

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. Is there a significant problem with AIDS in Henan?**
- 2. Are there many children affected? Are they not allowed into the school system?**
- 3. I thought that there was an anti-corruption push by the Chinese Govt. Is this the case?**
- 4. Are “whistleblowers” ever treated as political dissidents, such as in circumstances similar to these described by the Applicant?**
- 5. Is it possible that someone can be detained, pay a penalty and have no criminal conviction recorded? If so is this common?**
- 6. If there is not a conviction and a person is just detained and pays a penalty – do these people routinely come to the attention of the authorities if they try to leave the country? Are there instances where they have been able to leave the country easily?**

RESPONSE

Note: Kaifeng is located in Henan Province some 60 kms east of the provincial capital Zhengzhou. Shangcha may refer to Shangcai which is about 170 kms south of Kaifeng (‘Kaifeng & Shangcai, Henan Province’ 2000, *Microsoft Encarta Interactive Atlas 2000* – Attachment 1; ‘Current Overview of HIV/AIDS in China’ 2003, China AIDS Survey website <http://www.casy.org/overview.htm> – Accessed 26 May 2005 – Attachment 2; US Embassy Beijing 2000, ‘PRC Blood Donors And The Spread Of Rural AIDS’, March, ‘January 2000 Sichuan Newspaper on AIDS in a Henan Village’ <http://www.usembassy-china.org.cn/sandt/AIDSblood.htm> – Accessed 30 November 2006 – Attachment 3).

1. Is there a significant problem with AIDS in Henan?

Sources agree that Henan is one of China’s worst hit provinces for HIV/AIDS. Estimates for the number of people infected vary from a few thousand to over a million. A major cause of the infection in Henan was a blood selling scheme in the 1990s (‘AIDS situation in China’s Henan under “initial control” – visiting US expert’ 2006, *BBC Monitoring Alert*, source:

Xinhua, 20 September – Attachment 4; ‘Henan to begin AIDS check on 1.5m people’ 2006, Gov.cn website, 16 February http://english.gov.cn/2006-02/16/content_201216.htm – Accessed 22 November 2006 – Attachment 5).

Human Rights Watch states that under the 1990s blood scheme Henan provincial authorities encouraged low-income farmers to sell their blood. Plasma was isolated from the blood and sold on the global market. To prevent anaemia among those who frequently donated, the red cells left when the plasma was separated were pooled and re-injected into the donor without being screened for HIV or other blood-borne diseases. *The Economist* reported that blood selling was made illegal in 1998 (Human Rights Watch 2006, *China: House Arrests Stifle HIV/AIDS Petitions*, 11 March http://hrw.org/english/docs/2006/03/11/china12874_txt.htm – Accessed 22 November 2006 – Attachment 6; ‘AIDS in China’ 2005, *The Economist*, 28 July http://www.economist.com/World/asia/displayStory.cfm?story_id=4223578 – Accessed 9 August 2005 – Attachment 7).

The Chinese government has estimated that some 650,000 people have HIV/AIDS in China. However, some experts say that the numbers may be higher and over one million may be affected in Henan alone. Henan provincial health department figures estimate 35,000 reported cases in 2005 in Henan (‘China arrests former chief of AIDS-plagued county’ 2006, *Reuters News*, 17 August – Attachment 8; ‘HIV & AIDS in China’ 2006, AVERT website, 11 September, ‘Blood and blood products’ <http://www.avert.org/aidschina.htm> – Accessed 21 November 2006 – Attachment 9; Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.12 – Attachment 10).

[Note: AVERT is an international HIV and AIDS charity based in the UK, with the aim of AVERTing HIV and AIDS worldwide. Its website address is: [http://www.avert.org/.](http://www.avert.org/)]

2. Are there many children affected with AIDS?

Definitive statistics on the number of children affected by HIV/AIDS were not found in the sources consulted and sourced figures vary greatly.

In one report the Save the Children organisation defined children affected by HIV/AIDS as those aged under 18 years and include children who lost one or both parents due to AIDS; children living with HIV infected parents or sisters; and children with no family member being infected with HIV but living in communities heavily affected by HIV/AIDS (Save the Children 2006, *Listen, secrets!*, March, p.45 http://www.crin.org/docs/save_china_listensecrets!.pdf – Accessed 23 November 2006 – Attachment 11).

UNAIDS statistics in respect of China do not give an estimate for “Children aged 0 to 14 living with HIV” or for “Orphans aged 0 to 17 due to AIDS” (‘China’ (undated), UNAIDS website http://www.unaids.org/en/Regions_Countries/Countries/china.asp – Accessed 21 November 2006 – Attachment 12).

Xinhua reported “there are officially 1,535 child HIV sufferers” and that health experts estimate the real number of infected children at over 9,000. However, the article also cited a UNICEF report that more than 30,000 children live with HIV or AIDS of which nearly 11,000 were infected in 2005. A *People’s Daily Online* article stated that experts estimated the number of “‘AIDS orphans’ could be as high as 80,000 nationwide” (‘China badly needs

AIDS drugs for children' 2006, *Xinhua*, 10 August http://news.xinhuanet.com/english/2006-08/10/content_4946239.htm – Accessed 11 August 2006 – Attachment 13; 'AIDS orphan camp opens in Beijing' 2006, *People's Daily Online*, 10 August http://english.people.com.cn/200608/10/eng20060810_291631.html – Accessed 11 August 2006 – Attachment 14).

In December 2005 the World Health Organization reported the number of children receiving treatment in China was not known (World Health Organization 2005, *China*, December, p.3 http://www.who.int/hiv/HIVCP_CHN.pdf – Accessed 22 November 2006 – Attachment 15).

A June 2004 UNICEF article stated that in Henan over 2,000 children, most aged between six and 15 years, were orphaned by AIDS. Some were also HIV-positive (UNICEF 2004, 'China's children affected by HIV/AIDS', 11 June http://www.unicef.org/infobycountry/china_21607.html – Accessed 23 November 2006 – Attachment 16).

A May 2005 source cited by Human Rights Watch estimated that "up to 1.5 million children are affected by AIDS" in Henan (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.12/footnote 30 – Attachment 10).

3. Are children affected with AIDS not allowed into the school system?

Sources indicate that although there is compulsory education in China, children affected by HIV/AIDS may be refused admission to schools.

Chinese law provides for nine years of compulsory education and the government has officially outlawed discrimination against persons with HIV/AIDS. Under the government's "four frees and one care" policy there is free schooling for children orphaned by HIV/AIDS (US Department of State 2006, *Country Reports on Human Rights Practices for 2005 – China*, 8 March, 'Children', 'Other Societal Abuses and Discrimination' – Attachment 17; World Health Organization 2005, *China*, December, p.2 http://www.who.int/hiv/HIVCP_CHN.pdf – Accessed 22 November 2006 – Attachment 15).

Legislation on HIV/AIDS prevention and control introduced in March 2006 states that there cannot be discrimination against people living with HIV/AIDS, AIDS patients or their relatives. Under the law the legal right of education is protected ('New regulation shows greater resolve in AIDS control' 2006, *Xinhua Online*, 12 February http://news.xinhuanet.com/english/2006-02/12/content_4169711.htm – Accessed 27 November – Attachment 18; Watts, Jonathan 2006 'AIDS in China: new legislation, old doubts', *The Lancet*, 11 March, Vol. 367, Iss. 9513, p.804 – Attachment 19).

In September 2003 Human Rights Watch wrote:

Children are particularly vulnerable to both direct and indirect discrimination. Children who are HIV-positive or who have HIV-positive family members may be refused admission by schools...

School fees pose a major barrier to children attending school in cases where a family member has HIV/AIDS, as the high cost of medical care makes it difficult for the family to afford the rising cost of school fees. In Henan's Sui and Shangcai counties, tuition ranges from RMB 600-1000 (U.S.\$75-120). National and local governments in China sometimes promise

assistance for children affected by AIDS, but assistance is not always forthcoming in practice. In Henan's Wenlou village, orphans were promised a tuition break but the program was discontinued after it received media coverage. In Yunnan, Cao described two children he knew who were orphaned by AIDS but have been unable to obtain long-promised government assistance to pay for school fees. Some children whose parents die of AIDS live alone because relatives are afraid to take them in. Many children affected by AIDS in Henan and Yunnan are forced to seek employment at an early age, in some cases as young as ten years old, in order to support ailing parents, younger siblings, and themselves (Human Rights Watch 2003, *Locked Doors: The human rights of people living with HIV/AIDS in China*, September, Vol. 15, No. 7(C), p.38 – Attachment 20).

Jun Jing, of the Tsinghua University in Beijing and a policy advisor for the Chinese Ministry of Health, referring to a case where a child whose father was an AIDS patient could not attend school, wrote:

...A consequence of this exposure was the family's repeated failure to find a school to accept his son for a normal education. While this rejection is actually against the Chinese government's policies on the education of children living with parents who are AIDS patients, local schools that declined to enroll his son did not suffer any punishment. The local school authorities had ample excuses for not enrolling his son; they did not have to say outright that their refusal had to do with his father's HIV-positive status (Jing, Jun 'The Social Origins of AIDS Panics in China' in Kaufman, Joan, Kleinman, Arthur and Saich, Tony (eds) 2006, *AIDS and Social Policy in China*, Harvard University Asia Center, Cambridge, p.165 <http://www.fas.harvard.edu/%7Easiactr/publications/pdfs/AIDS%20Volume%20complete.pdf> – Accessed 29 November 2006 – Attachment 21).

In June 2005 Human Rights Watch reported that:

...Currently, widespread discrimination against people with HIV/AIDS in China, and the poverty faced by many rural Henan families, make institutions the first and virtually only solution for children whose families are unable to care for them. The tens of thousands of Henan children who have lost their parents due to complications related to AIDS, or whose parents are HIV-positive, are often turned away by local schools. While the government has promised free tuition to children orphaned by AIDS, it has made no provisions for those who have lost one parent, even where that parent may have been the sole wage-earner. Schools do not uniformly implement the government's free tuition policy, and many children affected by AIDS leave school because their families can no longer afford to pay school fees (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), pp.22-23 – Attachment 10).

UNICEF has reported that local governments in Henan waive school fees for HIV/AIDS affected children (UNICEF 2004, 'China's children affected by HIV/AIDS', 11 June http://www.unicef.org/infobycountry/china_21607.html – Accessed 23 November 2006 – Attachment 16).

4. I thought that there was an anti-corruption push by the Chinese Govt. Is this the case?

In recent years, including 2006, the Chinese government has taken a number of measures to deal with official corruption. The most recent anti-corruption campaign is seen by some analysts as part of a bigger political battle for control. Sources indicate that some arrests have been made in connection with the blood selling scandal.

Question 4 in the attached recent RRT Country Research Response covers the question of corruption amongst Chinese government officials and party cadres (RRT Country Research 2006, *Research Response CHN30726*, 6 October, quest. 4/pp.6-9 – Attachment 22).

A September 2006 Carnegie Endowment for International Peace briefing mentioned that southern China stepped up its anti-corruption efforts “this winter”. *BBC News* reported an anti-corruption drive leading up to the Communist Party Central Committee meeting in October 2006 (Keidel, Albert 2006, ‘China’s Social Unrest: The story behind the stories’, Carnegie Endowment for International Peace, September, p.2 http://www.carnegieendowment.org/files/pb48_keidel_final1.pdf - Accessed 25 October 2006 – Attachment 23; McGivering, Jill 2006, ‘China’s leaders hold policy meet’, *BBC News*, 8 October <http://news.bbc.co.uk/2/hi/asia-pacific/4801597.stm> – Accessed 23 November 2006 – Attachment 24).

On the recent anti-corruption campaign a *Far Eastern Economic Review* article states:

Corruption and the fight against it always engender political tensions between the central government and the provinces, as well as between the provinces and the locales. In China there is an historic sense of entitlement that goes with high office, and in this gray area the issue was primarily about proportion. Customs officials attracted punishment only when their expropriations became disproportionate to what they produced for the higher levels. The extent to which individual judgment determines every step of indictment, investigation and adjudication makes each of those steps very political.

Whether there is a genuine escalation of anticorruption activities by the Party or primarily an energetic campaign to publicize them is difficult to determine. And whether the campaign, if more significantly energized than previous campaigns, is really achieving its goals, is likewise hard to gauge. The CPC expelled 44,738 members in 2005 who “failed to meet Party requirements,” slightly down from the 49,000 expelled in 2004. But an overarching theme is that stronger and more objective legal processes are now being installed. This indeed would be welcomed by domestic and foreign interests alike (DeWoskin, Kenneth J. and Stones, Ian J. 2006, ‘Facing the China Corruption Challenge’, *Far Eastern Economic Review*, September <http://www.feer.com/articles1/2006/0609/p037.html> – Accessed 12 September 2006 – Attachment 25).

The *BBC News* reports:

Many analysts saw the anti-corruption drive as part of a bigger political battle for control, an attempt by Beijing to re-impose its authority on the regions (McGivering, Jill 2006, ‘China’s leaders hold policy meet’, *BBC News*, 8 October <http://news.bbc.co.uk/2/hi/asia-pacific/4801597.stm> – Accessed 23 November 2006 – Attachment 24).

A *BBC Monitoring Alert* states that:

President Hu Jintao, in his speech at the First Annual Convention and Conference of the International Association of Anti-Corruption Authorities on 22 October [2006], stressed that the UN Convention Against Corruption should be implemented “on the basis of respecting the difference of each other’s political system, legal system, and historical and cultural characteristics”.

According to commentator Chen Jinsong featured by Radio Free Asia, President Hu was in effect saying that the anti-corruption effort cannot touch upon the current political system and one-party rule. But these are seen by many as the fundamental cause of the corruption

problem ('Analysis: Doubts voiced over China's anti-corruption resolve' 2006, *BBC Monitoring Alert*, 25 October – Attachment 26).

Sources also indicate that some people have been arrested in connection with the blood selling scandal.

The US Department of State reports:

...In April [2005], 15 people were arrested as part of the illegal blood-selling schemes from the 1990s that caused the HIV infection of thousands. State-run media reported that the government closed 147 illegal blood-selling stations during the year...(US Department of State 2006, *Country Reports on Human Rights Practices for 2005 – China*, 8 March, 'Other Societal Abuses and Discrimination' – Attachment 17).

A *South China Morning Post* article, dated 24 July 2006, reported the case of Yang Songquan, former Communist Party chief of Shangcai county in Henan, who was arrested for allegedly siphoning off AIDS-prevention funds. Other officials were also said to have been arrested. However, another article, dated 18 August 2006, also refers to the arrest of Yang Songquan, for taking bribes over a river treatment project. It reported a Chinese anti-corruption official who stated that there was "no evidence to suggest that Yang has embezzled money allocated for AIDS prevention and treatment" ('10m yuan in Aids funds embezzled' 2006, *South China Morning Post*, 24 July – Attachment 27; 'China arrests former chief of AIDS-plagued county' 2006, *Reuters Health E-Line*, 18 August – Attachment 28).

5. Are "whistleblowers" ever treated as political dissidents, such as in circumstances similar to these described by the Applicant?

Sources indicate that, in some circumstances, whistleblowers may be treated in a similar manner to political dissidents, particularly concerning official corruption. However, the national government has also taken action to assist whistleblowers.

Robin Munro in a Human Rights Watch and Geneva Initiative on Psychiatry publication concerning the government's use of psychiatric detention states that:

...the several main categories of political and religious nonconformists that are especially liable to fall prey to these police-dominated diagnostic and judicial procedures: so-called "political maniacs," whistleblowers and exposers of official corruption, persistent complainants and petitioners, and also unconventional religious sectarians of various kinds (Munro, Robin 2002, *Dangerous Minds: Political Psychiatry in China Today and its Origins in the Mao Era*, Human Rights Watch and Geneva Initiative on Psychiatry, August, New York, Introduction/pp.39-40 – Attachment 29).

A recent *BBC Monitoring Alert* wrote in connection with China's anti-corruption campaign that:

Unofficial anti-corruption campaigners, even if they have no intention of challenging the current political system, continue to be harassed. As Beijing-based independent writer Yu Jie said in an article carried by Voice of America, the Chinese Communist Party sees "the fight against corruption as its own prerogative on which common people are not allowed to have a say" ('Analysis: Doubts voiced over China's anti-corruption resolve' 2006, *BBC Monitoring Alert*, 25 October – Attachment 26).

Another article notes that although the “Communist Party says corruption is the biggest threat to its existence, it is wary of independent whistleblowers who might challenge its absolute authority” (Bodeen, Christopher 2006, ‘Chinese Journalist Sentenced to Prison’, *Associated Press Newswires*, 26 January – Attachment 30).

Nevertheless the government has taken actions to assist whistleblowers. For example, it has established a website for the public to report corrupt officials and has offered rewards to bank employees who expose corruption (Toy, Mary-Anne 2006, ‘Beijing soothes challenges to its right to rule’, *Sydney Morning Herald*, 3 January – Attachment 31; ‘China Launches Whistleblower Website’ 2005, *The Age*, 29 December <http://www.theage.com.au/news/technology/china-launches-whistleblower-website/2005/12/29/1135732678059.html#> – Accessed 27 November 2006 – Attachment 32; Buckley, Chris 2005, ‘China Moves to Halt Fraud After String of Bank Scandals’, *The New York Times*, 29 March – Attachment 33).

On the launching of the website it was reported that:

The new website offers Chinese villagers and others a way to lodge complaints while avoiding local authorities, who some complain refuse to take action or retaliate against petitioners (‘China Launches Whistleblower Website’ 2005, *The Age*, 29 December <http://www.theage.com.au/news/technology/china-launches-whistleblower-website/2005/12/29/1135732678059.html#> – Accessed 27 November 2006 – Attachment 32).

Human Rights Watch has reported that local activists and NGOs are “hampered by the Chinese government’s sporadic harassment and detention of activists whose public criticism threatens the interest of some segments of the government” (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.1 – Attachment 10).

It also stated that before the extent of the AIDS situation in Henan was known, national and local officials attempted to prevent the information about the causes and extent of the blood scandal spreading, often using China’s “‘State Secrets’” law (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.14 – Attachment 10).

More recently Watts wrote in *The Lancet* that:

During the 1990s, China denied that it had an HIV/AIDS problem. This was exposed as a lie by a few brave whistleblowers, at least one of whom was locked up for revealing “state secrets”. But their revelations forced the government into a policy change...(Watts, Jonathan 2006 ‘AIDS in China: new legislation, old doubts’, *The Lancet*, 11 March, Vol. 367, Iss. 9513, p.803 – Attachment 19).

Although the national government has recognised the severity of the HIV/AIDS problem with a vice minister of health quoted as saying that “‘The situation is grave’”. Watts continued:

Despite such comments, HIV/AIDS NGOs say the scale of the problem is still being underplayed. Some say local officials are still covering up outbreaks, which could deter investment. Others say the problem is that people who are infected lie about their condition because they fear being ostracised (Watts, Jonathan 2006 ‘AIDS in China: new legislation, old doubts’, *The Lancet*, 11 March, Vol. 367, Iss. 9513, p.804 – Attachment 19).

According to Human Rights Watch national policies on AIDS are unevenly implemented due to entrenched local officials who may see the public discussion of AIDS as a source of embarrassment threatening external investment in their regions (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), pp.8-9 – Attachment 10).

In respect of Henan, an August 2005 Save the Children report states there was a growing number of people organising themselves to support AIDS orphans, particularly in Henan which had received national and international publicity on its blood selling practices (West, Andy and Wedgwood, Kate 2005, *Children's rights and children affected by AIDS, orphans, and programming in China*, Save the Children, 16 August, p.27, Child Rights Information Network http://www.crin.org/docs/children_aids_crin.doc – Accessed 5 October 2005 – Attachment 34).

Watts notes that there were huge regional contrasts in the approach in dealing with the HIV/AIDS problem. On Henan province, he states:

By contrast, Henan province – where the local authorities were involved in a blood-collection scandal that infected countless victims – has been an information black hole. For many years, the police arrested NGOs and journalists who attempted to visit the worst-hit villages. Until recently, UN representatives were also barred. There has been a slight relaxation in the past year, but it is still far behind other provinces in terms of disclosure and education (Watts, Jonathan 2006 'AIDS in China: new legislation, old doubts', *The Lancet*, 11 March, Vol. 367, Iss. 9513, pp.803-804 – Attachment 19).

On Henan's response to the AIDS problems Human Rights Watch reported in June 2005:

But in practice the Henan response to the AIDS crisis continues to be uneven, and in some cases hostile to efforts by HIV-positive villagers and activists who have formed local NGOs to help provide care, treatment and emotional support to fellow families struggling with the devastating impact of the epidemic. Residents and activists continue to raise concerns about the lack of adequate facilities to meet the overwhelming needs of tens of thousands of children affected by AIDS, the poor quality of the care and treatment provided, the sometimes abusive treatment by local authorities when senior officials come to visit; and about alleged corruption in the administration of internationally and nationally-funded aid programs (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.16 – Attachment 10).

In the June 2005 report Human Rights Watch also stated:

Henan officials continue to detain those who publicly criticize provincial efforts, or who attempt to disseminate information about the AIDS situation, either through the media or during official visits by high-ranking Chinese and international delegations. Some authorities have explained their actions by saying that AIDS activism, and even orphanages established for children affected by AIDS, make local officials look bad by drawing attention to the epidemic and discouraging external investment (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), p.17 – Attachment 10).

It is of interest that *Time* reported on Gui Xien, the doctor who discovered the AIDS epidemic in Henan in 1999 and informed the provincial health authorities. Henan officials, reluctant to expose the outbreak originating from the government-sponsored programme, were slow to respond and refused to allow him to return to the villages. Gui sent his report directly to Beijing and the Henan officials were pressured into action. According to the article

this made Gui more unpopular in the province and “he became the target of smear campaigns and physical threats” (Park, Alice 2005, ‘AIDS Whistle-Blower’, *Time*, 31 October <http://www.time.com/time/magazine/printout/0,8816,1124297,00.html> – Accessed 21 November 2006 – Attachment 35).

Other reports on the treatment of HIV/AIDS activists in Henan are:

- In July 2006 Li Xige and eight other HIV sufferers seeking more compensation were stopped in Beijing by police and local officials who followed them from Ningling county. They were taken by the authorities and returned to Henan. The following day, Li Xige and two other women were “officially detained on suspicion of ‘assembling crowds to attack state organs’” (‘Chinese HIV victim detained after asking government for help’ 2006, *Agence France Presse*, 20 July – Attachment 36; Amnesty International 2006, *China: Fear of torture or ill-treatment/ health concern Li Xige (f), aged 38, HIV/AIDS Activist*, 10 August, ASA 17/043/2006 – Attachment 37).
- In June 2006 Liu Xiaowu, an AIDS patient-activist in Shangcai county, was stabbed – reportedly in a revenge attack for revealing corruption among health officials (‘Aids activist stabbed after corruption claim’ 2006, *South China Morning Post*, 4 July – Attachment 38).
- In March 2006 Human Rights Watch reported that:

...numerous people living with HIV/AIDS in Henan were put under house arrest to keep them from bringing their petitions to the Congress, which opened in Beijing on March 5. In the 23 cases documented, people have been confined to their homes and monitored around the clock by police outside their doors (Human Rights Watch 2006, *China: House Arrests Stifle HIV/AIDS Petitions*, 11 March http://hrw.org/english/docs/2006/03/11/china12874_txt.htm – Accessed 22 November 2006 – Attachment 6).
- The June 2005 Human Rights Watch report also outlined cases between 2002-2004 in which Henan AIDS activists were harassed, detained or beaten (Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), pp.18-20 – Attachment 10).

6. Is it possible that someone can be detained, pay a penalty and have no criminal conviction recorded? If so is this common?

No information was found in the sources consulted on a person being detained, a penalty paid and no criminal conviction recorded.

Several references indicate widespread corruption among officials in China. On occasions, early release of prisoners has been negotiated by paying a bribe. This would appear to depend on the severity of the charge and the nature of the detention facility. There are also various forms of administrative detention which police can use at their discretion and are not subject to judicial scrutiny – for example, the detention of vagrants or migrant workers with no identification papers; and the period of detention while a crime is being investigated before

formal charges are laid. Bribes may be involved in reducing prison sentences. However, political prisoners who have been charged and sentenced are more strictly controlled.

Information on the above is in questions 1-2 of the attached RRT Country Research Response (RRT Country Research 2006, *Research Response CHN30551*, 29 August, quests.1-2/pp.1-4 – Attachment 39).

7. If there is not a conviction and a person is just detained and pays a penalty – do these people routinely come to the attention of the authorities if they try to leave the country? Are there instances where they have been able to leave the country easily?

No information was found in the sources consulted on these specific questions.

Country information indicates that the government allowed legal emigration and foreign travel for most citizens. Chinese citizens travelling overseas must present a valid passport and visa for the country of destination to an immigration official before being allowed to exit. Citizens in possession of a valid identity card and with no criminal record may apply for a passport. However, persons the government has deemed to be threats had difficulty obtaining passports. Under the law certain categories of persons were ineligible to leave the country.

Under Chapter II, Article 8 of the *Administrative Law on the Border Exit and Entry of Citizens of the People's Republic of China* Chinese citizens will not be allowed to exit the PRC border under the following circumstances:

- i) If the person is a defendant in a criminal case or suspected of a crime by the security organs, the People's Procuratorate or the People's Court;
- ii) If the People's Court notifies that the person is involved in a civil case that has not been completed and they cannot leave the country;
- iii) If the person is currently serving a criminal sentence;
- iv) If the person is undergoing re-education through labour;
- v) If the relevant organs of the State Council believe that, after departing the country, that person might cause danger to national security or cause extreme harm to national interests (Department of Foreign Affairs and Trade 2006, *DFAT Report 540 – RRT Information Request CHN30682*, 28 September – Attachment 40).

DFAT noted on the legislation:

5. As a general point, we remind you that implementation of rules in China can be incomplete, or over-zealous (Department of Foreign Affairs and Trade 2006, *DFAT Report 540 – RRT Information Request CHN30682*, 28 September – Attachment 40).

The Ministry of Public Security (MPS), which administers the law, has wide powers to interpret who may be denied a passport (DIMA Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August – Attachment 41).

DFAT has also stated:

A.3. We are aware of several instances where Chinese authorities have denied citizens passports to prevent them from leaving the country. These have included dissidents and human rights activists and their relatives. In the cases which we are aware of, the refusal to issue the passport came after the dissident or activist had served a period of imprisonment (but this is not necessarily an essential factor in denying a passport to this group of people). We are also aware of several cases where Tibetans have been refused passports. In these cases, the Tibetans had not previously been imprisoned or otherwise convicted of any illegal activity. There would very likely be other groups of people to whom China might refuse to issue passports but it is not possible to obtain information from the Chinese authorities on this practice (DIMA Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November – Attachment 42).

According to sources cited by a Canadian government office, Chinese citizens in possession of a valid identity card and having no criminal record may apply for a passport. It notes that citizens must apply through their local public security office to obtain a passport. Passport applicants are required to appear at that office in person (Immigration and Refugee Board of Canada 2005, *CHN100512.E – China: Procedures for obtaining a passport, including documents to be submitted, the issuing authority, processing times, and whether the applicant must apply in person (2003 – 2005)*, 7 October – Attachment 43).

DFAT has advised that in major cities and regions procedures for obtaining ordinary passports have been simplified. The applicants submit a form along with copies of their identification documents through their local post office and are digitally photographed (DIMA Country Information Service 2003, *Country Information Report No. 12/03 – Passport and Exit Procedures*, (sourced from DFAT advice of 15 January 2003), 24 January – Attachment 44; DIMA Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November – Attachment 42).

In responding to a question on whether a person who had come to the adverse attention of the government would experience difficulty in obtaining a legal passport, DFAT advised:

Yes. Checks with the Public Security Bureau in the applicant's place of registered residence would reveal any adverse records held by public security organs on the applicant. An applicant "whose exit, in the judgement of the relevant department of the State Council, would be harmful to state security or cause a major loss to national interests" would likely be denied a passport. Illegally obtaining a passport in the applicant's own name through bribery would be possible, but highly risky and expensive. It would be easier to obtain a passport using someone else's identity photographed (DIMA Country Information Service 2003, *Country Information Report No. 12/03 – Passport and Exit Procedures*, (sourced from DFAT advice of 15 January 2003), 24 January – Attachment 44).

The US State Department has reported that:

The government permitted legal emigration and foreign travel for most citizens. Most citizens could obtain passports, although those whom the government deemed threats, including religious leaders, political dissidents, and some ethnic minority members continued to have difficulty obtaining passports...There were reports that some academics faced travel restrictions around the year's sensitive anniversaries, particularly the June 4 anniversary of

the Tiananmen Square massacre. There were instances in which the authorities refused to issue passports or visas on apparent political grounds. Cheng Yizhong, the editor of Guangdong Province's Southern Metropolitan Daily newspaper, was banned by authorities from traveling abroad during the year to accept a UNESCO press freedom award. Members of underground churches, Falun Gong members and other politically sensitive individuals sometimes were refused passports and other necessary travel documents (US Department of State 2006, *Country Reports on Human Rights Practices for 2005 – China*, 8 March, Sect.2.d/'Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation' – Attachment 45).

Sources cited by a Canadian government office stated that Chinese citizens travelling overseas must present a valid passport and visa for the country of destination to an immigration official at the airport before being allowed to exit. The Frontier Defense Inspection Bureau (FDIB) is in charge of inspection barriers. Officers examine passports and immigration departure cards and verify the identity of the person through a “computerised record system”. Although Chinese travellers do not need to present their resident identity cards during the inspection an earlier source noted that, at the discretion of the inspection officer, they can be asked to produce other documents, such as their identity cards (Immigration and Refugee Board of Canada 2005, *CHN100513.E – China: Exit controls for citizens travelling overseas, including documents and police checks, and whether a person wanted by authorities could leave China using a passport in his or her name; exit procedures at Beijing airport (2003 -2005)*, 25 October – Attachment 46; Immigration and Refugee Board of Canada 2001, *CHN36091.E – China: Security and exit control procedures at Beijing airport; whether a person wanted by the authorities could leave the country using a passport in his/her own name*, 6 February – Attachment 47).

DFAT has also confirmed that the Chinese authorities check all outgoing passengers against an “alert list” (DIMA Country Information Service 2006, *Country Information Report No. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639)*, (sourced from DFAT advice of 7 August 2006), 25 August – Attachment 48).

On alert lists DFAT later advised:

A.2. We have so far been unable to obtain comprehensive information on alert lists from China's Ministry of Public Security. We can confirm that Chinese citizens subject to arrest warrants would be on the alert lists. It is likely that people under investigation but for whom a formal arrest warrant is yet to be issued would also be on these alert lists. The alert lists are connected to Chinese identity cards as well as passports. The alert lists operate at railway stations as well as airports and border crossings. We will continue to seek information on this issue (DIMA Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November – Attachment 42).

List of Sources Consulted

Internet Sources:

Google search engine <http://www.google.com.au>

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. 'Kaifeng & Shangcai, Henan Province' 2000, *Microsoft Encarta Interactive Atlas 2000*. (CD ROM)
2. 'Current Overview of HIV/AIDS in China' 2003, China AIDS Survey website <http://www.casy.org/overview.htm> – Accessed 26 May 2005.
3. US Embassy Beijing 2000, 'PRC Blood Donors And The Spread Of Rural AIDS', March, 'January 2000 Sichuan Newspaper on AIDS in a Henan Village' <http://www.usembassy-china.org.cn/sandt/AIDSblood.htm> – Accessed 30 November 2006.
4. 'AIDS situation in China's Henan under "initial control" – visiting US expert' 2006, *BBC Monitoring Alert*, source: Xinhua, 20 September. (CISNET China CX162173)
5. 'Henan to begin AIDS check on 1.5m people' 2006, Gov.cn website, 16 February http://english.gov.cn/2006-02/16/content_201216.htm – Accessed 22 November 2006.
6. Human Rights Watch 2006, *China: House Arrests Stifle HIV/AIDS Petitions*, 11 March http://hrw.org/english/docs/2006/03/11/china12874_txt.htm – Accessed 22 November 2006.
7. 'AIDS in China' 2005, *The Economist*, 28 July http://www.economist.com/World/asia/displayStory.cfm?story_id=4223578 – Accessed 9 August 2005. (CISNET China CX130430)
8. 'China arrests former chief of AIDS-plagued county' 2006, *Reuters News*, 17 August. (FACTIVA)
9. 'HIV & AIDS in China' 2006, AVERT website, 11 September <http://www.avert.org/aidschina.htm> – Accessed 21 November 2006.
10. Human Rights Watch 2005, *Restrictions on AIDS activists in China*, June, Vol. 17, No. 5(C), pp.1-2,5-28.

11. Save the Children 2006, *Listen, secrets!*, March, p.45
http://www.crin.org/docs/save_china_listensecrets!.pdf – Accessed 23 November 2006.
12. ‘China’ (undated), UNAIDS website
http://www.unaids.org/en/Regions_Countries/Countries/china.asp – Accessed 21 November 2006.
13. ‘China badly needs AIDS drugs for children’ 2006, *Xinhua*, 10 August
http://news.xinhuanet.com/english/2006-08/10/content_4_946239.htm – Accessed 11 August 2006. (CISNET China CX159167)
14. ‘AIDS orphan camp opens in Beijing’ 2006, *People’s Daily Online*, 10 August
http://english.people.com.cn/200608/10/eng20060810_29163_1.html – Accessed 11 August 2006. (CISNET China CX159081)
15. World Health Organization 2005, *China*, December
http://www.who.int/hiv/HIVCP_CHN.pdf – Accessed 22 November 2006.
16. UNICEF 2004, ‘China’s children affected by HIV/AIDS’, 11 June
http://www.unicef.org/infobycountry/china_21607.html – Accessed 23 November 2006.
17. US Department of State 2006, *Country Reports on Human Rights Practices for 2005 – China*, 8 March, ‘Children’, ‘Other Societal Abuses and Discrimination’.
18. ‘New regulation shows greater resolve in AIDS control’ 2006, *Xinhua Online*, 12 February
http://news.xinhuanet.com/english/2006-02/12/content_4169711.htm – Accessed 27 November.
19. Watts, Jonathan 2006 ‘AIDS in China: new legislation, old doubts’, *The Lancet*, 11 March, Vol. 367, Iss. 9513, pp.803-804.
20. Human Rights Watch 2003, *Locked Doors: The human rights of people living with HIV/AIDS in China*, September, Vol. 15, No. 7(C), pp.38-39
21. Jing, Jun ‘The Social Origins of AIDS Panics in China’ in Kaufman, Joan, Kleinman, Arthur and Saich, Tony (eds) 2006, *AIDS and Social Policy in China*, Harvard University Asia Center, Cambridge, pp.164-165
<http://www.fas.harvard.edu/%7Easiacr/publications/pdfs/AIDS%20Volume%20complete.pdf> – Accessed 29 November 2006.
22. RRT Country Research 2006, *Research Response CHN30726*, 6 October.
23. Keidel, Albert 2006, ‘China’s Social Unrest: The story behind the stories’, Carnegie Endowment for International Peace, September
http://www.carnegieendowment.org/files/pb48_keidel_final1.pdf - Accessed 25 October 2006.
24. McGivering, Jill 2006, ‘China’s leaders hold policy meet’, *BBC News*, 8 October
<http://news.bbc.co.uk/2/hi/asia-pacific/4801597.stm> – Accessed 23 November 2006.

25. DeWoskin, Kenneth J. and Stones, Ian J. 2006, 'Facing the China Corruption Challenge', *Far Eastern Economic Review*, September <http://www.feer.com/articles/1/2006/0609/p037.html> – Accessed 12 September 2006. (CISNET China CX161413)
26. 'Analysis: Doubts voiced over China's anti-corruption resolve' 2006, *BBC Monitoring Alert*, 25 October. (CISNET China CX164140)
27. '10m yuan in Aids funds embezzled' 2006, *South China Morning Post*, 24 July. (FACTIVA)
28. 'China arrests former chief of AIDS-plagued county' 2006, *Reuters Health E-Line*, 18 August. (FACTIVA)
29. Munro, Robin 2002, *Dangerous Minds: Political Psychiatry in China Today and its Origins in the Mao Era*, Human Rights Watch and Geneva Initiative on Psychiatry, August, New York, Introduction/pp.39-40.
30. Bodeen, Christopher 2006, 'Chinese Journalist Sentenced to Prison', *Associated Press Newswires*, 26 January. (FACTIVA)
31. Toy, Mary-Anne 2006, 'Beijing soothes challenges to its right to rule', *Sydney Morning Herald*, 3 January. (FACTIVA)
32. 'China Launches Whistleblower Website' 2005, *The Age*, 29 December <http://www.theage.com.au/news/technology/china-launches-whistleblower-website/2005/12/29/1135732678059.html#> – Accessed 27 November 2006.
33. Buckley, Chris 2005, 'China Moves to Halt Fraud After String of Bank Scandals', *The New York Times*, 29 March. (FACTIVA)
34. West, Andy and Wedgwood, Kate 2005, *Children's rights and children affected by AIDS, orphans, and programming in China*, Save the Children, 16 August, Child Rights Information Network http://www.crin.org/docs/children_aids_crin.doc – Accessed 5 October 2005. (CISNET China CX136352)
35. Park, Alice 2005, 'AIDS Whistle-Blower', *Time*, 31 October <http://www.time.com/time/magazine/printout/0,8816,1124297,00.html> – Accessed 21 November 2006.
36. 'Chinese HIV victim detained after asking government for help' 2006, *Agence France Presse*, 20 July. (FACTIVA)
37. Amnesty International 2006, *China: Fear of torture or ill-treatment/ health concern Li Xige (f), aged 38, HIV/AIDS Activist*, 10 August, ASA 17/043/2006. (CISNET China CX159245)
38. 'Aids activist stabbed after corruption claim' 2006, *South China Morning Post*, 4 July. (FACTIVA)
39. RRT Country Research 2006, *Research Response CHN30551*, 29 August.

40. Department of Foreign Affairs and Trade 2006, *DFAT Report 540 – RRT Information Request CHN30682*, 28 September.
41. DIMA Country Information Service 2005, *Country Information Report No. 05/43 – Chinese passports for Falun Gong practitioners*, (sourced from DFAT advice of 9 August 2005), 10 August. (CISNET China CX130538)
42. DIMA Country Information Service 2006, *Country Information Report No. 06/65 – China: Passport and exit arrangements*, (sourced from DFAT advice of 8 November 2006), 10 November. (CISNET China CX164795)
43. Immigration and Refugee Board of Canada 2005, *CHN100512.E – China: Procedures for obtaining a passport, including documents to be submitted, the issuing authority, processing times, and whether the applicant must apply in person (2003 – 2005)*, 7 October. (REFINFO)
44. DIMA Country Information Service 2003, *Country Information Report No. 12/03 – Passport and Exit Procedures*, (sourced from DFAT advice of 15 January 2003), 24 January. (CISNET China CX72393)
45. US Department of State 2006, *Country Reports on Human Rights Practices for 2005 – China*, 8 March, Sect.2.d/’Freedom of Movement within the Country, Foreign Travel, Emigration and Repatriation’.
46. Immigration and Refugee Board of Canada 2005, *CHN100513.E – China: Exit controls for citizens travelling overseas, including documents and police checks, and whether a person wanted by authorities could leave China using a passport in his or her name; exit procedures at Beijing airport (2003 -2005)*, 25 October. (REFINFO)
47. Immigration and Refugee Board of Canada 2001, *CHN36091.E – China: Security and exit control procedures at Beijing airport; whether a person wanted by the authorities could leave the country using a passport in his/her own name*, 6 February. (REFINFO)
48. DIMA Country Information Service 2006, *Country Information Report No. 06/42 – China: Failed asylum seeker return decision (CISQUEST ref 8639)*, (sourced from DFAT advice of 7 August 2006), 25 August. (CISNET China CX160293)