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How to protect the human rights of children temporarily out of custody in the Novel Coronavirus Pneumonia epidemic in China

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Abstract

In the current epidemic prevention and control of the Novel Coronavirus Pneumonia(NCP) in China, the protection of human rights of children temporarily separated from guardianship during the epidemic period has not yet attracted the attention of the state and society. Some of these children have their parents separated because of suspected or confirmed infection of NCP, or themselves have to be isolated because of suspected or confirmed diagnosis of NCP, so they are out of custody. Some are because their parents are doctors, police and other front-line anti epidemic staff, leaving the children at home alone, unattended. There are also children whose parents and other close relatives have been infected or suspected to be infected with NCP and who have no ability to take care of them. These children are actually out of the custody of their parents. The mental and physical health of these children are suffering from great damage, and the absence of state guardianship, the lack of awareness of

protecting children's rights of guardians themselves, and the adverse guidance of public opinion make these children in a dilemma at present.

Keywords : "Leftover children" out of custody; Novel Coronavirus Pneumonia; National guardianship; Temporary guardianship.

I. The situation of "leftover children" out of custody during the epidemic

Since the outbreak of Novel Coronavirus Pneumonia (NCP) in late January 2020, China has been fighting the epidemic with all its strength. After the closure of Wuhan City on January 23, all provinces of China have taken isolation measures for people with physical contact with people who ever stayed in Hubei Province from December 2019 to January 2020. All communities and villages around the country have taken various actions to restrict the flow of people and investigate suspected cases. However, in the context of such a large-scale anti-epidemic campaign, we have ignored the protection of human rights of a special group of people, that is, children, especially those temporarily out of custody, they are called special "leftover children". In this social crisis, children do not have the right to speak, but suffer the most. Their needs are often ignored by society and the state.

During the outbreak of the epidemic, there were many cases of children temporarily out of custody on the Internet, some of which were distressing and some of which were worrying.

Case 1: on January 29, 2020, an article entitled "family suspected NCP was isolated, Hubei 17-year-old child with cerebral palsy died after 6 days alone at home" introduced Yan Xiaowen, a villager from Yanjia village, Huajiahe Town, Hongan County, Huanggang City, Hubei Province, who was isolated due to suspected NCP. His 17-year-old son with cerebral palsy was alone at home for 6 days and died on January 29. On January 17, Yan Xiaowen, a single father working in Wuhan, returned to Yanjia village with his two sons. Three days later, Yan Xiaowen had fever symptoms. Suspected of being infected by NCP, Yan Xiaowen and his little son were sent to the centralized treatment site in Hong'an county. Yan Cheng was left at home alone because he did not have the ability to act independently, and he did not feel the symptoms of NCP, the hospital bed was tense and so on. Yan Cheng, a 17-year-old child with cerebral palsy, ate on the 24th and 26th and was fed two cups of amino acids by a village doctor on the 28th, the village committee said. Because Yan Xiaowen was confirmed to be

infected with NCP on 29th, Yan Cheng, as a close contact, was more likely to be infected. So at about 11am on 29th, the township hospital transferred Yan Cheng to the central observation point of Huajiahe town for isolation treatment. At 12:30, Yan Cheng died. The cause of death remains to be determined. In response, the government of Hong'an county formed a joint investigation team on the 30th. On the 31st, the government of Hong'an County recognized that the Party committee and the government of huajiahe town had some problems during the period of epidemic prevention and control, such as inaccurate work style, inadequate implementation of the responsibility for epidemic prevention and control, and made a decision to exempt Wang Baoquan, Secretary of the Party committee of huajiahe Town, and Peng Zhihong, mayor of the town. The County Commission for Discipline Inspection and supervision of Wang Baoquan and Peng Zhihong were disciplined Supervise and file a case. ¹

Case 2: according to beiqing.com on February 7, Fuyang, Anhui Province, a couple was quarantined for suspected NCP and the 8-month-old baby was left unattended. Yang Hongxing, a male nurse at Fuyang No. 2 people's Hospital, volunteered to be a temporary father and took turns taking care of the baby with his colleagues. According to Yang Hongxing, they take three shifts to take care of the baby in turn for 3 days. Later, the child was transferred to Pediatrics for treatment because of negative NCP. Later, the parents checked NCP negative and they all discharged. ²

Case 3: according to Kankanews.com, Ms Duan and her husband from Yuncheng, Shanxi Province, worked in Zhejiang Province. Before the Spring Festival, they returned to their hometown, Yuncheng, Shanxi Province, where they were quarantined for suspected NCP infection, leaving their 8-year-old son at home alone. During the isolation period, Ms. Duan left her mobile phone to her son for convenient contact. The boy downloaded the game with his mother's mobile phone, swiped several credit cards of his parents, and spent 13000 yuan to play mobile games. ³

Case 4: according to Yinchuan wenming.com, at 11:00 p.m. on February 1, Yinchuan Maternal and Child Healthcare hospital (MCH) received a special task assigned by the municipal government to temporarily receive three children for isolation observation and living care. Because the children's parents have been diagnosed with NCP. Three children, the oldest is 6 years old, the second is 4 years old, and the youngest is a baby just born for 45 days. MCH immediately coordinated three relatively safe isolation single wards to observe,

take care of and isolate the three children. At the same time, four nurses were transferred from the Department of Neonatology, Pediatrics, Surgery and Rehabilitation Coordination to take care of three children in shifts. MCH said that in addition to being responsible for children's physical health, children's mental state should not be ignored. The four nurses not only take care of children's daily life, but also are responsible for children's psychological counseling.⁴

Case 5: according to the people's daily news on February 5, Niu Niu, a son of Mr. Zhang, a doctor of Wuhan hospital, and his mother went abroad for tourism before the Spring Festival. On January 28, after their flight landed in Shanghai, they were arranged to be separated and observed in a hotel. On February 3, the boy's mother was tested positive for NCP and sent to the hospital for isolation treatment. At that time, Mr. Zhang was fighting in the front line of anti epidemic in Wuhan hospital. The 9-year-old boy was isolated in the hotel alone and left unattended. According to the person in charge of the isolation point appointed by Pudong district health care, the centralized isolation hotel has three meals a day and a special person to deliver meals to the boy. Every day, there are people in the hotel to look after the boy at a fixed time. The Pudong New Area Bureau of Culture, Sports and Tourism send a special personnel to take charge of the boy's mental health and daily life to ensure the nutrition supply. At the same time, the "love hotline" connecting "Pudong New Area Culture and Sports Tourism Bureau - isolation point - Wuhan hospital" was opened immediately. Mr. Zhang can contact Shanghai through the hotline to master and exchange the boy's living conditions timely.⁵

Case 6: according to China News Service on February 4, Mr. Wu, a police officer at the terminal of the Airport Public Security Bureau of Henan Provincial Public Security Bureau, and his wife, who worked in the Henan general hospital of Armed Police, first put themselves into the prevention and control of the epidemic after receiving the task of fighting against the epidemic, leaving their 7-year-old son at home alone. The child lives by eating instant noodles every day.⁶

Case 7: a 6-year-old girl in Hongshan District, Wuhan, Hubei Province was isolated in the house by herself. Her father was isolated in the isolation point due to suspected infection of NCP, while her mother was isolated at home due to fever, vomiting and other symptoms. Her mother suspected that she was also infected NCP and could not take care of the girl. Therefore, she asked for help, hoping a kind-hearted person could provide her daughter with meals every day. Because the girl is isolated in a room alone and crying, she has separation anxiety.⁷

In addition to the above cases, many similar cases can be found on the Internet. The reason

why the seven cases are selected in this paper is mainly based on the institutions that who voluntarily take care of the children. The first case is the village committee where the children live. The second case is the hospital nurses who receive suspected NCP patients voluntarily take care of the children. The third and the sixth cases are all unattended. The fourth case is designated by the municipal government to be exclusively responsible for the children's maternal and health care. The fifth case is the isolation and the tourism bureau send people to take care of the children. Among them, in the fourth case, government designated the children, the MCH hospital itself has the qualification and ability to take care of children, which can take into account the physical and mental health of children. Several other cases were organized by non-governmental organizations without the participation of the government. However, the third and sixth cases showed the status quo of children's survival without care. In the first case, although the child is in the care of the village committee, it is entrusted by his father. The village committee did not take the initiative to take responsibility, and children with cerebral palsy belong to special children, requiring 24-hour care by professionals. Obviously, the village committee did not fulfill their responsibilities, and when they realized that they could not take care of the child, they did not realize the seriousness of the problem, take the initiative to report to the higher authorities, ask the government to assign professional carers to take care of the child, and after the death of child, the village committee shirk responsibility. During this period, the father of the child turned to the Disabled Persons' Federation for help, but did not get help. The reason why the NCP isolation point where the child's father is located does not admit the child with quadriplegic cerebral palsy is that the child does not have the ability of autonomous movement, and the isolation point has limited beds. Therefore, not only the village committee shirked the responsibility after the death accident, but also the civil affairs department. Finally, the higher authority of the isolation point, huajiahe town government, took the responsibility. The seventh case is also included, which represents a common situation in Hubei Province. The parents, grandparents and other close relatives of children have been infected or suspected to be infected with NCP. Because of the tension of hospital beds, some patients can't be admitted and can only be isolated at home. Although in such family, children are accompanied by guardians, in fact, guardians have no ability to care for children.

Generally speaking, these "leftover children" during epidemic outbreaks are classified into three categories. The first category is that the parents are isolated due to suspected or confirmed NCP, and the children are separated from their parents' custody; or the children are

also suspected or confirmed NCP, and have to be isolated. The second category is that the parents are doctors, police and other front-line anti epidemic staff, leaving the children at home alone, unattended. There are also children whose close relatives, such as parents, have been infected with NCP or are suspected of being infected with NCP and have no ability to take care of them, so that children are actually separated from their parents' custody.

As far as the current social situation is concerned, the hospitals that treat NCP patients take part of the responsibility of caring for the first category of "leftover children". However, because the hospitals themselves treat NCP patients, they are already in overload operation. The care of such "leftover children" is only a drop in the bucket, and they can only care for individual children for a short time, which cannot cover all such children. While the second type of "leftover children" is partially responsible by the school where the children are located, most of them are monitored online through online video. They may be responsible for three meals a day for children by social workers or caring people or neighbors entrusted by their parents, but in fact, such children are still in a state of separation out of custody. The third category of children is currently the most at risk category of children who are still left unattended.

II. The damage of epidemic to the basic rights of "leftover children"

Children, especially those infants and young children, are the most vulnerable group in social crisis events. They are not able to protect themselves, nor have strong willpower to deal with all kinds of misfortunes in social crisis events. Therefore, once these children are not well cared for, they will suffer various physical and mental injuries, even death and injury events, and these injuries may become their lifelong psychological shadow. These special "leftover children" need more social attention and national attention. A 17-year-old son with cerebral palsy and quadriplegia, in Huanggang, Hubei Province, died at his home for six days alone, had made a wake-up call. We hope this is an extreme case. At present, the most worrying thing is physical health damage and psychological trauma caused by the epidemic isolation to children.

Epidemic isolation would damage mental health of "leftover children". For the isolated treatment of NCP patients, for an adult, he can accept it, but for children, especially young children, no matter whether they are infected with NCP or not, once isolated, they will cause psychological trauma. First of all, children's intelligence level can not understand such social

crisis events, and in the face of danger, children's parents are the spiritual pillar of children and an important source of children's sense of security. So in this kind of social crisis event, they are forced to be separated from their parents and isolated separately, which makes these children often make extreme reactions. They may be in panic for a long time, full of fear, afraid of the dark, crying, screaming, and even do not eat or drink for a long time, do not communicate with others, or indulge in online games, do not eat, drink or sleep, seriously damaging their health and mental health, these are the manifestations of children's psychological trauma. At the same time, because of the high infectivity of the NCP and various terrorist rumors in the society, this kind of "leftover children" has also become the object of people's implicit discrimination. Because they are either close contacts of the infected or themselves are suspected infected, people tend to choose to stay away from this kind of children and avoid contact with this kind of children, so that this kind of children are indirectly isolated from the outside world. This kind of implicit discrimination will also lay an eternal wound in this kind of children's psychology, making them hate outsiders or close themselves for a long time and refuse to communicate with outsiders. These psychological traumas are not limited to children who are suspected or diagnosed with NCP. For the above-mentioned children whose parents are doctors, nurses and police, who have to fight in the front line of anti epidemic daily and are forced to stay at home alone, they will suffer psychological traumas as well as implicit discrimination in the outside world, because their parents are all directly exposed to the source of NCP infection.

Epidemic isolation would damage the physical health of "leftover children". Isolation not only causes mental trauma to the separated children, but also seriously damages their health. For example, in the above-mentioned case 6, 7-year-old children can only eat instant noodles at home every day. If they eat instant noodles for a long time, it will not only cause malnutrition in children, but also cause many gastrointestinal diseases. In the third case mentioned above, the 8-year-old boy were isolated at home alone and addicted to mobile games, which not only caused direct economic losses to their parents, but also directly damaged his physical health. In the face of social crisis, no matter how parents teach children to be strong, children who are separated from their parents and isolated at home alone and in fear will have problems with their own diet. Even if there are three meals provided by outsiders, they will not be able to get enough nutrition. And all kinds of home appliances, or accidents, may directly cause children's death and injury. While, in case 7 above, although the children have adult close relatives at home, they can't be taken care of, because the children's close relatives themselves

have been infected or suspected to be infected with the virus. Those infected or suspected to be infected adults may infect the children at any time, and the children themselves are also suspected cases. If these children can't be admitted to hospital in time, they may directly cause death.

The United Nations Convention on the Rights of the Child stipulates four basic rights enjoyed by children, namely, the right to survival, the right to development, the right to protection and the right to participation. These four basic rights are also confirmed by the Law of the People's Republic of China on the Protection of Minors. Among them, the right to exist refers to the inherent right of life and health enjoyed by every child. The right to development refers to the right of children to fully develop their physical and intellectual abilities. The right to be protected refers to the right of children not to be adversely affected by their own development and to be protected. The state should take all appropriate measures to ensure that children are protected. The right to participate refers to the right of children to participate in the family, cultural and social life. But in the face of the epidemic, for those "leftover children", they can not even get the basic right to survival, let alone the right to development, participation and protection.

III. Social problems exposed in the protection of children's rights during the epidemic

The United Nations Convention on the Rights of the Child establishes the principle of the best interests of the child. China's civil law, criminal law, marriage and family related laws, as well as education laws, all recognize that children should be given special priority protection. When recognizing the four basic rights of children, the Convention on the rights of the child also proposes that the state should take all appropriate measures to ensure the protection of children. Article 19 of the Law of the People's Republic of China on the Prevention of Juvenile Delinquency stipulates that parents or other guardians of minors shall not allow minors under the age of 16 to live separately from their guardianship. Therefore, in this difficult period of epidemic, we should not forget the children who need to be cared for, let alone leave them unattended.

A. Absence of national guardianship

From the cases of children's separation from guardianship revealed on the Internet, although some organizations or personnel temporarily act as guardians to provide children with necessary food and living, these temporary guardians show the characteristics of individual case, arbitrariness, unprofessional and regional. The so-called characteristics of individual case refers to the case that the hospital nurses spontaneously form "temporary mothers", which is only limited to a small number of "leftover children" to be cared for, only one or two cases. If the number is too large, the hospital itself is in the front line of anti epidemic, and it has been overloaded, so it is impossible to draw out healthcare personnel to care for "leftover children". The so-called arbitrariness refers to where the "leftover children" are isolated, and where the responsibility of taking care of children is apportioned. For example, in the first case, the 17-year-old child with cerebral palsy is apportioned to the village committee, in the fifth case, the responsibility of taking care of children is apportioned to the isolation point set by the health committee and tourism bureau. While in most other cases, it is apportioned to the hospital treating NCP patients. Obviously showing the characteristics of randomness, it also reflects that there is no "temporary guardianship" system to care for such "leftover children" in China. The so-called unprofessionalism is that all kinds of individuals or institutions who take the initiative or passively take care of the "leftover children" have no common sense and experience of caring for children. Even hospitals that treat NCP patients are mainly doctors and nurses who are mainly treating respiratory related diseases, not paediatricians and nurses, so they are not professional. The so-called regionality refers to the fact that in places out of Hubei province with relatively less severe epidemic situation, most isolated children can be taken care of, because the number of suspected and confirmed NCP infected patients is relatively small, and the total number of isolated children is relatively small. Most of the hospitals accepting NCP patients take the initiative to take care of the isolated children. However, in Hubei province, due to the shortage of medical resources and insufficient beds, there are many NCP infected people who cannot be admitted to the hospital. These infected people have to be isolated at home, which directly leads to cross infection among family members. When the life safety of these adults is not guaranteed, children's care and even survival problems will get really tricky. For example, case 1 and case 8 in this paper.

A significant problem presented by these cases is that the state has not taken the responsibility of "temporary guardianship" of "leftover children". Since the anti epidemic war has started, how to protect the most vulnerable group of children in this campaign should be given enough

attention.

In the legislation of guardianship system in the general principles of civil law of our country, it is clear that the guardianship system is based on family guardianship, supplemented by social guardianship and supported by state guardianship. Therefore, the state guardianship should play an effective role in the absence of family guardianship of the above-mentioned "leftover children", while social guardianship cannot be realized. At present, the biggest problem is the absence of national guardianship.

B. The guardian's awareness of protecting children's rights is insufficient

In addition to the absence of national guardianship, many guardians themselves have insufficient understanding of the protection of children's rights. For example, in the third and sixth cases listed above, parents left their 7-year-old and 8-year-old sons at home alone. These parents not only think that 7-year-olds and 8-year-olds can take care of themselves, but also teach their children to live alone. They are not aware of the possible accidents that children may have at home alone, they are not doing their best to find close relatives for their children to help temporarily take care of children, they are not doing their best to ask for help from the state and society, hoping that relevant departments of the state or social caring people can take care of their children.

This is closely related to the traditional concept of "parental rights" that remains in modern Chinese society. The traditional Chinese "parental rights" are different from the western countries' parental rights system based on the equality of personality. The traditional Chinese "parental rights" permeate the characteristics of patriarchal clan system and family ethics, and communicate with the concepts of "filial piety" and "loyalty". Therefore, the traditional Chinese "parental rights" is closely related to "imperial power" and "royal power".⁸ Even though modern China abolished the traditional "parental rights" and established the guardianship system by imitating the Western parental rights system, in the social practice of our country, the traditional parental rights, paternalism and the concept of parents are still far-reaching. This is reflected in the fact that many parents still take it for granted that they can completely control the freedom of children and not be violated by the outside world. It is also reflected in the fact that many parents are unable to accept the discipline of children from people other than family members, such as teachers' discipline of children, which is the root of many family school disputes. So they don't agree with the state to regulate their children's

care behavior, and our country is also based on this deep-rooted concept. There is no systematic planning for the state custody, and our country still legislates the family marriage relationship based on the principle of not interfering too much in the internal family relationship. This traditional concept of parental rights is reflected in the current social crisis event, which changes into the self danger of adults, looking after their own families, and parents will not be aware of seeking the protection of their own children by the state.

C. The guidance of public opinion is unfavorable to the protection of children's rights

In fact, our whole society is also affected by this traditional concept of parental rights. We pay no attention to all kinds of children who are out of custody in the current epidemic, and appreciate the children who can live independently and reassure their parents. For example, China News Service reported on February 4, 2020, "Parents of police and doctors fight on the front line for NCP epidemic prevention and control, and their 7-year-old son living on instant noodles everyday". It was reported that Mr. Wu, a police officer of the terminal of the Airport Public Security Bureau of Henan Provincial Public Security Department and his wife working in the Henan general hospital of Armed Police, joined in the epidemic prevention and control work at the first time after receiving the task, leaving their 7 years old son stayed at home alone. "This lovely and sensible child eats fancy instant noodles every day to reassure the parents on the front line." ⁹ Qu Enze, a 10-year-old from Jiaozuo, Henan Province, whose father is a policeman and mother is a nurse, left a 10-year-old at home after fighting the epidemic, the people's daily Weibo reported on February 1, 2020. The boy did his homework, took Internet lessons, put on his mask and goggles to go shopping. For this, Simao education wrote a special article entitled "parents fight the front line of the epidemic, 10-year-old son takes care of himself alone, and the highest level of family education is willing to use children". ¹⁰For such public opinion, lawyer Tong Lihua, a famous child rights protection expert, said that such a thing is not worthy of public praise. The spirit of parents fighting in the front line of the Anti epidemic war is worthy of respect, but the situation of leaving children at home alone should not occur, so as to call on the state and society to pay attention to the "leftover children" during the epidemic period, "children can not be left unattended, otherwise, what's the meaning of rethinking when there is a fatal accident?" ¹¹

IV. Suggestions on the protection of children's rights during the epidemic

According to Article 40 of the Law of the People's Republic of China on the Protection of Minors, priority shall be given to the rescue of minors in case of emergencies in schools, kindergartens, nurseries and public places. In response to the current social crisis, child protection should be given priority.

The First thing we must do is establishing a systematic national guardianship system, and make clear the temporary guardianship system. The original leftover children protection system in China can be used. On February 4, 2016, the State Council issued the opinions on strengthening the care and protection of leftover children in rural areas, requiring the township government and street office to establish a detailed and complete information account of leftover children in rural areas, one person one file, and implement dynamic management and precise measures. In May 2019, the Ministry of Civil Affairs, the Ministry of Education and other 10 departments jointly issued the opinions on further improving the care and service system for leftover children and children in difficulties, requiring the establishment of "children director" and "children supervisor", specifically responsible for the care and service work for leftover children and children in difficulties in rural areas. According to statistics, China has 45000 "child supervisors" and 620000 "child directors", and implements the real name management.¹² At present, the Ministry of Civil Affairs has taken action to guide local "child supervisors" and "child directors" to find children temporarily out of custody due to NCP epidemic under the unified deployment of township (street) and village (residential) committees. ¹³The problem is that these "children directors" and "children supervisors" are part-time workers. In the special period of epidemic prevention and control, how to make them play an effective role is still a problem. In order to solve this problem, it is necessary for the state to clearly designate the responsible organ according to the national guardianship responsibility, implement it to specific departments and responsible persons, define the protection location and protection measures, and improve the supervision and restriction mechanism. At present, there are civil affairs departments in charge of taking in orphans and taking care of children, which have not played any role in epidemic prevention and control.

Second is expanding the interpretation of leftover children and children in difficulties in the existing laws and policies, and formulating special provisions for the protection of temporary

"leftover children" during the epidemic prevention and control period should be added. For example, Fang Yan, deputy to the National People's Congress and vice president of Shaanxi Lawyers Association, recently submitted the proposal on the protection of vulnerable groups of minors during the NCP epidemic to the Standing Committee of the National People's Congress. In view of the prevention and control of the epidemic situation of "temporary leftover minors", she called for the revision of the regulations on Emergency Response to Public Health Emergencies and National Emergency Response Plan for Public Health Emergencies as soon as possible, adding special provisions for the protection of "temporary leftover minors" during the epidemic prevention and control period, and designating special supervision organs to supervise the settlement of follow-up problems. ¹⁴To build a well-known, fast and efficient rescue channel, such as clearly designated responsible organs, civil affairs departments to take measures to mobilize the enthusiasm of "children's directors" and "children's supervisors" throughout the country, and cooperate with communities or villages to carry out home observation, temperature detection, etc.

Third, for the "leftover children" who are temporarily out of custody in the epidemic area, the state needs to come forward, allocate special funds, and designate special national treatment institutions for unified treatment. For example, in case 4, Yinchuan municipal government designated MCH hospital to treat children suspected of NCP infection is a good example. It can be popularized in various epidemic areas.

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