

Unofficial Translation

Research on Promoting Fair Employment for People Living with HIV in China

**China Academy of Labor and Social Security
Ministry of Human Resources and Social Security
December 2018**

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Disclaimer

This report is an unofficial translation of a report written in Chinese on “[Promoting Fair Employment for People Living with HIV in China](#)” by the China Academy of Labour and Social Security under the Ministry of Human Resources and Social Security of China, with the support of the ILO. This report forms an integral part of the UN Joint Program on HIV and AIDS in China. This unofficial translation aims at facilitating the access to updated information on HIV and employment in China for non-Chinese readers. The responsibility for the opinions and views expressed in this report rests solely with its authors. The publication and unofficial translation of the report do not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Research on Promoting Fair Employment for People Living with HIV in China¹

The HIV pandemic is one of the most significant challenges to health, development, and economic and social progress facing the world today. In countries that are most affected, the infection has reduced the productivity, eroded decades of development gains, and destabilized societies.

As of September 2018, there are approximately 850,000 reported cases of People Living with HIV in China, with three quarters of these being of working age. While China has managed to keep overall HIV prevalence rates low, it has not been able to stop the spread of the harmful stigma and discrimination that accompanies the virus. Despite better knowledge about HIV and efforts by the Chinese authorities to combat it, discrimination against People Living with HIV (PLHIV) and their families remains rampant in China today.

HIV related stigma and discrimination are particularly pronounced in three areas, employment, access to medical treatment and confidentiality, according to ILO reports of 2011². Employment discrimination is one of the greatest concerns of People Living with HIV in China today.

This report analyzes the HIV related employment legislation and policies in China, gives examples of good practices on fair employment for People Living with HIV, and provides recommendations to advance the efforts to eliminate employment discrimination. The report also provides suggestions for Chinese enterprises participating or planning to participate in the “Belt and Road Initiative” and “South-South Cooperation” to comply with HIV related international standards.

¹In addition to quoting data and some specific policy texts that need to be precisely expressed, this report no longer makes a detailed distinction between People Living with HIV and AIDS patients for the convenience of formulation and they are collectively referred to as People Living with HIV.

² HIV and AIDS related employment discrimination in China, https://www.ilo.org/asia/publications/WCMS_150386/lang--en/index.htm; Discrimination against People Living with HIV within Healthcare Settings in China, https://www.ilo.org/beijing/what-we-do/publications/WCMS_155791/lang--en/index.htm; HIV and Confidentiality in China, https://www.ilo.org/beijing/what-we-do/publications/WCMS_537463/lang--en/index.htm

PART I – LEGISLATION AND POLICIES ON HIV RELATED FAIR EMPLOYMENT IN CHINA

I. Legislation

China has made big progress in developing and implementing legislation and policies on eliminating employment discrimination against those left behind, and these include People Living with HIV.

1. Overview of the legislative policies

There is no overall anti-employment discrimination law in China yet, though it has been discussed for years. The provisions on fair employment are scattered across different legislations and regulatory documents of all levels. These include signed international conventions, the constitution, laws, departmental and regulatory documents, and local regulations and regulatory documents (see Annex 1).

1. Provisions on equal right to employment

The Constitution of the PRC provides a solid basis for the development of laws, regulations and policy documents on anti-discrimination. It includes the rights of all citizens to equality, work, rest and social security.

The Labor Law of the PRC, enforced since 1995, is the key law in the field of labour protection. It stipulates that in seeking employment, workers shall not be subject to discrimination on the ground of their ethnicity, race, gender, religion, etc.

China ratified the ILO **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** in 2005. Following the ratification, China has continued to introduce and improve national legislations and policies on fair employment. The adoption of the Employment Promotion Law of the PRC demonstrated the commitment of the Chinese government to eliminating discrimination in employment.

The Employment Promotion Law, issued in 2007 and built on the provisions on anti-discrimination of the Labor Law has a specific chapter on fair employment. It states that employment discrimination based on gender, disability, ethnicity, or the carrying of some kind of pathogen is prohibited. The law calls for actions from government, employers and the human resources service providers to take measures to reduce employment discrimination.

To enforce the Employment Promotion Law, the Ministry of Human Recourses and Social Security issued the **Provisions on Employment Services and Employment Management** in 2007. The Provisions reiterate the non-discrimination principle in employment and specifically state that discrimination against pathogen carriers is

prohibited and HBV testing is not allowed in recruitment and employment.

A number of local governments such as Beijing, Hebei, Jiangsu, Anhui, Hunan, Guangdong, Hainan, Yunnan, Tibet, and Xinjiang have adopted local laws and regulations to enforce the Employment Promotion Law.

In 2018, the State Council issued the **Provisional Regulation on Human Resources Market** to better support employment and entrepreneurship. It was the first administrative regulation on job hunting, hiring and associated services in the labour market in China. It stipulates that information such as employer's presentation, number of workers being recruited, job qualifications, job descriptions and other information shall not be discriminatory on the grounds of ethnicity, race, gender, religion, etc. The Regulation requests the human resources service providers to establish and improve complaint-handling procedures.

2. Legislation on equal employment rights for pathogen Carriers

The **Law of the PRC on Prevention and Treatment of Infectious Diseases**, adopted in 2004, stipulates that employers and individuals shall not discriminate against pathogen carriers or patients with infection diseases. This is in line with the **Employment Promotion Law of the PRC**, which highlights that pathogen carriers shall enjoy equal rights to employment.

The **Regulations on Prevention and Treatment of HIV/AIDS** issued by the State Council in 2006 state that the legitimate rights and interests of People Living with HIV and their family members related to marriage, employment, medical treatment and schooling shall be protected by law.

To strengthen the implementation of the State Council Regulations on Prevention and Treatment of HIV and AIDS, provincial governments also formulated their regulations.

2. Specific content of legislative policies

1. Definition of employment discrimination and scope of discrimination prohibition

There is no clear definition of "employment discrimination" in Chinese law yet, and existing laws list specific grounds on which employment discrimination is prohibited such as ethnicity, race, gender and religion. For example, the Employment Promotion Law prohibits discrimination against women, ethnic minorities, persons with disability, persons with infectious diseases and rural migrant workers who search jobs in other provinces or cities.

The legislation and policies also highlight non-discrimination principles in several

critical moments such as decision making in recruitment, extension of labour contract, job intermediary, access to social security and others. For example, the Employment Promotion Law of the PRC states, “When an employing unit recruits persons or when a job intermediary engages for intermediary activities, they shall provide persons with equal opportunities and fair conditions for employment, and they shall not discriminate against anyone.” Regulations on the prevention and treatment of HIV/AIDS issued by Zhejiang, Shaanxi, Hunan and other provincial governments say that HIV testing shall not be a condition for continued labour relationship, nor a reason to terminate employment.

2. Voluntary HIV testing

Restricting access to employment is the main form of direct discrimination against People Living with HIV, and its most common manifestation is mandatory HIV testing for workers in a pre-employment medical examination. Regarding infectious disease carriers, the legislation adopts a principle of general prohibition of employment discrimination however with certain exceptions. For instance, both the Employment Promotion Law of the PRC and the Law of the PRC on Prevention and Treatment of Infectious Diseases prohibits employment discrimination against pathogen carriers, however, both laws specify that pathogen carriers shall not take certain jobs in which the disease may easily spread and these jobs are defined by laws, regulations and health authorities. The Regulations on the Prevention and Treatment of HIV/AIDS clearly protect the rights of People Living with HIV to employment. They state that HIV testing should be voluntary and that mandatory HIV testing is prohibited.

3. Principles of information confidentiality and privacy protection

Chinese law clearly stipulates that the information related to People Living with HIV shall be kept confidential and their privacy shall not be infringed upon. As clearly stipulated in the Regulations on the Prevention and Treatment of HIV/AIDS, “Without the consent of the relevant persons or their guardians, no employer or individual shall disclose the names, addresses, employers, photos, medical history records or other information that may disclose the specific identity of People Living with HIV or their families.” At the same time, the Measures on the Administration of Free Voluntary Counseling and Testing for HIV (trial implementation) include clear provisions stipulating that the confidentiality of counseling and testing services shall be ensured, and the personal data of People Living with HIV shall not be disclosed to irrelevant persons. Local HIV related regulations issued by Zhejiang, Hunan, Shaanxi and other provincial governments also emphasize the rights of People Living with HIV to confidentiality, in particular with regard to HIV status, reasons for changing post at workplace etc.

4. Legal Liability and Remedy Channels in case of Employment Discrimination

A legal remedy is indispensable for guaranteeing workers’ equal treatment. Even

though the law promoting equal employment in China explicitly prohibits employment discrimination, the legal liability for employment discrimination is unclear. Within the framework of current laws and regulations, only Article 62 of the Employment Promotion Law clearly stipulates: "In violation of the provisions of this law, if a laborer encounters employment discrimination, he/she may file a lawsuit in the people's court." Some regions have clarified corresponding remedies for specific discrimination issues through laws and policies. For example, as stipulated in the Measures for the Implementation of the Regulations on Prevention and Treatment of HIV/AIDS of Hunan Province, "If the employing company violates the provisions and terminates the working contract with the employee on the grounds of HIV infection, the company shall be treated in accordance with the relevant provisions of the Labor Contract Law of the People's Republic of China."

From a practical point of view, the remedy channels in case of employment discrimination also include the following approaches:³

- Discriminatory provisions in a law or policy document can be revised or removed based on the Legislation Law. In addition, administrative review can be applied with the purpose of revising the law or policy document with discriminatory provisions based on the Administrative Reconsideration Law.
- Reports or complaints can be made to the labour security supervision organization. Although the Regulations on Labor Security Supervision do not explicitly include employment discrimination in the content of supervision, the labour security supervision organizations, based on the Labor Law and the Employment Promotion Law, can receive complaints on employment discrimination perpetrated by employers, career intermediaries, vocational training and accreditation agencies.
- A labour dispute can be submitted to the labour dispute arbitration institution according to law. At present, the Labor Dispute Mediation and Arbitration Law does not directly include employment discrimination within their scope of action, but in practice many cases of employment discrimination can be assimilated to labour disputes and thus processed through labour dispute settlement procedures.

3. Regulations on the employment of People Living with HIV

At present, HIV testing is an essential item of the pre-employment medical examination of several occupations, including civil servant, pilot, seafarer, and occupations in certain public institutions. In some areas, HIV testing is included in the pre-employment medical examination of public service industries such as hospitality, bathing, recreation, beauty salons, etc.

³See Wang Wenzhen: Comments on Legislation of Anti-employment Discrimination in China. *China Labor*, 2010 (5). 参见王文珍：我国反就业歧视立法评析. *中国劳动*，2010（5）。

1. Civil servants

Before 2005, there was no unified nationwide standard for the medical examination of civil servants. Some central departments and human resource departments of local governments set their own medical examination standards. Among them, some central departments explicitly prohibited the employment of HIV-infected candidates for certain civil servant positions that required special physical conditions of employees. In January 2005, the former Ministry of Personnel and Ministry of Health jointly issued the General Standards for the Entry Medical Examination of Civil Servants (trial) (hereinafter referred to as the General Standards), with which China unified the standards for pre-employment medical examination of civil servants at the national level for the first time. Two rounds of public consultation were sought for the General Standards, after which the provision in the draft was eventually changed from "AIDS patients and HIV virus carriers are unqualified" to "AIDS patients, unqualified." The Civil Service Entry Medical Examination Manual (trial) (hereinafter referred to as the Examination Manual) issued in February 2007, includes provisions related to HIV and AIDS as follows: "Its several clinical stages are included. Different from hepatitis B virus carriers, there is no concept of HIV virus carriers. Once a diagnosis of HIV infection is determined, the conclusion of an unqualified medical examination will be made." This explanation does not distinguish between the clinical symptoms of HIV-infected people and AIDS patients. As long as the HIV testing result is positive, the candidate cannot be employed. The Civil Service Recruitment Regulations (Trial) promulgated in November 2007 clearly stipulate that the medical checklist and standards of the civil service entry medical examination should be implemented in accordance with unified national regulations, which further secured the role of the General Standards in the entry medical examination of civil servants.

For civil servants in special positions in public security bodies, state security bodies, prisons, people's police of labour education and management organs, judicial police positions in people's courts and people's procuratorates, and departments of foreign affairs, customs, maritime affairs, inspection and quarantine, safety supervision, etc., which have special physical condition requirements for employees, the Ministry of Human Resources and Social Security, the Ministry of Health and the National Civil Service Bureau promulgated the Special Standards for the Entry Medical Examination of Civil Servants (trial) in 2010. Apart from some stricter regulations on certain medical examination items, the HIV testing is still to be implemented in accordance with the General Standards.

Although the General Standards have been revised several times, the regulations on HIV and AIDS have remained unchanged.

2. Public institution employees

Unlike the civil servant medical standards, there is no nationwide, unified and clear

medical examination standard for recruiting personnel in a public institution.⁴ Yet public institutions often refer to the General Standards and consider HIV and AIDS an item for restriction in the recruitment process. The degree of reference to the requirements of the civil service examination standards varies from one place to another, but in most cases, the General Standards are the main reference. The General Standards have a wide range of influence in practice. Many public institutions have incorporated them into their management system and some state-owned enterprises also use or are influenced by them.

For teachers, the “Implementation Measures for Teacher Qualification Regulations” require “no infectious diseases”, and clearly stipulate that medical examination items must include “infectious diseases” and “psychiatric history”. In the medical examination standards for kindergarten teachers’ qualification,⁵ it is further clarified that “sexually transmitted diseases” should be indicated in “previous medical history”. Among the teachers’ medical examination standards formulated by different administrations, 14 provinces do not include HIV and AIDS or sexually transmitted diseases, namely Tianjin, Liaoning, Inner Mongolia, Shanghai, Jiangsu, Zhejiang, Shandong, Henan, Hubei, Guangdong, Guangxi, Hainan, Guizhou and Xinjiang. Six provinces include disqualification by venereal diseases and sexually transmitted diseases, namely Beijing, Sichuan, Hebei, Heilongjiang, Shanxi and Anhui; and 11 provinces include disqualification for positive results in HIV testing, namely Yunnan, Ningxia, Fujian, Qinghai, Gansu, Hunan, Chongqing, Tibet, Jiangxi, Shaanxi and Jilin. As HIV and AIDS is also counted as a venereal disease or sexually transmitted disease, more than half of the provinces in China prohibit the access to a teaching position for People Living with HIV.⁶

In some places, the medical standards for teaching jobs follow the content of the General Standards regarding the examination of civil servants. In other places such as Fujian and Chongqing, sexually transmitted diseases and HIV and AIDS were not included in the disqualification scope before the introduction of the General Standards. However, after its introduction, those two provinces have revised their medical standards for teachers’ qualification, and kept them consistent with the HIV and AIDS-

⁴In November 2005, the Interim Provisions on Open Recruitment of Personnel in Public Institutions promulgated by the former Ministry of Personnel did not specify physical examination, and authorized the personnel administrative departments of provincial, autonomous regions and municipalities to formulate public recruitment measures in their respective regions in accordance with the regulations. 2005 年 11 月, 原人事部出台的《事业单位公开招聘人员暂行规定》中并未对体检作出详细的规定, 并授权省、自治区、直辖市政府人事行政部门可以依据规定制定本地区的公开招聘办法。

⁵See Notice on Adjusting the Standards of Physical Examination for Qualified Personnel of Kindergarten Teachers issued by the Teacher Qualification Guidance Center of the Ministry of Education (J.Z.Z. [2010] No. 15). 参见教育部教师资格认定指导中心出台的《关于调整申请认定幼儿园教师资格人员体检标准的通知》(教资字[2010]15 号)。

⁶See Ha Xiaosi: *Research on Entry Medical Examination and AIDS Employment Discrimination*, 2017. 参见哈晓斯: 入职体检与艾滋病就业歧视研究, 劳动科学研究所课题组, 2017 年。

related provisions of the General Standards. Guangdong Province solicited opinions from the public when it revised its Medical Examination Standards for Teacher Qualification Applicants in 2013, and the provisions referring to the HIV and AIDS requirement of the General Standards were questioned by society. After carefully listening to the opinions of experts and people from various fields, the newly revised version excluded the provisions on HIV and AIDS that had been used since 2007, giving People Living with HIV a policy guarantee for becoming teachers.

3. Workers in the so called “service to the public” sector ⁷

Service personnel in public places mainly includes staff and service personnel who provide services, such as accommodation, hotels, bathing, recreation, health care, hairdressing and beauty services. According to the current laws and regulations, employees who directly serve customers in public places must obtain health certificates before being allowed to serve the public. The Regulations on the Administration of Sanitation in Public Places and its implementation rules do not prohibit People Living with HIV from directly serving customers in public places. However, the Regulations on the Prevention and Treatment of HIV/AIDS stipulates that service personnel in public places shall, in accordance with the provisions of the Regulations on the Administration of Sanitation in Public Places, regularly accept health examinations and obtain health certificates. The Regulations on the Prevention and Treatment of HIV/AIDS in Zhejiang Province have adopted the national level approach, requiring service personnel in public places to obtain health certification. Some regions including Shaanxi, Guangxi, Xinjiang and Yunnan have made it clear that HIV testing should be included in the health inspection for certain service personnel in public places.

In the food industry, which has a close connection to public safety, the newly revised Food Safety Law of 2015 no longer specifically lists prohibited diseases but defers the authority for such determination to the Health Administrative Department of the State Council. The former health and family planning commission subsequently formulated the “List of Diseases that Impede Food Safety”, which includes six diseases including cholera. HIV and AIDS and hepatitis B were not on the list. In the food industry, there is no good reason to include HIV testing as a health inspection item for public service personnel. On the contrary, it infringes upon the employment rights and interests of People Living with HIV.

⁷According to the Regulation on the Administration of Sanitation in Public Places, public places mainly include hotels, restaurants, inns, hostels, carriage and horse’s hotels, cafes, bars and teahouses; public bathrooms, barbershops, beauty shops; cinemas, video halls (rooms), recreation halls (rooms), dancing halls, concert halls; stadiums (gymnasiums), swimming pools (halls), parks; exhibitions, museums, art galleries, libraries; shopping malls (shops), bookstores, waiting rooms (in hospitals), waiting rooms (trains, aircrafts, boats), and public transportation. 《公共场所卫生管理条例》规定，公共场所主要包括：宾馆、饭馆、旅店、招待所、车马店、咖啡馆、酒吧、茶座；公共浴室、理发店、美容店；影剧院、录像厅（室）、游艺厅（室）、舞厅、音乐厅；体育场（馆）、游泳场（馆）、公园；展览馆、博物馆、美术馆、图书馆；商场（店）、书店；候诊室、候车（机、船）室、公共交通工具。

4. Other industries and occupations

(1) Seafarers. Diseases such as HIV and AIDS and sexually transmitted diseases are prohibited conditions for seafarers in China, and HIV-infected people are usually forbidden from working as seafarers. As early as 1993, the Ministry of Transport issued the Standard of Medical Examination Requirements for Seafarers (a mandatory transport industry standard issued by the ministry, standard number: JT2025-93), which listed sexually transmitted diseases as a prohibited condition for seafarers. In November 2013, the State Standard on Physical Examination Criteria for Seafarers (standard number: GB30035-2013) was issued. According to the standard, "those suffering from infectious diseases included in the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases do not meet the requirements for crew health registration and shall not work on board during the infectious period". According to the Law of the People's Republic of China on the Prevention and Treatment of Infectious Diseases, HIV and AIDS and hepatitis B are infectious diseases. The carriers are therefore excluded from employment. In addition, when personnel working as seafarers apply for the Certificate of Health Examination for International Travelers and Medical Certificate for Seafarers, the check-up items include hepatitis, HIV and AIDS and venereal disease. If an HIV testing result is positive, the health certificate is denied and so is the employment as a seafarer.

(2) Pilots. In 2006, the General Administration of Civil Aviation of China issued the Norms for the Physical Examination and Appraisal of Civil Aviation Enrollment Flight Students (a standard of the civil aviation industry, standard number: MH/ T7013-2006), which stipulate the general conditions that newly enrolled civil aviation flight students should meet, including the following provision: "one shall not be infected by infectious diseases and not carry HIV." Ten years later, in 2017, the Civil Aviation Administration of China (CAAC) issued the latest Medical Specification for Recruitment of Civil Aviation Enrollment Flight Students (standard number: MH/ T7013-2017, replacing the 2006 standard), which also clearly stipulates the basic requirements for civil aviation recruitment flight students including the following: "HIV testing result should not be positive." In practice, this rule bans People Living with HIV from working as pilots.

4. Strengths and weaknesses of the legislation

1. Main strengths

Overall, China has made great progress in promoting fair employment for People Living with HIV, and related legislation continues to be improved. This is evident in the following aspects:

First, rapid progress has been made in formulating legislation and policies to create equal employment opportunities for People Living with HIV. China's anti-discrimination legislation started relatively late, but the last decade has seen laws and

regulations being issued, including the Employment Promotion Law, the Law on the Prevention and Treatment of Infectious Diseases and the Regulations on the Prevention and Treatment of HIV/AIDS. In particular, these regulations include provisions aimed at promoting equal employment opportunities for People Living with HIV, legally clarifying their right to equal employment. Many local governments have also issued relevant laws and regulations and abolished mandatory HIV testing in the pre-employment medical examinations in industries such as food processing production and teaching. Meanwhile, China has actively taken part in international HIV and AIDS prevention and control activities, keeping up with global trends. Representatives from the Ministry of Human Resources and Social Security, All-China Federation of Trade Unions and China Enterprise Confederation have attended the International Labour Conference and supported the adoption of the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200).

Second, the legislation on HIV and fair employment is comprehensive. The rights of People Living with HIV to equal employment opportunities are well defined, and provisions on non-discrimination, HIV voluntary counselling and testing, and confidentiality are developed. As to legal remedies, although laws at the national level only stipulate that people can seek judicial remedy, in reality People Living with HIV can claim their rights through varieties of channels such as courts, labour security supervision and labour dispute arbitration.

Third, the improvement of the legislation and policies related to the promotion of equal employment plays a significant role in shaping an enabling environment and in raising awareness on fair employment among enterprises, workers, governments and society.

2. Weaknesses

At present, the legislation and policies for the promotion of equal employment for People Living with HIV in China are not free from flaws. They require urgent improvements.

First, the legislation on the promotion of fair employment is decentralized and very general. The legal definition of employment discrimination is not established. The scope of the prohibition of employment discrimination is not fully defined, and the legal liability of employers for violating fair employment practices is unclear.

Second, compared with the policy guaranteeing equal employment opportunities for hepatitis B patients, the measures for People Living with HIV are weaker. In addition to clarifying the right to equal employment and the legal responsibility of hepatitis B patients through legislation, the government of China has also issued a series of policies and specific provisions for safeguarding the rights of hepatitis B surface antigen (HbsAg) carriers to enter schools and obtain employment. It has also

strengthened supervision and inspection, and strongly promoted the realization of the right to employment for hepatitis B surface antigen carriers. In contrast, the protection of the equal employment rights of People Living with HIV has not been defined in details.

Third, policies and standards have not completely eliminated employment discrimination against People Living with HIV. As mentioned above, the General Standards and Operation Manual for the civil service medical examination explicitly prohibit People Living with HIV from entering the civil service. Yet, the public sector should serve as a benchmark for ensuring equal access to employment. This treatment of People Living with HIV has conveyed misinterpretations of HIV and AIDS in the public. This has had an adverse effect on the elimination of social discrimination against People Living with HIV.

II. Reality of fair employment for People Living with HIV in China

1. HIV related employment discrimination and legal cases

1. A Small-scale survey on the employment of People Living with HIV

Surveys on employment discrimination faced by People Living with HIV are generally small in scale, but they also reflect the problem of employment discrimination against People Living with HIV. According to a survey of 500 infected people in 25 provinces, municipalities and autonomous regions of China conducted by the Women's Anti-AIDS Network⁸ in 2018, 35.4% of the respondents had a job; among them, 42 per cent were freelancers, 23 per cent were self-employed, 18 per cent were employed by foreign/private enterprises, 6.8 per cent were employed by state-owned enterprises, 6.2 per cent were civil servants, and 2.8 per cent were employed by non-governmental organizations. Among the 55 people with employers, 63.98 per cent experienced employment discrimination, and 61.07 per cent changed jobs because of their HIV infection. Fifty-one people reported that, in the past 24 months, their employers learned about their infection status, after which 24 people resigned voluntarily, eight were dismissed or persuaded to quit by their employers, 13 took extended sick leave, and only six remained in their original positions.

According to the statistics of He'rbutong Training and Education Centre,⁹ employment

⁸Women's Anti-AIDS Network - China, established in July 2009 with the support of UNAIDS, is currently composed of 27 women's community organizations from 12 provinces and municipalities in China. 女性抗艾网络-中国, 在联合国艾滋病规划署的支持下于 2009 年 7 月成立, 目前由来自全国 12 个省市的 27 家女性社区组织组成。

⁹He'rbutong Training and Education Centre is a non-governmental organization, their legal aid hotline for PLHIV is supported by the ILO Office for China and Mongolia. 艾博公益热线为国际劳工组织中蒙局支持、致力于艾滋病病毒感染者和艾滋病病人权益保护的民间组织, 建立于 2010 年 10 月。

discrimination against People Living with HIV is mainly reflected in compulsory HIV testing in hiring; compulsory HIV testing in the working period; the setting up of obstacles (sick leave required, revocation by departments, compulsory leave for personal affairs, alternative job placement, wage reduction, etc.), forcing workers to take the initiative to quit. In addition, People Living with HIV also face implicit discrimination from employers and colleagues in the workplace, resulting in greater psychological pressure.

2. Dispute cases of HIV employment discrimination in China

With the popularization of the concept of equal employment and the continuous improvement of China's anti-discrimination legislation and policy system, the demand for equal employment rights and protection of the interests of People Living with HIV has gradually increased, and a number of People Living with HIV have sought to defend their rights and interests through legal channels.

Regarding the cases themselves: **first**, employment discrimination cases of People Living with HIV often involve government departments and public institutions, especially the recruitment of teachers by schools. However, discrimination cases also occur in enterprises; **second**, the cases mainly focus on recruitment, and the renewal of labour contracts, with the pre-employment health examination becoming a "disaster area" for People Living with HIV; **third**, in most employment discrimination cases, the employer decided that People Living with HIV cannot engage in employment according to the General Standards; **fourth**, the cases not only involve employment discrimination but also entail labour dispute issues such as the non-signing of labour contracts and civil disputes such as revealing HIV status; and **fifth**, the cases include specific appeals of employees related to employment, continued employment, resumption of employment, financial compensation, emotional damage payments, and apologies. Among them, appeals for hiring, continued employment and resumption of employment are more frequent.

Regarding the case resolution: **first**, the attitude of the courts in dealing with cases of employment discrimination against People Living with HIV has changed from inadmissibility to the promotion of a reconciliation agreement between the two sides, and the support for workers' claims in judgments has gradually increased; **second**, in some cases, although the employees won the lawsuit and obtained compensation, it was difficult to support their appeals for recruitment, continued employment or resumption of employment. However, in Neijiang City of Sichuan Province, the judgement of the first domestic cases on employment discrimination led to the claimant signing a labour contract with the enterprise after reaching reconciliation agreements. This has set a good precedent; **third**, in cases of employment discrimination against People Living with HIV, the handling agencies often failed to identify the facts of employment discrimination clearly, but rather resolved the dispute by means of non-written labour contract compensation, economic compensation or

other labour dispute resolution channels.

Regarding the influence of the cases: Cases of employment discrimination against People Living with HIV are highly sensitive and have a strong demonstration effect, which has attracted the attention of the judiciary and of both the domestic and international community. On November 29, 2018, the Guangzhou Intermediate People's Court issued ten typical cases of labour disputes, including cases concerning the protection of labour rights and interests of People Living with HIV, and proposed that the employment rights of People Living with HIV and AIDS should be equally protected by Chinese laws. HIV-positive people must not be locked out of employment, as this does not comply with the basic stance of the current laws, regulations and policies that emphasize the protection of their legitimate employment rights. In December 2018, the Supreme People's Court issued the "Notice on Increasing the Case of Civil Cases (Law [2018] No. 344)", and began collecting statistics on disputes over equal employment rights and sexual harassment damages. Discrimination cases not only encourage more People Living with HIV to claim their right to fair employment through legal channels, they also encourage policy makers to continuously improve relevant laws and policies, increase the anti-discrimination awareness in judicial practice, and help raise the awareness of employers and the public.

3. HIV Employment discrimination cases faced by Chinese-invested enterprises abroad

In recent years, China's foreign investment has steadily increased, and the number of "going out" enterprises has continued to increase. By the end of 2016, 24,400 domestic investors had established 37,200 foreign direct investment enterprises in 190 countries, and their cumulative net foreign direct investment (stock) ranked sixth in the world.¹⁰ According to a McKinsey study,¹¹ more than 10,000 Chinese overseas enterprises operate in Africa in the manufacturing, services, trade, construction and real estate industries, of which about 90 per cent are private. McKinsey reports that these enterprises create job opportunities for millions of Africans while "generating healthy profits" and upgrading skills.

From "bringing in" to "going out", the opening up of China has entered a new stage. However, compared with the "bringing in", the "going out" experience of the government and enterprises remains insufficient. In order to support the "going out" development strategy, relevant agencies have provided abundant training for

¹⁰Statistical Bulletin of China's Foreign Direct Investment in 2016, from the website of the Ministry of Commerce: <http://hzs.mofcom.gov.cn/article/date/201803/20180302722851.shtml>. Accessed on: July 12, 2018. 《2016 年度中国对外直接投资统计公报》，来源于商务部网站：<http://hzs.mofcom.gov.cn/article/date/201803/20180302722851.shtml>，最后访问日期：2018 年 7 月 12 日。

¹¹McKinsey & Company, *Dance of the Lions and Dragons, How are Africa and China engaging, and will the partnership evolve?* June 2017.

enterprises engaged in this strategy. However, at present, such training is mainly confined to business administration, little attention is paid to the issue of labour rights. In contrast, in many countries, the right to equality in employment is a basic human right, and employment discrimination is a sensitive issue of high concern to society. Taking African countries as an example, some countries have established relatively comprehensive legal systems for equal rights protection, and formulated strict penalty measures. On the whole, they attach great importance to the issue of equality of opportunity and treatment to reduce discrimination. Compared with Chinese domestic employees, local employees in these countries are more likely to protect their rights in employment.

From 2016 to 2017, international media widely reported two cases of HIV discrimination involving Chinese-invested enterprises in Uganda. In the first case, a local cook sued a Chinese company for unfairly adjusting his position because of his positive HIV testing. In the second case, two workers sued another Chinese Company for unfair dismissal on the ground of their HIV infection. Due to insufficient details on these cases, it was very difficult for the research group to analyze and evaluate them. However, the lack of experience of overseas Chinese enterprises in effectively preventing discrimination and disputes contrasts sharply with the sensitivity of the public in Africa to employment discrimination. This creates hidden dangers and risks for enterprises. This lack of awareness is rooted in the deficiencies of the relevant domestic Chinese systems and practices.

2. Typical experience of promoting fair employment for People Living with HIV in China

1. Tripartite policies coordinating labour relations at provincial level

A large number of migrant workers leave their hometown and seek jobs in other provinces. Guangdong Province is one of the biggest receiving provinces in China. Generally speaking, migrant workers are more likely to be infected by HIV than non-migrant. In order to prevent and control the HIV epidemic in workplaces, the former Labor and Social Security Department of **Guangdong Province**, the Guangdong Federation of Trade Unions and the Guangdong Enterprise Confederation jointly issued the Guidelines on HIV Prevention in the Workplace in Guangdong Province at the end of 2006, which emphasized non-discrimination against People Living with HIV. According to the guidelines, employers should treat People Living with HIV equally and without discrimination in job promotion, various welfare benefits and labour rights and interests, and should not terminate labour contracts at will, thereby creating a working atmosphere that is free from discrimination. At the same time, the guidelines clearly oppose compulsory testing in the workplace and recommend workers' HIV status to be kept confidential. In 2008, led by the former Labor and Social Security Department, the Anhui Department of Health, the Anhui Federation of Trade Unions, the Anhui Enterprise Confederation and the Federation of Industry and Commerce

jointly issued the Notice on “Strengthening the Publicity and Education of HIV Prevention in Workplaces and Protecting the Labor Security Rights and Interests of People Living with HIV”. In the same year, the former Department of Labor and Social Security, the Department of Health, the Provincial Federation of Trade Unions and the Provincial Enterprise Confederation of **Yunnan Province** jointly issued the Notice on “Carrying out Publicity and Education of HIV Prevention in the Workplace and Protecting the Labor Security Rights and Interests of People Living with HIV”. Both the above-mentioned notices specifically strengthened the guidance for and supervision of employers in order to promote fair employment and safeguard the legitimate labour security rights and interests of People Living with HIV. In addition, the **China Enterprise Confederation** also issued the Proposal on “HIV Prevention in Enterprise Workplaces” to numerous enterprises at the first China Employers Forum in order to help enterprises gain a deeper understanding of the adverse impacts of HIV on the production and operation of enterprises, advocate for the respect for the rights of People Living with HIV, create a working environment without discrimination against People Living with HIV, and ensure confidentiality. At the local level, coordination between government, employers and workers to promote equal employment for People Living with HIV led to the creation of enabling environment, and encouraged the whole society to participate in the fight against employment discrimination and the realization of fair employment. It also helped to raise the awareness of employers against employment discrimination.

2. Training on HIV-related laws and regulations for labour inspectors

In 2014, ILO Geneva developed the Labour Inspector's Handbook on HIV, which includes basic information on HIV, international labour standards for labour inspectors regarding HIV, manifestations of HIV-related stigma and discrimination, and measures that labour inspectors can take. A total of 555 labour security inspectors in China participated in training on HIV-related laws and regulations, which raised the awareness of labour security inspectors on the social rights and interests of People Living with HIV in employment, and strengthened the ability of labour security inspectors to deal with employment discrimination.

3. Anti-discrimination education activities on HIV for specific groups such as the migrant population

In cooperation with the Ministry of Human Resources and Social Security, the All-China Federation of Trade Unions, the China Enterprise Confederation, the Chinese Family Planning Association and non-government organizations such as AIDS Care China, Home AIDS, etc., the ILO has successively carried out HIV prevention among migrant workers in 43 large enterprises in Guangdong, Sichuan, Yunnan and Anhui. These enterprises are mainly engaged in the electronics, clothing, mineral, steel, construction, retail and transportation industries, directly employing a migrant population of 270,000 people. This project incorporated HIV knowledge into new employees' induction training, occupational safety training, job skills training and

other programs; produced the HIV Enterprise Guidance Manual; carried out high-level business management seminars, peer educator training, enterprise trainer training and other activities; popularized HIV knowledge among employees; and reduced their misunderstanding and fear about HIV. Such actions helped transform the attitudes and understandings of business managers and employees towards People Living with HIV, hence creating a non-discrimination environment, care and support at the workplace. At the same time, it also strengthened HIV prevention through information dissemination among the migrant population. For example, the project members produced the HIV promotional video "Fellow Townspeople Help Each Other" and screened it at various cities and places in Shenzhen where migrant workers are relatively concentrated, such as in buses stations and metro stations. Carrying out publicity and education through vivid images helps the migrant population and the public to better understand HIV and AIDS and treat People Living with HIV with equality and friendship.

4. Education training on HIV for vocational training institutions and students in technical colleges

From 2007 to 2009, the ILO and Ministry of Human Resources and Social Security have jointly conducted participatory training on HIV/STD and Reproductive Health and Life Skills. They have trained 2,250 teachers from vocational and technical schools in 20 provinces and municipalities across the country, covering 550 vocational and technical schools and over 1 million students. The contents of the trainings included reproductive health education, HIV prevention, and having a caring, supportive, and non-discriminatory attitude towards People Living with HIV. This helped students in technical schools who were about to enter the labour market to understand HIV correctly and provide People Living with HIV with care and support.

5. Typical industries and enterprises actively carrying out HIV and AIDS prevention and education activities in the workplace in order to reduce HIV discrimination.

Supported by the ILO, the Ministry of Human Resources and Social Security and other departments and institutions, enterprises in HIV and AIDS-affected areas such as Yunnan and Guangdong are attaching greater importance to HIV prevention and education activities, taking active measures to prevent HIV and AIDS and formulating HIV and AIDS policies in the workplace in order to protect the equal employment rights of People Living with HIV. The China Enterprise Confederation and ILO also held workshops on HIV prevention and control in the hotel, railway and construction sectors, at which the causes of discrimination against HIV-positive employees and the response of business were discussed.

PART II EXPERIENCE AND PRACTICES OF PROMOTING FAIR EMPLOYMENT FOR PEOPLE LIVING WITH HIV IN OTHER COUNTRIES

I. International Labour Standards and guidelines for promoting fair employment for People Living with HIV

1. Fundamental principles for promoting fair employment for People Living with HIV

1. Major international labour standards

The concept of anti-discrimination in employment is reflected in a number of international labour standards. The most influential ones are the following. First and foremost, the ILO **Discrimination (Employment and Occupation) Convention 1958** (No. 111), a core labour standard, and an important convention for the promotion of equality in employment. The second is the **Code of Practice on HIV/AIDS and the World of Work** (hereinafter referred to as "the Code") formulated by the ILO in 2001. The Code sets out key principles for the workplace response to HIV and AIDS, as well as the rights and responsibilities of governments, employers' and workers' organizations, and proposes guidance on HIV and AIDS-related publicity, education, and training, as well as support and care programs. The third is the ILO **Recommendation concerning HIV and AIDS and the World of Work, 2010** (No. 200) (hereinafter referred to as "Recommendation No. 200"). The Recommendation is the first international labour standard on HIV and AIDS, requiring governments, employers and workers' organizations to participate in the fight against HIV and AIDS, raising fundamental principles for dealing with HIV and AIDS in the workplace, and calling for the establishment of HIV and AIDS-related policies and programs in the workplace. These international labour standards provide a detailed description of the concept of employment discrimination and of the basic principles for the promotion of equal employment for People Living with HIV. They also provides guidance for countries to eliminate employment discrimination and promote fair employment.

2. Content of the main labour standards

The concept of employment discrimination. Convention No. 111 defines the grounds of discrimination, including race, colour, sex, religion, political opinion, national extraction or social origin, which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Other distinctions, exclusion or preference which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, may be determined by the member State concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

The importance of eliminating employment discrimination against People Living with HIV in the workplace. Both Recommendation No. 200 and the Code state that HIV and AIDS is a workplace issue, and should be treated like any other serious illness or health condition. This is necessary not only because it affects the workforce, but also because the workplace, being part of the local community, has a role to play in the wider struggle to limit the spread and effects of the epidemic.

Fundamental principles for promoting equal employment for People Living with HIV. Relevant conventions, codes, and recommendations state that HIV and AIDS is a workplace issue and raise key principles such as the prohibition of discrimination, the prohibition of screening, confidentiality, continuation of employment relationships, and broad cooperation. The specific content includes:

(1) Prohibition of discrimination. Recommendation No. 200 states that there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the ground of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection. The Code further clarifies that discrimination and stigmatization of People Living with HIV inhibit efforts aimed at promoting HIV prevention.

(2) Prohibition of testing. It is specifically stated in Recommendation No. 200 that no worker should be requested to undertake an HIV testing or disclose their HIV status; testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent. HIV testing should not be required at the time of recruitment or as a condition of continued employment; the results of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement. Workplace-related testing is permitted in only three cases: Firstly, anonymous, epidemiological HIV testing in the workplace may occur provided it is undertaken in accordance with the ethical principles of scientific research, professional ethics and the protection of individual rights and confidentiality; Secondly, if undertaken, following risks of exposure to potentially infected material (human blood, body fluids, tissue) at the workplace, the worker should be immediately counselled to cope with the incident, the medical consequences, the desirability of testing for HIV and the availability of post-exposure prophylaxis, and he/she should be referred to appropriate medical facilities; and thirdly, voluntary testing may be undertaken at the request and with the written informed consent of a worker, with advice from the workers' representative if so requested. It should be performed by suitably qualified personnel with adherence to strict confidentiality and disclosure requirements.

(3) Strict confidentiality. Recommendation No. 200 and the Code state that workers, their families and dependents shall enjoy the right to privacy, including

the confidentiality of HIV-related information, and conditions. Workers shall not be required to disclose the status of their HIV infection. The Code states that there is no justification for asking job applicants or workers to disclose HIV-related personal information. Nor should co-workers be obliged to reveal such personal information about fellow workers.

(4) Continuation of employment. Recommendation No. 200 suggests that real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities consistent with the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Real or perceived HIV status should not be a cause for termination of employment. Temporary absence from work because of illness or caregiving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons. Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged. The Recommendation also states that programmes of care and support should include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses, with due regard to national conditions. Work should be organized in such a way as to accommodate the episodic nature of HIV and AIDS, as well as possible side effects of treatment; member States should promote the retention in work and recruitment of persons living with HIV. Member States should consider extending support through periods of employment and unemployment, including where necessary income-generating opportunities for persons living with HIV or persons affected by HIV or AIDS.

3. Broad cooperation. The documents developed by the ILO advocate the cooperation of all sectors to dialogue on issues related to promoting equal employment for People Living with HIV, and to jointly carry out related activities and services. Convention No. 111 stipulates that “each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof”. Recommendation No. 200 and the Code state that it is necessary to integrate HIV and AIDS into the core elements of the national, regional and international response to epidemics, with the full participation of employers and workers' organizations. Recommendation No. 200 also states that workers, their families and dependents shall receive HIV-related prevention, support and care services, and the workplace shall play a role in promoting these services.

2. Responsibilities of governments, employers' organizations and workers' organizations in dealing with HIV and AIDS issues in the workplace

Recommendation No. 200 highlights the principle of social dialogue in the workplace response to HIV and AIDS, and clarifies that the implementation of HIV and AIDS policies and plans shall be based on cooperation and trust between employers, workers and their representatives and governments, as well as on the active participation of People Living with HIV. The Code clearly describes the responsibilities of governments, employers' organizations and workers' organizations in tracking responses to HIV and AIDS in the workplace. In combating employment discrimination based on HIV infection, the responsibilities of tripartite partners are the following:

The responsibilities of governments include firstly, coherence: Governments should ensure coherence in national HIV and AIDS strategy and programmes, recognizing the importance of including the world of work in national plans; Secondly, multi-sectoral participation: the competent authorities should mobilize and support broad partnerships for protection and prevention; Thirdly, coordination: governments should facilitate and coordinate all interventions at the national level to provide an enabling environment for world of work interventions and capitalize on the presence of the social partners and all relevant stakeholders; Fourthly, legislation: in order to eliminate workplace discrimination and ensure workplace prevention and social protection, governments, in consultation with the social partners and experts in the field of HIV and AIDS, should provide the relevant regulatory framework and, where necessary, revise labour laws and other legislation; And fifthly, enforcement: The competent authorities should supply technical information and advice to employers and workers concerning the most effective ways of complying with legislation and regulations applicable to HIV and AIDS and the world of work. They should strengthen enforcement structures and procedures, such as labour inspectorates, labour courts and tribunals.

The responsibilities of employers and their organizations include: firstly, workplace policy: employers should consult with workers and their representatives to develop and implement an appropriate policy for their workplace, designed to prevent the spread of the infection and protect all workers from discrimination related to HIV and AIDS; Secondly, national, sectoral and workplace/enterprise agreements: employers should adhere to national law and practice in relation to negotiating terms and conditions of employment about HIV and AIDS issues with workers and their representatives, and endeavour to include provisions on HIV and AIDS protection and prevention in national, sectoral and workplace/enterprise agreements; Thirdly, education and training: employers and their organizations, in consultation with workers and their representatives, should initiate and support programmes at their workplaces to inform, educate and train workers about HIV and AIDS related prevention, care and support and the enterprise's policy on HIV and AIDS, including measures to reduce discrimination against people infected or affected by HIV and AIDS and specific staff benefits and entitlements; Fourthly, personnel policies: employers should not engage in

nor permit any personnel policy or practice that discriminates against workers infected with or affected by HIV and AIDS; And fifthly, grievance and disciplinary procedures: employers should have procedures that can be used by workers and their representatives for work-related grievances. These procedures should specify under what circumstances disciplinary proceedings can be commenced against any employee who discriminates on the grounds of real or perceived HIV status or who violates the workplace policy on HIV and AIDS.

The responsibilities of workers and their organizations include: Firstly, workplace policy: workers and their representatives should consult with their employers on the implementation of an appropriate policy for their workplace, designed to prevent the spread of the infection and protect all workers from discrimination related to HIV and AIDS; Secondly, national, sectoral and workplace/enterprise agreements: workers and their organizations should adhere to national law and practice when negotiating terms and conditions of employment relating to HIV and AIDS issues, and endeavour to include provisions on HIV and AIDS protection and prevention in national, sectoral and workplace/enterprise agreements; Thirdly, information and education: workers and their organizations should provide information on HIV and AIDS in the workplace, and develop educational materials and activities appropriate for workers and their families; Fourthly, personnel policies: workers and their representatives should support and encourage employers in creating and implementing personnel policy and practices that do not discriminate against workers with HIV and AIDS.

II. Legislative Policies of certain countries on promoting fair employment for People Living with HIV

1. Legislation on promoting fair employment for People Living with HIV

By 2010, 71 per cent of countries worldwide had enacted laws to prohibit discrimination against People Living with HIV.¹² According to the information collected by this research team, foreign countries have two kinds of legislation prohibiting employment discrimination against People Living with HIV:

First, discrimination against people who are suspected to be infected with HIV is explicitly prohibited in HIV prevention laws or labour laws. For example, **South Africa's** Employment Equity Act defines employment discrimination in this way and clarifies that employment discrimination includes discrimination based on HIV infection. The **Cambodian** AIDS Prevention and Control Act clearly states that any form of discrimination against People Living with HIV and their families before and after

¹²Regional Dialogue: Latin America, 26-27 June 2011, from the website of the Global Committee on AIDS and Law. <https://hivlawcommission.org/wp-content/uploads/2017/06/LARD-Fact-Sheet.pdf> , date of reading: August 30, 2018. The Global Committee on AIDS and Law was established by the United Nations Development Programme (UNDP) on behalf of the Joint United Nations Programme on HIV/AIDS (UNAIDS).

employment is prohibited. **India** passed the HIV/AIDS (Prevention and Control) Act in 2017, which prohibits HIV-based employment discrimination. **Malaysia** plans to introduce special legislation to eliminate workplace discrimination against People Living with HIV by 2020.¹³

Second, HIV and AIDS is included in the category of “disability” so as to protect People Living with HIV through laws providing protection for persons with disabilities. The advantage of such inclusion is that the laws on the protection of persons with disabilities usually stipulate in details the employer’s obligation to “reasonably accommodate the working conditions of People Living with HIV” such as workplaces and working hours. These measures will enable people with disabilities (including those living with HIV) to continue working as long as possible, allowing them to live in dignity and alleviating the pressure on social protection programmes. The “Disability Discrimination Act (DDA)” in **the United Kingdom**, amended in 2005, explicitly includes HIV in the scope of disability; the Disability Discrimination Ordinance (1995) of the **Hong Kong** Special Administrative Region clearly stipulates that AIDS patients and People Living with HIV are protected by the Ordinance. In **France**, the Family and Social Conduct Act defines disabled persons as “persons encountering one or more physical, psychological, cognitive or mental disorders, changing the living environment substantially and in an ongoing manner, thereby limiting their ability to participate in social life”, this definition covers all diseases or obstacles, including HIV and AIDS. In **Canada**, although there is no explicit legislation that include HIV and AIDS as disability, HIV and AIDS is included as a disability in judicial interpretation. The definition of disability in the Americans Disability Act (ADA) of **the United States** includes “People Living with HIV (both symptomatic and asymptomatic)”.¹⁴ **Russia's** legislation clearly states that a person can be considered disabled¹⁵ only when the person's body is damaged or when the person is totally or partially unable to work as a result of HIV.

2. Formulating policies and practical guidelines for AIDS response in the world of work

Based on the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200) and the ILO Code of Practice on HIV/AIDS and the World of Work, some countries have formulated policies, strategies, planning and practical guidance or guidelines to respond to HIV and AIDS in the world of work, further elaborating the

¹³New regulation to eliminate discrimination against people with HIV and at workplace soon (Updated), the Sun Daily, <http://www.thesundaily.my/news/2017/10/13/new-regulation-eliminate-discrimination-against-people-hiv-and-workplace-soon-update> Date of reading: July 2, 2018.

¹⁴Jane Hodges, Guidelines on Addressing HIV/AIDS in the Workplace through Employment and Labour Law, ILO, Geneva, January 2004, P. 24-25.

¹⁵Meng Jinmei: *AIDS and Law* (China University of Political Science and Law Press, 2005) Pages 3-5. 孟金梅:《艾滋病与法律》, 中国政法大学出版社 2005 年版, 第 3 页至第 5 页。

relevant content of anti-discrimination, care and support provisions, and clarifying the responsibilities of relevant institutions and organizations. **One type of response** has been formulated by relevant government departments, such as in India, Malaysia and South Africa; **the other type** has been formulated on behalf of tripartite institutions, such as in Ukraine.

The Ministry of Labour and Employment of **India** promulgated the National Policy on HIV/AIDS and the World of Work in 2009, which defines the policy framework on HIV and AIDS and the world of work, including the implementation and supervision mechanism at the national, state and workplace levels. The National Policy on AIDS and the World of Work also clarifies the responsibilities of relevant government departments, employers' organizations and chambers of commerce, enterprises, workers' organizations and social organizations (non-government organizations). It also proposes to establish a steering committee on HIV and AIDS and the world of work composed of multiple groups and institutions, monitoring and promoting the introduction of policies and being responsible for the decision-making of projects related to HIV and AIDS and the world of work. In addition, the employers' commitments on HIV and AIDS, the Joint Commitment of India's Central Trade Union Organization, and the AIDS policy plan in the workplace, implementation list and template are annexed to the National Policy on AIDS and the World of Work. In order to promote the implementation of this policy, the Ministry of Labor and Employment has established a National Steering Committee led by the joint secretary of the Ministry. The committee includes employers' organizations, workers' organizations, representatives of People Living with HIV, representatives of the Indian Parliament and the National AIDS Control Organization. The committee holds a meeting annually to review progress in policy implementation.

The Department of Occupational Safety and Health Bureau of the Ministry of Human Resources of **Malaysia** issued the Code of Practice on Prevention and Management of HIV/AIDS at the Workplace in 2001, which recommends that employers take appropriate measures to prevent the spread of HIV infection and ensure no discrimination against HIV-positive employees. The guidelines also outline the main principles to be followed in the workplace, including the formulation of HIV and AIDS policies and programmes, education training and awareness-raising projects, the creation of a non-judgmental and non-discriminatory working environment, attention to safety and health, confidentiality and privacy, preventive and control measures, counseling and social support, and the promotion of gender equality.

The Ministry of Labour of **South Africa** formulated the Code of Good Practice on key Aspects of HIV/AIDS and Employment (the Code) and the Technical Assistance Guidelines of the Code in 1998 and 2012 respectively. The latter specially stipulates the elimination of unfair discrimination and the promotion of equal opportunities in all areas of workers' employment, and includes basic principles, common problems, a list of measures, and all parties' responsibilities.

The National Tripartite Social and Economic Committee of **Ukraine** passed the National Strategy for Tripartite Cooperation on AIDS and the World of Work (2012-2017) in 2012, which proposes: (1) Supporting social dialogue among governments, employers and trade unions, and implementing AIDS-related policies and projects in the workplace; (2) Carrying out events or activities in the workplace so as to strengthen HIV related knowledge and information sharing through tripartite partners; (3) Preventing discrimination against People Living with HIV in terms of employment, work and services in private medical institutions; (4) With the participation of tripartite partners, supporting enterprises which carry out AIDS-related projects (e.g. anti-discrimination policies for People Living with HIV); (5) Formulating and implementing measures for preventing and treating AIDS at the national and local levels; and (6) Information sharing through mass media to promote healthy lifestyle and preventing HIV infection.

3. Specific provisions for promoting fair employment of People Living with HIV

1. Responsibility of employers to guarantee equal employment rights of People Living with HIV

(1) Definition of discrimination and scope of protection against discrimination

Some countries have clearly defined "employment discrimination" in their laws, and made it clear that no discrimination is allowed before or after recruitment. The scope of prohibition of discrimination includes the hiring, the termination of employment, adjustment of posts, the refusal of salary increase or promotion, etc.

Definition of employment discrimination. In the **United States**, the “Americans with Disabilities Act” lists discriminatory situations in detail, including: restricting, isolating or categorizing applicants or employees in a way that is not conducive for them to win opportunities or status because of their disability; using standards, measures or methods in management that have discriminatory consequences or make other people under the same management retain perpetual discriminatory attitudes; excluding or denying equal employment opportunities or benefits; refusing to provide reasonable accommodation unless the relevant institutions can prove that the accommodation will impose an excessive burden on their business operations; using eligibility criteria, employment tests or other screening criteria that exclude or tend to exclude the disabled or the disabled group, unless these criteria, tests or other screening criteria are related to the job and are consistent with the job responsibility requirements. **Vietnam** has stipulated in the Law on HIV/AIDS Prevention and Control (2006) that discrimination against People Living with HIV, people suspected to be infected with HIV, or people being in contact or suspected contact with People Living with HIV is an act of alienation, rejection, isolation, abuse, humiliation, prejudice or restriction of the rights of others. In the HIV and AIDS (Prevention and Control) Act of

2012 **India** stipulates that discrimination on the basis of HIV and AIDS means imposing any burden, obligation, liability, disability or disadvantage on any person or category of persons, based on one or more HIV-related grounds; or denying or withholding any benefit, opportunity or advantage from any person or category of persons, based on one or more HIV-related grounds.

The scope of protection against employment discrimination. Despite the varying degrees of elaboration of the provisions, the scope of discrimination prohibition basically covers all aspects of employment from hiring to dismissal. **South Africa** has made quite detailed legal provisions on this. The Employment Equity Act stipulates that no one shall discriminate directly or indirectly against employees in any employment policy or convention on the basis of one or more reasons. At the same time, an open enumeration of "employment policies or conventions" has been made so that the principle of prohibition of discrimination runs through recruitment, publicity and recruitment criteria, appointment and appointment procedures, job classification and grading, remuneration, benefits and working conditions, job assignment, working environment and supporting facilities, training and development, performance appraisal, promotion, transfer and demotion, as well as dismissal and other disciplinary measures. It covers the entire cycle of employment, strengthening the protection of workers' rights. The Technical Assistance Guidelines (TAG) on the Code of Good Practice on Key Aspects of HIV/AIDS and Employment (the Code) also provides employers with practices to follow before terminating contracts: firstly if the employee is too ill to complete the current work, the employer is obliged to try alternatives, including reasonable accommodation and rearrangement of work; Secondly, if the employee is too ill to carry out the existing work, the employer is obliged to abide by the accepted guiding principles; Thirdly, employers should ensure that employees retain the confidentiality rights of their HIV status as far as possible during the period of being incapacitated; And fourthly, unless approved by the Labour Court, employers should not force employees to accept HIV testing or disclose employees' HIV status, or regard it as part of the above mentioned procedures.

In the **United States**, the "Americans with Disabilities Act" stipulates that no institution shall discriminate against a qualified disabled person in recruitment, employment, promotion, dismissal, compensation, job training and other aspects of employment in terms of the duration, conditions and special treatment based on his or her disability. In **Vietnam**, the scope of protection against employment discrimination based on HIV and AIDS includes: (1) Termination of the employee's labour contract or work contract or creating problems in his or her work; (2) Forcing healthily fit employees to change the jobs they have been doing; (3) Refusing to give employees a wage raise or promotion, or failing to ensure their legitimate rights and interests; and (4) Requiring job seekers to conduct HIV testing or refusing to employ People Living with HIV on the ground of HIV infection in addition to the circumstances prescribed by law.

(2) HIV testing and HIV status as conditions of employment are prohibited

Discrimination against People Living with HIV in the workplace often manifests itself in the form of mandatory testing and the use of HIV testing as a condition of employment. Therefore, the majority of HIV and AIDS-related laws and labour laws related to HIV and AIDS include clear norms on testing issues. Mandatory testing is prohibited in many countries, such as Italy, the Netherlands, Ukraine, the United States and India. Some countries have also formulated general prohibitions with some exceptions, such as South Africa, Cambodia and Vietnam.

Prohibition of mandatory testing. The 1990 Act on Emergency Measures to Prevent and Combat AIDS in **Italy** prohibited employers in private or public sectors from conducting testing before or after employment, or they would face severe criminal sanctions. It is prohibited in the **Dutch Medical Examinations Act (WMK)** for HIV testing to be done as part of future employees' physical examinations. The Labour Law of **Ukraine** stipulates that when signing a labour contract, employers shall not require workers to submit documents other than those prescribed by law, including personal information on their health and HIV status, or refuse to offer jobs and promotions or dismiss employees on the ground of HIV infection. It is required in **India's** National Policy on HIV/AIDS and the World of Work that job seekers or medical workers should not be required to undergo HIV testing for the purpose of excluding People Living with HIV from employment or enjoying employment benefits. In **the United States**, the “Americans with Disabilities Act” states clearly that the prohibition of discrimination includes the prohibition of medical examination and inquiry. Before employment, no medical examination or inquiry shall be requested as to whether the applicant is disabled, or the nature or severity of any disability. During the period of employment, it is prohibited by law to conduct medical examination or inquiry to know whether employees are disabled, the nature of any disability, or the severity of any disability, unless the examination or inquiry is directly related to the nature of the work to be performed and meets the needs of the business.

General prohibition, allowing mandatory testing under statutory circumstances. **South Africa's** Employment Equity Act, promulgated in 1998, prohibits HIV testing for employees (including job seekers) unless the Labour Court determines that such testing is reasonable in accordance with relevant provisions. It is stipulated in **Vietnam's** Law on HIV/AIDS prevention and control (2006) that HIV testing can be carried out only when the testing is voluntary. Mandatory testing must be carried out only when the judicial body makes a decision or when an investigative organ, the people's procuratorate or the people's court formally requests it. The government should publish a list of occupations requiring HIV testing before recruitment.

The research team has also studied the medical standards for occupations including civil servant, teacher, aviation service personnel and pilot in their countries.

Regarding whether People Living with HIV can work as civil servants or teachers, the situation in the studied countries can be roughly divided into three categories:

The first category includes countries where there are no medical condition related to job requirements for the recruitment of civil servants, so there is no special provision prohibiting People Living with HIV from becoming civil servants or teachers. For example, in **the United States** all applicants should be treated equally regardless of their political affiliation, race, skin color, religion, nationality, gender, marital status, age, or health status. Only the factors related to competence and adaptability can be included in the qualification criteria.

The second category includes countries where it is clearly stipulated that People Living with HIV shall not be prohibited from engaging in public service. For example, **Cambodia** has made it clear that individuals should not be excluded from seeking elective and appointed public positions on the basis of their or their family members' actual or suspected HIV infection. The AIDS Prevention and Control Act (1998) of **the Philippines** stipulates that People Living with HIV shall not be deprived of the right to seek election or appointment to public positions. In 1999, the Ministry of Education of **South Africa** issued the National Policy on HIV/AIDS, for learners and educators in public schools, and students and educators in further education and training institutions, which states that no teacher should be deprived of the right to be employed, teach or be promoted because of actual or suspected HIV infection; HIV infection cannot be a reason for dismissing teachers, nor can it be a reason for a refusal to sign, continue or renew teacher employment contracts, or for any unfair discriminatory treatment.

The third category includes countries where the prohibition of employment of People Living with HIV used to exist but has been abolished. For example, in November 2009, the Constitutional Court of **Poland** ruled that the regulations issued by the Ministry of Interior concerning the non-qualification of People Living with HIV to work as police officers were unconstitutional. Since then, the Ministry of Interior has revised the above-mentioned provisions, stipulating that policemen infected with HIV should undertake an appraisal of their physical condition on whether they can perform their duties. The employment decision should be based on the result of the appraisal.

People Living with HIV serving as flight attendants and pilots: in South Africa, the courts determined that People Living with HIV shall not be excluded from the profession of flight attendants or pilots. In a lawsuit against South African Airlines by an employee who was rejected by the company due to HIV infection, the South African Constitutional Court ruled that it was an unreasonable discrimination of the airline to refuse to hire the employee because of his HIV infection, which violated the employee's right to equality, personal dignity and work. The airline was requested to hire the person as a flight attendant.

(3) Emphasis on information confidentiality and privacy protection

Information confidentiality is a basic principle to deal with HIV and AIDS at the workplace. According to **India's** National Policy on HIV/AIDS and the World of Work, it is unreasonable to require job seekers or workers to disclose personal information related to AIDS, and workers should not be forced to disclose such information about other colleagues. **South Africa's law** stipulates that all persons, including those living with HIV, enjoy the legal right to privacy protection, and it prohibits workers from being required to disclose their HIV infection or related medical information to employers or other workers. The results of HIV testing must be kept confidential and cannot be used to compromise job access, retention, security, or promotion opportunities. If a worker chooses to voluntarily disclose his or her HIV status to his or her employer or colleague, there must be written permission of information disclosure from the worker. Relevant mechanisms must be established in the workplace to encourage and support workers who disclose their HIV status.

(4) Obligation of employers to make reasonable accommodation

In countries where HIV infection is included in the definition of disability, People Living with HIV, just as disabled people, can enjoy the right to "reasonable accommodation" arranged by employers. In addition, South Africa and Vietnam laws clearly stipulate that employers should make reasonable accommodation to the work of People Living with HIV.

In **the United States**, the "Americans with Disabilities Act" 1990 (fully implemented since 1994) has played a significant role in promoting HIV prevention and protection in the workplace. The Act requires employers, within their financial capabilities, to provide reasonable accommodation to employees infected with or living with HIV, such as adjustment of work arrangements, redistribution of work, equipment adjustment, modification of examination and training modules, flexible working hours and additional sick leave. In order to benefit from the provisions of the Act, employees must announce to their employers their disability status, in this case their HIV infection status. However, the benefits brought by law may offset the risk of stigmatization. In **the United Kingdom**, employers' responsibilities to provide reasonable accommodation are also foreseen in legislation. Reasonable accommodation include: First, ensuring that a person with disability can join the recruitment process, and providing convenience during the interview and testing, taking into account the special needs of the disabled; Second, adjusting the working environment, including adjusting or removing barriers that are disadvantageous to individuals with disabilities. The courts have put forward some principles of "reasonable accommodation" in their judgment: First, the effectiveness of measures aimed at avoiding adverse circumstances; Second, the practicability of reasonable accommodation methods; Third, the costs of the adjustment and the severity of any negative impact; And fourth,

the situation of the employer's financial or other resources¹⁶.

The Employment Equity Act of **South Africa** stipulates that employers are required to provide reasonable accommodation for all workers, including those living with HIV, so that they can obtain and enjoy equal employment opportunities. Guidelines have been provided for employers in the Technical Assistance Guidelines (TAG) on the Code of Good Practice on Key Aspects of HIV/AIDS and Employment (the Code), including: adjusting existing facilities to make them easier to use; adjusting existing equipment or acquiring new equipment, including computers and software; reorganizing workstations; changing training and evaluation materials and systems; reorganizing work to redistribute unimportant functions; regulating working hours and vacations; providing specialized supervision, training and support; and rearranging work. In **Vietnam**, the HIV/AIDS Prevention and Control Act requires that employers arrange jobs suitable for the health conditions and professional qualifications of People Living with HIV.

(5) Other employers' obligations to prohibit discrimination in the workplace

These obligations include carrying out anti-discrimination information campaigns and training, informing employees of their rights related to equal treatment, establishing internal complaint procedures, formulating equality promotion plans, and providing care and support for People Living with HIV.

In **Germany**, it is stipulated in the General Equal Treatment Act that employers are obliged to formulate measures to prevent discrimination and provide anti-discrimination training and information to employees in an appropriate way. Employers have an obligation to publicize the contents of the General Equal Treatment Act and the rights of employees to appeal in the enterprise or the workplace. Employers should set up internal appeal bodies to receive and review complaints related to discrimination. Employers shall take proper, necessary and appropriate measures to protect employees when they are discriminated against by the third person at work. If an employee violates the anti-discrimination law, the employer shall take such measures as issuing a warning, transferring or dismissing the employee. In **Sweden**, it is required in the Discrimination Act that employers who employ more than 25 people shall formulate gender equality plans every three years, including on working conditions and job recruitment, as well as an action plan to ensure equal pay for equal work. The action plan may indicate what measures may be taken, when to act, and explanations of some cases which are not in line with the principle of equal pay for equal work. In **the United Kingdom**, employers shall be responsible for acts of discrimination by their agents or employees, even if the

¹⁶Rao Zhijing: Research on the Anti-Employment Discrimination System and Practice in the United Kingdom, *Hebei Law Science*. 2008 (11). 饶志静: 英国反就业歧视制度及实践研究, 河北法学.2008(11)

discrimination occurs without the knowledge or approval of the employer, unless they can provide sufficient evidence they have taken "reasonable steps" to prevent the occurrence of discrimination (such as formulating policies and providing training).

It is stated in **South Africa's** Technical Assistance Guidelines (TAG) on the Code of Good Practice on Key Aspects of HIV/AIDS and Employment (the Code) that employers and trade unions should take positive measures to eliminate unfair discrimination, such as carrying out education and training related to HIV and AIDS and providing support to employees living with HIV. Employers should formulate appeal procedures and disciplinary measures to deal with HIV and AIDS-related complaints in the workplace. It is suggested in **Malaysia's** Code of Practice on Prevention and Management of HIV/AIDS at the Workplace that employers should define the scope of programmes responding to AIDS in the workplace based on the needs and capabilities of the workplace, including education, training and awareness, prevention and control measures, first aid, and counseling and social support.

2. Establishment of specialized anti-discrimination bodies

Some countries have established specialized agencies for the promotion of employment equality which sometimes deal with legal remedy, and the legal liability of employers. On one hand, these bodies enable employees who are discriminated against to obtain practical protection. On the other hand, they also improve employers' awareness about discrimination and contribute to the implementation of anti-discrimination laws. The United States and South Africa present two different types of employment equality promotion bodies.

In **the United States**, people who are discriminated against can submit a written complaint to the Equal Employment Opportunity Commission. In addition to this Federal Commission, many states have their own anti-discrimination agencies. The Equal Employment Opportunity Commission is responsible for interpreting and formulating laws and regulations, as well as being the executive body of the Employment Discrimination Act. The Commission investigates the facts of a case, and if it considers the facts of discrimination valid, reconciliation can be achieved through meetings, mediation and persuasion. The Commission may also publish the names of law breaking employers and recommend the termination of contracts between such employers and the government or the prohibition to intermediaries from providing services to such employers. If the Commission does not support the applicant's appeal, or if the applicant is not satisfied with the result of the settlement or if the two parties have not reached a settlement within the prescribed time limit, the applicant may file a lawsuit in the court. The Commission may initiate employment discrimination lawsuits for victims on its own initiative.

In **South Africa**, a diversified implementation mechanism for employment equality laws and regulations has been established. Unlike countries such as the United

Kingdom and the United States, the Commission for Employment Equity established under the Employment Equity Act does not deal with specific appeals, but investigates and studies the implementation of the Employment Equity Act, acting as a tripartite advisory body and making suggestions to the Minister of Employment and Labour. At the same time, it rewards employers who perform well. The mediation, conciliation and arbitration committees are responsible for specific cases of discrimination. If the mediation is successful, then the two sides reach an agreement. If the mediation fails, the disputing parties may submit the case to arbitration or file a lawsuit in the Labour Court. If the case is submitted to arbitration, the mediation, conciliation, and arbitration committees make a binding final arbitration decision. If one party fails to abide by the arbitration decision, the committee may appeal to the Labour Court to enforce the arbitration decision. Any disputing party may file a lawsuit in the Labour Court, and the decision made by the appellate division of the Labour Court shall be final. In addition, labour inspectors and the chief executive of local labour departments are also responsible for supervising and implementing the Employment Equity Law.

3. Clarifying the legal liability of discriminatory acts

Numerous countries have legislated clear liability for discriminatory acts which generally include punitive compensation and in case of serious discriminatory acts, compensation for emotional or mental suffering. For example, in **the United States**, according to the “Americans with Disabilities Act”, the remedies granted to job seekers or employees when they are discriminated against by employers may include reinstatement, reimbursement of wages, equitable remedies, compensatory damages, and punitive damages. Compensatory and punitive damages can only be obtained when the defendant intentionally discriminates against the plaintiff. They are used to compensate the plaintiff for the actual loss of money, mental pain and suffering. In **the United Kingdom**, if the court determines that discrimination has occurred, it can ask the perpetrator to take the necessary action within a specified time frame to mitigate or eliminate the damage and pay compensation. Compensation is based on actual loss and mental pain and suffering: Actual loss compensation includes losses in the past and future caused by a loss of opportunity. The amount of compensation for mental loss ranges from 500 to 25,000 British pounds. In **Canada**, employers who violate the “Employment Equity Act” are subject to a fine of up to 10,000 Canadian dollars (CAD) for a single violation and up to CAD 50,000 for repeated or persistent discrimination. In **Madagascar**, those who discriminate against workers in employment, vocational training, working conditions, promotion, wage, treatment, and dismissal, etc. on the grounds of skin color, origin, sex and trade union affiliation face economic penalties ranging from 5 million to 15 million Malagasy Francs (Ariary) and/or can be sentenced to one to three years of imprisonment.

PART III COUNTERMEASURES AND SUGGESTIONS TO FURTHER PROMOTE THE FAIR EMPLOYMENT FOR PEOPLE LIVING WITH HIV IN CHINA

The right to equal treatment in employment is a fundamental human right. Many countries in the world attach great importance to the issue of equal employment, including for People Living with HIV. There are therefore numerous effective methods for China to learn from, including in formulating anti-discrimination legislation, clarifying the definition of discrimination, the reasons for prohibiting discrimination, the scope of protection against discrimination, the obligations and legal responsibilities of employers, establishing specialized anti-discrimination bodies, and increasing the promotion of equal employment. Considering the current HIV and AIDS situation in China, and the existing experiences in foreign practices, the research team puts forward the following recommendations:

I. Improve the laws and policies related to employment discrimination

In the long term, the first objective is to improve legislation. The current laws are very principled and difficult to implement. It is critical to clarify the legal responsibilities of related parties, and define punitive damages. The second objective is to specify the responsibility of the labour security supervision agencies and recognize the role of labour security supervision as a main remedy channel to fight against employment discrimination. The third objective is to formulate and adopt an overall anti-discrimination law. So far, the provisions on anti-discrimination are scattered across different laws in China, which are very difficult to enforce. Adoption of an anti-discrimination law will greatly improve the situation. At the same time, the enactment of the overall anti-discrimination law will help disseminate the concept of equal employment in the whole society and enhance awareness.

In the short term, all concerned parties should discuss and revise the mandatory HIV testing and employment access standards. In particular, the inclusion of HIV testing in the medical examination standards for civil servants is a prominent issue. Such provision violates relevant laws and regulations in China, such as the Employment Promotion Law, the Law on Prevention and Treatment of Infectious Diseases, and Regulations on Prevention and Treatment of HIV/AIDS. It also has a considerable influential effect. On the one hand, the government bears the responsibility of upholding equality and maintaining social justice; on the other hand, as employer, the government should act as an example, taking the lead in obeying related laws and regulations. The government should discuss and modify the medical examination standards and access qualifications of other occupations, abolish unreasonable employment access requirements and eliminate employment discrimination against People Living with HIV.

II. Establish tripartite bodies to promote fair employment

Many countries have established specialized anti-discrimination bodies to help eliminate discrimination and realize the right to equal employment. Considering the current institutional setting in China, it may not be suitable to establish special anti-discrimination bodies similar to those in the United States and the United Kingdom that can solve specific discrimination disputes. But China can learn from South Africa to establish tripartite advisory agencies.

China can invite different partners to discuss employment discrimination issues and explore the establishment of a tripartite advisory body on equal employment, or an advisory body with participation of more stakeholders.

The duties and tasks of the tripartite advisory body could include issues such as: carrying out preliminary research on employment discrimination related legislation, refining and improving anti-discrimination laws and regulations, and, if possible, promoting them; conducting investigations and studies on the implementation of laws related to equal employment, putting forward suggestions and relevant activities; encouraging health committees, trade unions, federations of enterprises, and federations of industry and commerce to jointly coordinate training on antidiscrimination, and enhance the awareness about corporate responsibility; strengthening communication and exchanges with trade associations and other organizations, and facilitating the implementation of equal employment rights in formulating industry standards; strengthening experience sharing with other countries and cooperation with international organizations (such as the ILO), making contribution to the global agenda of elimination HIV and AIDS issue by 2030.

III. Suggestions on specific measures to promote fair employment for People Living with HIV

1. Enhance the awareness and capacity of enterprises to deal with fair employment for People Living with HIV

For domestic Chinese enterprises, a first step could be to select key provinces to integrate issues of anti-discrimination, including fair employment for People Living with HIV into training activities such as the training on corporate labour relations regulations and management capacity. They can actively explore appropriate anti-discrimination strategies and methods with HR managers, guide enterprises to establish anti-discrimination policies in the workplace and internal complaint mechanisms for employment discrimination, and develop the "Guidebook on Fair Employment for People Living with HIV in Enterprises". They can also collect successful experiences of enterprises combatting discrimination, use these as examples, and actively promote the sharing of experiences between enterprises. A second step would be to improve awareness on equal rights to employment among human resources

service providers. These activities shall include information campaigns and training workshops on issues related to discrimination and equality practices.

As the number of enterprises involved in the "Going Out Policy" increases, and the number of people employed by Chinese enterprises in foreign countries expands, the issue of labour rights and interests, including equal employment, will become increasingly important. These affect not only the operation and sustainable development of Chinese enterprises operating abroad but also affect the image of China in the eyes of the governments and people of other countries. Therefore, guiding and urging Chinese enterprises to effectively handle the risks and problems associated with employment discrimination, including HIV and AIDS related discrimination, supporting and guiding Chinese enterprises in fulfilling their social responsibilities, and striving to achieve non-discrimination in enterprises, will not only facilitate the establishment of a good image of Chinese enterprises, but it will also help to maintain the image of China in the global scene and promote win-win cooperation between China and foreign countries. Specifically, a **first step** would be to include antidiscrimination in the existing training addressed to "going out" enterprises, to help enterprises incorporate the issue of HIV and AIDS into their overall strategies and action plans, to enhance their awareness about equality and to improve the management capability to reduce HIV related employment discrimination and prevent workers from HIV infection. **Secondly**, according to the characteristics and capabilities of enterprises of different size, different types of guidebooks should be developed. It is suggested that research shall be conducted in some "going out" Chinese enterprises in key countries, such as Uganda, to analyze the problems and conflicts in the systems, policies, cultures, and customs that Chinese enterprises face after "going out", and to understand the differences between Chinese and foreign employees and the challenges Chinese managers face in addressing HIV related issues. At the same time, with the help of local and international labour organizations, associations of Chinese enterprises and other support networks, the relevant enterprises should learn about local labour legislation, including HIV and AIDS-related legislation. On such basis, Chinese companies shall develop tailor-made training manuals for different types of enterprises, formulate HIV and AIDS policy in the workplace, further enhance the sensitivity of enterprises to employment discrimination, avoid labour disputes, and reduce the costs caused by unconscious violation of laws. This will also help Chinese enterprises to grasp the opportunity to eliminate HIV and AIDS employment discrimination, and establish a better image of responsible enterprises, so as to promote China's South-South cooperation and expand the strategic development of the Belt and Road initiative. **Thirdly**, in view of the many "going out" enterprises located in countries with high HIV prevalence, the government should provide guidance for these enterprise to provide HIV related information for workers, such as information on prevention, HIV testing, treatment care and support. **Fourthly**, in countries with considerable investment from Chinese enterprises, labour affairs officials should be appointed with the duties to publicize and introduce to Chinese enterprises the laws and regulations of the host countries and help coordinate and

resolve labour-related problems.

2. Enhance the awareness and ability of teachers and students in vocational and technical schools

In the face of the current HIV epidemic, young people have become a key group among those newly infected with HIV. Therefore, it is very important to strengthen HIV prevention education for young people. Generally speaking, knowledge of "sexual and reproductive health" among students in vocational schools is mainly acquired through the internet or peers, which results in the lack of scientific understanding of HIV. Therefore, in terms of HIV prevention, this sexually active population should be a priority. The previous training project on "HIV/STD and reproductive health and life skills" in vocational schools was effective and has accumulated some experience, on the basis of which in-depth training for teachers in vocational schools can be carried out. It has also supported teachers in conducting training courses on sexual and reproductive health as well as HIV and AIDS prevention, and in disseminating the an anti-discrimination concept to help students increase their awareness of equal employment before entering the labour market.

3. Enhance the awareness of equal rights among workers

In the process of providing employment services in the labour market, public employment services, job agencies, and vocational training institutions should facilitate the publication of laws, policies and typical cases related to equal employment through brochures, publicity boards, special activities and similar methods, so as to enhance the workers' awareness about their rights to equal employment and their understanding of the relevant channels of legal remedy.

4. Enhance the awareness of equal employment among labour inspectors, mediators and arbitrators

Labour inspectors, mediators and arbitrators play a very important role in eliminating employment discrimination and ensuring fair employment for People Living with HIV. **First of all**, referring to ILO's Handbook on HIV and AIDS for Labour Inspectors, and based on the reality in China, Chinese authorities should develop a handbook tailored for Chinese labour inspectors and arbitrators, and select key provinces for training. Emphasis should be placed on raising the awareness of labour inspectors, mediators and arbitrators on the issue of HIV and AIDS and the labour rights and interests of People Living with HIV, and on improving their capability to handle cases related to HIV employment discrimination. Specific training methods can incorporate HIV and AIDS issues into existing training activities for labour inspectors, mediators, and arbitrators, in which HIV and AIDS can be deeply analyzed as a typical case of employment discrimination, especially health discrimination, and obstacles and possible solutions

in protecting fair employment for People Living with HIV can be explored. **Secondly**, local experiences should be summed up in a timely manner. In the process of labour inspection and dispute mediation, once good practices are found, they can be summarized in a timely matter, shared and promoted. And **thirdly**, we should pay active attention to the practices of other countries in the world, and promote international exchanges in eliminating employment discrimination, especially HIV-based employment discrimination.

Research Team of Chinese Academy of Labor and Social Security
December 2018

ANNEX 1: ANTI-DISCRIMINATION LAWS, REGULATIONS AND POLICY DOCUMENTS ON HIV AND AIDS IN CHINA

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
1	ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Article 2: Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.	Ratified by the Standing Committee of the National People's Congress in 2005 and declared that it was not applicable to the Hong Kong Special Administrative Region
2	UN Convention on the Rights of Persons with Disabilities (CRPD)	1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia: a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of	China signed the Convention on March 30, 2007. On June 26, 2008, the Standing Committee of the National People's Congress ratified the Convention. On August 31, 2008, the Convention came into force in China

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions; b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;	
3	The Constitution of the People's Republic of China	The Constitution of the People's Republic of China provides a solid basis for the development of laws, regulations and policy documents on anti-discrimination. It defines the rights of citizens to equality, as well as rights to work, rest and enjoy social security.	The current Constitution is the 1982 version, which has been amended five times (in 1988, 1993, 1999, 2004 and 2018).
4	The Labor Law of the PRC	Article 3: Labourers shall have equal right to employment and choice of occupation, the right to remuneration for labour, to rest and vacations, to protection of occupational safety and health, to training in vocational skills, to social insurance and welfare, to submission of labour disputes for settlement and other rights relating to labour stipulated by law.	July 1994

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		Labourers shall fulfill their labour tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labour discipline and professional ethics; Article 12: Labourers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment..	
5	Law of the People's Republic of China on Promotion of Employment	Article 3: The workers enjoy the right to employment on an equal footing and to choose a job on their own initiative in accordance with law. In seeking employment, the workers shall not be subject to discrimination because of their ethnic backgrounds, races, gender, religious beliefs, etc. Article 30: When an employing unit recruits a person, it shall not use as a pretext that he/she is a pathogen carrier of an infectious disease to refuse to employ him/her. However, before a pathogen carrier of an infectious disease is confirmed upon medical test that he/she is cured or before the suspicion that the disease is infectious is expelled, he/she shall not take up the jobs which may easily cause the disease to spread and which are prohibited by laws and administrative regulations and	January 2008

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		by the administrative department of health under the State Council. Article 62: Where anyone practices discrimination in employment in violation of the provisions of this Law, the workers concerned may lodge a lawsuit in the people's court.	
6	Law of the People's Republic of China on Prevention and Treatment of Infectious Diseases	Article 16: The State and the community shall show concern about and help the infectious disease patients, pathogen carriers and suspected infectious disease patients and make it possible for them to receive timely medical treatment. No units or individuals shall discriminate against infectious disease patients, pathogen carriers and suspected infectious disease patients. The infectious disease patients, pathogen carriers and suspected infectious disease patients shall, before they are cured or cleared of suspicion, be barred from jobs as provided in laws or administrative regulations or by the health administration department under the State Council in order to limit the likelihood of causing the spread of infectious diseases.	August 2014

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
7	Regulations on Prevention and Treatment of HIV/AIDS	Article 3: The Law protects the rights of People Living with Human Immune Virus (HIV) and AIDS patients and their relatives. It includes the rights to marriage, employment, assessment of medical treatment and education. Any institution or individual shall not discriminate against the People Living with HIV, AIDS patients and their relatives. Article 10: The people's governments and the relevant departments of the people's government at various levels shall organize and develop education and care for, and shall not discriminate against People Living with HIV and AIDS patients and their relatives. The people's governments and the relevant departments of the people's government at various levels shall promote health and civilized life-style, and shall build a supportive social environment for AIDS prevention and treatment. Article 23: Voluntary system on AIDS counseling and testing shall be implemented national-wide. The competent health department of local people's governments at or above the county level shall appoint agencies of health and medicine to implement the voluntary counseling and primary-testing for all persons voluntarily coming for counseling and testing, in	January 2006

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		accordance with the formulated AIDS voluntary counseling and testing method by the competent health department of the State Council in co-operation with other relevant departments of the State Council.. Article 39: When the agencies of diseases control and prevention, and inspection/quarantine carry out AIDS epidemiological investigation, the institution or individual being investigated shall provide relevant facts. Any institution or individual shall not release the information that may be used to identify HIV positive, or AIDS patient and their relatives, such as their name, address, working institute, picture, medical history etc.	
8	The Provisions on Employment Services and Employment Management	Article 4: Workers shall enjoy equal employment rights according to the law. No worker may be discriminated against due to ethnicity, race, gender or religious belief when seeking employment. Article 19: No employer may, when employing workers, refuse a worker because he is a pathogen carrier of an infectious disease. However, a pathogen carrier of any infectious disease shall not take up a position that can easily cause the spreading of infectious disease as stipulated in state laws, administrative regulations or the provisions of the health administrative department	October 2007

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		under the State Council before he/she is cured upon medical appraisal or excluded from infectious suspects. No employer may, when employing workers, compulsorily take the serological indicator of hepatitis B virus as the standard of physical fitness unless the nature of the work does not make it possible for hepatitis B pathogen carriers to carry it out as stipulated in state laws, regulations or the provisions by the health administrative department under the State Council.	
9	Notice of the State Council on Effectively Strengthening AIDS Prevention and Treatment	Information on HIV prevention and treatment should be shared broadly and widely through varieties of activities radio, TV Programs, newspapers, internet and others. We should give full play to the role of public and private sectors to carry out information sharing to make the general public informed of the HIV transmission modes, prevention, healthy life style, and the reduction of stigma and discrimination against People Living with HIV. Based on the "Opinions on the Management of People Living with HIV and AIDS" developed by the Ministry of Health, management should combine medical services, community services and social and family care to strengthen the management of People Living with HIV and AIDS and eliminate discrimination.	March 2004

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
10	Notice of the Ministry of Labor and Social Security on the Implementation of the HIV Treatment	1: When implementing the Basic Medical Insurance Scheme for workers in urban areas, local government should treat People Living with HIV as any patients with other diseases, ensure that People Living with HIV participate in the basic medical insurance on an equal basis and enjoy the benefit as any other patients with any other diseases. Discrimination against People Living with HIV is prohibited. 2: Based on the List of Free Antiviral Drugs in the Circular of Measures for Antiviral Treatment and Voluntary Counselling and Testing (No. 107, 2004) issued jointly by Ministry of Health and Ministry of Finance, adjust the Drug List for National Basic Medical Insurance, so as to ensure that People Living with HIV covered by the Basic Medical Scheme can have access to the ARV drugs. 3: All local governments should include the cost of anti-viral drugs for People Living with HIV participating in the Basic Medical Insurance in the payment scope of the pooling fund, so as to reduce their burden of out-of-pocket medical expenses.	May 2004

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
11	Regulations on Prevention and Treatment of HIV/AIDS in Zhejiang Province	Article 40: If the work which People Living with HIV are engaged in is likely to spread HIV, the competent health authorities shall request their employers to adjust their work. After receiving the notification, the employer shall adjust their work posts, but they shall not terminate their employment or labour contracts on the ground of HIV infection, and it shall keep their HIV status confidential. Article 41: No employer or individual shall discriminate against People Living with HIV or their relatives, and no one shall infringe or deprive them from the rights to medical treatment, employment, social security, marriage, study and participation in social activities. Any employer or individual shall have the responsibility to keep HIV status of other people confidential according to the law.	Issued in March 2007 and revised in November 2014
12	Regulations on Prevention and Treatment of HIV/AIDS in Shaanxi Province	Article 52: Employers shall not terminate labour relationships with workers on the ground of HIV infection, and they shall keep workers' HIV related information confidential. If the work in which People Living with HIV are engaged in is likely to spread HIV, the disease prevention and control institutions shall inform	June 2007

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
		the employer in a timely manner. Upon receipt of the notification, the employer concerned shall immediately adjust their work posts, but it shall not terminate the labour relations and will bear responsibility for the confidentiality of the individual's HIV infection and the reasons for the adjustment. Article 65: Those who violate the provisions of Article 52 of these Regulations and unlawfully terminate labour relations shall be ordered to make corrections by the administrative department of labour and social security; those who cause losses to workers shall be liable for compensation.	
13	Measures for the Implementation of the Regulations on Prevention and Treatment of HIV/AIDS in Hunan Province	Article 32: Employers shall not terminate labour relations on the ground of HIV infection. If a worker is not suitable for his/her post due to HIV infection, the employer shall accommodate him/her to an appropriate post and keep his/her HIV related information confidential. Article 34: Employers who violate the provisions of these Measures and terminate labour relations with workers on the ground of HIV infection shall be punished in accordance with the relevant provisions of the Labor Contract Law of the People's Republic of China.	May 2012

No.	Name of the laws and regulations	Main articles involved	Date of approval and issue
14	Management Measures for Free Voluntary Counseling and Testing of HIV (Trial)	For those who volunteer for HIV testing, healthcare workers should provide information on testing prevention and treatment and discuss with them before and after HIV testing, and ensure that related consultation and testing are kept confidential. No personal data of People Living with HIV shall be disclosed to unrelated persons.	April 2004

