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# HEPATITIS B: A CATALYST FOR ANTI-DISCRIMINATION REFORMS?

By **Bonny Ling and Wing Lam**<sup>1</sup>

Increasing public awareness of the discrimination faced by people with chronic Hepatitis B in China could become a catalyst for invoking international human rights standards when addressing discrimination on the domestic front.

Echoing a chapter in the history of the global struggle against HIV/AIDS, the legacy of widespread discrimination sounds all too familiar in the daily struggles of China's estimated 120 million carriers of the Hepatitis B virus (HBV).<sup>2</sup> These individuals with a chronic HBV infection represent a staggering 10 percent of the country's population.<sup>3</sup> While the government has recognized HBV as a serious public health issue and has almost tripled the percentage of infants who are vaccinated against HBV since 2002,<sup>4</sup> prejudice and discrimination against individuals with chronic Hepatitis B have become widespread and flagrant, despite constitutional guarantees of equality.<sup>5</sup> Even though HBV cannot be transmitted through day-to-day contact, and many chronic Hepatitis B individuals lead healthy and normal lives, simply being an HBV carrier can result in expulsion from school, loss of employment and alienation from friends and community.

Discrimination based on a person's HBV status extends across all age groups, in both the public and private sectors. In March 2006, 20 three-year-old toddlers in Hangzhou were denied admission to kindergarten because they were HBV carriers;<sup>6</sup> six months later, 19 Uyghur students tested positive for HBV and were expelled from Urumqi public schools;<sup>7</sup> a newlywed husband in Shenyang filed for divorce after discovering that his wife had chronic Hepatitis B;<sup>8</sup> and in March 2007, a Chinese job applicant filed a lawsuit against Nokia, alleging that its China branch had refused him employment after a company-ordered medical exam found him to be an HBV carrier.<sup>9</sup>

In a 2005 survey on individuals with HBV conducted jointly by the Chinese Medical Association's Society of Hepatology and Society of Infectious Diseases, half of the respondents said they became estranged from friends who learned they were infected with HBV, and 68 percent said that the infection had adversely affected family relations.<sup>10</sup>

**Fact: Around 30 percent of the 400 million people worldwide who are chronically infected with the Hepatitis B virus live in China.<sup>12</sup>**

These reports of daily discrimination against individuals with HBV have become headline news and have drawn increasing public concern as more and more victims of Hepatitis B discrimination in China are breaking their silence and bringing their cases to the

courts and public attention. Since 2003, some high-profile lawsuits of Hepatitis B discrimination have unveiled rampant discrimination against HBV carriers in the workplace. Labor experts see Hepatitis B discrimination as one of the major types of labor rights violations in China. Despite increasing attention to this problem, even the 2004 Law on the Prevention and Treatment of Infectious Diseases—seen as a significant step forward by prohibiting discrimination on the basis of infectious diseases—does not specifically mention Hepatitis B, nor is its anti-discrimination provision echoed in the Labor Law.<sup>11</sup>

*Weiquan* (rights defense) activities against discrimination based on HBV status, such as efforts to resort to the legal system, sending petitions and finding support and mobilization through online forums, illustrate the broader challenges facing China's domestic legal reforms, in particular inadequate rights awareness among members of the public. This requires an active human rights education campaign that could change not only the pattern of Hepatitis B prejudice but also other forms of discrimination in China.

## Fears and prejudice

The prevalence of Hepatitis B discrimination in China results from public misunderstanding fueled by ignorance over how HBV is transmitted, and by unscrupulous medical companies that exaggerate the dangers of HBV transmission while touting cures. Many individuals with chronic HBV infection lead normal and healthy lives and do not develop any symptoms. Nonetheless, a common misperception that HBV can easily be transmitted by air or through day-to-day contact reinforces a social stigma that wrongfully labels HBV carriers as the source of the spread of the disease.

## Hepatitis B employment discrimination

Discrimination against HBV carriers features most prominently in employment, and can start at the initial stage of recruitment. In October 2006, a Beijing-based recruitment agency revealed that it would routinely arrange compulsory medical exams for candidates to fill positions in foreign-owned corporations, and that applications would not be processed for candidates testing positive for HBV. To avoid legal liability in future discrimination claims, the recruitment agency would advise its corporate clients not to mention in internal documents that a candidate was rejected on the basis of HBV status.<sup>14</sup>

HBV carriers who are already employed also receive little support in the workplace. A recent survey conducted by the Chinese University of Political Science and Law on

## UNDERSTANDING HEPATITIS B<sup>13</sup>

### What is Hepatitis B?

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- Hepatitis B is the world's most common liver infection caused by the Hepatitis B virus (HBV) that primarily affects the liver. It may lead to acute or chronic disease, and can cause hepatitis, liver failure, scarring of the liver (cirrhosis), liver cancer and death. Upon initial infection with HBV, most adults get rid of the virus and are not chronically infected.
- People who do not clear the virus after six months of exposure have a chronic HBV infection. Some develop the chronic disease, but others have no symptoms. While they can still transmit HBV, they may not know of their infection until undergoing blood tests. People with **chronic Hepatitis B** are also known as “**carriers,**” and they are at increased risk for developing cirrhosis and/or liver cancer.

### Who is more likely to develop a chronic infection?

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- The risk of chronic infection is age dependent: around 2 to 6 percent in people over 5 years old; 30 percent in children aged 1-5 years; and up to 90 percent in infants.

### How is HBV transmitted?

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- Similar to HIV, the virus that causes AIDS, HBV is transmitted through contact with blood or body fluids that contain blood.
- This can occur through direct contact with blood, transfusions, unprotected sex, intravenous drug use or from a mother to her newborn at birth.
- HBV *cannot* be transmitted by contaminated food or water, and cannot be spread casually in the workplace.

health discrimination in employment found that 49 percent of the 3,500 respondents were not willing to work with HBV carriers, and 55 percent said they would not hire HBV carriers.<sup>15</sup> Numerous cases have come to light in which employees have been forced to resign or were dismissed on unrelated grounds after compulsory medical exams that included a test for HBV. For example, a 28-year-old man surnamed Liao had won a company award for good performance at an electronics company near Shanghai, but was later told that he was unfit for employment after a company physical found him to be an HBV carrier.<sup>16</sup> Liao's case represents the wider trend of negative sentiments towards HBV carriers, and exemplifies the difficulties and pressures faced by most individuals with chronic HBV infection in a labor market that offers few safety nets for employees.

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## Efforts against Hepatitis B discrimination

While many HBV carriers might have simply accepted unjust discrimination by their employers in the past, now an increasing number of support networks are encouraging them to break their silence. The turning point came in 2003 with the case of a young graduate, Zhou Yichao, from Jiaxing City, Zhejiang Province. In January 2003, Zhou Yichao ranked among the highest scorers in a civil service exam in Jiaxing City, but his application for employment was rejected because he had tested positive for HBV during a routine medical exam. Similar to many asymptomatic individuals with chronic Hepatitis B, he hadn't known before that he was an HBV carrier. Driven by anger and despair, Zhou broke into the recruitment office, stabbing one official to death and seriously wounding another. Zhou was subsequently sentenced to death by a local court and executed in March 2004.<sup>17</sup>

The tragedy of 22-year-old Zhou Yichao was a wake-up call to the government and society, underscoring the need to recognize the long-standing frustration and injustice suffered by HBV carriers, whose normal lives are undercut by the strong stigma against

Hepatitis B in general. Zhou's case inspired a great deal of sympathy, as well as criticism of discriminatory hiring practices. Later the same year, another young university graduate named Zhang Xianzhu challenged discrimination based on HBV status by filing China's first Hepatitis B discrimination administrative lawsuit in Wuhu, Anhui Province, and won a partial victory against the local government's personnel bureau.

With the two high-profile cases of Zhou Yichao and Zhang Xianzhu—two comparable situations of promising graduates who fell victim to Hepatitis B discrimination in public hiring—2003 became a turning point. The case of Zhang, in particular, came to symbolize the increasing willingness of victims to seek legal remedies against discrimination.<sup>20</sup> In the words of prominent labor-rights lawyer Zhao Litai, who supports HBV carriers bringing their case to the courts, "Progress can only be made by seeking legal redress."<sup>21</sup>

### Changing public attitudes

The cases of Zhou Yichao and Zhang Xianzhu also illustrate the potential of public sympathy and mobilization to change attitudes towards discrimination. Zhou's case inspired solidarity among those who suffer from similar discrimination, and led the Chinese media to name 2003 the "Year of Anti-Discrimination of HBV Carriers."<sup>22</sup> A Web site forum called *Gandan Xiangzhou* (a Chinese idiom suggesting close friendship and understanding), became a popular platform for indi-

### China's First Hepatitis B Discrimination Administrative Lawsuit: The Case of Zhang Xianzhu

Zhang Xianzhu was a 25-year-old university graduate who received the highest score in the Wuhu civil service qualifications examination. His employment, however, was denied after he tested positive for HBV in a routine pre-employment medical exam. In November 2003, he filed China's first Hepatitis B discrimination administrative lawsuit at the People's Court in Xinwu District, Wuhu City, Anhui Province, alleging that the ban against HBV carriers was discriminatory and violated his constitutional rights of equality and political participation.<sup>18</sup>

The case was tried in December 2003, and a judgment in Zhang's favor was delivered in April 2004.<sup>19</sup> The court ruled that there was insufficient evidence to demonstrate that Zhang, although an HBV carrier, belonged to one of the seven HBV groups that Anhui's provincial health standards barred from public service.

However, it was an empty victory: although the court could have ordered the local personnel bureau to accept Zhang's application, it denied Zhang's request to be reconsidered for the civil service position, noting that the recruitment season had already finished.

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viduals with chronic HBV infection to exchange news and incidents of discrimination, share experiences and advocate equal treatment.

Members of *Gandan Xiangzhou* quickly took an instrumental role in Zhang Xianzhu's administrative lawsuit, offering advice on his litigation strategy, contacting the media to raise publicity and encouraging fellow HBV carriers to show support by attending Zhang's court hearing.<sup>23</sup> They also submitted a petition signed by 1,611 individuals to the Standing Committee of the National People's Congress, requesting a constitutional review of all existing government regulations barring HBV carriers from civil service. The petition also called for the enactment of legislation specifically aimed at protecting China's HBV carriers from employment discrimination. The huge support for Zhang Xianzhu vividly demonstrated how effective public mobilization could not only make a difference in an individual case, but also positively affect public sentiment towards people with chronic Hepatitis B infection.

## Changing laws

Public opinion about the Zhou and Zhang cases exerted pressure on the government to make concrete legal and administrative changes. Faced with increasing public awareness and sympathy for HBV carriers, the government made its first attempt to address Hepatitis B discrimination by revising the Law on the Prevention and Control of Infectious Diseases in August 2004. For the first time, the government explicitly barred "discrimination against people infected with contagious diseases, people carrying the pathogen of a contagious disease, and people who are suspected of having a contagious disease."<sup>24</sup> A few months later, in January 2005, the Ministry of Personnel and the Ministry of Health lifted the ban on public service recruitment of HBV carriers in a new set of national standards on public servants' medical exams.<sup>25</sup> These were seen as a triumph in the struggle to protect the rights of individuals with HBV.<sup>26</sup>

Though these new statutory provisions represent positive change, significant legal challenges remain, in particular a lack of legal redress for victims of Hepatitis B discrimination.<sup>27</sup> This is in large part due to the fact that China's domestic law does not have a clear and comprehensive definition of discrimination, even though the Constitution states that all citizens are equal before the law and enjoy the rights prescribed by the Constitution and the law.<sup>28</sup> Lack of legal redress is particularly acute in the private sector, where China's Labor Law does not offer any specific reference to non-discriminatory employment of HBV carriers beyond the general non-discrimination clause—" [L]aborers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief"<sup>29</sup>—and the stipulation that citizens have the right to be employed on an equal basis.<sup>30</sup>

In February 2007, Qu Jianzhi, the lawyer for a young university graduate (alias Chen Long) from Jiangsu who had filed a lawsuit against a Shanghai-based technology company for employment discrimination against HBV carriers, assessed his client's limited chances of success by noting that **it is inherently difficult to seek justice for those who are the victims of discrimination because China does not have specific legislation on the prevention of discrimination.**<sup>32</sup>

Nonetheless, Qu hopes that Chen Long's case will improve the current situation of employment discrimination and push forward the legislative reform agenda on measures to prevent discrimination.<sup>33</sup>

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A clear legal definition on discrimination would help to advance claims of Hepatitis B discrimination, given that at present, most such cases are lost, or are simply not accepted by the court.<sup>31</sup> The absence of a concrete definition of discrimination may also dissuade many prospective claimants from seeking legal remedies in the first place, given the likelihood of losing the claim while bearing the costs and enduring the inevitable publicity. Consequently, the number of Hepatitis B discrimination cases appearing before the courts today very likely represents only a very small number of the overall cases, given that 10 percent of the population is believed to have chronic HBV infection.

## Institutional and broader challenges

Seeking legal remedies for Hepatitis B discrimination illustrates the broader challenges facing China's domestic legal reforms. These challenges include laws that are too vague to offer genuine protection; the arbitrary and weak implementation of legal provisions; and inadequate rights awareness among members of the public. For instance, the absence of a specific and comprehensive definition of discrimination in Chinese laws undermines the effectiveness of legal channels within the context of an already weak framework for protecting workers' rights in China. Labor laws are arbitrarily enforced amidst allegations that even the statutory labor inspectors monitoring compliance can be bribed to overlook violations.

On the other hand, media attention to lawsuits on Hepatitis B employment discrimination has opened a space for public concern and debate on this issue. Even with relatively low success rates, the implications of these cases have provoked serious discussions on labor rights. It is this public realm that holds the greatest promise for change in ending the prejudice and systematic discrimination against China's 120 million HBV carriers. Foremost, public education on HBV is crucial to ending the ignorance and fear surrounding this medical condition and the stigma attached to people with chronic HBV infection.

Beyond this is a clear need for more education fostering practical and useful knowledge of international human rights principles and standards. For instance, in their reviews on China's implementation progress, UN human rights treaty bodies have long recommended that the Chinese government adopt a definition that would concretely set out the scope of legislation targeting discrimination.<sup>34</sup> The fact that this recommendation has yet to be routinely referenced by China's activists fighting Hepatitis B discrimination indicates a considerable gap between domestic and international jurisprudence, and underscores the need for China's international human rights reviews to be publicized more at the domestic level. Placed in the context of China's international human rights obligations, efforts to end China's longstanding prejudice against HBV carriers could potentially become a catalyst for wider institutional change against all forms of discrimination.

**Postscript:** As this issue of CRF went to press, China's ministries of health and labor

**“[M]en or women, young or old, short or tall, should not tolerate any form of discrimination, because sooner or later we are all likely to fall victim to this insidious practice.”<sup>35</sup>**

***China Daily*, March 9, 2004, reporting on the execution of 22-year-old Zhou Yichao, a victim of Hepatitis B discrimination**

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issued new guidelines targeting workplace discrimination against Hepatitis B carriers, including a prohibition against compulsory HBV tests for job applicants. For more details, see Raymond Li, "Guidelines to protect hepatitis-B carriers," *South China Morning Post*, June 1, 2007.

## Notes

1. The authors are grateful to two medical practitioners, S. Lam and A. Unger for valuable background discussions on Hepatitis B.
2. *Zhongguo weishengbu fabu weilai wunian quanguo yigan fangzhi guihua* [Ministry of Health Announces National Plan for Prevention and Control of Hepatitis B for the Next Five Years], Ministry of Health, February 13, 2006, <http://www.hbver.com/Article/ygfgz/ygzs/200602/4675.html>.
3. Ibid.
4. "In Brief: Infant Vaccinations Triple," *South China Morning Post*, May 12, 2007, <http://china.scmp.com/chitoday/ZZZIEHE011F.html>.
5. Constitution of the PRC, promulgated on December 4, 1982 and amended on April 12, 1988, March 29, 1993, March 15, 1999 and March 14, 2004, Article 33.
6. *Yigan qishi rang sansui nuhai beiju youzhiyuan wai* [3-Year-Old Girl Denied Kindergarten Admission over Hepatitis B Discrimination], *Hangzhou Daily*, March 19, 2006. <http://tongnian.com/Html/Etxw/Et-xw/0319083234472.htm>.
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10. *Zhongguo yigan huanzhe renzhi xianzhuang yanjiu baogao* [Research Report on Societal Perceptions of People with Hepatitis B], jituo.net, May 16, 2005, <http://www.jituo.net/baojian/13/488009.shtml>.
11. Law on the Prevention and Control of Infectious Diseases, promulgated on February 21, 1989 and amended on August 24, 2004.
12. "Statistics," Hepatitis B Foundation, <http://www.hepb.org/hepb/statistics.htm>.
13. This textbox on basic facts on Hepatitis B is compiled from information accessed during May 2007 and available at: "Hepatitis B Frequently Asked Questions," U.S. Centers for Disease Control and Prevention, <http://www.cdc.gov/ncidod/diseases/hepatitis/b/faqb.htm>; "General Information," Hepatitis B Foundation, <http://www.hepb.org/05-0230.hepb>; and "Fact Sheet No. 204: Hepatitis B," World Health Organization, October 2000, <http://www.who.int/mediacentre/factsheets/fs204/en/>. Please refer to these sites for more detailed information. The definitions on 'carriers' and 'chronic hepatitis B' are taken from "Glossary of Terms," Hepatitis B Foundation, <http://www.hepb.org/expforum/glossary.aspx?language=English>. Explanations on 'carriers' and 'chronic hepatitis B' are taken from "Glossary of Terms," Hepatitis B Foundation, <http://www.hepb.org/expforum/glossary.aspx?language=English>.
14. *Zhongguo yigan daijunzhe shoudao gezhong qishi* [Hepatitis B Carriers Face Rampant Discrimination], Radio Free Asia, October 16, 2006, [http://www.rfa.org/cantonese/xinwen/2006/10/16/china\\_discrimination/](http://www.rfa.org/cantonese/xinwen/2006/10/16/china_discrimination/).
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16. Fan, op cit.

17. "Dismantling Discrimination," *China Daily*, March 9, 2004, <http://www.china.org.cn/english/China/89774.htm>.
18. "Voices Against Discrimination: Chinese Citizens Challenge Discriminatory Regulations and Practices," *China Law and Governance Review*, no. 2 (June 2004), <http://www.chinareview.info/issue2/pages/main1.htm>; PRC Constitution, op cit, Article 33.
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23. "Voices against Discrimination: Chinese Citizens Challenge Discriminatory Regulations and Practices," op cit.
24. Law on the Prevention and Control of Infectious Diseases, op. cit., Article 16.
25. National Standard for Medical Exams on Public Servants (Provisional), Ministry of Personnel and Ministry of Health, promulgated on January 19, 2005, Article 7.
26. *Zhongguo jiada chuanranbing fangzhi lidu jinzhi qishi chuanranbing huanzhe* [China Strengthens Efforts in the Prevention and Control of Infectious Diseases and Outlaws Discrimination Against Individuals with Infectious Diseases], Xinhuanet, August 28, 2004, [http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/newscenter/2004-08/28/content\\_1907458.htm](http://big5.xinhuanet.com/gate/big5/news.xinhuanet.com/newscenter/2004-08/28/content_1907458.htm).
27. *Zhuanjia : Quanguo renkou 10 ganran yigan fanjiu yue qishi ying lifa* [Expert: Legislation for Anti-Discrimination in Employment Urgently Needed as Hepatitis B Population Accounts for 10% of the Country's Population], *China Youth Daily*, February 5, 2007, [http://news.xinhuanet.com/employment/2007-02/05/content\\_5697170.htm](http://news.xinhuanet.com/employment/2007-02/05/content_5697170.htm).
28. PRC Constitution, op cit, Article 33. The Law on the Protection of Disabled Persons, however, does explicitly forbid discrimination against disabled persons; for example, Article 34 elaborates the non-discrimination against disabled persons in the workplace: "No discrimination shall be practiced against disabled persons in recruitment, employment, obtainment of permanent status, promotion, determining technical or professional titles, payment, welfare, labor insurance or in other aspects." The Law of the PRC on the Protection of Disabled Persons, promulgated on December 28, 1990 and effective on May 15, 1991.
29. Labor Law of the PRC, promulgated on July 5, 1994 and effective on January 1, 1995, Article 12.
30. *Ibid.*, Article 3.
31. *Fanyigan qishi lumanman*, op cit.
32. *Yigan daijunzhe Chen Long konggao shanghai yi taizi qiye qishi* [Hepatitis B Carrier Chen Long Sues Shanghai-Based Firm over Employment Discrimination], Radio Free Asia, February 28, 2007, [http://www.rfa.org/cantonese/xinwen/2007/02/28/china\\_discrimination/index.html?simple](http://www.rfa.org/cantonese/xinwen/2007/02/28/china_discrimination/index.html?simple).
33. *Ibid.*
34. "An HRIC Brief: China's Growing Prominence in the Multilateral Human Rights System," *China Rights Forum* 1 (2007): 25.
35. "Dismantling Discrimination," op cit.