人民共和国民事诉讼法》，全国人民代表大会常务委员会，2007年10月28日。

4. The case must fall into the scope and jurisdiction of the Civil Court.⁶⁸

同时,《民事诉讼法》第一百一十二条规定:人民法院收到起诉状或者口头起诉,经审查,认为符合起诉条件的,应当在七日内立案,并通知当事人;认为不符合起诉条件的,应当在七日内裁定不予受理;原告对裁定不服的,可以提起上诉。⁶⁹

Moreover, Article 112 of the Civil Litigation Law states that when a civil court receives either written prosecution or an oral complaint, it should initiate an investigation, and if the case meets the conditions for prosecution, the court should register the case and notify the relevant parties within seven days. If the court considers that the case does not meet those conditions, it should issue a decision that it will not accept the case; in such a case, the plaintiff who has been ruled against may appeal to a higher court.⁷⁰

法院越来越倾向于拒绝受理案件,这样的发展趋势实在令人费解。以此看来,有些法院可能已经违反国家关于民事诉讼程序的法律,但同时,更高级别的法院并未追究这些法院的责任。我们无法证实是否有高院的指示,让基层法院拒绝受理艾滋病相关案件;但这样的指示很明显是歧视性的。而且,这样的做法只能导致受害者去上访。本报告将会展示,上访极少能给受害者和当地政府带来好的结果。

The emerging trend in which courts refuse to accept cases is deeply puzzling. It appears that some courts may be violating the country's civil procedure laws, but at the same time, higher-level courts are not holding these courts accountable. We are unable to confirm whether or not there has been a higher-level order to courts instructing them to refuse HIV/AIDS-related cases; such an instruction would be clearly discriminatory. In addition, it only results in driving victims of the blood disaster to petition instead, which, as we show later in this report, rarely leads to a good outcome for either victims or local authorities.

证据的问题

Problems with Evidence

在输血或血液制品感染艾滋病的诉讼中,如果法院受理案件,受害者需要提供输血或使用血液制品的证明。如果不能提供,那么受害者提出的主张就很难得到法院的支持。

In cases where victims are able to successfully file a case, in the course of litigation on infection with HIV through blood or blood products, victims must show proof that they received a blood transfusion or used blood products. If they cannot provide this proof, it is difficult to get recognition of their claims in court.

⁶⁸ Article 108, *People's Republic of China Civil Litigation Law*. National People's Congress Standing Committee, October 28, 2007.

⁶⁹ 第一百一十二条,《中华人民共和国民事诉讼法》,全国人民代表大会常务委员会,2007年10月28日

⁷⁰ Article 112, *People's Republic of China Civil Litigation Law*. National People's Congress Standing Committee, October 28, 2007.

由于医院或卫生部门并没有告知患者输入的血液或使用的血液制品可能受到污染，因此受害者往往是在输血之后的很多年才发现自己感染了艾滋病毒。此时他们再回头找当初的病历或输血证据，很多时候都很难找到。

Since hospitals and health departments largely failed to inform patients of the risk that blood or blood products might be contaminated, it is often only many years after the contaminated transfusion that victims discover they are living with HIV. At this point, their copies of the original medical records or records of the blood transfusions may be difficult to find.

来自河南的感染者李某说：

“搬了三次家，病例、证据什么的都没有，早就丢了。纸上的证据都没有了，证人很多，都知道我生孩子时大出血。”⁷¹

As Li, a person living with HIV/AIDS from Henan, said,

I moved home three times, and I lost the medical records and evidence and whatever early on. I didn't have any kind of paper proof, though there were plenty of witnesses, and they all knew my child lost a lot of blood at the time.⁷²

河北的黄某说：“我们是农民，只要一出院就认为这些材料没有用了。拿回家时间一长就丢掉了。已经过了七八年才知道（有艾滋病），知道以后证据已经没有了。可以说大部分人都没有证据。”⁷³

Huang from Hebei said,

We're farmers. Once we get out of the hospital we figure these pieces of papers are useless. I threw mine out on the way home from the hospital. Now, seven or eight years later, I find out (I have HIV/AIDS), and now I find out I don't have any proof (of how I got it). It's fair to say that most people have no proof.⁷⁴

而在一些农村地区，20世纪90年代的时候，农民看病根本就没有使用病历。⁷⁵ 所以受害者只能寄希望于医院来提供医疗记录。

In some rural regions, in the 1990s, many farmers did not collect medical records after a hospital stay.⁷⁶ Many victims have no other option except to go to the hospital and request documentation of their treatment there.

⁷¹ 惟谦采访李某，河南，2011年6月3日。

⁷² Korekata interview with Li X, Henan, 3 June 2011.

⁷³ 惟谦采访黄某，河北，2011年6月1日。

⁷⁴ Korekata interview with Huang X, Hebei, 1 June 2011.

⁷⁵ 惟谦采访张某，山西，2011年7月18日。

⁷⁶ Korekata interview with Zhang X, Shanxi, 18 July, 2011.

几乎所有丢失证据的受害者都选择回到当初的医院查找病历，但极少有成功的例子。在接受采访的20名病历丢失的被访者当中，除了有6人没有回医院查找病历，其余的14人都声称医院告诉他们，当年的病历已经丢失或者找不到了。

Most of the victims we interviewed who had lost their evidence went back to the hospital that had given them the blood transfusion to request their records, but few were successful. Twenty of those we interviewed told us they were missing medical records. Fourteen of these people told us that the hospital informed them that the hospital had also lost their records.

缺乏医疗证据，会直接影响诉讼的进行。李某称她“通过私人关系开了个证明”，到其所在县的“公立医院查档案”。但“找不到，没有”。⁷⁷她失望地说：“没有档案（即病例），打官司没有办法打，证据没有打官司也白搭，没有用。”⁷⁸最后她放弃了对医院的起诉。

This lack of medical evidence is likely to directly affect the proceedings. Li reported that she “used personal connections to get some proof,” and went to the county government office where the hospital was located to “register a hospital file investigation case.” However, “they couldn’t find it, they said there wasn’t any” such file.⁷⁹ She told us, “With no file (i.e., medical case record), there was no way to fight a lawsuit. Without evidence the case would be lost, it was pointless.”⁸⁰As a result, she gave up on litigating the hospital.

尽管医院拒绝提供病历，但有的受害者仍然努力让医院提供相关证明。Even when hospitals refuse to turn over medical records, some victims persevere in obtaining the evidence they need.

来自河南的谢某在当地的医院出生，之后也一直在该医院看病。2007年她母亲发现她感染艾滋病之后，一直回医院要求查找病例。由于当地是一个小县城，都是熟人社会。医生和谢某的家长很熟，大家都知道孩子一直在该医院看病。最后，医院只能给谢某开了一个证明，称“因我院1997年以前住院病例保存不完善，1995年住院者谢某的病例经查找后未找到，可能已经遗失”⁸¹。而1995—1997年正是该院使用受污染血液的多发年份。

Xie was born in a hospital in Henan, and after her birth she continued to be treated at the same facility. In 2007, when her mother discovered that Xie was living with HIV, she repeatedly went back to the hospital to demand the medical records that proved Xie had been infected at the hospital. The place where they lived was a small town, and everyone in it was closely connected. As a result of the pressure, the hospital gave in and provided Xie’s mother with a memo stating, “As our hospital’s records are incomplete prior to 1997, the hospital has been unable to locate records

⁷⁷ 惟谦采访李某，河南，2011年6月3日。

⁷⁸ 惟谦采访李某，河南，2011年6月3日。

⁷⁹ Korekata interview with Li X, Henan, 3 June 2011.

⁸⁰ Korekata interview with Li X.

⁸¹ 河南省某医院，《证明》，2007年6月25日。惟谦艾滋法律中心存档。

belonging to Xie, who stayed in the hospital in 1995, and these records may have been lost.”⁸² The years 1995 to 1997 were those in which the blood disaster largely took place.

而河北的王某可没有这么幸运。他的妻子1995年因为宫外孕在医院做手术，输血进行治疗。2006年发现妻子感染艾滋病。2007年他到医院查找病例，医院也说找不到了。他让医院开一个遗失病例的证明，医院不同意。最后，王某声称要申请政府补助，需要证明家庭困难，医生才补开了一个王某妻子1995年在该院住院的证明。⁸³

Wang, a man in Hebei, was not so fortunate. His wife underwent surgery in 1995 for an ectopic pregnancy and received blood transfusions. In 2006, she discovered she was HIV-positive. In 2007, Wang went to the hospital to request his wife's medical records, and the hospital said they were unable to find them. He demanded that the hospital create a memo recording the loss of their records, and the hospital refused. Finally, since Wang was unable to apply for government financial assistance without evidence of his family's difficulties, the doctor finally agreed to write a memo stating that Wang's wife had stayed in the hospital in 1995.⁸⁴

湖北的范某为了让医院拿出病例，同样费尽了周折。他说：“医院就是这样的：我能瞒，尽量瞒。我能拖，尽量拖。他对艾滋病人的态度就是这样子的。”⁸⁵

Fan, in Hubei, also went through a great deal of trouble in his efforts to get the hospital to produce his medical records. He said,

This is how the hospital is: If they can cover something up, they'll cover it up as much as they can. If they can drag out a process, they'll drag it out as long as they can. That's just their attitude towards people living with HIV/AIDS.⁸⁶

由于缺乏病历等相关证据，受害者很难提起诉讼，诉讼也很难成功。1995年，崔某出生几个月后由于腹泻住进了当地的医院。医生说孩子身体太差，给他输了三袋血浆。10年之后的2005年，孩子被检测出艾滋病阳性。父母起诉了医院，但经法院调查，找不到病历。只能撤诉。最后由于缺乏经济来源以及相关治疗，孩子于2007年病故。⁸⁷

When they lack medical records or other evidence of their hospital stay, it becomes difficult for victims to sue on transmission of HIV, and it is unlikely that any suit they file will succeed. Cui Tao, who was born in 1995, was admitted to the hospital a few months later due to chronic diarrhea. The doctor said that the baby was too weak, and gave him three blood transfusions. Five years later, in 2005, the child tested positive for HIV. His patients sued the hospital, but the court's investigation was

⁸² Henan Province X Hospital, "Certificate," June 25, 2007. Document on file at Korekata AIDS Law Center.

⁸³ 惟谦采访王某，河北，2011年6月25日。

⁸⁴ Korekata interview with Wang X, Hebei, 25 June 2011.

⁸⁵ 惟谦采访范某，湖北，2011年7月20日。

⁸⁶ Korekata interview with Fan X, Hubei, 20 July 2011.

⁸⁷ 崔某，《孩子感染艾滋病的情况反映》，2007年11月25日。为个人陈述，惟谦艾滋法律中心资料。

unable to turn up any medical records. The family had to drop the case. In 2007, when the family ran out of financial resources to buy needed medicines, the child died.⁸⁸

医院在发现血液污染事件，对受害者进行赔偿协议时，往往需要受害者出示有关的证明。医院需要患者证明在该院输过血，才愿意讨论赔偿的事宜。而且我们在研究中发现，有些医院对于有证据的受害者和没有证据的受害者，赔偿的金额并不一致。而如果是诉讼，当事人也有举证责任，需要证明曾经住院的事实。

When hospitals discover there has been contamination of their blood supply, and begin negotiations with patients for compensation agreements, they generally require the victims to bear the burden of proof. The hospitals require the patient to supply evidence that she or he received a blood transfusion at that hospital as a condition of beginning discussions. In our research, we found that some hospitals will compensate victims who have evidence at different levels than those without it. In the context of a lawsuit, courts also expect the victims of contaminated blood transfusions to bear the burden of evidence.

但是，医院本身承担着保存医疗记录的责任。根据《医疗机构管理条例实施细则》第五十三条：医疗机构的门诊病历的保存期不得少于十五年；住院病历的保存期不得少于三十年。⁸⁹

However, hospitals should be responsible for saving their own medical records. According to Article 53 of China's Regulations for the Implementation of Management of Medical Institutions,

Out-patient medical records must be preserved for not less than fifteen years; in-patient medical records must be retained for not less than thirty years.⁹⁰

那些声称丢失或不提供某个时期病历的医院，实际已经违反医疗机构保存医疗记录的法律规定。受害者因此无法进行诉讼或获得赔偿，由于医院的过失而进一步对受害者造成了伤害。

Hospitals that claim to have lost or that are unable to provide medical records within this time period are actually in violation of these regulations. In cases where victims are unable to either litigate or obtain compensation, they are actually being further harmed due to the hospital's negligence.

法律上的因果关系

Issues with Legal Causation

⁸⁸ Cui X, "Reflections on My Child's Infection with HIV/AIDS." November 25, 2007. Personal statement on file at Korekata AIDS Law Center.

⁸⁹ 第五十三条，《医疗机构管理条例实施细则》，中华人民共和国卫生部。1994年8月29日。

⁹⁰ Article 53, "Details on Implementation of management of Medical Institutions." Policy statement, Ministry of Health of the People's Republic of China, August 29, 1994.

在实践中，尽管有时受害者掌握一些输血的证据，但证明输血与艾滋病之间的因果关系则是下一步的重大挑战。同时，由于各地法院法官水平参差不齐，律师和法官对艾滋病的特性了解有限，一些法院把举证责任转移到患者身上，导致患者败诉。

Once in the court, and even if victims have some evidence of their blood transfusion, proving the cause-and-effect relationship between a blood transfusion and infection with HIV can be the next major challenge. Due to the variations in understanding of HIV/AIDS between courts, lawyers and judges, some courts have put the burden of proof of HIV transmission via blood transfusion onto patients, leading some patients to lose their cases.

证据有两种方式，即由当事人举证以及法院调查取证。⁹¹而在医疗纠纷领域，则存在“举证责任倒置”的原则，即“因医疗行为引起的侵权诉讼，由医疗机构就医疗行为与损害结果之间不存在因果关系即不存在医疗过错承担举证责任。”⁹²但是，根据我们的采访和研究，一些地方的法院对这一原则并没有很清晰的认识，以致将举证责任置于受害者身上。

In the course of hearing a case, evidence may be obtained and provided in two ways: It is either provided by the plaintiff, or obtained during the court's own investigation.⁹³ In the field of medical malpractice litigation, as the Supreme Court has said, the principle of “burden of proof” operates as follows: “In medical malpractice litigation, those performing medical acts have the responsibility to provide evidence.”⁹⁴ However, according to blood disaster victims we interviewed, courts in some localities do not seem to have a clear understanding of this principle, and sometimes push the burden of proof onto the victim of medical malpractice.

代某1995年因病在医院输血治疗，2003年发现艾滋病阳性。代某决定起诉医院。法院调查发现，当年输血时并未进行艾滋病毒检测，而且仅有献血者的姓名，没有其他任何信息，包括身份证号。医院找到了姓名与记录相符的两名献血者进行检测，却发现他们是阴性。

In 1995, Dai became ill and received a hospital blood transfusion, and in 2003 he tested positive for HIV. Dai decided to sue the hospital. The court's investigation discovered that in the year in which he received the blood transfusion he did not take an HIV test. In addition, the hospital had no information about the original blood donor other than the donor's surname. The hospital tracked down two blood donors from that year who shared the same name and tested both for HIV, but both tested negative.

尽管原告称院方找到的两名献血者不能肯定就是当年献血的人。但法院认

⁹¹ 最高人民法院，《关于民事诉讼证据的若干规定》。2001年12月6日颁布，2002年4月1日实施。

⁹² 最高人民法院，《关于民事诉讼证据的若干规定》。2001年12月6日颁布，2002年4月1日实施。

⁹³ Supreme People's Court, “On Certain Provisions on Evidence in Civil Litigation.” Promulgated on December 6, 2001; took effect on April 1, 2002.

⁹⁴ Supreme People's Court, “On Certain Provisions on Evidence in Civil Litigation.”

为，现有的证据，包括姓名，以及献血队长的证词，能够证明他们就是当年献血的人。由于法院认为不能证明代某是因为输血而感染艾滋病的，法院驳回了代某的诉讼请求。⁹⁵

The plaintiff could not confirm that those two donors were the ones who had given him the transfusion he received in 1995, but the hospital asserted that the names of the two donors, and their testimony and other written documentation, showed that one of them must have been the donor. As a result, the court decided there was no evidence that Dai had been infected with HIV through a blood transfusion, and refused to hear the case.⁹⁶

在这个案件当中，法院把本来应该由医院承担的举证责任，转嫁给了患者。法院在二审判决书中称：“本院认为，当事人对自己提出的主张，有责任提供证据，没有证据或者证据不足以证明当事人的事实主张的，由负有举证责任的当事人承担不利后果。”⁹⁷

In the course of this case, the court shifted the burden of proof from the hospital to the person living with HIV/AIDS. In his appeal, the court stated,

The court finds that when a party puts forward his own theory, it is his responsibility to provide evidence to support it. If there is no evidence or insufficient evidence to prove the theory advanced by the party, then that party with the burden of proof must bear the negative consequences.⁹⁸

“本案中，上诉人（即受害者）承认1995年献血给他的供血者分别叫杨某和温某，同时否认被上诉人（即医院）找到的并经原审法院确认的两位叫“杨某”和“温某”的人不是当年的供血给上诉人的献血者，认为原审法院确认的此两人只是与真正献血者同名而已，但是，上诉人对此并未提出反证。”⁹⁹

In this case, the plaintiff (i.e., the victim) recognizes that in 1995 the blood transmission given to him was by people named Yang and Wen, and at the same time denies that the people named Yang and Wen found by the appellant [i.e., the hospital] are the people who donated blood to him in that year. However, the plaintiff has not been able to provide evidence to refute that they are the donors.¹⁰⁰

按照举证的原则，如果医院认为这两个人就是献血者，那么医院就应当提

⁹⁵ 《广东省某市某区人民法院民事判决书》，XX法民初字第2856号（2005）。为案卷资料，惟谦艾滋法律中心存档。

⁹⁶ *Guangdong Province Y City Z District People's Court Civil Court Decision*, YY Court Document No. 2856 (2005). Court document on file at Korekata AIDS Law Center.

⁹⁷ 《广东省某市中级人民法院民事判决书》，XX法民一终字第274号（2008）。为案卷资料，惟谦艾滋法律中心存档。

⁹⁸ *Guangdong Province X City Intermediate People's Court Civil Decision*.

⁹⁹ 《广东省某市中级人民法院民事判决书》，XX法民一终字第274号（2008）。为案卷资料，惟谦艾滋法律中心存档。

¹⁰⁰ *Ibid.*

供能够证明的材料。但在此案中，医院仅有的证据就是姓名和血头的证词，没有身份证号或其他信息，并不能确定就是这两人给患者输了血。

Actually, based on the principle of burden of proof, if the hospital asserts that two men are the donors, then the hospital should be required to provide materials proving their assertion. But in this case, the hospital was only able to provide proof that the men shared the same surname and their verbal testimony, and did not have identity card numbers or other forms of identification; the hospital therefore could not confirm that these two men were in fact the source of the blood transfusion in question.

核实献血者的责任在于医院，应当由医院承担举证责任，法院却将责任转嫁给了患者，要求患者证明这两人不是献血者，从而导致患者的败诉。总而言之，法院接受了医院提出来的存在瑕疵的证据，做出了有利于医院一方的决定。

The responsibility to verify blood donors' identities should fall on the hospital, but in this case, the court shifted that responsibility onto the patient, who lost the case as a result. The court thus accepted questionable evidence from the hospital in order to hand down a decision in favor of the hospital.

而在另一起案件中，患有血友病的孩子感染了艾滋病，将血液制品公司告上了法庭。但法院认为“.....根据艾滋病发病的潜伏期较长之特点，仅就原告在1995年9月28日购买并使用了第一被告生产销售的血制品‘八因子’之实际情况，即断定原告之子感染病毒即为该制品造成，期间存有直接的因果关系来要求被告承担民事赔偿责任证据欠充分，本院不予采信。”¹⁰¹ 法院决定不支持原告的诉讼请求。事实上对于没有性和吸毒行为的孩子来说，其母亲也不是感染者，感染艾滋病的途径其实非常有限。

In another case, a child with leukemia was infected with HIV through blood products, and sued the blood product company for damages. However, the court found,

The AIDS disease is characterized by a long incubation period; thus in respect to the plaintiff who in fact purchased Factor VIII (FVIII) blood products from the first defendant on September 28, 1995, while the plaintiff has concluded that plaintiff's son was infected as a result of the products, and has asked that the defendant bear civil liability; however, the court shall not accept that there is sufficient evidence to show a direct causal relationship.¹⁰²

The court decided not to endorse the plaintiff's claim. However, logically speaking, if there is no sexual behavior or drug use in the case of a child, and the child's mother is also not living with HIV/AIDS, then there are very limited possible causes for HIV transmission.

¹⁰¹ 清华大学，《区人民法院判决书》，艾滋病模拟立法听证资料，《与艾滋病相关的案件》，2005年11月，福特基金会资助出版，北京，2005年11月，p.95。

¹⁰² Tsinghua University, "District People's Court Civil Ruling", p. 95.

在另外一个儿童（非血友病患者）输血感染艾滋病的诉讼中，法院在一审中则做出了完全不同的判决：“现被告虽提供医疗护理技术操作常规以证实其诊疗过程无过错，但其既不能提供从血站调取血浆的证据，也未能提供给血者的血浆符合给血标准的证据。故不能排除其输血行为与原告罹患AIDS之间不存在因果关系。因此，被告应就原告因输血感染HIV以及罹患AIDS承担民事侵权赔偿责任。”¹⁰³

In another lawsuit at a different court in which a child (who did not have leukemia) was allegedly infected with HIV through blood transfusions, the court came to a completely different conclusion:

While the defendant now provides routine medical care, technical operations and other medical procedures to confirm that there was no fault, however, the defendant cannot provide evidence that the blood was obtained from a blood station. Moreover, the defendant has not been able to provide proof that the donor of the blood products fulfilled blood [safety] standards. Thus, the defendant should bear the risk of tort liability for the infection of HIV through the blood transfusion.¹⁰⁴

2002年4月1日施行的《最高人民法院〈关于民事诉讼证据的若干规定〉》明确规定，“因医疗行为引起的侵权诉讼，由医疗机构就医疗行为与损害结果之间不存在因果关系及不存在医疗过错承担举证责任。”¹⁰⁵

Article 4(8) of the Supreme Court's publication, *Certain Provisions on Evidence in Civil Procedure Litigation*, which went into effect on April 1, 2002, clearly states, “In tort litigation arising from medical actions, there is no causal relationship between medical actions that are performed by medical institutions and resulting damages, and no burden of proof to show medical fault.”¹⁰⁶

然而，由于法院对举证责任的理解不清晰，在我们收集的案例中就发现，受害者由于无法呈现足够的证据，法院又将不合理的举证责任加到受害者身上，从而使案情变得对医院有利。事实上，医院有责任保证安全的血液供应。

Nonetheless, because courts have a limited understanding of where the burden of proof lies, in some cases we collected, we found that victims were facing an unreasonable evidentiary burden, which they were unable to meet, and as a result, courts found in favor of the hospitals. In fact, hospitals should have the responsibility for ensuring that their blood supplies are safe.

¹⁰³ 周斌，《我为患者打官司——典型医疗案件代理思路与操作规程》。北京：中国法制出版社，2009；p. 296。

¹⁰⁴ Zhou Bin, *Lawsuits I Have Filed for Patients: Reasoning and Procedures in Typical Medical Litigation Cases*. Beijing: China Legal Publishing Company, 2009; p. 296.

¹⁰⁵ 最高人民法院，《关于民事诉讼证据的若干规定》（法释〔2001〕33号）2001年12月6日颁布，2002年4月1日实施，第4条。

¹⁰⁶ Supreme People's Court, “*On Certain Provisions on Evidence in Civil Litigation*.” Promulgated on December 6, 2001; took effect on April 1, 2002.

律师面临的压力

Pressure on Lawyers and Other Procedural Problems

血液污染事件往往影响到很多受害者，牵涉到法律正义、赔偿等问题，涉及政府和医院的责任，影响当地政府的声誉和政绩。有的地方政府往往不希望触碰和处理这一问题。因此对于那些试图揭开这个伤疤的人，会面临多方面的压力。

The events that comprise the blood disaster reached into many areas, extending to the potential liability and reputation of local government authorities. Thus, some local officials have been reluctant to address the issue, and those who threatened to reveal the problem risked coming under pressure. In other cases, we found that courts were reluctant to issue judgments.

在河北，一名当事人在当地找不到律师来代理她的案件，因为地方上的律师担心会受到压力。最后是在一家民间机构的帮助下，一名北京的律师为她的案件提供了法律援助。¹⁰⁷

In Hebei, one plaintiff told us he was unable to find a lawyer to represent his case, because local lawyers were afraid of potential repercussions. Finally, with the help of a local NGO, he was able to get legal aid from a lawyer in Beijing.¹⁰⁸

湖北的四名感染者请了一名外地律师协助他们诉讼进行赔偿。而一到达当地，地方政府的人就围了过来。一名感染者说：“政府通过湖北省的律师协会打电话给他们山西律师总的律师事务所，说要吊销这名律师的律师证。”而同行的一名血站方面的专家，当晚就吵着要回去，因为他“要是再不走的话，他们就要把他开除”¹⁰⁹。

He and three other Hubei people living with HIV/AIDS hired a lawyer to assist them in suing for compensation. However, when the lawyer arrived in their town, he was immediately surrounded by government representatives. One person living with HIV/AIDS told us,

The [Hubei] government went through the Hubei provincial Lawyers' Association to contact the head partner of the law firm in Shanxi and asked him to revoke the lawyer's permit to practice the law." That night, an expert on the blood disaster who had traveled to Hubei with the lawyer pleaded with him to go home, saying, "If you don't leave now, they are going to have you fired."¹¹⁰

为了解决这个事情，政府召集这些当事人、律师，以及各个部门的人一起开会商讨，包括“这个镇的司法部门，市里的司法部门，然后政府行政（部

¹⁰⁷ 惟谦采访君某，河北，2011年6月25日。

¹⁰⁸ Korekata interview with Jun X, Henan, 25 June 2011.

¹⁰⁹ 惟谦采访吴某，湖北，2011年7月20日。

¹¹⁰ Korekata interview with Wu X, Hubei, 20 July 2011.

门），然后是民政的，还有我们（感染者）各个帮扶单位的”。¹¹¹ 在这个会上，市政府的官员说，在中国，不是法律能够解决所有问题的。¹¹² 当事人已经付律师三万元的律师费，政府又给律师三万元，让他离开。最后，律师把三万的律师费退还给了当时人，说“你们的权利肯定只能你们自己去争取”。¹¹³ 虽然当天中午大雨倾盆，但律师和专家连午饭都没有吃，在感染者的护送下上了高速公路，离开了。

In order to deal with the incident, the local authorities convened the group of plaintiffs, their lawyer, and a number of government officials in a meeting. They brought in “the township judiciary, the metropolitan judiciary, the government administrative [department], the civil affairs bureau, and every work unit that was helping [people living with HIV/AIDS].”¹¹⁴ In this meeting, the official from the metropolitan government said that in China, “We can’t look to the law to resolve all our problems.”¹¹⁵ The plaintiffs had already paid their lawyer a legal fee of 30,000 CNY [approx. USD \$4733]; the government also paid him [a bribe of] 30,000 CNY to go home.

In the end, the lawyer returned the plaintiffs’ fee to them, saying, “Only you can fight for your own rights.”¹¹⁶ In the middle of the day, during a massive thunderstorm, the lawyer and the blood expert left town without stopping for lunch—accompanied by a protective escort made up of the people living with HIV/AIDS.

在接受我们采访时，这名受害者说道：“真的，我对法律失去了信心。我什么方法都想过。法律不是不能解决问题吗？那我就做犯法的事！”¹¹⁷

During our interview, the plaintiff told us,

Seriously, I have lost all faith in the law. I have tried absolutely everything I can think of. So ‘the law can’t resolve problems’? Then I may as well do something criminal.¹¹⁸

艾滋病的敏感性，甚至也会影响到证据在判决中的体现。在一个案件的审理中，法院依照职权调取了一份证明医院不执行国家规定长期私采血的证据。如此重要的证据却在判决书中没有出现。¹¹⁹

The political sensitivities surrounding HIV/AIDS can even influence the ways in which evidence is viewed in court judgments. During one trial, the court obtained evidence showing that a hospital had not implemented national policies that require hospitals to keep long-term records of the origins of blood donations. This important

¹¹¹ 惟谦采访范某，湖北，2011年7月20日。

¹¹² 惟谦采访范某，湖北，2011年7月20日。

¹¹³ 惟谦采访范某，湖北，2011年7月20日。

¹¹⁴ Korekata interview with Fan X, Hubei, 20 July 2011.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ 惟谦采访范某，湖北，2011年7月20日。

¹¹⁸ Ibid.

¹¹⁹ 周斌，《我为患者打官司——典型医疗案件代理思路与操作规程》。北京：中国法制出版社，2009；p.294.

evidence, while accepted in the trial, was omitted from the court records.¹²⁰

大多数艾滋病赔偿案件审理期限非常长，很少能在审理期限内结案，有时甚至会以各种理由被搁置。受害者在等待审理和赔偿的过程当中越来越穷困，甚至死亡。

In most cases relating to compensation for the blood disaster, trial periods are prolonged. In some cases trials are suspended indefinitely. While awaiting an outcome and compensation, victims face conditions of growing poverty, and some even die while awaiting a decision.

惟谦2007年代理了一起儿童输血感染艾滋病及丙肝的案件。案件于当年的11月开庭，庭审期间审判长缺席，由审判员主持，并未做出判决。到2008年6月，主审法官口头告知当事人，该案要“中止审理”，但并未出具任何文书。

In 2007, Korekata AIDS Law Center represented the case of a child infected with HIV and hepatitis B through a hospital blood transfusion. The case was first heard in court in November. As the presiding judge was absent, and another judge presided instead, no decision was handed down. In June 2008, the judge informed the parties that the case was suspended, but he did so verbally and did not hand out any formal document.

惟谦打电话到法院询问，法官说“这个案件虽然是以丙肝起诉，但当事人也是艾滋病感染者，实际是个艾滋病案件。根据上级的指示，案件只能中止审理。”¹²¹ 在这期间，由于当事人病情恶化，急需治疗费用，惟谦帮助当事人向法院申请先予执行五万元用于治疗。而这个案件也一直搁置至今，没有获得判决。鉴于2008年北京举办奥运会，所以当地法院可能也承受了一定的压力。

Korekata AIDS Law Center telephoned to the court to clarify the situation, and the judge said, “This case was submitted as a case of infection with hepatitis B, but the plaintiff is also HIV-positive, so in fact it’s really an AIDS case. We have received instruction from our superiors that the case must be suspended.”¹²² In this period, because the child was becoming more ill and urgently needed treatment, Korekata helped the plaintiff to apply for a court order requesting just 50,000 CNY [about USD \$7868] for her immediate treatment costs. However, this court order was also suspended and as of 2011, it has yet to be resolved or decided upon. In 2008, Beijing hosted the Olympics, and so it is possible that the court received political pressure to delay the case.

在另外一个案件中，地方政府更是直接对法院进行干预，“强行”要求当事人进行撤诉，并接受和解。2003年底，吉林省某市几十名因为有偿献血而感染艾滋病的受害者，起诉了当地的血液制品企业和卫生部门。2004年5月法院送

¹²⁰ Zhou Bin, *Lawsuits I Have Filed for Patients: Reasoning and Procedures in Typical Medical Litigation Cases*. Beijing: China Legal Publishing Company, 2009; p. 296.

¹²¹ 徐海波，《惟谦河南谢某案件工作报告》，2008年9月。内部案件报告，惟谦艾滋法律中心存档。

¹²² Xu Haibo, *Korekata AIDS Law Center Work Report on Xie X*, September 2008. Internal NGO case report, on file at Korekata AIDS Law Center.

达了开庭通知书，但却在5月26日通知延期开庭。¹²³

In another case, the government also directly intervened in order to compel the plaintiff to drop the case and submit to mediation instead. In 2003, several dozen people infected with HIV through a blood transfusion in a city in Jilin Province sued the local blood products company and the local health bureau. In May 2004, the court served notice of the trial, but on May 26 issued another notice postponing the hearing.¹²⁴

后来，当地市政府以“社会定向捐赠”的名义，给每位起诉的感染者四万元捐赠，条件是签同意和解的协议，并进行撤诉。“当时如果不签字，一分钱也拿不到。”¹²⁵ 受害者认为，“这种以政代法的做法是蔑视法律的行为，对受害者群体是不公平和不公正的”。¹²⁶

Subsequently, the local government gave the plaintiffs what they called a “socially-oriented donation,” with the requirement that the plaintiffs sign an agreement to drop the case. “At the time, if we hadn’t signed, we wouldn’t get a cent,” said one of the plaintiffs. “¹²⁷ This kind of behavior by the government shows contempt for the law, and it is unfair and unjust to the victims.”¹²⁸

根据中国的诉讼法，一般案件“应当在立案之日起六个月内审结。有特殊情况需要延长的，由本院院长批准，可以延长六个月；还需要延长的，报请上级人民法院批准。”¹²⁹ 实践中法院的审理期限过长，甚至不做出判决，已经违反了有关法律。

Under China’s Litigation Law, most cases “should be decided within six months of the filing date. If special circumstances require the trial to be extended, this extension must be approved by the court, and the extension may be for a period of six months; if the extension must be for a longer period, the court must obtain approval from a higher court.”¹³⁰ The practice of having such long trials, and in some cases not even issuing a judgment, is in itself a violation of the relevant laws.

然而，在我们看来，血液污染事件相关的政治压力，已经使得律师和法院难以独立运作。

However, it appears that political pressures surrounding the blood disaster have

¹²³ 朱某、米某、刘某、夏某，《诉求报告》，2007年7月20日。为个人陈述，惟谦艾滋法律中心存档。

¹²⁴ Zhou X, Mi X, Liu X, and Xia X, “*Appeal Report*”, July 20, 2007. Personal statements on file at Korekata AIDS Law Center.

¹²⁵ 朱某，《某市某镇68名HIV感染者的赔偿诉讼》，2007年7月19日。为个人陈述，惟谦艾滋法律中心存档。

¹²⁶ 朱某执笔，某市全体艾滋病病毒感染者及家属，《申诉书》，2007年4月24日。为个人陈述，惟谦艾滋法律中心存档。

¹²⁷ Zhu X, “*Litigation on Behalf of 68 People Living with HIV/AIDS in X Township, Y City*,” July 19, 2007. Personal statement on file at Korekata AIDS Law Center.

¹²⁸ Zhu X (on behalf of all the people living with HIV/AIDS and their families in X city), “*Letter of Appeal*”, April 24, 2007. Personal statement on file at Korekata AIDS Law Center.

¹²⁹ 第一百三十五条，《中华人民共和国民事诉讼法》，全国人民代表大会常务委员会，2007年10月28日。

¹³⁰ Article 108, *People’s Republic of China Civil Litigation Law*. National People’s Congress Standing Committee, October 28, 2007.

made it difficult for lawyers and courts to function independently.

判决及执行

Judgments and Their Implementation

以上描述的程序问题使得血液污染的受害者们很难提起诉讼，并对判决结果也可能产生影响。但是，在下面的个案中，受害者经过漫长的诉讼获得了有利的判决，而判决的执行却异常困难。

The procedural issues described above make it difficult for victims of the blood disaster to sue for compensation, and can influence the outcome of their trials. However, in one case where a victim successfully weathered a long trial and obtained a favorable judgment, he found it extremely difficult to implement.

河北卫某的妻子在当地一家医院输血感染了艾滋病，并通过母婴传播传染给了女儿。妻子去世之后，卫某在2000年起诉了医院，但官司一打就是四年，经过了一审、二审、发回重审、再次二审的漫长诉讼程序，到2004年才获得最终判决，法院判决医院赔偿卫某36万余元。¹³¹

Wei is a man in Hebei whose wife was infected with HIV through a hospital blood transfusion; through mother-to-child transmission, she passed on the virus to her daughter. In 2000, after his wife passed away, Wei sued the hospital, a case that dragged on in the court for four years. When he lost that lawsuit he appealed twice, and a higher court sent the case back to the original court for a new trial. He lost the case a third time and appealed yet again. After multiple multi-year lawsuits, he finally obtained a judgment against the hospital of approximately 360,000 CNY [USD \$56,650].¹³²

但2004年的法院判决只是又一场拉锯战的开始。第一年，卫某获得了7万元的赔偿款，但这笔钱并不是医院给的，而是法院从医院的上诉费中划拨给卫某的。因为通过各种手段转移财产，医院的账面上并没有可以执行判决的费用。Yet this 2004 court judgment was in itself only the beginning of a long struggle. In the first year, Wei obtained compensation of 70,000 CNY [about USD \$11,015], but this was not paid out by the hospital; it was funds obtained by the court as payment of the hospital's court fees.

在之后的几年时间里，卫某每年都要向法院至少申请两次强制执行，前后一共申请了12次。法院的工作人员甚至告诉他：“你申不申请强制执行都一样。”卫某仍然没有拿到赔偿款。¹³³

In the ensuing years, Wei applied a total of twelve times for compulsory implementation of the court judgment. The court staff even told him, “It's pointless

¹³¹ 惟谦采访王某，北京，2011年10月24日。

¹³² Korekata interview with Wang X, Beijing, 24 October, 2011.

¹³³ 惟谦采访王某，北京，2011年10月24日。

for you to apply again.” However, Wei never obtained any of his compensation.¹³⁴

无奈之下，卫某开始到市里、北京上访。他说：“我那年就是在北京、市里、省会三个地方来回跑。”2008年，卫某和其他的受害者一起去当地政府进行上访，最后是政法委、公安局和法院共同出钱，凑够剩余的赔偿款给卫某。卫某说：“我当时想，2008年北京举办奥运会，我一定要在2008年拿到赔偿款，不然以后也拿不到了。”¹³⁵

In desperation, Wei began to travel to the provincial capital and then to Beijing to petition the government for assistance with his case. He told us, “That year, I ran back and forth all the time between Beijing, the provincial capital, and the province.” In 2008, Wei and other victims began to go together to the local government. Finally, the Politics and Law Committee [a government agency], the Public Security Bureau and the court together pooled their funds and lobbied [the government] for the balance required to pay Wang. Wei said, “At the time, I thought, Beijing is getting ready to hold the Olympics, so if I don’t get my compensation in 2008, I’ll never get it.”¹³⁶

受害者获得赔偿不一致

Uneven Compensation Awards

尽管有少数的案例能够跨越多重障碍获得法院的判决，但各地的赔偿金额差异很大，而调解的个案情况也类似。有时即使在同一地方，获得的赔偿数额也不一样。

Like Wei, a small number of plaintiffs are able to navigate through these obstacles and finally receive a court judgment. However, the amounts of compensation have varied greatly, whether awarded through litigation or through settlements negotiated with hospitals. Moreover, the amounts of awards have varied greatly, even among cases in the same locations.

赔偿的内容也有差异。一些当时事人只获得了一次性的金钱赔偿，而有些人获得的赔偿则包括精神损失费、每月生活补助、医疗费用等。

The types of compensation awarded also vary. Some plaintiffs only win a one-time payment, while others get payment that includes amounts for emotional harm, additional monthly disbursements, medical costs, and more.

黑龙江一家医院的19名受害者获得的赔偿方案为前期医疗费、误工费、精神损失费共计20万余元，误工费、营养费、护理费三项每月共计3000元，终生给付。¹³⁷还包括外地治疗的交通费、医疗费、住院费，以及定期检查的费用。

¹³⁴ Korekata interview with Wang X.

¹³⁵ 惟谦采访王某，北京，2011年10月24日。

¹³⁶ Ibid.

¹³⁷ 《HIV和AIDS与黑龙江某农场职工医院人身损害赔偿协议》，2006年11月13日，惟谦艾滋法律中心存档。

138

In Heilongjiang Province, nineteen victims who sued one hospital won a compensation package that included reimbursement for past medical fees, unemployment and compensation for emotional harm that amounted to 20,000 CNY [approx. USD \$3155], and compensation for loss of income, nutritional needs and nursing care amounting to 3,000 CNY each month [approx. USD \$473] for the rest of their lives.¹³⁹

另外，受害者已经死亡的，由法定继承人获得死亡赔偿金，数额按当年上一年度全省城镇居民人均可支配收入标准计算。¹⁴⁰这一比较全面的赔偿计划得到了很多感染者的支持。

In addition, the court ordered that family members of victims who were already deceased be given a death payment, using the previous year's provincial household income reports as a basis for the calculation.¹⁴¹ This relatively comprehensive compensation plan is endorsed by many of the victims we met.

而在吉林省，几十名受害者在政府的协调下获得了一次性每人4万元的补偿。但对于长期需要医疗救治的艾滋病感染者来说，这笔钱只是杯水车薪，受害者陷入生活困境之后，当地的社会矛盾加剧。一名受害者写道：

In Jilin Province, the government advised several dozen victims in the process of obtaining compensation of 40,000 CNY [approx. USD \$6310]. However, when it comes to the long-term medical assistance needs of people living with HIV/AIDS, this sum is inadequate. When victims later got into financial difficulties, they began to have conflicts with local authorities.

“得到捐款（即补偿款）后受害者.....在经济上也改善许多.....过激言行也少了。这种现象只维持一年多，钱花没了，这些人又陷入困境，新的问题又发生了。因多次上访奔波，加上社会的严重歧视，医疗救治跟不上。本地区处理此类问题区别太大.....多名患者病危，得不到有效及时救治，发生死亡现象，这些问题又激化了矛盾。”¹⁴²

As one victim wrote,

Once victims got the donation [i.e., the compensation], their economic situation improved a bit...and their words and actions also became less radical. But this situation only lasted for a little over a year, until the money was spent, at which point those people got into difficulties and new problems

¹³⁸ 《HIV和AIDS与黑龙江某农场职工医院人身损害赔偿协议》，2006年11月13日，惟谦艾滋法律中心存档。

¹³⁹ “*Personal Injury Compensation Agreement with Heilongjiang X Agricultural Hospital*”, November 13, 2006. Contract on file at Korekata AIDS Law Center.

¹⁴⁰ 《HIV和AIDS与黑龙江某农场职工医院人身损害赔偿协议》，2006年11月13日，惟谦艾滋法律中心存档。

¹⁴¹ “*Personal Injury Compensation Agreement with Heilongjiang X Agricultural Hospital*.”

¹⁴² 朱某，《上访录》，2008年6月15日。为个人陈述，惟谦艾滋法律中心存档。

began to emerge.

Because they often ran around petitioning [government agencies for help], they began to experience even more serious social discrimination, and they couldn't keep up with their medical treatment. The differences in how these cases were addressed were too great...and when several patients reached the critical stage of their illness, they were unable to get effective assistance. When other people died, these issues began to turn into conflicts.¹⁴³

一名获得一次性4万元赔偿的受害者说：“现在我们这个钱花完了，生活都不能生活了。”¹⁴⁴

One victim who was awarded a one-time payment of 40,000 CNY [approx. USD \$6010] told us, “We have already spent that money, and now we have no way to live.”¹⁴⁵

在湖北，一些受害者从医院获得了一定数额的赔偿，以及每月500左右的生活补助。但受害者提出：“500块这个生活肯定不够了。”¹⁴⁶

In Hubei, some victims obtained a small amount of compensation, about 500 CNY [approx. USD \$79 each month]. However, as one victim pointed out, “Five hundred *kuai* is not enough to live on.”¹⁴⁷

他提到，现在物价都在上涨，“猪肉今年都18块了，大米要2块五，一个月够吃什么呀。”¹⁴⁸

He pointed out that inflation has been steadily increasing, and “This month, it costs eighteen *kuai* for a piece of pork, 2.50 for rice, what are you supposed to eat each month?”¹⁴⁹

这些受害者到政府上访，希望能提高每月补助的水平。 另一名受害者提到：“我们都是有小孩的人，我们的小孩要怎么办？小孩要打预防针，打个乙肝疫苗都要300多块。”¹⁵⁰

Some of these victims petitioned the government to ask for an increase in the monthly compensation standard. Another victim pointed out, “We are all people with young children. What are our children supposed to do? Children need to get vaccinated, and the hepatitis B vaccine costs over 300 *kuai*.”¹⁵¹

下面的图表展示了我们在研究过程中所收集到的赔偿信息，包括赔偿数

¹⁴³ Zhu X, “Petition Record”, June 15, 2008. Personal statement on file at Korekata AIDS Law Center.

¹⁴⁴ 惟谦采访陈某，河北，2011年6月1日。

¹⁴⁵ Korekata interview Chen X, Hebei, 1 June, 2011.

¹⁴⁶ 惟谦采访袁某，湖北，2011年7月20日。

¹⁴⁷ Korekata interview with Yuan X, Hebei, 20 July, 2011.

¹⁴⁸ 惟谦采访袁某，湖北，2011年7月20日。

¹⁴⁹ Ibid.

¹⁵⁰ 惟谦采访范某，湖北，2011年7月20日。

¹⁵¹ Korekata interview with Fan X, Hubei, 20 July, 2011.

额、地点、获赔途径（诉讼或调解）。如图所示，在河南，赔偿金额范围从49万元到25000元不等。在湖北和黑龙江一些地方，为受害者提供了一次性的赔偿和每月生活补助，而其他受害者只获得一次性的赔偿。

The chart below shows information we gathered in the course of this research about amounts of compensation awarded, the localities, and the ways in which the victims obtained the settlements (through litigation or out-of-court settlements). As the table shows, compensation has ranged from a high of 490,000 CNY [approx. USD \$69,400] to a low of 25,000 [approx. USD \$3943] in Henan. Some in Hubei and Heilongjiang have successfully arranged for initial payments to be supplemented with monthly stipends, while others have recently only one payment.

在这样的情况下，一些受害者感到强烈的不公平是很自然的。在采访中，一些受害者不愿意告知具体的赔偿数额。

Under the circumstances, it is natural that some victims may be envious of others, and that some were unwilling to share the details of their settlements with us.

表格一：赔偿金额列表

当事人	所处地区	时间	赔偿数额（元）	方式
赵某、李某夫妇	河南	2007年	一次性补偿每人42500元；共85000元	与医院达成协议
马某	河南	2005年	一次性补偿25000元	与医院达成协议
谢某	河南	2007年	先期执行医疗费50000元； 医院一次性补偿42500元	法院裁定；与医院达成协议
李某（赔偿已去世，儿童）	河南	2007年	一次性补偿50000元	与医院达成协议
张某（已去世，儿童）	河南	2007年	一次性补偿53000元	与医院达成协议
王某	河南	2007年	一次性补偿53000元	与医院达成协议
武某	河南	2004年、2007年	艾滋病（2004年）： 赔偿106476.22元 丙肝（2007年）： 82407.47元	法院判决
刘某	河南	2002年	赔偿492866.23元	法院判决
王某	河南	2006年	赔偿62763.30元	法院判决
王某	黑龙江	2006年	每月3000元的误工费、营养费、护理费从2006年8月起终生给付；前期医疗费、误工费、精神损失费210391元；每年四次CD4、两次病毒载量、一次耐药性检测及化验血常规、肝功和大生化；去外地治疗的住院费、医疗费、交通费、护理人员的伙食补助费	法院调解

陈某等人	河北	2008年	一次性补偿40000元	地方卫生局协调
君某	河北	2010年	一次性补偿300000元	法院调解
吴某	湖北	2004年	一次性补偿80000元； 每月生活费250元至死亡	与医院达成协议
张某	湖北	2003年	一次性补偿15万元	与医院达成协议
李某（儿童，赔偿时已经死亡）	湖北	2005年	一次性补偿80000元	与医院达成协议
严某	湖北	2004年	一次性补偿70000元	与医院达成协议
吴某	湖北	2005年	一次性补偿76000元； 每月500元生活费	与医院达成协议
熊某	湖北	2005年	一次性补偿80000元， 每月生活费500元	与医院达成协议
吴某	湖北	2005年	一次性补偿40000元， 每月生活费500元	与医院达成协议
吴某	湖北	2005年	一次性补偿76000元， 每月500元生活费， 出外就医每年报销500元	与医院达成协议
吴某	湖北	2005年	一次性补偿81000元； 每月生活补助500元	与医院达成协议
吴某	湖北	2007年	一次性补偿138000元	与医院达成达成协议
易某、王某夫妇	湖北	2008年	一次性补偿两人 267000元	与医院达成达成协议
吴某	湖北	2009年	一次性补偿110000元	与医院达成达成协议
张某	湖北	2007年	一次性补偿70000元	与医院达成达成协议
张某、袁某夫妇及两个孩子（均为感染者，张已去世）	湖北	2008年	一次性补偿440000元	与医院达成达成协议

Table 1: Compensation Settlements

Plaintiff	Province	Year	Compensation (CNY)	Amount (USD) ¹⁵²	Type of settlement
Zhao X, wife Li X	Henan	2007	One-time payment of 42,500 to each person	\$6746	Out-of-court settlement with hospital
Ma X	Henan	2005	One-time payment of 25,000	\$3968	Out-of-court settlement with hospital
Xie X	Henan	2007	Reimbursement of medical expenses of 50,000; one-time payment of 42,500	\$6746	Court-mediated settlement with hospital
Li X (child of a person who died of HIV/AIDS)	Henan	2007	One-time payment of 50,000	\$7937	Out-of-court settlement with hospital
Zhang X (child of a person who died of HIV/AIDS)	Henan	2007	One-time payment of 53,000	\$8413	Out-of-court settlement with hospital
Wang X	Henan	2007	One-time payment of 53,000	\$8413	Out-of-court settlement with hospital
Wu X	Henan	2004 and 2007	One-time payment for HIV/AIDS (in 2004) of 10,647, one-time payment for hepatitis (in 2007) of 82,407	\$1690; \$13,080	Court judgment
Liu X	Henan	2002	49,286	\$7823	Court judgment
Wang X	Henan	2006	62,763	\$9962	Court judgment
Wang X	Heilongjiang	2006	Beginning August 2006, monthly payment of 3,000 for unemployment, nutrition and nursing for life;	\$476 unemployment; \$33,395 emotional harm	Court judgment

¹⁵² Based on exchange rate of USD \$1 : 6.3 CNY.

			reimbursement for medical expenses, loss of employment income, and emotional harm of 210,391; annual CD4 test, biannual viral load test, one-time testing for treatment resistance and blood test, as well as liver function test; compensation for travel costs when seeking treatment outside the province, including medical costs, travel costs, nursing and food subsidies.		
Chen X and group	Hebei	2008	One-time payment of 40,000	\$6349	Local City Health Bureau settlement
Jun X	Hebei	2010	One-time payment of 300,000	\$47,619	Court-mediated settlement
Wu X	Hubei	2004	One-time payment of 80,000, monthly payments of 250 for life	\$12,698; monthly \$40	Out-of-court settlement with hospital
Zhang X	Hubei	2003	One-time payment of 150,000	\$23,810	Out-of-court settlement with hospital
Li X (child of a person who died of HIV/AIDS)	Hubei	2005	One-time payment of 80,000	\$12,698	Out-of-court settlement with hospital
Yan X	Hubei	2004	One-time payment of 70,000	\$11,111	Out-of-court settlement with hospital
Wu X	Hubei	2005	One-time payment of 76,000 plus monthly cost-of-	\$12,063; monthly \$79	Out-of-court settlement with hospital

			living payment of 500		
Xiong X	Hubei	2005	One-time payment of 80,000, plus monthly cost-of-living payment of 500	\$12,698; monthly \$79	Out-of-court settlement with hospital
Wu X	Hubei	2005	One-time payment of 40,000, plus cost-of-living payment of 500	\$6349; monthly \$79	Out-of-court settlement with hospital
Wu X	Hubei	2005	One-time payment of 76,000, monthly cost-of-living payment of 500, and annual reimbursement of 500 for travel to treatment facilities	\$12,063; monthly \$79; travel \$79	Out-of-court settlement with hospital
Wu X	Hubei	2005	One-time payment of 81,000, plus monthly cost-of-living payment of 500	\$12,857; monthly \$79	Out-of-court settlement with hospital
Wu X	Hubei	2007	One-time payment of 13,8000	\$2190	Out-of-court settlement with hospital
Yi X and Wang X (spouses)	Hubei	2008	One-time payment of 267,000	\$42,380	Out-of-court settlement with hospital
Wu X	Hubei	2009	One-time payment of 110,000	\$17,460	Out-of-court settlement with hospital
Zhang X	Hubei	2007	One-time payment of 70,000	\$11,111	Out-of-court settlement with hospital
Zhang X, Ai X (spouses with two children, Zhang is suspected to have died of HIV/AIDS)	Hubei	2008	One-time payment of 440,000	\$69,841	Out-of-court settlement with hospital

上访中的障碍

Obstacles to Petitioning

接受我们采访的大多数感染者，在发现自己感染之后都是这样的维权路径：找医院要病历，到法院进行诉讼，被拒绝后继续找医院，没有结果或赔偿额度太少的话就到当地政府和北京上访。这也是调查人员听到的研究过程中最令人头疼的故事。

Most of the people living with HIV/AIDS who spoke to us had followed a similar path: After testing positive for HIV, they went to the hospitals to try to obtain their medical records, and then tried to sue in court. After they were unsuccessful in court, they went back to the hospitals to demand compensation. If they were unable to obtain compensation in this way, or if the compensation they received was too low, they began to petition the local government for help, and also petitioned in Beijing. This in turn led us to hear some of the most troubling accounts we gathered in the course of our research.

上访是中国特有的政治表达形式，有着悠久的历史。上访，或称“信访”，“指公民、法人或者其他组织采用书信、电子邮件、传真、电话、走访等形式，向各级人民政府、县级及以上人民政府工作部门反映情况，提出建议、意见或者投诉请求，依法由有关行政机关处理的活动。”¹⁵³ 尽管上访极少能够真正解决问题，但对于很多公民来说，这是最后也是唯一的申诉途径。访民时常会经历拘留和粗暴对待，但一些上访者仍然坚持多年。¹⁵⁴

Petitioning is a uniquely Chinese system that has existed for many centuries. “Petitioning,” also known as “letters and visits,” is described under Chinese law follows:

Citizens, legal persons or other organizations may use letters, e-mail, fax, telephone, visits and other formats, may submit suggestions, comments, complaints and requests to the People’s Government at all levels, and to the work departments of the People’s Government above the county level; these are to be handled by the relevant administrative authorities according to law.¹⁵⁵

Petitioning is rarely an effective way to resolve a problem, but for many people, it is the last and sometimes the only route to redress. Many petitioners suffer imprisonment and ill-treatment, but nonetheless persist for many years in their appeals.¹⁵⁶

¹⁵³ 《信访条例》，2005年1月5日国务院第76次常务会议通过，自2005年5月1日起施行。

¹⁵⁴ 人权观察，《我可能随时消失：中国访民生存状况》，2005。

¹⁵⁵ *Petition Regulations*, Ratified by the State Council Executive Meeting Number 76 on January 5, 2005; Implemented beginning May 1, 2005.

¹⁵⁶ Human Rights Watch, *I Could Disappear at Any Time: Abuses Against Petitioners in China*, report, 2005.

由于法律渠道走不通，上访往往成为感染者争取权益的唯一途径，也成为当地社会矛盾的因素。

Because the road to legal justice may lead to a dead end, petitioning becomes the last route left to some people infected with HIV/AIDS through the blood disaster, and this in turn may lead to social instability and conflict.

我们在研究和收集材料的过程中，发现几乎全部的受害者都写过申诉信，或者上访信。这些愤慨的求助信件大多投递无门或石沉大海。

In the course of gathering materials for this report, we found that all of the victims we met had written either petitions or appeal letters. However, most of these appeals for help had led nowhere.

而在我们下乡采访的路途中，经常会看到沿途的墙壁上写着“严禁缠访闹访”、“严禁非法上访”等标语。这表明上访已经成为当地不稳定的主要因素之一，并且已经造成受害者与地方政府之间的矛盾和冲突。

When we went to the countryside to conduct interviews, we often saw slogans written on the walls, such as "Absolutely No Petitioning or Trouble-making," or "Petitioning is Absolutely Illegal." These slogans were just one symptom of the fact that petitioning has become a source of instability at the local level, and has become a point of conflict between victims and the local authorities.

地方政府对上访很头疼

Petitioning: A Headache for Local Authorities

由于单个感染者很容易被政府忽视，所以感染者会联合一起去上访。Because it is easy for the government to ignore one person living with HIV/AIDS, victims seeking compensation sometimes join together to petition.

一名接受采访的受害者称：“我们是几个乡镇，涉及的村里代表都去了，总共十几，二十几个人。你说我们聚众吧，我们5个人代表这个乡，5个人代表那个乡，我们哪儿都不触犯你。提前都想好怎么说了。”¹⁵⁷

As one person we spoke with said, "A bunch of us from different villages went together to the village chief. There were ten or twenty of us. You want to say we're ganging up, but you know, it's just five guys from one place, five guys from another place, we're not threatening nobody. We figured out what we would say before we went."¹⁵⁸

在当地上访效果有限，而到北京则成为很多投诉无门的感染者的选择。“我们离北京太近了，政府防不胜防，我们打个车就过去了。他管不住。现在有那种大巴车，拉十几个人，才200块钱，就到国家信访局。然后回来政府给钱了

¹⁵⁷ 惟谦采访胡某，河北，2011年6月25日。

¹⁵⁸ Korekata interview with Hu X, Hebei, 25 June, 2011.

，你怕啥呀。”¹⁵⁹

However, if petitioning locally has limited results, many petitioners choose to go to Beijing. "We're too close to Beijing, and the government can't stay on top of what we're up to. We just rent a van and go—by the time they figure it out it's too late. They've got this bus now where you can take a dozen people, it's only 200 *kuai* to get to the national petitioning office. The government gives you money and then you come back, so why not do it?"¹⁶⁰

由于上访与当地政绩挂钩，所以上访有时候也成为感染者与政府相抗衡的方式——也出现了访民多次上访迫使政府付款的情况。一名被访者称：“我们每次上访都发500块钱，往返的那个误工费，交通费。必须要到钱才回，不然不回。”¹⁶¹

Since petitioning reflects badly on the performance evaluation of local officials, it can sometimes turn into a competition between officials and local residents—sometimes leading to a situation in which residents petition multiple times to get payments. As one person said, "Every time we petition it costs us about 500 *kuai*, to pay for transportation and loss of income. So they have to give us money to come home, otherwise we won't come back."¹⁶²

在一些情况下，地方政府可能会双管齐下，为上访者解决部分问题，同时也采用行政手段压制。来自河南的刘某因为有偿献血而感染艾滋病。2009年他因为生活和治疗问题在当地上访，无果。遂决定到北京上访，但刚到郑州就被政府截回来了。截访回来之后政府对于他提出的生活和治疗问题都给予解决了。¹⁶³但是因为带领其他感染者一起去政府上访，刘某被判刑一年，缓刑两年。¹⁶⁴

In other cases, authorities may both pay someone off and retaliate with criminal charges. Liu, a man from Henan, was infected with HIV through a blood donation. In 2009, in order to get funds to help with cost of living and medical care, he began to petition, but with no result. He decided to petition in Beijing, but on arriving in Zhengzhou he was immediately detained and sent home. After his forcible return, the authorities addressed his need for financial assistance.¹⁶⁵ However, because he had taken other people living with HIV/AIDS to petition with him, Liu was given a one-year prison sentence and a two-year suspended sentence.¹⁶⁶

在其他一些情况下，上访往往导致个人状况的恶化，而不是问题的解决。上访往往会威胁当地的政绩，影响政府的形象，所以有的当地政府往往对上访很紧张，采取一些严厉的手段对待上访者，或有一套严谨的制度应对上访。一

¹⁵⁹ 惟谦采访胡某，河北，2011年6月25日。

¹⁶⁰ Ibid.

¹⁶¹ 惟谦采访胡某，河北，2011年6月25日。

¹⁶² Korekata interview with Hu X, Hebei, 25 June, 2011.

¹⁶³ 惟谦采访刘某，北京，2011年7月5日。

¹⁶⁴ 惟谦采访刘某，北京，2011年7月5日。

¹⁶⁵ Korekata interview with Liu X, Beijing, 5 July, 2011.

¹⁶⁶ Ibid.

些被访者声称上访时受到暴力或粗鲁对待。

In still other cases, petitioning can lead to abuses instead of payments. Because petitioning can negatively affect the image of a locality and can affect officials' evaluations by more senior officials, some local authorities can be extremely anxious about petitioning, and some may use harsh methods towards petitioners to discourage it. Some petitioners report that they have experienced violence or rough treatment.

在湖北，接受我们采访的受害者称，地方政府给镇里的每个感染者安排了一个“帮扶单位”。¹⁶⁷ 帮扶单位的安排，名义上是一对一地为感染者提供必要的生活救助。但实际上帮扶单位是要确保它所负责的感染者不上访、不闹事，是当地政府维护稳定的一种手段。¹⁶⁸

In Hubei, victims we interviewed said that the local authorities had appointed "assistance units" to each person living with HIV/AIDS in their town.¹⁶⁹ Ostensibly the "assistance units" are supposed to give each person living with HIV/AIDS one-on-one living assistance. But in reality, we were told, the assistance units focus on ensuring that people living with HIV/AIDS do not petition or make trouble for the local authorities.¹⁷⁰

在河北，11名输血感染艾滋病的受害者在2008年温家宝总理视察当地的时候试图向温总理反映情况。他们没能见到温总理，接受采访的陈某说：“这个政府啊，为了控制这个局面，先对着我们啊，喷了一种也不知道是什么药，喷了迷迷糊糊的。”¹⁷¹ “几个人对付我们一个人，把我们踩倒了。”¹⁷² 这些受害者被拘禁了一个月。

In Hebei, eleven people infected with HIV through blood donations planned to use Premier Wen Jiabao's 2008 visit to their region to protest and share their problems with him. They were unable to see him. Chen, one of the group, told us, "This government, they want to control this situation. Right now, towards us, they sprayed I don't know what kind of drug on us, sprayed something that made us dazed."¹⁷³ "A bunch of people ganged up on, pushed us over."¹⁷⁴ Chen said that this group was detained for one month.

最后，政府要求与他们签协议，为每人提供4—5万元的补偿。被访者说：“当时给我们4万块钱，给我们说，你们要是不签字，看守所里不放人。”¹⁷⁵ 作为协议的一部分，他们不得进行诉讼、上访，或者再要求赔偿。而且手里掌握的输血感染的证据都要上交给卫生局。签署协议本应签署双方各持一份，但受

¹⁶⁷ 惟谦采访吴某，湖北，2011年7月20日。

¹⁶⁸ 惟谦采访吴某，湖北，2011年7月20日。

¹⁶⁹ Korekata interview with Wu X, Hubei, 20 July, 2011.

¹⁷⁰ Ibid.

¹⁷¹ 惟谦采访陈某，河北，2011年6月1日。

¹⁷² 惟谦采访王某，河北，2011年6月1日。

¹⁷³ Korekata interview with Chen X, Hebei, 1 June, 2011.

¹⁷⁴ Ibid.

¹⁷⁵ 惟谦采访陈某，河北，2011年6月1日。

害者称他们签了名之后协议就被政府收走，不让他们手里留有协议，为的是不留把柄。¹⁷⁶

Eventually, the government required that they sign an agreement in which each individual received 40,000 to 50,000 CNY (approx. USD \$6350 to \$7940) in compensation. Chen told us, "At the time, this 40,000 *kuai*, they told us, if you don't sign, no one will get out of detention."¹⁷⁷ As part of the agreement, they were not to sue, petition, or ask for any more compensation. In addition, any evidence of their infection with HIV through blood donations had to immediately be turned over to the health bureau. Normally, a copy of a signed contract should be given to each party, but in this case the victims told us that after they had signed their contract the government representatives took it away, and would not allow the people living with HIV/AIDS to keep a copy.¹⁷⁸

而之后每到重要的日子，如奥运期间或国庆，县里面都会派人监视他们，因为担心他们到市里或北京上访、闹事。¹⁷⁹

Afterwards, they told us, when there were major occasions such as the Olympics or National Day, the county sends people to keep an eye on them to prevent them from going to the city or to Beijing to petition and make trouble.¹⁸⁰

对于上访、其中的杜某说：“我们还想再去上访的时候，政府老是拦着、政府阻止着不让上访。我们只有去（写）信、去（写）一封信没有回音、去（写）一封信没有回音。信访办、中央信访办、都去过（写过信）的。”¹⁸¹

One of the group of petitioners, a man named She, said, "Whenever we think again about going to petition, the government always stops us, the government won't let us petition. All we can do is write a letter here, write a letter there, and we never get anything back. We've written to the [local] petitioning office, the central government's Office of Letters and Petitions, we've tried them all."¹⁸²

而在当地的上访，各个部门之间互相推诿不解决是常见的情况。河北的杜某说：“我们去找卫生局局长，他说‘市长不批，我有什么办法，我没有办法。市长管的我，我又不是管的市长’。给我们的回答就是‘你们爱上哪儿找上哪儿找，你们要去上访，去国务院和我们一点关系都没有’。卫生局给我们的回答就是这样。”¹⁸³

At the local levels, it is common that government agencies pass cases back and forth without resolving them. Mr. She said, "We've gone to see the head of the health bureau, and he said, "If the city health chief doesn't approve it, what can I do? There's nothing I can do. I report to the city health chief, he doesn't report to me."

¹⁷⁶ 惟谦采访杜某，河北，2011年6月1日。

¹⁷⁷ Korekata interview with Chen X, Hebei, 1 June, 2011.

¹⁷⁸ Korekata interview with Du X, Hebei, 1 June, 2011.

¹⁷⁹ 惟谦采访陈某，河北，2011年6月1日。

¹⁸⁰ Korekata interview with Chen X, Hebei, 1 June, 2011.

¹⁸¹ 惟谦采访杜某，河北，2011年6月1日。

¹⁸² Korekata interview with Du X, Hebei, 1 June, 2011.

¹⁸³ 惟谦采访陈某，河北，2011年6月1日。

The answer we get is always 'You want to go over my head, then go for it, go up to the State Council if you want, it has nothing to do with me'—that's the answer we always get from the health bureau."¹⁸⁴

而河南一名男孩的父母在发现孩子输血感染艾滋病后，到当地司法局的法律援助中心咨询，工作人员让他们去找医院解决。他们去找了医院，但一直没有结果。后来到了信访办，信访办的人又告诉他应当去找法院判决。¹⁸⁵

Similarly, the parents of a Henan child infected with HIV through a blood transfusion reported that an employee of the Legal Aid Center of the local Bureau of Justice told them to take it up with the hospital. When the parents went to the hospital, they got no result. Eventually they went to the Office of Letters and Petitions, and the staff of that office told them to take the case to court.¹⁸⁶

一些接受采访的受害者称，他们在上访的过程中遭受拘禁、殴打，申诉的个案被不同的部门像踢皮球一样踢来踢去，却没有获得任何解决。In other cases, people infected with HIV through the blood disaster who attempted to petition reported to us that they had been detained, beaten, and told to take up their cases with one agency after another, without any resolution.

在山西，重重的山峦隔断了村民获得信息的渠道，也使得村民与外界的沟通更加困难。我们在这里碰到了最无望的个案。Finally, in Shanxi Province, where high mountains cut off villages and make communication with the outside world difficult, we encountered the case that seemed the most hopeless of all.

一位在医院输血感染了艾滋病的村民，曾试图到村委去反映情况，但去了几次都大门紧锁，她连村干部什么时候上班都不知道。¹⁸⁷ 她也没有尝试到镇里甚至市里去上访，“因为出去一趟车费需要花几十块，还很可能没有任何结果。”¹⁸⁸

One Shanxi villager who contracted with HIV through a hospital blood transfusion told us that she had tried to bring up the situation with the village chief, but that every time she went to the chief's office, the door was locked, and she couldn't even find out when the [more senior] Community Party officials of the village were supposed to be at work.¹⁸⁹ She didn't try to go to the township or the city to petition, "because taking the bus there costs twenty or thirty *kuai*, and it might not get me anywhere."¹⁹⁰

即便如此，这名妇女也是接受我们访谈的7名山西受害者当中仅有的有过上

¹⁸⁴ Korekata interview Chen X, Hebei, 1 June, 2011.

¹⁸⁵ 王某，《陈述书》，无日期。为个人陈述，惟谦艾滋法律中心存档。

¹⁸⁶ Wang X, "Statement". No date. Personal statement on file at Korekata AIDS Law Center.

¹⁸⁷ 惟谦采访党某，山西，2011年7月18日。

¹⁸⁸ 惟谦采访党某，山西，2011年7月18日。

¹⁸⁹ Korekata interview with Dang X, Shanxi, 18 July, 2011.

¹⁹⁰ Ibid.

访念头和行动的人，而这7名受害者，没有任何一人因为输血感染获得赔偿。

The woman we spoke with knew seven other Shanxi people who had tried to petition and do something about their case, but among these seven, not one person had obtained any compensation for his infection with HIV through a blood transfusion.

由于村里对艾滋病的歧视非常严重，绝大多数的当地感染者都不敢公开身份。常女士甚至不敢去申请低保，因为需要告知申请原因，而她绝对不敢说自己是感染者的身份。¹⁹¹

Stigma surrounding HIV in the village is intense, and most of the people living with HIV/AIDS in the village are unwilling to make that fact known to the others. Chang, a woman we spoke with, did not even want to apply for social security payments, because she would have had to explain why, and she was afraid to let others know that she was living with HIV.¹⁹²

公民享有申诉、救济的权利，但血液污染受害者们在上访的过程中发现，政府部门互相推诿，或对上访者采取严厉的应对和监控措施。上访加剧了受害者与当地政府的冲突，但政府也因为受害者的上访而更加了解这一问题，并相应进行了解决。上访加重了受害者在经济、精神等方面的负担。

Citizens have the right to appeal and to ask for financial assistance. But those who have petitioned for help because of the blood disaster have discovered that government offices push the responsibility onto one another, or use harsh methods to repress petitioners and keep them under control. Petitioning has worsened the conflict between victims and the local governments, yet at the same time, it has made the government more aware of their issues and pushed some officials to resolve them. Petitioning has also increased the financial and psychological burden on victims of the blood disaster.

吉林一名多年上访的受害者称：“我们.....五年来一直在依法维权，曾多次到镇、区、市、省、中央有关部门上访.....几年来，我们不但承受艾滋病魔的摧残，还要承担来自因上访难、起诉难而造成的经济、精神上巨大损失和痛苦。”¹⁹³

我们认为，中国迫切需要建立一个系统性的补偿和救助机制，为受害者们提供生活和医疗的支持。

One Jilin victim who has petitioned for many years said, "We...have been using the law to defend our rights for five years, and we have petitioned over and over again at the county, district, city, province and national government offices.... These past years, we have not only had to put up with the ravages of this illness, but also the tremendous psychological and financial damage caused by petitioning."¹⁹⁴ For this

¹⁹¹ 惟谦采访常某，山西，2011年7月18日。

¹⁹² Korekata interview with Chang X, Shanxi, 18 July, 2011.

¹⁹³ 朱某，《致省长、市长的一封信》，2007年7月10日，惟谦艾滋法律中心存档。

¹⁹⁴ Zhu X, "Letter to the Governor and the mayor," July 10, 2007. Letter on file at Korekata AIDS Law Center.

reason, we need to establish a systematic approach to providing compensation and assistance to victims of the blood disaster.

法律在应当主持正义的时候没有起作用，而上访又根本无法解决问题。在这样的情况下，只会引发更为激烈的社会矛盾和冲突。

The law should facilitate justice, but it has not done so, and petitioning is also not resolving the fundamental problems. In this situation, petitioning has actually deepened the social contradictions and conflicts.

国际准则

International Standards

根据中国所签署的一些国际人权法，受害者享有获得补救和赔偿的基本权利。

Under several international human rights laws to which China is a signatory, victims have a fundamental right to remedy and to reparations.

中国作为联合国的成员国，有义务支持作为普世价值的《世界人权宣言》。《世界人权宣言》指出，“当宪法或法律所赋予他的基本权利遭受侵害时，任何人有权由合格的国家法庭对这种侵害行为作有效的补救。”¹⁹⁵

The Universal Declaration of Human Rights, which China must uphold as a member of the United Nations, states that “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights.”¹⁹⁶

中国签署但并未批准的《公民权利和政治权利国际公约》，保障任何一个被侵犯了该公约所承认的权利的人，“能得到有效的补救”。¹⁹⁷ REDRESS是一家英国的人权机构，主要关注人权侵害受害者的正义和补救。REDRESS认为，人权委员会“已经制定出规范性的框架，通过人权委员会类似于司法的职能，发布对个人申诉的‘意见’，以及通过国家报告的程序‘观察’其表现”。¹⁹⁸ 通过这些文书，委员会认为，补救应该是“适当的”（而不是象征性的），行政上的补救并不足够和有效；而且委员会也认为，补救应该赔偿受害者心理和身体两方面的创伤。¹⁹⁹

China has signed, though not ratified, the International Covenant on Civil and Political Rights (ICCPR), which provides that states parties must undertake to ensure individuals whose rights are violated under the Covenant “shall have an effective remedy.”²⁰⁰ According to REDRESS, a British human rights organization that focuses

¹⁹⁵ 世界人权宣言，第八条，联合国大会1948年12月10日第217A(III)号决议通过并颁布。

¹⁹⁶ Article 8, *Universal Declaration of Human Rights (UDHR)*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

¹⁹⁷ 公民政治权利国际公约，第二条，联合国大会1996年12月16日第2200A (XXI)号决议通过。

¹⁹⁸ REDRESS, *Justice for Victims: The ICC's Reparations mandate*, 英国伦敦，2011年5月，p. 12，网址：
http://www.redress.org/downloads/publications/REDRESS_ICC_Reparations_may2011.pdf

¹⁹⁹ REDRESS, *Justice for Victims*, p. 12.

²⁰⁰ Article 2(3)(a), (b) and (c), *International Covenant on Civil and Political Rights (ICCPR)*, GA res. 2200A (XXI), UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

on justice and reparations to victims of rights abuses, the Human Rights Committee “has developed the normative framework for reparation through its quasi-judicial function, issuing ‘views’ on individual complaints and ‘observations’ on States’ submissions through its reporting procedure.”²⁰¹ Through these statements, the Committee has established that reparations should be “appropriate” (i.e., not purely symbolic), and that administrative remedies are not adequate and effective substitutes for reparations; the Committee has also established that reparations should compensate victims for psychological harm as well as physical harm.²⁰²

联合国《粗暴违反国际人权法和严重违反国际人道主义法行为受害者享受补救的赔偿权的基本原则和准则》（简称《基本准则》）重申和阐述了国家负有人权侵害提供补救的法律责任。²⁰³《基本准则》对受害者进行了定义：

受害者系指由于构成粗暴违反国际人权法或严重违反国际人道主义法的行为或不行为而遭受损害，包括身心创伤、感情痛苦、经济损失或基本权利受到严重损害的个人或集体。适当时，根据国内法，受害者还包括直接受害者的直系亲属或受抚养人以及出面干预以帮助处于困境中的受害者或阻止加害他人行为而遭受损害的人。²⁰⁴

The UN Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law (or the Basic Principles) reaffirms and elaborates on the legal obligation of states to provide reparations for human rights abuses.²⁰⁵ The Basic Principles defines victims as follows:

Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights...Where appropriate, and in accordance with domestic law, the term “**victim**” also includes the **immediate family or dependents** of the direct victim and persons who have suffered harm in intervening to assist victims in distress [emphasis added].²⁰⁶

补救包括哪些内容？根据 REDRESS，《基本准则》包括了以下几个方面：

- 程序性和实质性的权利，“在某些情况下，程序上的补救，以有效的调查和审判的形式，能构成部分或全部的赔偿”；
- 复原，“尽可能将受害者恢复到发生粗暴违反国际人权法或严重违反国际人道主义法行为之前的原来状态”；
- 赔偿，包括“(a)身心伤害；(b)失去的机会，包括就业机会、教育机会和社会福利；(c)物质损害和收入损害，包括收入潜力的损失；(d)精神伤害

²⁰¹ REDRESS, *Justice for Victims*, page 12.

²⁰² Ibid.

²⁰³ 经济及社会理事会，粗暴违反国际人权法和严重违反国际人道主义法行为受害者享受补救的赔偿权的基本原则和准则，2005年7月25日第38次全体会议。

²⁰⁴ REDRESS, *Justice for Victims*, p. 16.

²⁰⁵ *Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law*

²⁰⁶ REDRESS, *Justice for Victims*, p. 16.

- ；(e)法律或专家援助费用、医药费用以及心理服务与社会服务费用”；
- 康复，包括“医疗和心理护理以及法律服务和社会服务”；
- 满足和保证不再发生，包括诸如公开披露真相（但披露真相不得进一步伤害或威胁受害者、受害者亲属），公开道歉，为受害者提供赔偿等措施。²⁰⁷

What should reparations include? According to REDRESS, the Basic Principles and Guidelines stipulations can be understood as follows:

- **Procedural and substantive rights:** “in some instances, the procedural remedy, in the form of an effective investigation and trial, may in and of itself constitute full or partial reparation”;
- **Restitution**, or “the act of restoring the victim, to the extent possible, to the original situation before the violation, crime or injury occurred”;
- **Compensation**, including “(a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; (e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services”;
- **Rehabilitation**, including “medical and psychological care as well as legal and social services”;
- **Satisfaction and guarantees of non-repetition**, which can include such measures as public disclosure of the truth (provided that such disclosure does not further harm the victim or the victim’s family), a public apology, and/or commemorations and tributes to the victims.²⁰⁸

中国的“四免一关怀”政策为感染者提供抗病毒药物治疗和其他福利，但并没有对不同途径的感染者进行区分，特别是因为政府行为而导致的艾滋病感染。该政策是一种行政上的补救，而根据人权委员会的定义，行政上的补救是不足的。

China’s “Four Free, One Care” policy provides access to antiretroviral treatment and other benefits to all people living with HIV/AIDS in China without distinguishing those infected with HIV through the actions of state actors. It is an administrative remedy and in accordance with the Human Rights Committee’s previous judgments, it does not qualify as a form of reparation.

正如本报告所示，中国薄弱的法律系统并未能保障受害者诉讼的权利，而诉权本应构成部分的补救，以确保受害者能够为其所遭受的多种形式的伤害获得充分的赔偿。对血液污染事件的沉默，加上艾滋病的污名，使得受害者康复和满足的权利得不到实现。同时，也剥夺了公众对事件真相的知情权。

As this report shows, the weak legal system is failing to give victims the procedural rights that would help to partially constitute reparations and that would ensure they

²⁰⁷ REDRESS, *Justice for Victims*, p. 9-13.

²⁰⁸ REDRESS, *Justice for Victims*, p. 9-13.

gain adequate compensation for the multiple forms of harm they have suffered. The silence imposed on discussions of the blood disaster, when combined with the stigma surrounding the epidemic has also denied victims their rights to rehabilitation and to satisfaction, including public acknowledgment of the truth they experienced, of their suffering, and public commemoration of the many victims lost.

建立一个国家补偿机制，不仅能保障这些在国际上已经承认的基本权利，为血液污染受害者提供补救和复原，同时也让中国有机会为处理类似的灾难建立新的国际准则。

By establishing a national mechanism to provide reparations and restitution to victims of the blood disaster, China can not only uphold its human rights obligations, but also establish a new international standard for providing right to redress and compensation to a disaster.

IV 政策建议 Policy Recommendations

2012年初，一个由专家和律师组成的工作小组将一份关于建立国家补偿政策的提案向公众征询意见。这份即将提交给人大的提案，参考了亚洲促进会2007年的报告《他山指石：国际血液污染事件处理经验》，也综合了本报告所提的建议。

In early 2012, a working group of Chinese policy experts, lawyers and government advisors circulated a draft proposal for comment that recommended establishing a national compensation plan. This proposal, now going before China's legislators, incorporates some of our suggestions below, as well as drawing extensively on a 2007 Asia Catalyst report, *AIDS Blood Scandals: What China Can Learn From the World's Mistakes*.

在向工作小组分享我们的研究结果之后，本报告也公布于众。根据我们对中国法律、国际法律和准则的共同理解，以及对血液污染受害者生活经验的研究，并借鉴其他国家处理类似灾难的经验和教训，我们提出以下三方面的建议：

Having shared our recommendations with this working group, this report now shares them with the public. Based on our understanding of Chinese laws and standards, international laws and standards, our research into the experiences of the blood disaster survivors, and both the positive and negative examples set by other countries that have also survived blood disasters, we recommend a plan that includes three parts:

- 针对血液污染的范围和受害者人数开展独立和彻底的调查；
- 制定一个国家补偿政策，彻底解决受害者的需求；
- 向公众道歉。
- An independent investigation to establish once and for all the scope of the disaster;
- A comprehensive national compensation policy that would fully resolve the financial needs and demands of the disaster's victims;
- An apology by the government to the victims.

一方面，我们理解建立补偿基金需要很多方面投入和资源。但另一方面，我们的研究也表明，由于政府在血液污染的问题上进行拖延而不是直接解决，花费的资源可能等于或甚至远远超过建立补偿基金所需的费用。目前，大量的国家资源花在拖延或拒绝审理案件、安抚上访者、动用各个部门维护社会稳定、并处理因此而产生冲突和分歧上。倘若建立补偿基金，在一段时间内成功解决大部分个案后停止基金的运作，实际上反而能更有效地利用国家资源。

On the one hand, we understand that the resources required to establish such a comprehensive compensation fund are significant. But on the other hand, our research suggests that the state is currently expending perhaps equal, and arguably even greater resources in delayed trials, repeated payouts to petitioners, meeting with victims by multiple agencies to hear their repeated claims, and management of conflicts and disagreements that arise as a result. A compensation fund that existed for a limited time and that resolved most cases successfully could, in the long run, actually be more efficient as a use of state resources than the current approach.

这些建议更重要的作用在于，血液污染的受害者，他们的家庭和社区，那些在90年代对艾滋病还不了解、现在对受害者满腹愧疚的有良心的官员，以及整个社会，能够去正视和解决这个问题，然后问心无愧地向未来迈进。这同时也是一个很好的机会，对公众进行艾滋病教育，以减少艾滋病相关的污名和歧视。

Above all, the recommendations we make would enable victims of the disaster, their families and communities, officials of conscience who did not fully understand HIV/AIDS in the 1990s and who now feel regret and concern for the well-being of the disaster's victims, and Chinese society as a whole, an opportunity to address the disaster, resolve it, and move on into the future with a clear conscience. It also provides an excellent opportunity to educate the public about HIV/AIDS and to reduce stigma and discrimination.

这场灾难给中国造成了经济、心理和社会等方面的负担，但这些问题是可以解决的。90年代的错误给今天的中国提供了一个机会，那就是建立一个解决社会问题的新模式。而且在这个过程中，有机会让中国练习其领导力，为其他国家如何处理类似的国家责任事件，提供了一个解决问题的模式。

The disaster is currently a financial, psychological, and social burden on China, but it does not have to be one. The mistakes of the 1990s provide an opportunity to all of us today to establish a new model for China's approach to social problems—and in the process, an opportunity for China to exercise global leadership by acting as a model for other countries to handle similar national disasters.

建议一：对血液污染的受害者人数开展调查

Recommendation 1: Hold an Investigation to Establish the Number of Victims

血祸发生至今已逾十多年，但目前并没有受害者人数的确切统计。尽管中国每年都会公布艾滋病疫情的相关数据，但对于血液污染这一发生范围较广、受害人数众多的灾难，政府没有开展专项调查。仅有的一次调查是2004年在河南地区针对有偿供血人员开展的普查，公布受害者人数为2.5万²⁰⁹。根据最近的

²⁰⁹ 张可，《河南艾滋病五年调查报告》，NGOCN.net（网站）。访问日期：2011年11月15日。网址：

这份提案，受害者人数估计为60,840人。²¹⁰这个数据可能是准确的，但由于地方政府曾经掩盖疫情，我们对这一数据仍然存疑。除此以外，对于医院输血感染以及血制品感染的受害者，和因此已经去世的受害者，并没有准确的调查数据。

The blood disaster took place more than a decade ago, but up until now we have not had a complete count of the number of victims. Although China publishes an annual report on the HIV/AIDS situation and related statistics, the extensive scope of the blood disaster and the number of people affected by the disaster have yet to be fully investigated. A one-time report in 2004 on the spread of HIV through paid blood donations in Henan Province reported that there were only 25,000 victims.²¹¹ The current proposal before the government estimates 60,840 victims.²¹² This may be accurate, but the record some local governments had at the time of covering up the blood disaster is cause for concern. In addition, there is no accurate survey data on the number of people infected through hospital blood and blood products who died as a result.

我们认为，作为解决问题的基础和前提，同时也是为了避免公众对受害者人数的质疑，政府应当对血液污染的影响人数和范围开展独立的调查。卫生部可以和各地的非政府组织合作，统计受害者人数。调查应包括以下几个方面：

- 通过有偿献血感染艾滋病的人
- 通过输血或使用血液制品感染艾滋病的人
- 与前两类受害者接触而感染的家庭成员和伴侣

In our view, as a basis for resolving this issue, and avoiding future social conflict with those unsatisfied with the government's estimate, we urge the government to hold an independent investigation of the number of people infected through contaminated blood and blood products. The Ministry of Health could partner with local non-governmental organizations in order to gather complete statistics. This investigation should include efforts to document:

- People who contracted HIV through paid blood donations,
- People who contracted HIV through transfusions of contaminated blood and blood products,
- Their sexual partners and children who may have contracted HIV through secondary transmission.

建议二：建立国家补偿基金

Recommendation 2: Establish a Compensation Fund

<http://www.ngocn.net/?action-viewnews-itemid-2605>。

²¹⁰ 邱仁宗、翟小梅等《关于建立经医疗输血或使用血液制品感染艾滋病病毒保险和补偿机制的意见》。中国红丝带北京论坛：<http://www.bjrrforum.org/ChinaAIDS>。访问日期：2012年2月16日。

²¹¹ Zhang Ke, *Investigation Into Five Years of HIV/AIDS in Henan*, NGOCN. net [website]. Accessed November 15, 2011: <http://www.ngocn.net/?action-viewnews-itemid-2605>.

²¹² Qiu Renzong, Zhai Xiaomei, et. al., "Views On the Establishment of Insurance and Compensation Mechanisms for the Medical Transfusion of HIV-Infected Blood or Blood Products," China Red Ribbon Forum, posted on <http://www.bjrrforum.org/>, accessed February 16, 2012.

我们建议，中国应颁布专门的法规、成立专门的机构来负责血液污染感染艾滋病的补偿问题。由卫生部牵头，召集其他相关部门（如法院），成立一个由政府管理的国家补偿基金，为血液污染受害者提供支持。应当颁布《血液污染感染艾滋病补偿条例》，为补偿的提供和基金的运作提供法律依据和规范。补偿基金的设立应当是短期的；一旦基金处理完所有申请，就应当关闭。这也将有助于管理和限制政府支出。

We recommend that Chinese leaders pass laws to establish an agency responsible for compensating people infected with HIV/AIDS through the blood disaster. The agency should be established under the leadership of the Ministry of Health, working with relevant agencies (such as the courts), to establish a national compensation mechanism. The government should promulgate regulations to create a framework and a legal basis for the mechanism. The compensation fund should be established for a set period of time; once the fund has settled all the claims, the fund should close. This will also help to manage and limit government expenditures.

该基金的办公室应当设在北京，并由办公室受理所有的申请。基于这一问题在地方上的敏感性，我们认为在北京独立运作的基金办公室更有可能公平地处理这些个案申请。

The compensation mechanism should be established in Beijing with an office there that accepts all applications for compensation. Because of the sensitivity around this issue at the local level, we believe that an office in Beijing will be more independent and fair in its management of applications than would local offices.

我们之所以建议成立补偿基金，是因为很多受害者试图通过法律途径争取赔偿，但如本报告分析，受害者在寻求司法救济的过程中遇到一系列的困难。而且由于法律途径非常耗时耗力，对于本身就患病的受害者来说并不是一个理想方案。也有些受害者没有通过诉讼，而是通过地方政府或当地医院协调，获得一些补偿。如报告所述，这些小额的补偿大多数是一次性的，受害者花完之后生活就无法维系。那些只获得很少赔偿或没有获得任何赔偿的受害者来说，如果诉讼的权利也被剥夺，那么他们除了上访之外没有任何途径可以获得补偿，这反过来又会导致社会矛盾和冲突。

We recommend a national fund because the legal system has failed to meet the needs of the large number of victims of this disaster. Many victims have attempted to use the legal system to obtain compensation, and as this report documents, they have encountered numerous procedural problems. The legal process is time-consuming and ineffective. Others have obtained compensation through one-time settlements negotiated with local government or local hospitals, and these small settlements have been insufficient to meet their needs. If those who have only small compensation or no compensation at all are denied legal redress, they have no means to obtain compensation except petitioning, which can in turn lead to conflict.

此外，国际经验表明，通过程序性的法律途径来解决问题，远比建立补偿基金要花费更多的资源。

Furthermore, international experience has shown that allowing processes to play out in court is far more wasteful of government resources than a fund that pays out compensation directly.

但是，这并不意味着法院可以免除责任，不处理受害者提出的诉讼要求。受害者可以选择接受基金的补偿，也可以选择以诉讼的方式由法院判决赔偿。但受害者只能选择其中一种方式，接受基金补偿的需要签订协议，约定不再进行诉讼或要求赔偿；诉讼之后也不能再申请补偿基金。

However, this does not relieve the courts of their obligations to protect victims' rights to sue if they so choose. Once the compensation fund is established, victims should be able to choose whether to accept the package offered through the compensation fund, or to choose to sue for compensation, but should not be able to do both. If they accept the compensation package, the agreement they sign should stipulate that they cannot sue in the courts, and if they choose to sue they may not apply to the compensation fund.

以下关于基金管理的建议来源于我们与受血液污染影响人群工作的经验。The following recommendations on management of the fund are drawn from our own experiences working with those directly affected by the disaster.

1、告知及申请程序

1、*Public Announcement and Application Process*

我们的经验表明，当地政府可能会极力掩盖血液污染的情况，以保护其声誉。所以应当通过各种媒体，包括电视、报刊、广播以及网络等，广泛告知曾经输血、有偿献血，或输用过血液制品的人进行艾滋病检测，此外还需要检测其他能够通过血液传播的疾病，如乙肝、丙肝等。政府应当保证检测的自愿和保密性，以及与检测相配套的治疗及其他服务。

As experience has shown that local authorities may attempt to cover up the blood disaster out of a desire to protect their reputations, it is important that the compensation fund should be announced in multiple forms of media, including television, newspapers, radio, and the internet, in order to advise everyone who has received a blood transfusion, donated blood or used blood products to test for HIV and other blood-borne pathogens such as hepatitis B and hepatitis C. The government should ensure that all such testing is confidential and voluntary, and that tests are accompanied by information and counseling on treatment and related services.

很多受害者处于边远的农村地区，教育水平较低，个人可以选择到国家补偿基金的办公室直接进行申请，或者可以通过网络、邮寄等方式进行申请。基金应当设立免费的咨询电话，供受害者咨询关于基金申请等方面的信息。我们建议，申请表格应当简单明了，让文化程度较低的人也能填写。

Many victims of the blood disaster live in remote rural areas, and have a low level of

education. The fund should therefore permit individuals to choose whether to go to the fund office in person to apply, or to apply by mail or the Internet. The fund should establish a toll-free phone number that individuals can call to gather information about how to apply. We recommend making the application form short and simple, to make it easy for people with limited education to apply.

2、资格及证明

2、 *Eligibility and Evidence*

考虑到基金可能会在较长的一段时间内运作，为了使基金运作的时间最小化，避免处理每个申请都花费漫长的时间，同时避免未来可能发生上访和冲突，申请者的资格认定应该使用比较宽泛的标准。任何一位艾滋病感染者只要能提供材料证明曾经历过以下情况之一，就应当视做符合基金申请的资格：

- 输血或使用血制品
- 有偿献血
- 二次传播，即与因输血、使用血制品或有偿献血感染艾滋病的人发生高危接触而感染艾滋病的情况

In order to minimize the amount of time and resources spent on managing the fund, we recommend minimizing the resources spent on investigating and managing each individual case, and also avoiding potential future petitioning and other conflicts, by making eligibility as broad as possible from the outset. Any person living with HIV/AIDS should only need to provide evidence that she or he has experienced one of the following circumstances:

- Received a blood transfusion or blood products
- Donated or sold blood
- Secondary transmission, i.e. evidence of exposure to someone who had previously donated blood or received a blood transfusion or used blood products.

我们提出这样的建议，是因为证据的提出和认定，在任何国家都是一个极其复杂的问题，鉴于灾难已经发生这么多年，对于大部分的受害者来说，很难拿出符合高标准的证据。如果设定的标准过于严格，也只会为未来的冲突、上访和诉讼埋下伏笔。

We recommend this approach because issues of evidence and proof are extremely complex issues in any country. As the blood disaster took place many years ago, it will be difficult for most victims to meet a higher standard of evidence. Furthermore, setting eligibility criteria too narrowly will only create a basis for future conflict, petitioning, and litigation.

关于证明，申请者应当提供艾滋病感染证明（检测报告或服药证明等）、住院或输血证明，以及其他相关的材料。

In terms of the type of evidence required, we recommend that those applying to the

fund provide evidence of HIV status (i.e., a test result or prescription for ARVs), evidence of a hospital stay or blood transfusion, and any other related materials.

对于已经通过诉讼或调解的方式获得赔偿的受害者，如果已获得的赔偿标准高于补偿基金，就按原方案进行。如果少于补偿基金，则由补偿基金提供不足的部分。

As for those who have already obtained compensation through litigation or through private settlements, if the compensation package already awarded is more than that offered by the compensation fund, it should be implemented as it stands. If it is less than the package offered by the compensation fund, then it should be supplemented by the compensation fund.

3、争议的解决

3、 *Dispute Resolution*

争取赔偿的过程本身已经非常漫长而艰巨，而在申请的过程各方对基本事实的认定可能会存在争议。因此，基金办公室还应当包括一个专门的监察委员会，来裁定中出现的一些争议。委员会应当由受害者代表、律师、专家、政府代表和非政府组织代表等共同组成。该委员会应当对以下问题进行独立调查，做出裁定：

- 申请遭到拒绝的情况
- 申请获得批准，但没有恰当执行的情况

The process of struggling for compensation has already been long and arduous, prone to dispute over basic points of fact. Thus we recommend that the compensation fund office include a dedicated oversight committee in order to resolve any problems or disputes that occur around the compensation process. The committee should include representatives of the victims, lawyers, government representatives, and NGO representatives. This committee should hold independent investigations and issue binding decisions in cases in which:

- Applications are denied; or
- Applications are accepted, but there are problems in implementation.

4、赔偿标准

4、 *Compensation Standards*

我们的研究发现，黑龙江北安农场案件为受害者所提供的赔偿方案，比较能够满足受害者的需求。因此，我们建议为所有血液污染的受害者提供全面的补偿方案。

Our interviews showed that in Heilongjiang Province, the compensation package received by victims actually came close to meeting all their needs. Thus we recommend offering comprehensive compensation to all victims who contracted HIV through the blood disaster that includes:

- 一次性精神损失费10万至30万元；
- 根据当地生活水平终生发放每月生活补助，包括误工费、治疗费、住院费、营养费、心理咨询费，以及家庭所需的支持，如孩子教育的费用；
- 对于因输血感染艾滋病并发症而死亡的受害者，其家庭应当获得法律所规定的死亡赔偿金，以及丧葬费；
- 对于同时感染丙肝的受害者的赔偿方案，一次性给予10万元的补偿。
- One-time compensation for emotional harm of between 100,000 and 300,000 CNY [USD \$15,773 to \$47,319]
- Monthly compensation for life based on local cost-of-living expenses that includes loss of income, treatment costs, hospital costs, nutritional costs, counseling, and other support needed by the family, such as educational costs for children;
- And for those who contracted HIV through the blood disaster and who died as a result, compensation for death according to legal standards, and cost of funeral expenses;
- Those who were infected with hepatitis C should be given an additional one-time compensation of 100,000 CNY [approx. USD \$15,873].

本报告建议针对受害者提供一次性补偿加每月生活补助的方案，基于几方面的原因。很多血液污染的受害者已经举债过日（包括生活债务和医疗债务），而一次性的补偿应该能够解决这个问题。但是，他们也应该获得每月的生活支持。首先，艾滋病是终生的、不可治愈的疾病，患者需要长期的医疗和生活照顾。其次，我们担心大额的一次性补偿会让受害者很快花完，或者引来居心不良的人对他们进行欺诈，导致他们再次陷入困境。每月的生活补助能够为受害者提供长期的支持。

We recommend a system that combines one-time payments with monthly payments for several reasons. Many people living with HIV/AIDS as a result of the blood disaster have already amassed debts (including livelihood debts and medical debts) that a one-time payment could help to resolve. However, they should have monthly payments as well. First, HIV/AIDS is a lifelong condition that requires lifelong care. Second, we are concerned about the risk of victims spending lump sums quickly, especially as the prospect of large payments of cash could attract unscrupulous people who attempt to cheat them of their funds, leaving them in hardship again. Monthly payments are more likely to provide the victims with long-term security.

建议二：向受害者正式道歉

Recommendation 3: An Official Statement of Apology

在处理血液污染的事件上，有两种主要的观点。一种观点认为，当年的责任官员应当对此负责，要追究他们的刑事责任，给受害者一个交代²¹³；一种观

²¹³ 《北京红丝带论坛2011年研讨会会议记录》，2011年7月22日。网址：
<http://www.bjrrforum.org/rdry/34515.htm>。

点认为，以往的问题可以按照无过错的原则，不再追究²¹⁴，或者认为，“刑事责任的问题，先放一放，先解决感染者基本生活和治疗的生存权问题”。²¹⁵ 灾难已经过去了很多时间，很多当年的官员或医生都已经退休，甚至去世，很难再去追究责任。

There are generally two opinions about addressing potential criminal responsibility attached to the blood disaster. Some people believe that government officials of the time should be held accountable.²¹⁶ Others believe that the issue could be handled under the "no-fault" principle and that no criminal accountability should apply.²¹⁷ Or as some have put it, "Put the issue of criminal responsibility aside for now, and first address the basic needs of victims for compensation and medical assistance."²¹⁸ Other challenges apply to assigning criminal responsibility: The disaster took place quite a few years ago, and many officials who were involved at the time have now retired, while some have even passed away. Holding them accountable would be difficult.

我们认为，当年血液污染事件曾经在较大范围内存在，涉及到的责任人众多，包括地方血头、地方卫生官员、甚至可能包括地方的卫生系统；由于灾难过去时间较长，收集证据存在很大难度；受害者和公众对于该问题的强烈情绪，可能会影响审判的公平进行。

In our opinion, the responsibility for the blood disaster is quite widespread, and the number of people potentially facing criminal responsibility could be great. It could include local blood brokers (the "blood heads"), local health officials, and even the local health system. In addition, since the disaster happened many years ago, gathering evidence will be difficult. As feeling is strong about the issue among victims and the general public, popular opinion could influence the ability to have a fair trial.

另一方面，接受惟谦采访的受害者一致表示，解决赔偿问题是现在的当务之急。血液污染使得受害者的身心以及家庭都遭受重创。我们认为，应当以受害者的需求为重。为受害者提供赔偿，维持他们的生活、治疗和家庭，迫在眉睫。

Additionally, the victims interviewed by Korekata AIDS Law Center expressed to us that they urgently need compensation. The blood disaster has profoundly affected them and their families. Our view is that the victims' demands should be at the center of our response, and that it is urgent to provide them with compensation so that they and their families can survive.

²¹⁴ 《北京红丝带论坛2011年研讨会会议记录》，2011年7月22日。网址：

<http://www.bjrrforum.org/rdry/34515.htm>。

²¹⁵ 《北京红丝带论坛2011年研讨会会议记录》，2011年7月22日。网址：

<http://www.bjrrforum.org/rdry/34515.htm>。

²¹⁶ *Minutes of the 2011 Beijing Red Ribbon Forum Conference, July 22, 2011. Available online at*

<http://www.bjrrforum.org/rdry/34515.htm>.

²¹⁷ *Minutes of the 2011 Beijing Red Ribbon Forum Conference, July 22, 2011.*

²¹⁸ *Ibid.*

同时，我们建议政府也向公众告知血液污染事件的真相，向受害者致歉。在其他发生过血液污染事件的国家，政府除了针对事件开展调查，为受害者提供赔偿，还处罚责任官员，并向民众道歉。日本²¹⁹、法国²²⁰和加拿大²²¹都采取了这种做法。另外，美国政府也因为在1946年的医学研究中让数百名危地马拉人感染性病，而向公众表示道歉。这是中国政府可以参考的应对方式。

At the same time, we recommend that the government publicly acknowledge the blood disaster to the public, and should apologize to the victims. In other countries, such as Japan,²²² France,²²³ and Canada,²²⁴ where blood disasters took place, the government not only held full investigations of the disaster and provided compensation to victims, but they also held some officials accountable and apologized to the public. Additionally, the U.S. government apologized publically for transmitting sexually-transmitted diseases to hundreds of Guatemalan citizens in 1946. The Chinese government could consider these examples of public apologies.

政府的道歉会引起媒体的关注，这也提供了一个机会让公众了解受害者所承担的痛苦。这个过程将有助于消除艾滋病相关的污名和歧视。

The media attention around this statement of apology may also provide victims with the opportunity to describe their painful experiences, and in the process will help to reduce the stigma surrounding HIV/AIDS in China.

政府的道歉和声明将有助于抚慰这个国家因血液污染而造成的创伤，确保这样的灾难永远不再发生。与此同时，国家应当面向所有受害者建立国家补偿基金。

The statement can help to heal the national wound created by the blood disaster, can help to ensure that such a disaster never happen again, and should be issued at the same time that China announces the establishment of the national compensation fund.

²¹⁹ 亚洲促进会，《他山之石——国际血液供应污染事件处理经验》，纽约，2007年9月

²²⁰ 程宗璋，《西方国家血液安全之责任与赔偿》，临床误诊误治，15（1）：[2002]p23

²²¹ 杨士龙，加拿大法官裁定血污染事件被告无罪，新华网，2007年10月2日。访问日期，2011年9月11日。网址：http://news.xinhuanet.com/newscenter/2007-10/02/content_6822654.htm。

²²² *AIDS Blood Scandals: What China Can Learn from the World's Mistakes*. New York: Asia Catalyst Report, 2007.

²²³ Cheng Zongzhang, "Liability and Compensation of Blood Safety Responsibility in Western Countries", *Clinical Misdiagnosis*. Volume 15(1): 2002; p23 .

²²⁴ Yang Shilong, "Canadian Judge Rules Defendant Not Guilty in Blood Contamination." *Xinhua News*, 2 October 2007. Visited 11 September 2011. Available at http://news.xinhuanet.com/newscenter/2007-10/02/content_6822654.htm.

致谢 Acknowledgments

作者感谢所有的受访者，感谢联合国艾滋病规划署驻华办事处和李维—斯特劳斯基金会为本研究提供资金支持。特别感谢在我们两个机构为本报告进行背景研究的志愿者们，以及刘巍律师、邱仁宗教授和马克·海伍德先生为本报告所提的宝贵意见。

The authors are grateful to all those who were willing to be interviewed, as well as to the UNAIDS China Office and Levi Strauss Foundation for their support. Special thanks to volunteers for both our organizations who assisted with background research, to legal advisor Liu Wei, Prof. Qiu Renzong and Mark Heywood for their advice on aspects of the report, and to David Snow for copyediting.

惟谦艾滋法律中心致力于帮助受艾滋病影响的人群维护权益和伸张正义，推动中国的法制进程。我们试图通过诉讼、倡导、培训等方式，推动中国艾滋病相关法制的建设和发展。我们关注的议题包括艾滋病歧视、血液污染的赔偿、治疗可及性，以及边缘人群的权益问题。

联系我们：86—10—84034803

地址：北京市旧鼓楼大街大石桥胡同18号，100009。

Korekata AIDS Law Center aims to defend the rights of people affected by HIV/AIDS, and to advance the development of Chinese rule of law. Through casework, publications, advocacy and workshops, we promote access to and participation of people affected by HIV/AIDS in China's development legal system. Our issues include combating discrimination, advocating for compensation for people infected with HIV through hospital blood transfusion, advocating for treatment access, and promoting respect for the rights of vulnerable communities.

Contact us: 86-10-84034803. Address: No.18 Da Shiqiao Hutong, Gulou Ave, 100009.

亚洲促进会关注东亚和东南亚地区健康领域的边缘社群。我们认为，推进人权的最好方式，起始于建立一个透明、平等和负责任的非营利组织管理架构。我们为合作伙伴提供管理培训，帮助机构稳定发展，同时帮助他们成为有效的权利倡导者。更多信息请登陆：www.asiacatalyst.org。

Asia Catalyst works with grassroots groups from marginalized communities in East and Southeast Asia that promote the right to health. We believe that the best way to promote human rights is to begin by building transparency, equality and accountability into nonprofit organizational management. By coaching our partners to build strong and stable organizations, we help them to become powerful and effective rights advocates. For more information, please see www.asiacatalyst.org.