

# **2005 Shanghai Forum on HIV/AIDS Legislation**

## **SUMMARY REPORT**

**Shanghai Forum on HIV/AIDS Legislation 2005 was organized by the HIV/AIDS Public Policy Center, Shanghai Academy of Social Sciences in Shanghai, PR China**

Prepared by  
Dan Zhou  
Guest Fellow, HIV/AIDS Public Policy Center  
Shanghai Academy of Social Sciences

This report summarizes key content from the 2005 Shanghai Forum on HIV/AIDS Legislation as interpreted by the report author. The Forum participants neither reviewed nor approved this summary report, and it is not intended to be a consensus document.

## **Acknowledgements**

The 2005 Shanghai Forum on HIV/AIDS Legislation was organized with the understanding that the response to the HIV/AIDS epidemic in China involves many of the most difficult legal and policy issues of our time. The Forum's goal, therefore, was to engage the Forum participants in a spirited and productive debate on the legal challenges of the HIV/AIDS prevention and treatment. If the heated and informed discussions that accompanied much of the Forum process are any indication, the meeting was a success.

Among the most important preconditions for this success were the intense curiosity, goodwill, and candidness of the Forum participants. We thank them for their openness, honesty, and enthusiasm and wish them the best of luck in their future endeavors.

## **Program Summary**

### Introduction

Since the first AIDS case in China was reported in 1985, the spread of HIV/AIDS and the interventions deployed against it have raised a number of complex legal, ethical, regulatory, and administrative concerns for research scientists, policy-makers, scholars, lawyers, and the broader society. To help policy-makers, legislators, law enforcement officers, HIV/AIDS researchers, scholars and lawyers address these subjects generally and the matters related to the making of HIV/AIDS laws particularly, the HIV/AIDS Public Policy Center at Shanghai Academy of Social Sciences (“SASS”) launched the inaugural Shanghai Forum on HIV/AIDS Legislation in December of 2004. It was followed by the second Shanghai Forum on HIV/AIDS Legislation on December 9-10, 2005. This report provides a summary overview of the proceedings from this 2005 Forum.

Fifty-two participants from Shanghai, Beijing, Yunnan Province attended a series of panel discussions related to the legal, policy and ethical challenges arising from the HIV/AIDS response in Shanghai, as well as in China generally. In addition to government officials, experts and policy-makers, there were attendees from grassroots organizations in Shanghai. The people with HIV/AIDS and representatives of high-risk/vulnerable populations were also present at the Forum to exchange views.

**December 9, 2005**

**Session I**

**An Overview of the Making of the Experts' Version of the HIV/AIDS Law**  
(XIA Guomei, Director of the HIV/AIDS Public Policy Center, SASS)

Professor Xia opened the conference by providing a brief description of the making of the experts' version of the Shanghai HIV/AIDS Prevention and Treatment in the passing year. Prof. Xia highlighted the role of the experts' version in subverting the paradigm of the traditional public health law, articulated the principles a good and sound HIV/AIDS law should comply with, such as government accountability, respect of human rights and antidiscrimination, partnership and cooperation among stakeholders, and stressed the importance of reducing and removing the stigma attached to HIV/AIDS.

As a commentator, Mr. QIU Renzong, a prominent professor of ethics at the Chinese Academy of Social Sciences, reiterated his praise for the active role of the Prof. Xia-led group participating in the drafting and consulting process as well as his support for the vision the experts translated into the law.

The subject fueled a heated discussion among the participants over whether the expert's version subverts the legislative framework of the traditional HIV/AIDS law.

**Session II**

**Shift of the Paradigm of the HIV/AIDS Legislation**

(LU Xiaowen, Associate Professor, Institute of Sociology, SASS)

Mr. Lu introduced the attendees to the proposed paradigmatic change of the HIV/AIDS legislation. Mr. Lu argued that the societal transformation and the emerging civil society would require and contribute to a shift of the HIV/AIDS legislative paradigm. Mr. Lu noted the traditional HIV/AIDS law heavily deploys the compulsory preventive and intervention measures and put so-called public interests over rights of people with HIV/AIDS. Mr. Lu pointed out the ineffectiveness, illegitimacy and negative implications of the coercive measures applied to high-risk populations and vulnerable populations. He ended his presentation by advocating a new legislative paradigm where least coercive measure should be prioritized and individual rights should be equally respected.

Mr. Wang Ruotao, professor and director of the Office of Policy and Information at the Chinese Center for Disease Prevention and Control, commented on this subject. He posited that any type of the law framework should be based upon facts and any preventive measure should be evidence-based. He then briefly described the HIV/AIDS epidemic in mainland China. He indicated that though the coercive measures such as mandatory testing of

detainees and prisoners might work to help the government identify and treat a limited number of the people with HIV/AIDS under particular circumstances, they have far-reaching negative ramifications.

### **Session III**

#### **Government Accountability in HIV/AIDS Response**

(XIAO Jianguo, Professor, East China University of Politics and Law)

Professor Xiao focused on the government accountability issue in the HIV/AIDS prevention, treatment and care in China. He discussed the leadership role the government should play in the response to HIV/AIDS. He emphasized that it is important for the law to depict what are the powers, responsibilities and functions of the government in the HIV/AIDS context, together with the penalties for governmental breach of duty. He noted that the current HIV/AIDS regulations at the national and local levels are rather vague on the governmental responsibilities in the response to HIV/AIDS.

Ms. JIN Wei, professor at the Party School of the Communist Party of China Central Committee, commented on this subject. She emphasized the leadership role of the government in combating the HIV/AIDS pandemic. She also highlighted the significance of strengthening the preparedness and responsiveness at all levels of government in China.

In the discussion phase, a couple of participants shared their views that the concept of good governance may guide the government in a right direction in the fight against HIV/AIDS.

### **Session IV**

#### **Cooperation Between the Government and NGOs**

(YANG Shaogang, Director, HIV/AIDS Legal Research Center at Shanghai Institute of Politics and Law)

Mr. Yang posited that while the government should play a leadership role in the response to HIV/AIDS, the government should cooperate with non-governmental organizations. He argued that the leadership role does not mean an omnipotent government, and thus the government should cooperate with NGOs where NGOs can play a more effective part, especially in carrying out behavioral invention and community support in the high-risk populations and the people with HIV/AIDS. Mr. Yang suggested that one of the best ways for the government to support NGOs in the fight against HIV/AIDS is to empower NGOs by facilitating registration and funding NGOs.

This subject is immensely controversial, prompting a debate over the feasibility of the cooperation. Some participants took the view that it would be

very difficult for the government to relax registration of NGOs in the foreseeable future, while other participants contended that an exception should be made available to HIV/AIDS NGOs only.

### **Session V**

#### **Nondiscrimination Principle and Controversy over Right To Know**

(LI Dun, Professor, Contemporary China Research Center, Tsinghua University)

Prof. Li discussed the weight of nondiscrimination in the HIV/AIDS prevention, treatment and care by introducing the participants to its jurisprudential origins. He noted many discriminatory provisions in national and local HIV/AIDS regulations. He argued that unjustified different treatments to people would amount to discrimination, which would be contrary to a basic component of constitutionalism and rule-of-law: equality. Furthermore, he addressed the controversial issue of the right to know in the HIV/AIDS context by analyzing in the public/private legal framework.

Prof. Li's representation was followed by Mr. Wang Ruxun's comments. Mr. Wang is Executive Deputy President of Yunnan Province HIV/AIDS Association. Based upon his experiences, he gave concrete examples of how discriminatory practices impeded the efforts to contain the spread of HIV/AIDS. He also noted the conflict between the HIV prevention work and the police enforcement in the field of commercial sex and drug use.

### **Session VI**

#### **Hospitals Designated for People with HIV/AIDS and Job Transfer**

(ZHOU Dan, Lawyer, Guest Fellow at the HIV/AIDS Public Policy Center, SASS)

Mr. Zhou questioned the legitimacy of the so-called designated hospital arrangement for people with HIV/AIDS which requires all people with HIV/AIDS should seek medical services at the only hospital (e.g. the local contagious disease hospital). Mr. Zhou posited that the designated hospital arrangement cannot stand from the medical and legal perspectives because there is no reliable evidence or sound rationale to support it. Mr. Zhou also noted the negative consequences of the designated hospital system: failure to provide to patients with HIV/AIDS such services as beyond its normal capacities and staffing; medical services by non-designated hospitals were denied to people with HIV/AIDS. Moreover, Mr. Zhou argued against the designated hospital program and the mandatory job transfer for people with HIV/AIDS by invoking the nondiscrimination theory.

Mr. ZHANG Konglai, a leading professor of epidemiology at Peking Union, offered his comments on this subject. Prof. Zhang is also Vice President of the National Expert Consultation Committee on HIV/AIDS Prevention and Control.

He echoed Zhou's position by challenging the presumptions upon which the designated hospital program was based.

During the discussion phase, among others, Prof. Zhang answered the questions related to the estimate of the people with HIV/AIDS in mainland China.

The first day of the Forum ended with a remark by Dr. RU Xiaomei, Deputy Director-General at the National Population and Family Planning Commission, China.

### **December 10, 2005**

The half-day session is designed for soliciting and seeking comments on the draft experts' version of the HIV/AIDS law. Many of the participants are from grass-roots organizations, people with HIV/AIDS, high-risk populations, university students.

Comments and suggestions made by the participants are primarily related to the following subjects:

- (1) Management of blood products and supplies (including the imported blood products);
- (2) Registration of HIV/AIDS NGOs and implications for NGOs registered as for-profit entities;
- (3) Availability of free anti-viral drugs;
- (4) Circumstances of discrimination; and
- (5) Partner notification

### **AFAO's Contribution**

Special thanks go to AFAO whose funding, together with other financial contributors, helped make this Forum possible.

The allocation of the AFAO's contribution is shown in the table below.