PREFACE

In mid-2007, the International Development Law Organization (IDLO), Yunnan Daytop Drug Abuse Treatment and Rehabilitation Center (Daytop), Yunnan Righteous Law Firm and the Asia Pacific Council of AIDS Service Organizations (APCASO) launched a joint project to support the legal response to HIV in Yunnan and to protect and promote the rights of people living with HIV and vulnerable groups.

A training workshop, “Promoting Harmonious Society: Training on HIV and Law” was held on 15-17 December 2007 in Kunming, Yunnan Province. The workshop was the first of its kind in China, specifically targeting lawyers and legal aid services providers. Workshop participants included over 20 lawyers from law firms and legal aid centers in Kunming and other areas of Yunnan Province, senior law professors and law graduates from the Yunnan University School of Law, senior professors from the Yunnan University School of Finance and Economics, and representatives from non-governmental organizations (NGOs).

The training workshop aimed to:

1. Enhance the awareness and understanding of participants on basic knowledge of HIV/AIDS and the laws, rules and regulations related to HIV/AIDS.
2. Support participants’ understanding of the psychological status of different groups vulnerable to HIV and provide participants with skills to communicate and interact with these groups.
3. Improve participants’ skills and techniques to provide legal services to vulnerable groups by introducing and analyzing both international and national cases.
4. Collect information to establish a database of legal aid professionals and compile a guidebook on HIV and law in Yunnan, China.

Training facilitators included:

1. Mr. Zhang Yong, Head, STD and HIV/AIDS Section, Center for Disease Control, Yunnan Province
2. Ms. Jenny Xia, PTAP Regional Manager, Asia Pacific Council of AIDS Service Organizations (APCASO)
3. Mr. Li Xiang, Founder, Mangrove (the first NGO for people living with HIV/AIDS in China)
4. Mr. Yang Maobin, Director and Founder, Yunnan Daytop Drug Abuse Treatment and Rehabilitation Center
5. Mr. Guo Yaqi, Ji An De Consulting Center, Beijing
6. Mr. Jia Ping, Founder & CEO, China Global Fund Watch Initiative and Legal Counsel, Friend Project
7. Mr. David Patterson, Legal Consultant with 20 years experience on law and policies relevant to HIV/AIDS in Canada and Australia.

All facilitators provided relevant and quality training, focusing on issues pertinent to HIV/AIDS and the law in Yunnan. Facilitators received positive feedback from participants, with many attending lawyers noting that the training raised their levels of awareness of HIV-related legal issues and generated an interest to contribute to the legal response for HIV in China to protect the rights of people living with HIV and vulnerable groups.
As the major sponsor and technical advisor for the workshop, IDLO considered production of the ‘Guidebook on HIV/AIDS and the Law: Yunnan, China’, as a key project output. The success of the December 2007 training not only reflected the legal field’s support for the prevention and treatment of HIV/AIDS in Yunnan, but also allowed for the provision of timely and comprehensive technical and informational support for the Guidebook’s development.

The Guidebook describes basic knowledge about HIV/AIDS, treatment for HIV/AIDS, groups vulnerable to and affected by HIV/AIDS, discrimination and protection of the legal rights of people living with HIV/AIDS. The Guidebook will be distributed to HIV/AIDS groups, hospitals specialized in treating HIV and AIDS patients, NGOs, and Harm Reduction Centers in Yunnan, aiming to provide legal information about the rights and obligations of people living with HIV and introducing HIV/AIDS issues to legal professionals.

On behalf of IDLO, I would like to express our sincere thanks to the Bill & Melinda Gates Foundation. With support from the Foundation, IDLO was able to sponsor this valuable project in Yunnan, China. I also would like to thank all the staff of our partner organizations; namely, Yunnan Daytop Drug Abuse Treatment and Rehabilitation Center, Yunnan Righteous Law Firm, and the Asia Pacific Council of AIDS Service Organizations. May our collective efforts contribute to the development of a just and harmonious society in China.

Hongxia Liu
Chief Representative and Director
Asia Pacific Regional Centre
International Development Law Organization (IDLO)

PREFACE TO THE ENGLISH TRANSLATION

The Chinese version was translated into English by Ms Jingping (Kitty) Ruan and Mr Jia Ping. It was edited by Ms Nicole Hoagland. The English version is provided to assist readers understand the laws and context of the response to HIV in Yunnan, China, in 2008. In providing this translation, the International Development Law Organization (IDLO) makes no assurance as to the accuracy of the laws herein described, or any other matter. For example, the Guide states that HIV may be transmitted by sharing toothbrushes (with a person who is HIV positive). Whereas the theoretical possibility of HIV transmission in such circumstances cannot be ruled out, HIV transmission in this way has not been documented. The vast majority of HIV infection in China is today transmitted through shared needles in the context of illegal drug use and through unprotected sexual intercourse. Our task is to improve the legal environment to reduce vulnerability to HIV, and its impact on people living with HIV, based on the best available scientific evidence and public health practices.

David Patterson
Manager, HIV and Health Law Program
International Development Law Organization (IDLO)
Guidebook on HIV/AIDS and the Law:
Yunnan, China

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1.0 Basic Knowledge of HIV/AIDS

1.1 What is HIV/AIDS?
‘AIDS’ stands for ‘Acquired Immunodeficiency Syndrome’, a fatal disease caused by the Human Immunodeficiency Virus (HIV). HIV breaks down the human body’s ability to fight disease and infection, weakening its resistance to pathogens. When the body’s resistance is completely destroyed, individuals are more susceptible to common infections and illnesses which people without HIV/AIDS do not easily contract. Without medical treatment, AIDS can lead to death.

The medical standard used to determine the shift in the body’s resistance to infection is the CD4 cell count. The plasma CD4 cell count for a healthy person with a strong immune system is 500-1500 cells per microlitre (uL) of blood. A person’s CD4 cell count is lowered as HIV increasingly affects the human body.

HIV’s resistance to the environment outside of the human body is low. Heat, dry atmospheric conditions and common disinfectants can kill the virus.

1.2 Epidemic of HIV/AIDS in China
By the end of 2007, the cumulative number of reported HIV/AIDS infections in China was approximately 700,000, of which 85,000 were AIDS cases. The number of new HIV/AIDS infections in 2007 was 50,000 and there were an estimated 20,000 AIDS-related deaths.

The HIV infection rate among China’s population is 0.05%. Of the 50,000 new infections in 2007, 44.7% reportedly occurred through heterosexual transmission, 12.2% through men having sex with men (MSM), 42% by injecting drug use (IDU) and 1.1% through mother-to-children transmission (MTCT). By the end of October, 2007, the total reported number of people living with HIV/AIDS in China was 223,501, including 62,838 AIDS cases. 22,205 AIDS-related deaths were recorded.

1.3 Voluntary Counseling and Testing (VCT)
Voluntary Counseling and Testing (VCT) is free of charge in China. VCT refers to the process whereby individuals willingly decide either to take or not to take an HIV test after receiving counseling, information about informed consent and assurance of confidentiality. Generally, VCT includes pre- and post-test counseling and supportive counseling and referral services relevant to treatment, care and support for people living with HIV (PLHIV). So far, 4,293 VCT sites have been established in 31 provinces, autonomous regions and municipalities in China, under the direct guidance of the central government. The number of people receiving VCT annually is estimated at more than 1 million persons.

1.4 Four Stages of HIV/AIDS
It takes approximately 10 years for a HIV-positive individual to develop AIDS. The progression from HIV to AIDS can be divided into four stages:
1. **Acute HIV infection stage**  
36 weeks after HIV enters the human body, symptoms and signs of acute infection will be apparent. An individual may develop a cold or infectious mononucleosis. Symptoms may include fever, headache, muscle pains and aches, sore throat, nausea, vomiting, diarrhea, joint aches, and a rash.

2. **Asymptomatic stage**  
During this stage, HIV antibody testing is positive but the individual has no clinical symptoms or signs of infection. This stage typically lasts from 2-10 years, ranging from shorter periods of 2-5 years to longer spans of 20 years or more.

3. **HIV symptomatic stage (relevant syndrome stage)**  
At this stage, individuals will experience lymph node enlargement, fever, diarrhea, disorders of the peripheral nervous system, and weight loss.

4. **AIDS stage**  
When an individual's CD4 cell count is less than 200 cells/uL, infections of respiratory system, digestive system, brain, eyes and skin may develop. Multiple infections may develop concurrently. Symptoms include consistent and irregular fever of unknown origin, chronic diarrhea, progressive wasting and chronic fatigue, as well as pneumonia, cryptosporidiosis in the mouth, meningitis, septicemia, recurrent symptoms and signs of Herpes virus infection, disorders of the nervous system, Kaposi sarcoma, and even dementia among some young and middle-aged persons.

Not all people living with HIV will experience all four stages. Reasons for this include:
- a HIV-positive person may find himself/herself to be at any one of the four stages when learning of his/her HIV status;
- the asymptomatic stage for PLHIV who have healthy lifestyles and access to medical care may be longer, while individuals with poor health conditions (psychological and physical) and limited access to health services may have shorter life spans;
- even once HIV progresses to the AIDS stage, if treated effectively and promptly, the health of the person living with AIDS may be improved.

1.5 Differences between AIDS Patients and People Living with HIV

People living with HIV (PLHIV) are:

1. People who are living with the human immunodeficiency virus but do not show any clinical symptoms or signs of infection and can carry out a ‘normal’ lifestyle. Basically, their health conditions do not influence their work, lives or education.

2. People who have demonstrated HIV-related symptoms and signs, but, in accordance with the diagnostic standards from the Ministry of Health can not be diagnosed as having AIDS.

When the virus duplicates within the human body and the body’s resistance to disease
weakens, other microorganisms may enter the body, resulting in serious infections such as diarrhea, pneumonia, Candida Infection, infections of nervous system and development of tumors. When the symptoms and signs of PLHIV align with the diagnostic standards for AIDS established by the Ministry of Health, an individual can be diagnosed with AIDS and referred to as an AIDS patient.

1.6 Modes of HIV Transmission
Although people living with HIV may appear healthy, their blood, semen, vaginal secretions, and fluids from broken skin membranes and ulcers contain antibodies from the human immunodeficiency virus, which is infectious. A mother’s breast milk may also contain HIV antibodies. However, even though traces of HIV are found in the saliva, tears, sweat and urine of people living with HIV, the amount is too little for HIV to be transmitted through these means.

The three modes of HIV transmission are:

1. **Sexual Transmission**
   Sexual intercourse is the leading mode of HIV transmission. Oral sex, vaginal sex and anal intercourse, either heterosexually or homosexually, maintain the highest level of risk for transmitting HIV.

2. **Blood-borne transmission**
   Blood-borne transmission may be caused by the following factors:
   a. sharing contaminated needles and injecting equipment among injecting drug users (IDU);
   b. transfusion of blood or blood products not tested for HIV, as well as transfusion of bone marrows and unscreened organ transplants;
   c. improper sterilization methods or lack of such methods for needles and syringes, particularly if new/sterile injecting equipment is not available for every vaccination shot for children;
   d. improper sterilization or lack of sterilization of oral apparatus, delivery apparatus, operational apparatus and needles for acupuncture;
   e. unsterilized scissors, knives and needles for haircuts, cosmetic procedures including eyebrow tattoos, ear and body piercing, and body tattoos;
   f. sharing shavers or toothbrush with others;
   g. emergency rescue operations where blood-to-blood contact occurs between individuals.

3. **Mother to child transmission (MTCT)**
   Pregnant women with HIV may transmit the virus to their babies through placenta during birth or through breastfeeding afterwards. Less than 40% of women with HIV transmit the virus to their babies. The incubation period for children infected with HIV to develop AIDS is much shorter than in adults. If children do not receive medical treatment promptly, they may die before the age of 12.
In the later stages of pregnancy, if a woman is taking anti-retroviral (ARV) medications, the transmission rate for HIV is reduced from an average of 30% to 10% or less. Preventative measures including combining ARV medication with delivery via a cesarean section, as well as the use of formula to feed the baby rather than breast milk, can further reduce HIV transmission rate to 2%.

If women living with HIV plan on having children, attention must be paid to personal hygiene and monitoring of health and hospital facilities and conditions for delivery. It is important to choose well-equipped hospitals which exercise strict sterilization and isolation measures. Preventative medical treatment should be undertaken with the guidance of doctors. Cesarean sections and the use of formula to feed the baby instead of breast milk are recommended and follow-up doctor visits for new-born babies should be arranged and appointments kept.

1.7 What Behaviors Increase the Risk of HIV Transmission?
1. Using the same injecting equipment repeatedly or sharing injecting equipment with others.
2. Having multiple sexual partners.
3. Having unprotected sex (sex without using a condom) heterosexually or homosexually.
4. Receiving a blood transfusion or organ transplant without first screening the blood or organ for HIV/AIDS.
5. Professional exposure of healthcare providers or jurisdiction staff to HIV/AIDS through blood to blood contact.
6. Currently suffering from a sexually transmitted disease or diseases (STDs) or having previously contracted a STD.
7. One’s sexual partner has a STD.

1.8 Steps to Prevent Transmission of HIV
1. Correctly use a qualified condom during sexual intercourse (vaginal, anal and oral) every time you engage in sexual activities.
2. Do not use contaminated or unsterilized injecting equipment or needles for shots or injections of any kind.
3. Do not transfuse or receive a blood transfusion or organ transplant from an unscreened source.

2.0 Treatment of HIV/AIDS

Anti-retroviral therapy (ART, also called ‘Cocktail Therapy’) refers to a treatment method for HIV/AIDS that combines several types of ARV medications. To-date, ART has been the most effective method to minimize the impact of HIV/AIDS on the body. The treatment aims to depress the multiplication of HIV antibodies to assist in the recovery of the body’s immune system and restore CD4 cell count to avoid the development of opportunistic infections. The treatment assists in preventing the progression of HIV to AIDS and also
lowers the rate at which an individual develops resistance to ARV medications.

The immune system is mainly composed of white blood cells that control and eliminate the duplication of viruses within the human body to prevent damage to the body’s systems.

**Advantages of ART:**
ART can depress the multiplication of HIV antibodies, maintain or re-build the immune system to resist opportunistic infections, and improve the quality of life for people living with HIV. ART can assist people living with HIV to live for an extended period of time.

**Disadvantages of ART:**
ART medications do have certain disadvantages. Adverse effects in the short term include impaired liver function and skin rashes while the loss of lipids and atherosclerosis may result from long term use. In addition, people living with HIV must take ARV medications for the rest of their lives. For some people, it may be inconvenient to take ARV medications on a daily basis.

**Time frame for taking ARV medications**
HIV antibodies operate by damaging the body’s CD4 cells. The prime indicator for measuring the health of the immune system and its ability to function is the CD4 cell count, which ranges from 500 to 1500 for an average, healthy person. HIV progressively damages the body’s CD4 cells, gradually reducing the CD4 cell count in the body. In Yunnan, when a person living with HIV has a CD4 cell count of 300 or below, the individual is eligible for benefits offered by support programs sponsored by the “Four Frees and One Care” policy.

People living with HIV and undertaking ART should consider the pros and cons of the ARV medications. Clinical studies indicate that the advantages of ART outweigh its disadvantages if ART is started when CD4 cell count is 300. Medical experts recommend that people living with HIV start ART when their CD4 cell count is 300.

**Common ARV medications currently used and their adverse effects**
There are more than 20 ARV medications available worldwide. Each of these medications has the capacity to stop the multiplication of HIV antibodies. ARV medications are categorized into three types depending on the method through which they halt the progression of the virus.

**Considerations for ART**
Because the ARV medications now available can not completely eliminate HIV from the body, people undertaking ART need to take the medications for the rest of their lives.
3.0 Groups at high risk for HIV

3.1 Injecting Drug Users (IDU)
Behaviors associated with drug use and drug addiction are often closely related to the transmission of HIV. As illicit drug prices rise, drug addicts are increasingly utilizing intravenous rather than oral methods of drug use. In addition, needles and syringes are often shared by multiple persons as drug addicts lack money to purchase new syringes or choose to share drugs among themselves.

Enhancing this already risky situation, drug users often draw blood into the syringe and flush it back into their veins in order to ensure the drug enters the bloodstream rapidly and completely. This practice increases the risk for HIV transmission. If one individual has HIV/AIDS, it is highly likely that the virus will rapidly spread to all individuals sharing the same needles and syringes. Further, drug addiction can lead individuals to exchange drugs for sex if they do not have money to purchase drugs. This too increases the risk of HIV transmission among drug users and the general population.

To prevent the spread of HIV/AIDS through injecting drug use (IDU), many measures have been taken both in China and abroad. These include efforts promoting clean syringe exchange projects and methadone maintenance therapy (MMT). By the end of October 2007, a total of 397 methadone clinics were established in 22 provinces, autonomous regions and municipalities in China, and a total of 88,313 heroin addicts had participated in MMT. In addition to MMT, clean syringe exchange projects have been developed in the areas with the highest incidence of illicit drug use.

3.2 Men Who Have Sex with Men (MSM)
Men who have sex with men are the group at highest risk for contracting STDs and HIV. Surveys conducted by various health sectors in China show MSM accounts for 2% to 4% of the total population of sexually active men. According to these estimates, approximately 5 to 10 million men in China have sex with other men. This is the first time Chinese authorities have publicly shared the number of men having sex with men and the number of people living with HIV in China. Homosexuality has been studied for hundreds of years. In 1992, the World Health Organization (WHO) announced that homosexuality was, in fact, a natural inclination and was no longer to be considered a psychological disorder.

MSM typically involves anal intercourse during sex. This practice causes irritation of and slight damage to the membrane of the anus. HIV antibodies contained in semen can enter the bloodstream or lymph system through the damaged anal membrane, making sexual partners of MSM susceptible to HIV transmission.

Behaviors associated with MSM in China may also lead to increased HIV transmission including:
1. Concurrent sexual partners - a practice accompanying high risks;
2. MSM may be married but have not told their wives about their male sexual partners.
This leaves their wives vulnerable to contracting HIV as protection may not be used during sex;
3. MSM activities are often highly confidential;
4. This can easily lead to HIV infection in the general population.

3.3 Commercial Sex Workers (CSW)
Commercial sex has recently appeared on a large scale in China over the past 20 years. At present, it is estimated that there are about four million CSW in China. In many areas, the HIV infection rate among CSW is steadily increasing. A low rate of condom use and lack of knowledge about HIV/AIDS among CSW increases the risk of HIV transmission through commercial sex work.

Recently, large scale intervention programs targeted at CSW have been implemented in China. In 2007, all counties and districts in China were covered by at least one HIV/AIDS intervention program targeting CSW. According to behavioral surveillance data from 2006, the rate of condom use among CSW has risen from 14.7% in 2001 to 41.4% in 2006 and the percentage of CSW never using condoms has dropped from 37.4% in 2001 to 7.5% in 2006.

3.4 Transmission of HIV/AIDS through Blood Transfusion
In the 1990s, illegal blood donation was common practice in some rural areas of China, causing the rapid spread of HIV. Blood donations were often exchanged for money and such blood was not screened prior to transfusions. Periodic cases of HIV infections resulting from blood transfusion have since been reported.

In 2007, the transmission of HIV through commercial blood donations was under control in China. The percentage of clinical blood transfusions using blood voluntarily donated (without payment) increased from 22% in 1998 to more than 98% in the first half of 2007.

3.5 Children
In China, ‘AIDS Orphans and Vulnerable Children’ (OVC) refers to children living with HIV/AIDS or who have at least one parent living with HIV/AIDS. Presently, there are nearly one million OVCs in China who suffer from mistreatment and discrimination based on their HIV-related circumstances. OVCs are often deprived of the rights and opportunities afforded to other children in China.

In 2005, an average of 14,000 people were infected with HIV daily, of which 1,800 were children under the age of 15. According to the statistics released by the United Nations Joint Programme on HIV/AIDS (UNAIDS) and United Nations Children's Fund (UNICEF), of the infected children needing medical treatment, less than 5% received such care. Roughly 15 million children worldwide have lost at least one parent to HIV/AIDS; less than 10% of these children have received public relief and assistance.
### 4.0 HIV/AIDS and Anti-discrimination

Discrimination against PLHIV is a common phenomenon all over the world. The most important step to eliminating such discrimination is to encourage public education to promote an understanding of HIV/AIDS and support the prevention and treatment of HIV/AIDS.

At present, many people lack basic awareness about HIV/AIDS. Many are even frightened when HIV/AIDS is merely mentioned in conversation. It is sometimes difficult for people to shake hands with a person living with HIV out of fear of transmission. However, PLHIV are not always guilty of using drugs or participating in commercial sex work as people often assume. PLHIV need care, support and assistance from communities.

Discrimination against PLHIV is a serious problem and because of this, PLHIV is one of the most vulnerable groups in the community. PLHIV are often denied their rights to medical care and treatment, education, employment and even housing. PLHIV are often dismissed from their jobs, refused treatment at hospitals and may even be kicked out of their homes. As a consequence of such discrimination, many PLHIV choose not to reveal their HIV-positive status out of fear of mistreatment, which is detrimental to controlling the HIV/AIDS pandemic.

In 2007, the United Nations Development Programme (UNDP), the National Basketball Association (NBA) and the Aaron Diamond AIDS Research Center (ADARC) held a national, multimedia HIV/AIDS anti-stigma campaign in Beijing, featuring NBA ‘All-Star’ Yao Ming and Chinese film star Pu Cunxin. Designed by PLHIV, university students and members of the NGO community, a new poster was revealed showing Yao Ming and Pu Cunxin together with young people from AIDS-affected communities. The poster’s message was: “We have the same feelings, the same dreams, the same life. HIV/AIDS will not affect our friendship. We Are Friends!”.

This project sought to minimize discrimination against PLHIV and encourage families, neighbors, colleagues and friends of PLHIV to accept these individuals in the community regardless of their HIV status. The UN Representative Office in China has appealed for commercial media and other private sectors to participate in programs against HIV/AIDS-related stigma and discrimination and to promote public awareness regarding the prevention of HIV/AIDS.

### 5.0 Legal Protection for People Living with HIV/AIDS

#### 5.1 Rights of People Living with HIV/AIDS and Their Families

##### 5.1.1 Basic Rights and Obligations

**Political Rights**

The Constitution of the People's Republic of China stipulates:
“Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration. Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law. Citizens of the People's Republic of China have the right to criticize and make suggestions to any state organ or functionary. Citizens have the right to make to relevant state organs complaints and charges against, or exposures of, violation of the law or dereliction of duty by any state organ or functionary.”

**Personal Rights**

The Constitution of the People's Republic of China stipulates:

“The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procurator or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited. The personal dignity of citizens of the People's Republic of China is inviolable. Insult, libel, false charge or frame-up directed against citizens by any means is prohibited. The home of citizens of the People's Republic of China is inviolable. Unlawful search of, or intrusion into, a citizen's home is prohibited. The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law.”

**Economic, Cultural and Social Rights**

The Constitution of the People's Republic of China stipulates:

“Citizens of the People's Republic of China have the right as well as the duty to work. Working people in the People's Republic of China have the right to rest. Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. Citizens of the People's Republic of China have the duty as well as the right to receive education. Citizens of the People's Republic of China have the freedom to engage in scientific research, literary and artistic creation and other cultural pursuits. Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life. Marriage, the family, and mother and child are protected by the state. The state and society help make arrangements for the work, livelihood and education of the handicapped citizens.”

**Obligations**

Apart from prescribing the basic rights of its citizens, the Constitution of the People's Republic of China also clearly stipulates:

“The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens.”

While enjoying the rights as prescribed in Constitution of the People's Republic of China and other laws, citizens must also fulfill their prescribed obligations.

5.1.2 Specific Rights and Obligations of PLHIV

The *Regulations on AIDS Prevention and Control* which came into effect on 1 March 2006, clearly stipulates the rights of PLHIV. No entity or individual may discriminate against
people living with HIV/AIDS or their family members. The lawful rights and interests enjoyed by people living with HIV/AIDS and their family members in marriage, employment, medical treatment, and education are protected by law. Without the consent of people living with HIV/AIDS or their guardians, no entity or individual may make the relevant information regarding an individual’s HIV/AIDS status known to the public. Medical institutions can not turn down or refuse to provide medical care to people living with HIV/AIDS based on or because of their HIV status.

The state shall implement a HIV voluntary counseling and testing system. The medical institutions designated by the competent health departments of the local people’s governments at or above the county level shall, in accordance with the measures for HIV voluntary counseling and testing formulated by the state, provide free counseling and preliminary screening for those who accept HIV counseling and testing voluntarily.

Meanwhile, the Regulations on AIDS Prevention and Control also outline the obligations of people living with HIV/AIDS to:

1. Accept epidemiological investigation and guidance of disease prevention and control organs or entry-exit inspection and quarantine organs.
2. Inform their sexual partners of their HIV status and HIV pathogenesis according to scientific fact in a timely manner.
3. Inform the doctors who treat them of their HIV status and HIV pathogenesis according scientific fact when seeing doctors.
4. Take necessary protection measures to prevent HIV transmission and keep others from being infected.
6. People living with HIV/AIDS shall accept civil compensation liability in accordance with the law if they have spread HIV/AIDS purposely. If the case constitutes a crime, criminal responsibility shall be investigated in accordance with law.

5.2 Relevant Laws, Rules and Regulations
- Constitution of the People’s Republic of China (2004.3.14)
- The Pharmaceutical Administration Law of the People’s Republic of China (2001.2.28)
- Administration of Blood Products (1996.12.30)
- Regulation on the Prevention and Treatment of HIV/AIDS (2006.3.1)
- Management of Mandatory Detoxification Institutions (2000.4.17)
- Regulation on the Prevention and Treatment of HIV/AIDS of Yunnan Province (2007.1.1)

5.3 Important Policies and Documents
- Declaration of Commitment on HIV/AIDS, United Nations (2001.6.25-6.27)
- Circular on Strengthening the Prevention and Treatment of HIV/AIDS, State Council (2004.3.16)
- China’s Medium- and Long-Term Programme for the Prevention and Control of

- ‘Opinion on Managing People Living with HIV/AIDS’, issued by the Ministry of Health on 20 April 1999 (1999.4.20)

‘Four Frees and One Care’ Policy

The ‘Four Frees’ are:

1. People living with AIDS who are rural residents or people with financial difficulties living in urban areas and not involved in any medical insurance scheme, such as the National Town Employee Medical Insurance system, may receive free ARV drugs and ART from the Infectious Disease Hospitals or the Infectious Disease Ward of comprehensive hospitals designated by the local health administrative sectors.

2. People willing to undergo VCT for HIV/AIDS may receive free counseling and testing for HIV at the Centre for Disease Control (CDC) at different levels or at medical institutions designated by medical administrative sectors at different levels.

3. Pregnant women living with HIV can receive health counseling, prenatal guidance and delivery services from the hospitals offering ART, and receive free medications to prevent mother-to-child transmission, as well as free HIV testing reagent for newborn babies.

4. People’s governments at different levels will raise to offer OVC free psychological counseling and free schooling.

‘One Care’ refers to:

The state provides health care to PLHIV; people’s governments at different levels are to ensure PLHIV and their family members with financial difficulties are eligible for government allowances and provide them with living subsidies as stipulated by social relief policies. Governments should help the households with PLHIV gain their livelihoods.

5.4 Areas of Discrimination Against PLHIV/AIDS

Discrimination from health care providers

From the perspective of PLHIV, discrimination by health care providers is the most disastrous, as health care providers should be the group most understanding and supportive of the prevention and treatment of HIV/AIDS. There is nothing unique about HIV/AIDS when compared with other infectious diseases in terms of treatment. Nonetheless, in reality, only a small portion of health care providers treat PLHIV fairly. Many hospitals and medical staff still fear HIV/AIDS transmission. They do their best to avoid PLHIV and sometimes find excuses to refuse to help these individuals. Discrimination from health care providers, which should not exist, not only enhances the general public’s misunderstanding of HIV, but also marginalizes PLHIV. Eliminating discrimination from the health care system and among health care providers is the most important focus area of the anti-discrimination campaign for PLHIV. If discrimination against PLHIV by health care providers is not eliminated, any work or measures addressing the prevention and treatment of HIV/AIDS will be less effective.

Discrimination in education

On 2 February, 2004, Oriental Horizon of Chinese Central Television made the following report:

Mr. Huang Wei, a resident of Chongqing City, adopted four children orphaned by
HIV/AIDS and intended to send them to a local school. However, the four healthy children were unable to attend the school located at Jiangbei District of Chongqing City, as parents of other students repeatedly called the Education Committee of Jiangbei District and threatening: “if you allow these four children, orphaned by HIV/AIDS, to study at the same school as our children, we will transfer our children to another school at once”.

The four children were helpless and had no choice but to return to their hometown in Henan province. The public’s attitude towards the orphans was cold and unmoved. The difficulties for PLHIV to protect their fundamental rights to education can be well imagined in these circumstances.

**Discrimination in employment**

Discrimination against PLHIV in employment is exists in several areas. Discrimination occurs in situations of employment, promotion and transfer at work, training opportunities and equal treatment of employees. Once a person is diagnosed as HIV-positive or as an AIDS patient, he/she is often refused, transferred or fired by employers. It is very common that people lose their jobs after it is determined that they are HIV+. Many people lose their livelihoods and sources of income and will not be re-employed. Consequently, their living standards decrease sharply.

**Discrimination in insurance**

A number of insurance companies consider HIV/AIDS as one of the conditions exempting them from their obligations. Insurance companies will not pay insurance proceeds to PLHIV. Instead, they use articles referring to serious diseases and conditions, including those resulting from war, military actions, riots, armed rebellion, nuclear explosion, nuclear radiation or nuclear pollutions, in parallel with HIV/AIDS to exempt them from insurance obligations. However, placing HIV/AIDS in parallel with the major events listed in these articles implies that “HIV/AIDS is a super-disease and untreatable”. Such discriminatory articles in insurance contracts, which do not correspond to facts regarding HIV/AIDS, exacerbate discrimination against PLHIV and leave PLHIV in despairing situations.

**Balance of interests between the rights of privacy of PLHIV and rights of the public to learn the truth**

PLHIV are entitled to their privacy and their HIV status cannot be revealed to others without their consent. However, relevant laws, rules and regulations also stipulate that the information regarding one’s HIV status, which may impact public interest, shall within limits be communicated to the public.

In certain circumstances, the privacy and confidentiality rights of PLHIV and public’s right to learn the truth may be in conflict. The key to solving such conflicts is to balance the interests of both parties. The public has the right to know information associated with public interest, but the excise of such rights should be reasonable and not infringe excessively on the personal privacy and confidentiality of PLHIV.

In addition, PLHIV are susceptible to the violation of their rights to equality, development, housing, travelling, associations and enjoying social security welfare.

### 5.5 Types of Lawsuits Related to HIV/AIDS

#### 5.5.1 Infringement damages and contract disputes associated with HIV infections:

- Civil action;
- Medical malpractice suit;
- Protection of consumer’s rights and interest.
5.5.2 Discrimination damages and contract disputes after HIV infection:
- Termination of labor contract and lease contract;
- Marriage and families disputes;
- Deprivation of rights to education;
- Deprivation of property inheritance rights;
- Deprivation of rights to raise children;
- Personal attack and emotional damage;
- Loss of social welfare and social security.

5.6 Procedure for Claiming Compensation for Civil Tort

5.6.1 Collecting lawsuit evidence
Types of evidence: documentary evidence, material evidence, audio-visual evidence, testimony of witness, statement of the parties, expert conclusion, record of inquest.

Key evidence to be collected:
- Evidence to prove the identification of both parties;
- Evidence to prove the defendant guilty;
- Evidence to prove the facts relating to damages to the plaintiff caused by the defendant;
- Evidence to prove the relation between facts relating to damages and the guilt of the defendant;
- Evidence to prove civil compensation liability.

5.6.2 Determine the subject of civil tort compensation and the liability forms
1. The subject of civil lawsuits: natural person, legal person, organizations without legal status and the state.
2. The liability forms: no-fault liability, fault liability, fair liability.
3. Coincidence of contractual and tortuous liabilities.

5.6.3 Scope of civil tort compensation and calculation standards
1. Scope of compensation for bodily injury (for people not disabled)

All expenses paid by a victim suffering from a personal injury for medical treatment and his income loss due to missed working time; including the medical expenses, the loss in income due to missed working time, the nursing expenses, the traffic expenses, the accommodation expenses, the board expenses in hospital, necessary expenses for nutrition, and expenses for emotional damage, shall be compensated by the person obliged to pay compensation.

Where the victim becomes disabled due to an injury: the necessary expenses he/she has paid for additional needs in his/her living and his/her income loss due to his/her inability to work; including the compensation for disability, the expenses of aid for disability, the living expenses of the persons in need of his/her maintenance and upbringing, the necessary healing expenses that actually occurred for healing and nursing, expenses for continuing treatment, the nursing expenses, and the follow-up treatment expenses, shall also be compensated.

Where victim is dead: funeral expenses, living expenses of the dependant who is maintained by the aggrieved, compensation money, and the transportation cost, food and boarding cost and income loss due to missed working time of the relatives of the aggrieved to organize the funeral of the aggrieved shall be paid.
2. Scope of compensation for emotional damage

Where emotional damage is caused, apart from ordering compensation for damages, and to rehabilitate the reputation of and make an apology to the aggrieved person to the extent of the infringing acts affected; the People’s Court may order the payment of compensation to the aggrieved person for emotional damage.

5.6.4 Negotiation, compromise and mediation between the two parties
1. Where disputes arise, parties may negotiate or ask the third party to mediate to reach a reconciliation agreement.
2. Where parties are unwilling to or fail to negotiate, or do not honor the reconciliation agreement, parties can apply for mediation to People’s Mediation Committee.
3. Where parties are unwilling to or fail to negotiate, or do not honor the reconciliation agreement, except for labor disputes which should be arbitrated prior to filing the lawsuits, parties can file a litigation suit to the People’s Court.

5.6.5 Civil action
1. Counsel the lawyers and prepare the indictment.
2. Lodge a lawsuit to the People’s Court of jurisdiction and prepay the litigation fees.
3. Court trial.
4. Court mediation or adjudication.
5. Appeal and trial of second instance (if any).
6. Adjudication comes to force.
7. Apply for execution of the order.

5.7 Legal Services: Mode and Process

1. Mode of legal services

A. Legal counseling
Oral or written legal advice on legal issues relating to laws, rules and regulations and policies can be provided by means of answering the questions orally, on-line or through letters, offering legal memoranda, attending workshops and demonstration meetings, including:

- Free consultation on laws, rules, regulations and policies;
- Answering inquiries regarding laws associated with specific administrative, criminal or civil acts;
- Answering inquiries regarding processes of mediation, arbitration, lawsuits, etc.

B. Writing legal document for clients
Represent clients in drafting, revising legal documents and documents related to other legal activities, including but not limited to:

- Indictments, petition for appeal, accusation letters, application, appeal for revision, etc.
- Legal documents such as contracts, agreements, articles of association, feasibility reports.

C. Lawsuits and arbitration
Investigation and evidence collecting, preservation of evidence and property:

- Represent the party to take part in civil action, including case analysis, study of action strategy, assessment of action results, filing of a lawsuit, responding to action, reply, counterclaim, negotiation of reconciliation, appeal, etc.;
- Represent the party to take part in arbitration, mediation and other ways of solving disputes;
- Study and analyze the complicated cases and put forward legal advice;
• Execution, appeal and retrial cases on behalf of the parties;
• Accept the entrustment of the parties to be defender for criminal suspect or the accused.

2. Legal Counseling Process

A. Face to face counseling
Make appointments → determine the time of counseling → affirm the inquiries for counseling → bring relevant documents and materials → face to face counseling with lawyers → the lawyers answer the questions and concerns.

B. Counseling in writing
Put forward the issues for counseling in writing → provide relevant documents and materials → the staff pass the documents and materials on to the lawyers → the lawyers answer the questions and concerns.

C. Counseling on-line
Contact by telephone → put forward the issues for counseling → the lawyers answer the questions and concerns.

3. Rates for the payment of litigation costs charged by People’s Court

Case acceptance fees shall be paid separately to People’s Court at the following rates:

For each case on injury to the right to name, the right to reputation, the right to honor or other right to personality, anywhere from 100 Yuan up to 500 Yuan shall be paid.

For each labor dispute case, 10 Yuan shall be paid.

For each divorce case, anywhere from 50 Yuan up to 300 Yuan shall be paid.

The amount or price under the litigation claim in a property case shall be paid by adding up to the amounts within the rate brackets.

The application fee shall be prepaid by the applicant and the losing party is to pay the fee in the end. If the parties have difficulties in paying litigation costs, they may apply to People’s Court to postpone payment, reduce the amount of the expenses or apply to be exempt from paying the expenses.

4. Rates for the payment of lawyers’ services

Rates for the payment of lawyers’ services for civil cases:

For each non-property case, no more than 5000 Yuan shall be paid.

The amount or cost under the litigation claim in a property case shall be paid by adding up to the amounts within the rate brackets.

The rate for the payment of lawyers’ services for criminal cases ranges from 3,000 to 20,000 Yuan per case. Parties with financial difficulty or those meeting the stipulations of certain laws or rules may apply for legal aid.
5.8 Legal Aid for HIV/AIDS Issues

1. State legal aid
Under the guidance and coordination of legal aid institutions established by the state, ‘state legal aid’ refers to people offering legal services, such as lawyers, notaries, or legal service providers at primary level, who reduce or waive charges for legal services for citizens with financial difficulties or parties with special cases.

Eligibility criteria for state legal aid
1. The issue applied for is within legal aid scope;
2. Good evidence/proof that legal aid is urgently needed to protect one’s own legitimate rights and interests;
3. Unable to afford the expenses for legal services because of financial difficulties;
4. One's domicile is within the county or one hold’s a Temporary Resident Permit issued by the county.

Parties can apply for state legal aid regarding the following issues:
1. Criminal lawsuits;
2. Request for payments for supporting parents, grandparents, or children;
3. Request for survivor's funds or relief funds, enjoying minimum social insurance treatment, payment of labor remunerations;
4. Request for compensation, indemnity and costs of medical care for industrial injuries;
5. Request for state compensations;
6. Other matters needing legal aid.

Mode of legal aid:
1. Provide legal advice and represent clients in writing litigation documents;
2. Criminal defense and agency;
3. Agency of civil action;
4. Agency of administrative lawsuit or administrative reconsideration;
5. Agency of arbitration acts;
6. Agency ad litem of non-litigation matters;
7. Other forms of legal services.

2. Legal aid to PLHIV
Due to financial difficulties, PLHIV often can not afford the fees for relevant legal services and must forfeit the ability to protect their legitimate rights from being violated. It can be said that financial difficulty is a huge obstacle for PLHIV seeking legal relief and support.

At present, PLHIV may apply to Yunnan Daytop Drug Abuse Treatment and Rehabilitation Center for legal assistance. The Center will assess specific cases and offer legal aid to the applicants. With this legal assistance, PLHIV can find support and bravely protect their legitimate rights and interests.
APPENDIX

Legal Aid Services Available for HIV/AIDS Issues in Yunnan Province

1. Lawyers Offering Legal Aid for HIV/AIDS Related Issues

<table>
<thead>
<tr>
<th>Names</th>
<th>Organization</th>
<th>Mobile phone</th>
<th>Telephone (O)</th>
<th>E-mail</th>
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<tbody>
<tr>
<td>Tang Rong</td>
<td>Yunnan Righteous Law Firm</td>
<td>13888089200</td>
<td>0871-3115653</td>
<td><a href="mailto:trong99@gmail.com">trong99@gmail.com</a></td>
</tr>
<tr>
<td>Zhou Dayong</td>
<td>Yunnan Righteous Law Firm</td>
<td>13888292598</td>
<td>0871-3184818</td>
<td><a href="mailto:ashry@sina.com">ashry@sina.com</a></td>
</tr>
<tr>
<td>Liu Lin</td>
<td>Yunnan Huilin Law Firm</td>
<td>13888656573</td>
<td>0871-3182188</td>
<td></td>
</tr>
<tr>
<td>Liu Shulin</td>
<td>Kunming Legal Aid Center</td>
<td>13577174889</td>
<td>0871-3154662</td>
<td></td>
</tr>
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<td>Sun Jineng</td>
<td>Kunming Legal Aid Center</td>
<td>13888159154</td>
<td>0871-3154662</td>
<td><a href="mailto:sunlvshi@126.com">sunlvshi@126.com</a></td>
</tr>
<tr>
<td>Wang Zhenggang</td>
<td>Legal Aid Section of Union Trade of Yunnan Province</td>
<td>13708898659</td>
<td>0871-4179030</td>
<td></td>
</tr>
<tr>
<td>Liu Xichen</td>
<td>Legal Aid Center of Wuhua District of Kunming</td>
<td>13888498307</td>
<td>0871-3628400</td>
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</tr>
</tbody>
</table>

2. Legal Aid Centers in Yunnan Province

<table>
<thead>
<tr>
<th>Legal AID Centers</th>
<th>Telephone</th>
<th>Address</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kunming Legal Aid Center</td>
<td>0871-3154662</td>
<td>444, Beijing Road, Kunming</td>
<td>650011</td>
</tr>
<tr>
<td>Qujing Legal Aid Center</td>
<td>0874-3101283</td>
<td>289, South Qilin Road, Qujing City</td>
<td>655000</td>
</tr>
<tr>
<td>Yuxi Legal Aid Center</td>
<td>0877-2059576</td>
<td>36, Yuxing Road, Hongta District, Yuxi City</td>
<td>653100</td>
</tr>
<tr>
<td>Zhaotong Legal Aid Center</td>
<td>0870-2157148</td>
<td>68, Yingfeng Road, Zhaotong City</td>
<td>657000</td>
</tr>
<tr>
<td>Baoshan Legal Aid Center</td>
<td>0875-2161679</td>
<td>Judicial Departments of Baoshan</td>
<td>678000</td>
</tr>
<tr>
<td>Legal Aid Center of Honghe Prefecture</td>
<td>0873-2151269</td>
<td>1,Heping Road, Gejiu City</td>
<td>661000</td>
</tr>
<tr>
<td>Legal Aid Center of Chuxiong Prefecture</td>
<td>0878-3128025</td>
<td>115, West Ring-road, Chuxiong City</td>
<td>675000</td>
</tr>
<tr>
<td>Legal Aid Center of Nujiang Prefecture</td>
<td>0886-3622358</td>
<td>53, Liuku Town, Nujiang Prefecture</td>
<td>673100</td>
</tr>
<tr>
<td>Legal Aid Center of Dali Prefecture</td>
<td>0872-2132971</td>
<td>114, South Renming Road, Dali City</td>
<td>671000</td>
</tr>
<tr>
<td>Legal Aid Center of Wenshan Prefecture</td>
<td>0876-2120148</td>
<td>Xiangshuiqiao, Kaihua Town, Wenshan County</td>
<td>663000</td>
</tr>
<tr>
<td>Legal Aid Center of Diqing Prefecture</td>
<td>0887-8229914</td>
<td>Longmarch Road, Shangri-La County</td>
<td>674400</td>
</tr>
<tr>
<td>Legal Aid Center of Dehong Prefecture</td>
<td>0692-2100148</td>
<td>Jianguo Road, Mangshi, Luxi City</td>
<td>678400</td>
</tr>
<tr>
<td>Legal Aid Center of Xishuangbanna Prefecture</td>
<td>0691-2122206</td>
<td>Taihua Law Building, Middle Ganglan Road</td>
<td>666100</td>
</tr>
<tr>
<td>Legal Aid Center of Lincang Prefecture</td>
<td>0883-2124411</td>
<td>Nanping, Fengxiang, Lincang Prefecture</td>
<td>677000</td>
</tr>
<tr>
<td>Legal Aid Center of Simao Prefecture</td>
<td>0879-2122960</td>
<td>South Zhenxing Road, Simao City</td>
<td>665000</td>
</tr>
<tr>
<td>Legal Aid Center of Lijiang Prefecture</td>
<td>0888-5186148</td>
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