



**IDU/HIV感染者就业歧视现状调查报告**

**Employment Discrimination Against People Living with HIV/AIDS  
and Injection Drug Users**

云南省红河州蒙自市“康馨家园”自救互助组

Kangxin Home  
Mengzi City  
Yunnan Province  
China

“说着把钱给我让我签字，我签字后老板随手把我签字用的笔扔进了垃圾桶，于是我就这样被解雇了。”

彬彬（化名），男，36岁，IDU/PLWHA

“My boss gave me my money and told me to sign my name. After I signed the receipt, he immediately threw the pen into the trashcan. And that was how I was fired.”

Bin Bin (pseudonym)

36-year-old male drug user living with HIV/AIDS

## 家园简介：

云南省红河州蒙自市康馨家园自救互助组由一群IDU/HIV同伴自发成立于2007年11月18日，现有工作人员8人，志愿者4人成员48人。家园旨在团结本地区IDU/HIV感染者、美沙酮维持治疗人员，开展抗艾防艾宣传、咨询、自救互助活动，减少HIV对社会造成的伤害，以此提高本地区毒品滥用人群和HIV/AIDS感染者的生活质量、倡导社会平等。

## Introduction

Kangxin Home was founded by a group of injecting drug users (IDU) and people living with HIV/AIDS (PLWHA) in Mengzi City, Yunnan Province on November 18, 2007. Kangxin currently has eight full-time staff, four volunteers, and forty-eight members of its self-help group. Kangxin Home works to unite local IDU and PLWHA, including individuals currently on methadone maintenance therapy, conduct HIV/AIDS prevention, counseling, self-help and mutual support, and reduce the harm caused to society by HIV/AIDS. Through these activities, Kangxin aims to improve the quality of life of people who use drugs and people living with HIV/AIDS, and to advocate for social equality.

## 调查背景：

家园工作人员在日常的工作随访中，发现IDU/HIV同伴因背负双重身份，在工作或者应聘的过程中一旦身份暴露，就会遭到用人单位的开除或者拒绝录用，所以大部份同伴没有工作，基本生活都成问题，社会的歧视及现实中的种种压力致使大多数社群同伴失去了生活的信心自暴自弃，有的重新走上了复吸的道路对社会造成了许多不安定的因素。

## Project Background:

In our daily work, Kangxin Home staff finds that most of our peers have a dual identity as IDU and as PLWHA. In the course of their hiring and employment, once their status is disclosed, employers may refuse to hire them, or may fire them if they are already employed. As a result, most of our peers are unemployed and having trouble meeting even basic living conditions. They encounter social stigma and a variety of kinds of pressure, to the point where many members of our community have lost self-confidence and have given up on themselves. Some have begun to use drugs again, making employment discrimination a cause of social instability.

基于以上的原因家园决定在亚洲促进会的帮助下对本地区IDU/HIV社群同伴做一次深入的采访，把收集到的就业歧视案例整理成一个报告并且递交相关的政府部门，让他们了解IDU/HIV社群同伴的就业现状及生活状况，推动IDU/HIV同伴平等就业政策的落实，让IDU/HIV社群同伴也能享有平等就业的权利。

For these reasons, Kangxin Home, with help from Asia Catalyst, decided to conduct in-depth

interviews with members our local community to document employment discrimination. Our plan is to organize the cases into a report, and submit the report to relevant government departments in order to help them to understand the employment and living conditions of drug users and PLWHA. We hope this will help to promote the implementation of equal employment policies that will enable IDU/PLWHA fully enjoy their right to equal employment.

### 采访过程：

家园工作人员两人一组分成4个小组，在通过大量的走访工作后本着保密、自愿的原则在征得当事人同意并签署了知情同意后，对18位有过就业歧视经历的社群同伴进行了采访，通过受访人口述工作人员记录的方式，于2011年10月14日至30日完成了18份案例收集，为了保护受访者的隐私报告中所涉及人名均为化名，在受访人中有6位女性，12位男性，他（她）们的年龄在23至43岁之间，他（她）们曾经的工作大多数以服务行业为主。

### Research Methodology:

To conduct interviews, Kangxin Home staff split into four groups of two people each. We worked to ensure that each interview was confidential and voluntary, and asked each interviewee to sign an informed consent agreement. From October 14 to 30, 2011, Kangxin Home interviewed eighteen drug users/PLWHA who reported that they had experienced employment discrimination. All the names in this report have been changed to protect the privacy of the interviewees. The interviewees included six women and twelve men between the ages of twenty-three and forty-three. Most reported that they had worked in the service sector.

18个案例18个让人深思的故事，虽各有不同但他（她）们的感受却是相同的，“让我们能有一个良好的就业环境，不要让更多无法回归社会而重新走上绝路的悲剧重演。”<sup>1</sup>这句话出自一个受访者口中，他道出了IDU/HIV感染者的心声。

The eighteen interviews tell eighteen different moving stories, but share a similar sentiment. As one interviewee put it, expressing the views of many IDU/PLWHA, “Give us a decent work environment, and do not drive even more people out of society and back into self-destruction and tragedy.”<sup>2</sup>

### 主要发现：

#### Key Findings:

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<sup>1</sup> 小梅，康馨家园采访，2011年10月26日

<sup>2</sup> Xiao Mei, interviewed October 26, 2011.

## 一、因IDU/HIV身份暴露而屡次失去工作

由于社会大众对IDU/HIV同伴双重身份的偏见、歧视与污名化，导致了IDU/HIV同伴身份一旦暴露后就会遭到解雇，因为在大多数人的观念里有过吸毒经历的人是不可能戒断毒瘾的，他们认为吸毒的人和艾滋病感染者是画等号的，不但带有很多的怪病，而且人品都有问题，其中就有一位受访者在遭受解聘时签字用的笔被老板扔进了垃圾桶<sup>3</sup>，两位受访者被同事和老板误认为是小偷——在无证据情况下——原因就是知道了他们IDU/HIV的身份<sup>4</sup>。一个老板在真正的小偷被抓住后道了歉<sup>5</sup>。

### 1. IDU/PLWHA fired from multiple jobs due to the disclosure of their status

Our peers who are IDU and PLWHA often experience widespread stigma and prejudice and once their status is disclosed can be fired directly. This stigma continues in part because many people believe that someone who has injected drugs can never fully recover from drug dependence. Many people also believe that anyone who has used drugs must have contracted HIV as well as several other infectious diseases, and that these people lack a strong moral character. Among those we interviewed, one interviewee reported that his boss had thrown the interviewee's pen in a trashcan after he used it to sign a resignation letter.<sup>6</sup> Two interviewees said they had been accused of thievery by colleagues and their superiors—without evidence—simply because of their status as drug users living with HIV/AIDS.<sup>7</sup> After the actual thief was caught, only one of the bosses apologized.<sup>8</sup>

在18个受访者中就有14人曾经有过多被解聘的经历，通过访谈我们还了解到他（她）们在工作中没有违反任何的规定<sup>9</sup>，工作也都非常认真、积极，其中有8位受访者的工作表现还得到过老板和同事的认可<sup>10</sup>，但是只要他们的身份一旦暴露就会被老板与各种借口开除，就算是生意很好，老板也会与生意不好为借口辞退同伴，由于偏见、歧视与污名化他们多次遭到解雇。

Fourteen out of the eighteen interviewees were dismissed repeatedly, although according to the interviewees, they had worked diligently and had not violated any rules of

<sup>3</sup> 彬彬，康馨家园采访，2011年10月14日

<sup>4</sup> 小张，康馨家园采访，2011年10月26日、小飞，康馨家园采访，2011年10月28日

<sup>5</sup> 小飞，康馨家园采访，2011年10月28日

<sup>6</sup> Bin Bin, interviewed October 14, 2011.

<sup>7</sup> Xiao Zhang, interviewed, October 26, 2011; and Xiao Fei, interviewed, October 28, 2011

<sup>8</sup> Xiao Fei, interviewed October 28, 2011.

<sup>9</sup> 彬彬，康馨家园采访2011年10月14日、陈琳，康馨家园采访，2011年10月15日、小勇，康馨家园采访2011年10月16日、小静，康馨家园采访2011年10月19日、小吴，康馨家园采访2011年10月20日、小伟，康馨家园采访2011年10月20日、小王，康馨家园采访2011年10月21日、小泽，康馨家园采访2011年10月24日、小梅，康馨家园采访2011年10月24日、健哥，康馨家园采访2011年10月24日、小张，康馨家园采访2011年10月26日、燕子，康馨家园采访2011年10月29日、圆圆，康馨家园采访2011年10月30日、亚鹏，康馨家园采访2011年10月30日、

<sup>10</sup> 彬彬，康馨家园采访2011年10月14日、陈琳，康馨家园采访，2011年10月15日、小伟，康馨家园采访2011年10月20日、小王，康馨家园采访2011年10月21日、小梅，康馨家园采访2011年10月24日、小张，康馨家园采访2011年10月26日、小马，康馨家园采访2011年10月27日、亚鹏，康馨家园采访2011年10月30日

employment.<sup>11</sup> Eight of the interviewees reported that previous to disclosure their employers and colleagues had recognized them for their excellent job performance.<sup>12</sup> Only after disclosure did the bosses use various excuses to dismiss them. For instance, even while business was excellent, some bosses used lack of business as an excuse to fire our peers. Because of stigmatization, discrimination, and prejudice, they were fired multiple times.

没有稳定的经济来源，生活十分贫困，病重时不能得到及时的治疗，多重的压力致使他（她）们的身体和心理都非常脆弱。在我们的访谈中有4位受访者因为多次被无辜解聘让他们对生活丧失了信心，又重蹈覆辙走上了吸毒的老路。<sup>13</sup> 其中一位受访者甚至尝试自杀，他说：“我根本没有勇气面对人们冷酷的面孔和那一双双鄙视的眼神，这就是身为一个IDU/HIV感染者的悲哀，想重新做人没有人愿意给一次机会。”<sup>14</sup>

Without a stable source of income their lives became extremely difficult and when their illness worsened they were unable to get timely treatment. This and other sources of pressure weakened their physical and emotional states. Because of repeated firings, four interviewees lost interest in life, and had turned again to the old path of injecting drugs.<sup>15</sup> One interviewee reported that he had tried to commit suicide, and said, “I just don’t have the courage to look people in the face and see the callousness in their eyes. This is just the tragedy of being an IDU and PLWHA: If you want to start life over again there is no one who will give you a chance.”<sup>16</sup>

而一些女性同伴为了生存，不得不从事性工作来维持日常的生活，在我们访谈的6位女性中就有两人是因为多次遭到解聘，找不到合适的工作，迫于生活的压力不得不从事性工作，其中一位女性同伴说：“由于没有经济来源，我不得不出卖自己的肉体，和大部份女性IDU/HIV一样成为一名性工作者。”<sup>17</sup>

In order to survive, some women in our community had no choice but to go into sex work in order to support themselves. Two of the six women we interviewed said that they turned to sex work after trying repeatedly to find other work and being fired repeatedly. One of our female peers said, “Since I had no source of income, I had to sell my own body. Like many

<sup>11</sup> Bin Bin, interviewed October 14, 2011; Chen Lin, interviewed October 15, 2011; Xiao Yong, interviewed October 16, 2011; Xiao Jing, interviewed October 19, 2011; Xiao Wu, interviewed October 20, 2011; Xiao Wei, interviewed October 20, 2011; Xiao Wang, interviewed October 21, 2011; Xiao Qi, interviewed October 24, 2011; Xiao Mei, interviewed October 24, 2011; Chen Kuo, interviewed October 24, 2011; Xiao Zhang, interviewed October 26, 2011; Yan Zi, interviewed October 29, 2011; Yuan Yuan, interviewed October 30, 2011; Ya Peng, interviewed October 30, 2011.

<sup>12</sup> Bin Bin, interviewed October 14, 2011; Chen Lin, interviewed October 15, 2011; Xiao Wei, interviewed October 20, 2011; Xiao Wang, interviewed October 21, 2011; Xiao Mei, interviewed October 24, 2011; Xiao Zhang, interviewed October 26, 2011; Xiao Ma, interviewed October 27, 2011; Ya Peng, interviewed October 30, 2011.

<sup>13</sup> 陈琳，康馨家园采访，2011年10月15日、小王，康馨家园采访2011年10月21日、健哥，康馨家园采访2011年10月24日、小张，康馨家园采访，2011年10月26日

<sup>14</sup> 小张，康馨家园采访，2011年10月26日

<sup>15</sup> Chen Lin, interviewed October 15, 2011; Xiao Wang, interviewed October 21, 2011; Chen Kuo, interviewed October 24, 2011; Xiao Zhang, interviewed October 26, 2011.

<sup>16</sup> Xiao Zhang, interviewed October 26, 2011.

<sup>17</sup> 小梅，康馨家园采访，2011年10月24日

other female IDU/PLWHA, I became a sex worker.”<sup>18</sup>

因为IDU/HIV身份暴露而屡次失去工作，致使他们对找工作失去了信心，由于长期没有工作没有经济来源，他们不但生活十分的贫困而且还要承受心理上种种的压力，由于社会大众的偏见他们无法回归社会主流，因此许多社群同伴失去了生活的信心。这些受访者的经历证明了社会大众对IDU/HIV双重身份的偏见、歧视与污名化是导致他们屡次失业和难以找到工作的一个重要因素。

After being fired repeatedly based on the disclosure of their status as IDU/PLWHA, many said they had lost hope of finding employment again. Due to longtime unemployment and lack of any financial resources, they are in serious financial difficulties. Stigma and prejudice exclude them from the mainstream work and make it impossible for them to return to society and start their lives over again. The pressure from their daily living situation is very hard for them to bear both physically and mentally; a few have given up hope. Their experience shows that social prejudice, discrimination, and stigmatization against IDU/PLWHA make it very difficult for them to find employment and are major factors in their repeated loss of work.

## 二、 社会大众对艾滋病知识的缺乏和恐惧心理致使他们不愿意和 IDU/HIV 感染者一起工作，并且制造压力给老板解雇同伴。

社会大众对IDU/HIV感染者的污名化和对艾滋病知识的缺乏，是直接导致歧视发生的原因之一，他们对有着双重身份的社群同伴抱有极大的偏见与恐惧心理，不愿意接纳他们甚至连一个机会也不愿意给，原因是因为他们不愿意和IDU/HIV同伴一起工作，害怕被传染上艾滋病，所以他们一旦知道受访者身份就会利用大众对吸毒者的偏见和艾滋病的恐惧心理在老板面前制造压力迫使老板开除同伴。

### 2. **Widespread fear and ignorance about HIV/AIDS causes many people to refuse to work alongside IDU and PLWHA, and creates pressure on bosses to fire our peers.**

Widespread stigma towards drug users and people living with HIV/AIDS and a lack of information about HIV/AIDS are direct causes of discrimination. Many people view our peers with suspicion and fear, and are unwilling to have contact with them or to give them an opportunity to prove themselves. Because many people are unwilling to work alongside drug users and PLWHA, and fear that it could lead to transmission of HIV, the moment they know about a person's status, they put pressure on bosses to fire our peers.

在我们的访谈的18份案例中就有14份案例是由于外界的压力迫使老板解雇同伴<sup>19</sup>，其中

<sup>18</sup> Xiao Mei, interviewed October 24, 2011.

<sup>19</sup> 彬彬，康馨家园采访2011年10月14日、陈琳，康馨家园采访，2011年10月15日、小静，康馨家园采访2011年10月19日、小伟，康馨家园采访2011年10月20日、小吴，康馨家园采访，2011年10月20日、小王，康馨家园采访2011年10月21日、健哥，康馨家园采访2011年10月24日、小梅，康馨家园采访2011年10月24日、小张，康馨家园采访2011年10月26日、小宇，康馨家园采访2011年10月26日、小飞，康馨家园

有一份案例是同事知道了受访者的身份后，写了联名信给领导说：“如果继续雇用同伴，他（她）们就集体辞职”<sup>20</sup>。理由是他们害怕与受访者在一起工作会被传染艾滋病。值得一提的是这位受访者是在本地的一家医院里做临时工，按道理医院的工作人员对艾滋病的传染途径和相关的知识应该比普通大众更清楚，他们应该知道与感染者在一起生活和工作是会被传染的，但是他们还是集体要求领导解聘受访者，而医院领导以顾全大局稳定工作程序为理由解聘了受访者。

Fourteen out of the eighteen people we interviewed reported that employers fired them because of pressure from others.<sup>21</sup> In one case, as soon as they knew of the individual's status, a group of hospital workers submitted a letter to their director saying, "If you continue to employ this person, we will resign collectively".<sup>22</sup> Their stated reason was fear that if they worked together with a PLWHA, they too might become infected with HIV. It is important to note that the interviewee was a part-time employee of a local hospital. Logically, staff of a hospital should have a greater understanding of HIV/AIDS than ordinary people, and should know that ordinary contact and working with a person living with HIV/AIDS does not result in HIV transmission. However, they still wrote this collective letter to the director demanding the firing of the interviewee and the hospital director used the excuse of maintaining stability in the workplace to fire the interviewee.

这样的例子在我们的访谈中还有很多，他们都是由于身份被他人或者是同事暴露给老板后，有的老板是迫于压力，有的老板是出于自身本来就对IDU抱有偏见认为他们不能让人信任，再加上对艾滋病知识的缺乏，所以在知道受访者身份后就马上开除他们，因为老板们害怕顾客知道雇用IDU/HIV感染者后会影响到他们的生意，其中有一位老板说：“来我店买化妆品的人都是有钱有势的人，要是让他（她）们知道，我雇用的员工是一个吸毒犯还是一个艾滋病，谁还会来买？想一想都会让人觉得恶心，还有谁会把你接触过的化妆品往脸上擦？”<sup>23</sup>在我们的访谈中大多数老板在知道了同伴的双重身份后，都害怕自己的生意受到影响选择了解聘同伴。

These kinds of examples came up often in our research. In many cases, superiors came under pressure to fire IDU/PLWHA from other people [e.g., customers] or other employees. Some bosses expressed bias towards IDU and felt that these people could not be trusted, and because of their own lack of knowledge around HIV/AIDS they immediately fired the person. Some bosses feared that if customers knew they had employed an IDU/PLWHA it

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采访，2011年10月28日、燕子，康馨家园采访2011年10月29日、圆圆，康馨家园采访2011年10月30日、亚鹏，康馨家园采访2011年10月30日

<sup>20</sup> 小吴，康馨家园采访，2011年10月20日

<sup>21</sup> Bin-bin, interviewed October 14, 2011; Chen Lin, interviewed October 15, 2011; Xiao Jing, interviewed October 19, 2011; Xiao Wei, interviewed October 20, 2011; Xiao Wu, interviewed October 20, 2011; Xiao Wang, interviewed October 21, 2011; Chen Kuo, interviewed October 24, 2011; Xiao Mei, interviewed October 24, 2011; Xiao Zhang, interviewed October 26, 2011; Xiao Yu, interviewed October 26, 2011; Xiao Fei, interviewed October 28, 2011; Yan Zi, interviewed October 29, 2011; Yuan Yuan, interviewed October 30, 2011; Ya Peng, interviewed October 30, 2011.

<sup>22</sup> Xiao Wu, interviewed October 20, 2011.

<sup>23</sup> 陈琳，康馨家园采访，2011年10月15日



would affect business. One boss said, “The people who come to buy my cosmetics are all wealthy and powerful people. If they knew that my staff were drug-using criminals or AIDS people [sic], who would shop here? It grosses people out. Who would want to put these cosmetics on her face after you have handled them?”<sup>24</sup>

另外有四个受访者是在多次找工作失败后，选择了自己做生意<sup>25</sup>，但是在生意中出现了恶性竞争，竞争对手产生了严重的嫉妒心理，他们到处散布受访者的身份信息，利用大众对IDU/HIV感染者的污名、偏见、恐惧和无知的心理制造谣言致使同伴失去客源，最终失去了自己的生意。其中有一位同伴就是因为竞争对手在他的小吃店门口向来吃东西的客人散布他是吸毒犯和感染者的信息，致使所有的客人都不敢再来光顾。<sup>26</sup> In addition, four interviewees decided, after being fired several times, to start their own businesses.<sup>27</sup> However, they encountered some ugly competition after their competitors started smear campaigns against them. These competitors used the interviewees’ identity and the widespread social stigma about IDU and PLWHA to spread rumors about them, causing our interviewees to lose customers and business. One interviewee who ran a small snack stand reported that her business failed because her competitor stood right in the doorway and told people who were coming to buy snacks that the owner was a drug-using criminal and a person living with HIV/AIDS. This caused all her customers to stop patronizing her business.<sup>28</sup>

原本社会大众对IDU就存在偏见再加上他们对艾滋病知识的缺乏致使很多人不愿意与有着双重身份的IDU/HIV感染者一起共事，也不愿意购买他们的东西，雇主为了自己的利益采取了解雇同伴的做法，哪怕他们的工作做得非常出色，这也是IDU/HIV感染者难以找到工作的一个因素。

The fundamental social stigma towards drug users, combined with ignorance about HIV/AIDS, causes many people to be reluctant to work with people who have these two identities, and makes many more reluctant to buy things from them in shops. Employers, claiming it is for the good of their business, fired most of our interviewees despite their very good job performance. Once fired, it is difficult for IDU/PLWHA to find work again.

### 三、法律意识淡薄，缺乏法律保护

#### 3. Limited awareness of law and lack of legal protection

2004年以来，中国制订或修订了现有的法律和法规，从而开始推出一些措施来处理针

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<sup>24</sup> Chen Lin, interviewed October 15, 2011.

<sup>25</sup> 小勇，康馨家园采访2011年10月16日、小静，康馨家园采访2011年10月19日、小宇，康馨家园采访2011年10月26日、小马，康馨家园采访2011年10月27日

<sup>26</sup> 小静，康馨家园采访2011年10月19日

<sup>27</sup> Xiao Yong, interviewed October 16, 2011; Xiao Jing, interviewed October 19, 2011; Xiao Ning, interviewed October 26, 2011, Xiao Ma, interviewed October 27, 2011.

<sup>28</sup> Xiao Jing, interviewed October 19, 2011.

对吸毒者和艾滋病患者的歧视。<sup>29</sup>然而，经过多次尝试，法律工作者们还没有成功地通过法院为受到雇主歧视的受害者伸张正义。<sup>30</sup>

Since 2004, China has introduced or revised existing laws and regulations that begin to offer ways to address discrimination against drug users and PLWHA.<sup>31</sup> However, despite several attempts, lawyers have not yet succeeded in using courts to obtain redress for victims of discrimination by employers.<sup>32</sup>

中国的法律定义含糊，往往在处理一件事情上自相矛盾。<sup>33</sup>在最近的三个案子里，几名正式的教师采取了法律行动，因为他们在强制性的公务员体检时被认定为艾滋病毒呈阳性而被剥夺了教师工作，这就向我们显示了在求助于法律时所遇到的困难。<sup>34</sup>

Chinese laws are vague and sometimes contradictory in addressing the issue.<sup>35</sup> The three recent cases of qualified Chinese teachers denied teaching jobs due to their positive status on mandatory HIV health check for civil servants, illustrate the difficulties of pursuing a legal remedy.<sup>36</sup>

我们的研究发现，受到采访的人在被无理解雇之后，其中多数人并没有采取任何诉诸

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<sup>29</sup>国际劳工组织和中国的疾病控制和预防中心的“中国的艾滋病和艾滋病相关的就业歧视”，2011年1月14日。

<sup>30</sup>于方强，“中国第一个关于针对艾滋病人的歧视案”，亚洲促进会，2011年10月25日，

<http://asiacatalyst.org/blog/2011/10/chinas-first-lawsuit-on-discrimination-against-a-person-living-with-hiv-aids.html>.

<sup>31</sup> International Labor Organization and China's Center for Disease Control and Prevention, “HIV and AIDS Related Employment Discrimination in China,” 14 January 2011.

<sup>32</sup> Yu Fangqiang, “China’s First Lawsuit on Discrimination Against People Living with HIV/AIDS,” Asia Catalyst blog, October 25, 2011, <http://asiacatalyst.org/blog/2011/10/chinas-first-lawsuit-on-discrimination-against-a-person-living-with-hiv-aids.html>.

<sup>33</sup>例如，中华人民共和国关于防治传染性疾病预防法第16条（2004年修正案）规定：雇主和个人不得歧视“传染病病人，病原携带者和可能的传染病病人”，但禁止他们工作和就业。促进就业法第30条也有类似的矛盾：“雇主不得因申请人携带传染病病原而拒绝其就业。任何个人不得从事可能会促进疾病传播的工作，卫生部门可以依法予以禁止直到他们康复和不具感染性。”公务员考试体检标准第18条规定：“患有淋病，梅毒，软下疳，性淋巴肉芽肿，人类乳头状瘤病毒，生殖器疱疹，艾滋病的人不具公务员资格。”此外，国家公务员健康手册中规定：“不同于乙肝病人，艾滋病感染患者有100%的发病率，若不经治疗，其中大部分将在发病两年后死亡。因此，一旦发现感染了艾滋病毒，任何携带病毒的人将被取消资格。”

<sup>34</sup>中国的数字时代，“艾滋病毒呈阳性的教师向中国政府请愿”，2011年11月29日。

<sup>35</sup> For example, Article 16 of the Law of the People’s Republic of China on the Prevention and Treatment of Infectious Diseases (2004 amendment), states that employers and individuals should not discriminate against “patients of infectious diseases” while it specifically bars from jobs, “infectious disease patients, pathogen carriers, and suspected infectious disease patients.” Article 30 of the Employment Promotion Law contains a similar contradiction: “Employers should not deny employment for the reason that the applicant carries pathogens of infectious diseases. Individuals should not do any jobs that may increase the communication of the disease and forbidden by laws, regulations and rules of health authorities, until they recover and the possibility of infection is dismissed.” Article 18 of the Civil Service Exam Physical Examination Standard states that “[p]ersons with Gonorrhoea, syphilis, chancroid, venereal lymphogranuloma, HPV, genital herpes or HIV will be disqualified from being civil servants.” Furthermore, the handbook on health qualifications of civil servants states that “different from those who carry Hepatitis B, people living with HIV have a 100 per cent chance of developing AIDS, and most of them will die within two years of developing the disease given no anti-HIV therapy. Therefore, once HIV infection is detected, whoever carries the virus will be disqualified.”

<sup>36</sup> *China Digital Times*, “HIV positive teachers to petition Chinese government,” 29 November 2011: <http://chinadigitaltimes.net/2011/11/hiv-positive-teachers-to-petition-china-government/>. Accessed 4 January 2012.

法律的行动。一位打算采取法律行动的受访者因其律师告诉她起诉将会非常困难而感到沮丧和的气馁。<sup>37</sup>

In our study, most of the people we interviewed did not take any legal action after being unjustly fired. A lawyer who told her how difficult it would be to prosecute her case discouraged one interviewee, who wanted to take legal action.<sup>38</sup>

我们发现受到采访的IDU/HIV感染者的合法权益难以得到保障有四个方面的原因：

We found four reasons why it was difficult to protect the legal rights of IDU/PLWHA interviewees:

### **第一、 缺乏法律知识和维权意识**

在访谈中大多数的受访者在遭到无辜解聘后他们都选择了沉默，因为他们在应聘时没有和用人单位签订过劳动合同，他们缺乏法律知识，不知道怎样用法律来保护自己的就业权利，其中有一个受访者就是不知道法律知识，在失去被曾经的老板后来的竞争对手恶意中伤失去自己的生意后使用自己的方式暴力维权，不但被罚款还被拘留了15天，反而害了自己又触犯了法律。这些说明他们的法律意识淡薄，不知道要怎么做才能维护自己的合法权益。

#### **1. Lack of legal information and awareness of rights protection**

After being dismissed, most interviewees chose to keep silent because they had not signed contracts with their employers, lacked knowledge of the law, and did not know how to use it to protect their rights. One interviewee, not knowing any legal options, retaliated violently against the malicious slander against her by a competitor; she was fined and detained for 15 days, and only succeeded in breaking the law and harming herself.<sup>39</sup> In other words, interviewees lack a legal consciousness and did not know how to protect themselves legally.

### **第二、 法律条款本身存在漏洞、不清楚**

在访谈中曾有一位同伴咨询过律师，律师是这样对他说的：“我们国家现在还没有一整套规范的法律来保护感染者的就业权和隐私权，仅有的一些条款也是模糊不清，就算是通过法律来维权，胜诉的可能性也很小。”<sup>40</sup>听了律师的话以后，这位受访者最终还是选择了沉默，放弃了维权的念头，他认为连法律都不能为他维权，他不知道自己还能怎么做？

#### **2. Current laws are vague**

One of our peers consulted with a lawyer who told her “Our country currently does not have a law that completely protects the employment rights and confidentiality rights of PLWHA. There are only some abstract and unclear regulations, and the chance of achieving redress is

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<sup>37</sup> 小马，康馨家园采访，2011年10月27日

<sup>38</sup> Xiao Ma, interviewed October 27, 2011.

<sup>39</sup> Xiao Ma, interviewed October 27, 2011.

<sup>40</sup> 小马，康馨家园采访，2011年10月27日

slim.”<sup>41</sup> On hearing this, the interviewee put aside his thoughts of defending his rights and finally chose to stay silent about his dismissal. If he could not use the law courts to protect his rights, then what could he do?

### **第三、 害怕身份再次曝光，给造成家庭和自身造成更大的伤害。**

访谈中我们了解到有的同伴害怕一旦站出来维权后会更加暴露自己的身份，连带家人也遭到歧视。家人的不支持与不理解，也是导致他（她）们不能勇敢的站出来为自己维权的原因之一，有一个受访者在遭到医院无辜解聘后想通过法律来为自己维权，但是由于父母的反对他最终选择了放弃，因为他的父母也是医院的职工，而且他们的家住在医院宿舍里，父母害怕这样做会让他们的无法继续工作和生活。

### **3. Fear of further exposure of status and the risk of harm to families and themselves**

Some of the peers we interviewed were afraid that if they stood up for their rights, they could be further exposed and could risk discrimination against their families. In cases where family members did not support or understand them, this also made interviewees reluctant to be courageous about standing up for their rights. One interviewee, after being fired from a hospital based on his status, tried to take legal action, but gave up after his parents objected, because they also worked for the same hospital and lived in the hospital compound. The parents were afraid that his taking legal action would also cause them to lose their jobs and their home.<sup>42</sup>

### **第四、 家人的不理解与不支持，导致他们对生活丧失信心，选择放弃维权。**

还有一个案例是受访者的父母在知道他的被开除的原因是因为IDU/HIV的身份暴露还被同事和老板误认为是小偷时，他们不但没有安慰他为他申辩，而且还认为他不洁身自爱让，不仅他从家里搬出去住，从此再不以和他一起同桌吃饭，父母的这些做法深深的伤害了受访者，这让原本想通过法律来捍卫自己尊严，为自己维权的他处境尴尬失去了生活的信心，放弃了维权的念头，还重新走上了复吸的道路<sup>43</sup>。

### **4. Lack of understanding and support from family causes loss of self-confidence and causes victims to give up on defending their rights**

In one case, an interviewee was fired because of disclosure by co-workers of his status as a drug user and PLWHA and the resulting accusations that he was a thief. On learning this, his parents not only did not comfort him and advocate for him, they also blamed their son for what had happened, forced him out of the family home, and refused to eat at the same table with him. The behavior deeply hurt the interviewee. Though he had originally considered using the law to defend his rights and regain some self-respect, he lost hope, abandoned his ideas of obtaining legal redress, and even relapsed into drug use again.<sup>44</sup>

<sup>41</sup> Xiao Ma, interviewed October 27, 2011.

<sup>42</sup> Xiao Wu, interviewed October 20, 2011.

<sup>43</sup> 小张，康馨家园采访2011年10月26日

<sup>44</sup> Xiao Zhang, interviewed October 26, 2011.

这些都是致使受访者不能维权的一些因素。

These are all factors that contributed to interviewees not using the law to defend their rights.

在访谈中唯一值得欣慰的是有一位受访者当老板要解雇他时，他通过自己的努力和老板、同事沟通，竭力宣传艾滋病的相关知识，并且引用了《艾滋病防治条例》中不允许歧视感染者及感染者享有就业权的一些条款后，最终为自己赢得了继续工作的机会<sup>45</sup>。

There was only one encouraging case in which an interviewee, facing the risk of being fired by his boss, worked hard to communicate with his boss and colleagues and to educate them on HIV/AIDS. He also used the prohibitions on discrimination in the national *Regulation on Prevention and Control of AIDS* that prohibits discrimination against PLWHA, and ultimately was able to win the opportunity to continue at his job.<sup>46</sup>

所以我们认为不应该轻易放弃自己的权利，因为我们的身边已经有一例成功维权的案例，只有自己才能拯救自己，只有勇敢的站出来团结起来我们才能获得想要的理解和尊重，才能重新让社会重新接纳我们。

We have at least one successful case of rights defense close at hand, so we should not give up on our rights. If we can only find the courage to stand up for ourselves and unite together, we can obtain understanding and respect, and begin to be accepted again by society.

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<sup>45</sup> 耀斌，康馨家园采访2011年10月30日

<sup>46</sup> Yaobin, interviewed October 30, 2011.

## **解决办法:**

### **Recommendations:**

一.建议人民代表大会对现有的关于艾滋病的相关法律法规作出细致的修订。

1. We recommend that the National People's Congress promulgate reforms that clarify current laws relating to employment discrimination and HIV/AIDS.

二.建议地方卫生局定期对辖区内的公司及企业做艾滋病知识及相关法律法规的培训。

2. We recommend that local health bureaus provide information and training on HIV/AIDS-related laws and regulations to small businesses under their jurisdiction on a regular basis.

三.建议劳动局能把感染者纳入就业技能培训范围，让他（她）们和其他人一样同时接受培训。

3. We recommend that local labor bureaus ensure that IDUs and PLWHA be integrated into existing job skills training programs.

四.建议就业劳动局帮助有 IDU/HIV感染者与用人单位签订劳动合同，让他们的合法权益得到保障。

4. We recommend that local employment and labor bureaus provide assistance to IDU and PLWHA in negotiating work contracts that protect employee rights.

五.建议各个社区办事处能关心感染者的就业问题，积极与用人单位协调并且提供一些适合的就业岗位。

5. We recommend that local community offices should take into consideration the employment needs of IDU/PLWHA and work in cooperation with employers and work units in their jurisdiction to help provide suitable job positions for IDU/PLWHA.

六.建议民政局加大对感染者的关怀力度，了解他们的需求，为他们解决实际困难。

6. We recommend that local Civil Affairs bureaus should pay greater attention to PLWHA, gain understanding of their needs, and assist them to resolve practical challenges.

## **感谢:**

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### **About Asia Catalyst**

Asia Catalyst works with grassroots groups from marginalized communities in East and Southeast Asia that promote the right to health. We train our partners to meet high standards of effective and democratic governance, to establish a stable foundation for future growth, and to conduct rigorous human rights research and advocacy. We aim to help our partners become leading advocates at the local, national and global levels. For more information, see [www.asiacatalyst.org](http://www.asiacatalyst.org).