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Policy Audit: Sexuality and Disability in Policies Affecting Chinese People with Disabilities

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December 2014

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Preface

In January 2013, the Institute of Development Studies (IDS) approached Pink Space Sexuality Research Centre, China (Pink Space), to participate in a sexuality and poverty research project. The project invited researchers from Pink Space to select an area of policy in China on which to conduct a policy audit, with a particular focus on heteronormativity in China's social development policies.

Pink Space has a history of working among communities in China who are oppressed on the basis of their gender and sexuality. We work with women and children living with HIV, lesbian and bisexual women, transgender people, female and transgender sex workers, gay men's wives and people with disabilities. Pink Space collects people's voices, stories and life experiences, understands their desires and needs, works with the media to represent their experiences, and provides support and assistance to these communities and people who face discrimination due to their gender and sexuality. Through art, films, workshops, research and advocacy, we show their desires, stories, voices and experiences to the public, with the aim of influencing policymaking and legal processes.

The invitation from IDS to conduct a policy audit offered Pink Space the opportunity to focus in-depth on one of the groups of people we work with, and to understand how their lives are affected by particular policy and legal frameworks. The research also allowed us the chance to examine the direction of our own work in protecting sexual rights into the future. We decided to focus on people with disabilities in China. By focusing on how assumptions of heterosexuality are embedded in policies relating to people with disabilities, we hope to provide a deeper understanding of the effect of these assumptions on the sexual lives and health of people with disabilities.

Executive summary

Researchers at Pink Space believe that in the current context in China, we are seeing the re-emergence of traditional patriarchal attitudes and behaviour. We assert that the heterosexual male is privileged in terms of sex, love, marriage, family and other aspects of social life, where heterosexual relationships and gender conformity are privileged over same-sex relationships, and gender non-conformity. In addition, as we outline in this policy audit, oppression and discrimination on the basis of gender, sexual orientation and gender identity are exacerbated for people with disabilities who experience significant social stigma on account of their disabilities (Charlton 1998). This can lead to multiple layers of discrimination, for example, for people with disabilities who are lesbian, gay, bisexual and transgender (LGBT).

This policy audit examines the cultural, political and economic spheres in China from the perspective of people with disabilities. Through a series of case studies we argue that the heteronormative assumptions that underpin disability policies do not recognise the sexual desires and sexual needs of people with disabilities. Therefore, laws, families and society at large treat sexual behaviours among people with disabilities as abnormal, and the disabled as people who need to be arrested, invisible and even criminalised.

Not only do the current laws and regulations fail to recognise people with disabilities as sexual beings and as having sexual needs, they also give power to guardians to have complete authority to control the sexuality of people with disabilities, all in the name of care, responsibility and law.

These omissions in law result in lack of sex education, services and opportunities for people with disabilities, and leave little space for them to fulfil their sexual needs and desires, but too many chances to get infected with sexually transmitted diseases and/or HIV, and experience sexual frustration and devastation.

1 Introduction

China's traditional feudal culture can be traced back over 2,000 years. Despite the long history of patriarchy embedded in men and women's everyday lives, the communist revolution in 1949 offered some reprieve: at that time the state's communist ideology offered some scope for subverting the patriarchal culture and sexual politics embedded in Confucianism (Bauer *et al.* 1992).¹ The government-led equality movement, in particular, partially collapsed the traditional superiority and privilege of the male as 'husband', 'father' and 'son' within the Confucian cultural order. Because the country's overall economic and cultural development lagged behind, some of the patriarchal institutional arrangements and practices, such as son preference, persisted. In 1979, after economic reform and the opening up of the Chinese economy, historic Confucian practices and attitudes began to return and are now playing important roles in Chinese political, economic and social life.

The patriarchal and hierarchical institutional arrangement of the Chinese state remains strongly visible and is manifest, for example, in the Politburo, the ruling Chinese Communist Party's highest decision-making body: only two of the 25 members are female, an illustration of the low levels of female participation in political decision-making. With respect to the economy, data released in the Third China Women's Leadership Forum in March 2012 indicates that over the past two decades, the gap between men and women's income in China has widened (China.org.cn 2011).²

While there are indications of shifts in sexual attitudes and behaviour, discussed below, mainstream Chinese culture remains strongly heteronormative (Warner 1991), and those who do not conform to the privileged status of the heterosexual male experience restrictions in terms of sexual autonomy and sexual expression. For example, according to the report for the Lesbian, Gay, Bisexual and Transgender (LGBT) Rights Protection Meeting in January 2013 (sponsored by the Canadian Embassy to China), China's LGBT population is not currently protected under the existing legal framework (Canada Embassy 2013). The stigma attached to LGBT people exists in every aspect of social life: they face discrimination in accessing employment, promotion, social welfare sharing, and access to health resources. There is intense pressure on all Chinese people, irrespective of their sexual orientation and gender identity, to get married in order to access social benefits and gain social acceptance (*The Economist* 2010). This pressure has in turn created new disadvantaged groups including, for example, heterosexual wives of gay men. In addition, the government does not allow open discussion of LGBT issues in newspapers, magazines, books, films and television programmes (Ho 2009). There are few or no positive representations of LGBT people in literary and artistic works. As a result, the sexual life of LGBT populations remains very much underground.

This paper seeks to understand, in particular, the sexual needs and desires of people with disabilities and it explores how these are reflected in existing policy and legal frameworks. To this end, the paper analyses laws, regulations and policies related to disability to uncover the ways in which they impact on the lives of people with disabilities.

¹ The most influential form of Confucianism includes the three obediences: the requirement of a woman to obey her father before marriage, her husband during married life and her sons in widowhood; and four virtues: fidelity, physical charm, propriety in speech and efficiency in needlework (Sheng 2011).

² The Report of UN Women China 1990 indicated that the income of urban women was 77 per cent of what urban men earned, with rural women's income 79 per cent of rural men's earnings. Today, this ratio is even lower, decreasing respectively to 67.3 and 56 per cent.

2 Background and methodology

There are more than 83 million people with disabilities in China, a country with a total population of 260 million (Zheng *et al.* 2011). Due to the enormous stigma attached to disability, this group – approximately 30 per cent of citizens – is more likely to be economically marginalised. With regard to the Law on the Protection of Persons with Disabilities, in 2012 the China Disabled Persons' Federation conducted an inspection in every province and found that the overall living standard of people with disabilities in China is far lower than the average for the population as a whole: per capita income for people with disabilities is around 60 per cent of the general population's and, furthermore, lower incomes are accompanied by the higher living expenses associated with having a disability (CDPF 2012). More than 40 per cent of people with disabilities living in rural areas are surviving below the poverty line.³

Given the high levels of social stigma and related economic marginalisation experienced by people with disabilities, this paper sets out to explore the extent to which existing policies and laws address or reinforce these interlocking forms of discrimination. It does so with a particular focus on sexuality, as sexuality offers a useful analytical lens for unpacking the construction of people's lives and livelihoods through legal and policy structures that, ostensibly, set out national and federal guidelines to enhance the wellbeing of people with disabilities.

This paper is structured around three questions:

1. How are the sexual needs and sexual rights of people with disabilities, their rights to sexuality, intimate relationships, and family life dealt with in laws, regulations and policies?
2. How are people with disabilities represented within these laws, including the way that the guardian system supervises and regulates their sexual and reproductive health?
3. How is the issue of sexual and reproductive health education reflected in the laws, regulations and policies for people with disabilities and their implementation?

In the Chinese legal framework, there are approximately 50 policies, regulations and laws which directly or indirectly relate to the lives of people with disabilities. We therefore began by conducting a thorough review of these official documents in order to understand how people with disabilities are constructed, represented and protected (or neglected) in the law.

To collect empirical data, we engaged with non-governmental organisations (NGOs) that provide support to people with disabilities and carried out detailed discussions with members of staff in these organisations. We also held small focus group discussions with disabled service users and their carers.

Finally, Pink Space staff conducted a systematic search of the organisation's 'story store', an archive of stories collected through five years of work with people with disabilities. Once the main questions had been identified, the structure of the paper was agreed by the team and relevant stories from the archive were identified as supporting evidence. The findings of the focus groups, discussions, policy review and archive search were summarised and used to draft policy recommendations.

³ 'Forty per cent of rural disabled people are living below the poverty line', the report on the implementation of the Law on the Protection of Persons with Disabilities, http://news.xinhuanet.com/politics/2012-08/27/c_112865254.htm (in Chinese).

3 Key findings

3.1 Regulating sexuality: disability in policy and the law

Our in-depth study of 50 policies, regulations and laws revealed a wide range of laws related to disability distributed across different legal jurisdictions and areas of life. At a national level, ministry regulations and national legislation are in place to represent people with disabilities. Together, these policies direct provincial and city-level government authorities to enact and enforce this legislation at regional and local levels.

Our analysis of this legal and policy framework revealed that in more than 50 policies, regulations and laws, there is no item that addresses the sexual needs or rights of people with disabilities. This is a notable absence, particularly when people with disabilities, and women with disabilities in particular, have been identified as a 'high risk' category in terms of sexual and reproductive health. For example, a survey by Anhui Medical University that evaluated 687 women with mental disabilities has shown that women with mental disabilities experiencing spontaneous abortion, stillbirth, neonatal death, of delivering children with congenital malformations and other negative reproductive health outcomes, are more at risk than women without mental disabilities. In Guangzhou, the prevalence of gynaecological disorders amongst poor women with disabilities is nearly 60 per cent, nearly twice the rate of able-bodied women (Servais 2006).

The lack of attention to the sexual and reproductive health needs of people with disabilities was further reflected in our consultation with service providers and service users. In discussions with people with disabilities we found that people with disabilities generally felt that society did not understand these needs (Servais 2006). For example, Ms Jin Ling, a visually-impaired woman from One Plus One (an NGO that supports people with disabilities) told us that many people consider people with disabilities to be physically immature or child-like. She explained that society seems to consider people with disabilities to have no need for sexual expression and to not experience or desire sexual pleasure (One Plus One 2012). Our visits and interviews revealed that many people with disabilities battle against the common misconception that they cannot experience sexual desire as a result of being perceived as unable to care for themselves. This was also linked to the belief that sexual needs are separate from and superfluous to the basic needs associated with day-to-day life. One could assume that people with disabilities must be looked after by others; but it is also mistakenly assumed that people with disabilities have no control over, or responsibility for, their sexual behaviour. These assumptions may be one contributing factor to the absence of sex in the 50 policies, regulations and laws related to people with disabilities.

In the Amendments to the country's Law on the Protection of Persons with Disabilities in 2008, it is only mentioned generally in Article 3 that people with disabilities enjoy equal rights with other citizens in political, economic, cultural, social and family life:

Persons with disabilities enjoy equal rights with other citizens in the political, economic, cultural, social and family life. Civil rights and dignity of persons with disabilities are protected by law. Prohibition of discrimination, insult against people with disabilities.

It is noteworthy, then, that in comparison to other disadvantaged groups that Pink Space works with, there is an absence of any reference to the sexual needs or rights of people with disabilities in any of the policy or legal documentation we reviewed. The sexual rights of women and the elderly, for example, are protected in a number of policies and laws.

Chapter 7 of *People's Republic of China Women's Rights Protection*⁴ refers to the rights of married women and of women in relationships. For people with disabilities, however, the law has nothing in place that directly protects their rights to sexual expression, autonomy or to married and family life.

Pink Space believes this to be one of the reasons why people with disabilities continue to experience a lack of sexual autonomy and are unable to enjoy the same rights to sexual expression and sexual pleasure as the rest of Chinese society. The failure to address or protect the sexual rights of people with disabilities is also a reflection of cultural attitudes towards disability, that view people with disabilities as somehow deficient or lacking and as failing to meet up to ideals of strength and independence. This can be traced back to the dominant idea of the able-bodied heterosexual male and the idea that all people with disabilities, irrespective of the nature of their disability, are different from the able-bodied population in their capacity for and right to sexual expression and autonomy.

The following section outlines the implications of this policy and legal framework through a series of case studies that centre on the three main focus areas and research questions of this policy audit. The case studies are used to explore the lived experiences of people with disabilities in terms of their sexual needs, behaviour and autonomy and the care they receive. These studies reflect on the policies, laws and regulations designed to protect their rights and it articulates the limitations of the existing legal framework as it is invoked in people's everyday lives.

3.2 Negotiating sex, stigma and the law: the case of the Hailing Service Centre

The Beijing Hailing Service Centre (hereinafter referred to as 'Hailing') is a care centre for people who are mentally challenged. The issue of sexual attraction and intimate attachments within the centre was a common concern amongst Hailing staff. The case studies in Box 3.1 illustrate the importance of recognising that people with disabilities do have sexual feelings and develop emotional attachments to others. It also illustrates that people with disabilities are capable of acting on those feelings and expressing love and sexual attraction. However, as described earlier, this is not reflected in law and the common perception remains that people with disabilities cannot, and should not, have sex or express their sexual desire. The law may even interpret their sexual behaviour as illegal, as seen in Box 3.1 with the case of Xiao Po, Xiao Gao (who ended up serving a prison sentence) and Jing'er (Xiao Gao's partner, who was left broken hearted). The lack of legal guidance also has implications for the service providers who are unsure how to deal with such cases.

⁴ Law published in 1992 by the Seventh National People's Congress.

Box 3.1 Ignoring and punishing sexual desires and practices of people with disabilities

Fang Yuxiang, a staff member at Hailing, told the story of a male resident at the centre, Xiao Po, who was keen on a female resident. The female resident had displayed no reaction to his attentions and her lack of response had made Xiao Po very distressed. Xiao Po often complained to Hailing staff about how bad this made him feel. In response to this example, Fang said that the residents are very simple and that as they grow up they develop attachments to others and have their own needs. It was quite normal for them to like others and have their own emotional worlds and feelings. However, this could become very difficult for some staff members and also for parents. Fang described one example where the parents of one female resident, on discovering her strong attachment to a male resident, had taken her out of the centre and kept her locked in her room.

One particularly serious case was recounted to us by Hailing staff. Jing'er, a 19-year-old woman, and Xiao Gao, a 21-year-old man, had both been sent by their parents to live in the secure residential accommodation at Hailing. In July 2005, it was discovered by care workers that Jing'er and Xiao Gao liked to hug each other and that Xiao Gao repeatedly stroked Jing'er's body. It was later discovered that they were having a sexual relationship. Jing'er's parents reported the relationship to the police and took out civil action against Xiao Gao. On 10 May 2006, Xicheng District Court criminal division sentenced Xiao Gao to two years' imprisonment for the crime of rape and one year for the crime of molesting a woman. The final sentence was two years and six months imprisonment. Xiao Gao challenged the sentence through the courts but on 18 June 2006, Beijing Intermediate People's Court affirmed the original judgement. In the verdicts determined by Xicheng District Court, Jing'er was judged to have 'no sexual self-defence ability' and Xiao Gao was deemed as having 'partial criminal duty' on the basis of a psychiatric assessment.⁵

For the case of Jing'er and Xiao Gao, Hailing apologised repeatedly to Jing'er's parents and to the parents of other residents. They paid 10,000 yuan to Jing'er's parents as compensation in August 2007. These incidents had a very negative effect on both the staff and residents of the centre. Staff remain nervous about any form of intimacy between residents and they have, as yet, been unable to find a solution to the issue of intimacy and desire within the institution.

We do not wish to pass comment on the individual cases described above, but rather to use them as illustrations of the difficulties experienced by staff when dealing with the sexual and emotional needs of the people in their care, in the absence of laws and frameworks that recognise this eventuality.

These case studies indicate that it is difficult for mainstream Chinese society to accept the sexual behaviour of people with disabilities on a number of levels. When sexual desire is expressed and conducted by people with disabilities they run the risk of being designated a criminal or it happening due to the incompetence of professionals. People with disabilities are seen to possess no sexual needs or feelings. However, when expressing their desire, men with disabilities can be seen as villains, perpetrators, or sexual offenders; conversely, women with disabilities are seen as naive, incapable and sexual defenders (Yacoub and Hall 2009).

There are currently 21.16 million registered people with disabilities of marriageable age who are divorced or widowed. (This accounts for 27 per cent of the total number of people with disabilities.) Of this figure, 62.5 per cent are married, compared with 83 per cent for society as a whole, and 10.5 per cent are unmarried. As citizens with equal rights, the sexual needs and sexual rights of people with disabilities should be outlined and protected through national laws, regulations and policies. Given the social attitudes described above, and the failure to identify and protect the sexual rights of people with disabilities, it is more difficult for the

⁵ It means she has no sexual ability or self-defence ability; and he has some ability to conduct a criminal offence.

people with disabilities to realise their sexual rights and the right to sexual relationships.⁶ Moreover, existing laws, regulations and public policies do not provide special protection and encouragement to enable people with disabilities to realise their rights. Thus, people with disabilities face further barriers to realising their sexual rights and their right to enjoy marriage and family life.

3.3 Representation and regulation through the law: the guardian system and the case of the Beijing Sunshine Care Centre

Article 9 of the Law on the Protection of Persons with Disabilities outlines the guardian system for people with disabilities. It stipulates that only parents or civil affair authorities can become legal guardians. One of the key problems with the legal guardianship system is that it does not take into account disabled people's perspectives on their sexual rights and autonomy. A further problem is the guardian supervision system. Without understanding and recognising the sexual desires and needs of people with disabilities, the system deprives them of their sexual rights. Under the guardian system, parents, family members and carers suppress and correct sexual behaviours of people with disabilities, ostensibly in the name of the law, of love and of care.

Fear of conception, as outlined in the case study in Box 3.2, can lead some parents to take extensive measures to ensure that their children cannot have sex. In the care centres we engaged with, staff expressed a great deal of awareness of the sexual desires and behaviours of their residents but were not sure how to deal with them.

Sexual intimacy, and same-sex desire in particular, are surrounded by fear and as a result, the response is usually to restrict opportunities for sexual contact between people with disabilities. One explanation for this response is the lack of guidance and support available to guardians, parents/relatives and carers, about the sexual needs of people with disabilities and how to support them to ensure that their needs are addressed. In addition, guardians are aware of the prevailing cultural attitudes towards disability that do not recognise people with disabilities as sexual agents. The restriction of freedom for people with disabilities in order to avoid sexual contact with others should be considered as a serious violation of their rights and interests. Where legal guardianship entitles guardians to take such action, this should be considered as a serious flaw in the guardianship system. For this reason, a supervision system that provides support and guidance to guardians is vital.

⁶ People with disabilities can be vulnerable to sexual exploitation. However, they are over-protected, their sexual desires are overlooked too, as they are not considered as sexual beings and with sexual desires, but as if they merely need protection.

Box 3.2 Case II: Homosexuality and masturbation in Beijing Sunshine Care Centre

The Beijing Sunshine Care Centre accommodates people who are mentally challenged in separate male and female dormitories. Wang Shaocheng is a 40-year-old man with learning disabilities and in the centre he works as a manual labourer and is responsible for taking care of other residents and feeding the dogs. Pei Yongzhi is a 39-year-old man, also with learning disabilities, and he is responsible for cleaning the house and also for taking care of other residents. The two men are often inseparable; they eat together and work together. They are known to have a sexual relationship and could be described as lovers. Every weekend, Wang Shaocheng goes home to his family. This is usually accompanied by Pei Yongzhi asking 'Where is Shaocheng? I want Shaocheng to be with me!' and he always looks forward to the following Monday when Wang will return. The sexual intimacy between the two is generally acknowledged inside the centre. Centre staff reported that some nights when they enter the room, they find them both in the same bed and have to ask them to separate. However, they often find that they are back in the same bed together when they return some time later. Centre staff feel that there is nothing they can do about this and that, while they would not describe them as homosexuals, they are nonetheless glad that there is no possibility of their sexual behaviour leading to a conception.

Centre staff also said that it was common for male residents to openly masturbate, usually while they were eating or watching television. The most common response was for staff to tell them to continue in a separate room and then return to the group when they were finished. Staff were aware that female residents also masturbate and in some cases, their private parts were scratched and their genitals sore and swollen as a result. Centre staff admitted that they did not really know how to deal with the sexual behaviour of residents and in some cases had resorted to forcibly separating couples to avoid any further contact. In one particular case of separation, a female inmate in her early twenties who was good at singing, and a male inmate in his early thirties who had a talent for drawing, fell in love. The man kept telling his mother that he wanted to marry the woman. The mother and the centre staff feared that they might have sex and have children, and it was decided to keep the man at home in order to separate the two. The female inmate later developed manic psychosis and was admitted to a psychiatric hospital, and the man suffered from depression.

Under the current law it is taken for granted that parents or legal guardians of people with disabilities will protect them through the bonds of love or responsibility. There is no current mechanism in place to ensure that guardians fulfil that duty in an appropriate way. A proper supervisory system would ensure that education was provided to guardians about people with disabilities' sexual needs and other sexuality-related issues. It would be able to address the perception that people with disabilities lack the capacity for sexual feelings and desire, and work with people with disabilities to address the health and other implications of having sex.

3.4 Education for all: policy integration and implementation of sexual and reproductive health education

The *Individuals with Disabilities Education Ordinance* regulation has no provision for the sex education of people with disabilities. There is very little knowledge or information available about the sexuality of people with disabilities and the information needs of people with different kinds of disabilities. As a result, people with disabilities are unlikely to access appropriate sex education. As the case study in Box 3.3 suggests, this is particularly problematic during and after puberty when people begin to develop an awareness of their own bodies and their sexual desires. Without access to relevant sex education, people with disabilities do not have the opportunity to learn about different forms of sexual contact, how to protect themselves and avoid risk, and their rights and responsibilities. We argue, through

the case study and in this paper, that lack of appropriate sex education has serious implications for the sexual and reproductive health of people with disabilities.

Box 3.3 Case III: The case of blindness

Twenty-seven-year-old 'Tiger' is a blind gay activist from Shenyang. For several years, Tiger has operated a hotline for gay men with disabilities, which has attracted calls from more than 30 gay men with disabilities across the country. When he was interviewed, Tiger said that he had known that he was gay since he was ten when he started to have sexual contact with boys in his class. But it was not until he was 20 that he first heard about condoms. He remembered that getting hold of condoms as a blind person was a big challenge. He described how sighted people can use their eyes to look for condoms on shop counters and once identified, can use their fingers to point to them without having to speak out. But a blind person must ask for them directly and it takes courage. He used to wait for a long time before having the courage to ask. And the challenge did not stop there. As he explained, sighted people can find out how to use a condom from instructions, a manual, books or television. But there is no information about how to use a condom available in Braille. Where radio programmes exist, they are usually too fast for the listener to retain all the information. For those people with disabilities who are able to access information about how to use contraception, they are faced with the hardest task, which is negotiating their use within sexual relationships or encounters. Tiger illustrated why using condoms was particularly difficult if you have a disability:

To have someone who would like to have sex with you is already a difficult thing. So how can I dare to request that he wears a condom? As people with disabilities we do have an inferiority complex. If someone would like to have sex with us it usually means they think highly of you. Most people with disabilities would not think of self-protection. Moreover, as a blind gay man, I am doubly discriminated against. When having sex, I am usually very anxious and once finished, I usually leave quickly. Self-protection and safe sex are not our concerns.

Tiger knew many gay men with disabilities who are HIV positive or have a sexually-transmitted infection. He said that most of his peers have little opportunities to have sex, and they are desperate to have sex, and hardly care if it is safer sex. This was one of the reasons why he set up a hotline, to help more people like him to get access to information about safe sex.

The example of 'Tiger' illustrates some of the specific obstacles and challenges that people with disabilities face in pursuing their sexual desires and being protected. It also illustrates the double discrimination experienced by those people with disabilities who are same-sex desiring. As Tiger points out, negotiating safe sex requires individuals to feel empowered, yet prevailing attitudes towards the sexuality of people with disabilities can lead them to feel inferior and incapable of asking for what they need or desire. As such, stigma and discrimination can lead some people with disabilities to put themselves in situations of risk.

4 Discussion: sexuality and disability

The above laws, regulations and policies, from various administrative levels of the country, and from all aspects of life in various fields, begin from the same basic premise: that no matter what the disability is, people with disabilities are treated fundamentally differently from people without disabilities. This difference is articulated in terms of psychological and physiological deficiencies and presents disability as something that is 'abnormal'. People with disabilities are assumed to require the care of others, and protection policies focus primarily on the provision of specialist care. In the wording of laws, regulations and policies, people with disabilities are rarely spoken about as having inherent rights that cannot be taken away. Where rights are discussed they are in relation to favourable protection measures and welfare policies that can be withdrawn according to the social development plans of the government. This emphasis on the management of people with disabilities contributes to the exclusion and marginalisation of people with disabilities within society as a whole. As we have already shown, it also contributes to the prevailing assumption that, regardless of their disability, people with disabilities are asexual, do not have sexual desires and are unable to manage the consequences of sexual behaviour. Given this position, we conclude that people with disabilities are considered in regulations, policies and laws as second class citizens.

If China wishes to continue its march forward to modernisation, there will need to be a major shift in the way that people with disabilities are treated in policy and law. These include recognising that people with disabilities are born with rights and that society has a responsibility to help them to realise those rights. There is clearly also a need for more education of the public and the media on the needs and experiences of people with disabilities, particularly on their right to sexual expression and right to relevant education to help them to avoid risk.

5 Moving forward: involving people with disabilities in the decision-making process

The legislative process in China is outlined in detail in Annex 1. Anyone wishing to influence the law-making process within the current system needs to get involved during the project establishment process and ensure that they direct timely advocacy activities toward the department responsible for the law drafting. There are a number of different ways to participate in the drafting process, including: commenting on the draft; holding or participating in seminars, consultations and public hearings and debates. Within this framework, the voices of those who will be directly impacted by the future law are unlikely to attract the attention of the legislative department, particularly if they are from disadvantaged or marginalised groups. However, the thoughts and recommendations of the experts can play an important role so it is vital to direct advocacy efforts on behalf of marginalised groups towards these individuals.

In terms of legislative and policymaking processes, there are two main bodies which deal with disability: the China Disabled Persons' Federation and the Legislative Affairs Office of the National People's Congress. Both organisations work closely with government ministries such as the Ministry of Civil Affairs, the Ministry of Education, Ministry of Human Resources and Social Security and the Ministry of Health. A law related to disability will usually go through a number of consultation processes with departments from central and local government, as well as with universities and research institutions. In China, legally registered organisations are often controlled by the government and as such, they tend to be run by staff who are well educated and well paid. Within the current system, consultations with such organisations cannot be said to represent the needs and views of people with disabilities, and particularly of the poorest and most marginalised. Community-based organisations formed by people with disabilities have little or no opportunity to participate in the legislative process. Wu Runling from Huitianyu, a Beijing-based disability support group, said that he had never had the chance to be involved in any of the legal or policy-related consultation processes. While Huitianyu had submitted policy recommendations to the China Disabled Persons' Federation, it had been told that these would be used only as reference material. Without grass-roots participation in policymaking processes, it is difficult for any process of law-making or policymaking and change to adequately reflect the needs, views and experiences of people with disabilities.

The case studies in Boxes 3.1, 3.2 and 3.3 show that there are a number of barriers to the recognition and realisation of the needs of people with disabilities to fulfil their sexual desires. Heteronormativity, which is embedded in policies and laws that treat people with disabilities as abnormal, villains and criminals, rules them out from reproduction and denies them as sexual beings, and therefore human beings. The voices of people with disabilities are silenced and their experiences are ignored. Limited research and inadequate studies toward disability and sexuality issues contribute to little understanding of the desires and needs of people with disabilities, if not a total misunderstanding.

Policymakers and law-makers, and guardians are unaware of or refuse to acknowledge the sexual needs and desires of people with disabilities. They are given too much power over people with disabilities to control and diminish their sexuality. It is taken for granted that people with disabilities are treated unequally and do not have full citizenship, and sometimes – if not most of the time – their rights, especially sexual rights, are deprived.

People with disabilities do themselves fight for their rights (Ng 2012), but they have yet to organise to voice their sexual needs and desires, or appeal for their rights as sexual beings, as too many of their other rights are not addressed, and sexual rights are thought of as luxury and not given priority, or considered as part of their human rights.

6 Policy recommendations

1. Law-makers and policymakers at the national level should involve people with disabilities and grass-roots organisations in the consultation processes, to guarantee their needs and desires are represented and reflected in the policies and laws that are relevant to them. We recommend that this is done alongside an analysis of international best practice around disability and to consider its relevance to the Chinese context. It must address both the protection and recognition of people with disabilities' sexuality, paying equal attention to protecting people from sexual abuse as well as recognising the sexual autonomy of people with disabilities. There should be mechanisms developed to moderate laws and regulations that give power to guardians of people with disabilities, not only to protect people from sexual harassment, but also ensure their sexual needs are being fulfilled.
2. Local and regional ministries that are responsible for implementing national policies should integrate education on sexual and reproductive health and rights across national policies and provide better access to sexual health resources for people with disabilities. Also, guardians and carers should be involved in the research programmes on sexuality and disability, enabling them to contribute to the better understanding of disability rights and sexual rights of people with disabilities.
3. NGOs and the civil society sector working on disability issues need to work across fields with NGOs working on sexuality issues to reach a better understanding of disability and sexuality issues and to have practical support and guidance to meet the needs of people with disabilities on sexual health.
4. For people with disabilities, socialising and mobilising and speaking up for themselves on their needs and desires are very important, and this must take sexual rights into account. Alongside the right to jobs, education and health, the right to sex is fundamental, and as long as people with disabilities are treated as sexual beings, they will be seen as the same as other human beings and their rights will be similarly addressed.

Annex 1: The legislation process

As laid out in the Legislation Law, the National People's Congress (NPC) (the legislative body) and its Standing Committee are the law-making body. The basic law-making process usually includes four phases: proposal of legislation, drafting of law, voting, and the publication of law. The main discussion is in the period of drafting law and the other three periods are more formative arrangements.

In the legislation proposal period, two departments have the right to introduce a bill to the NPC for legislation: (1) relevant state departments; and (2) one of the delegations within the NPC or a group of more than 30 representatives.

The law drafting period normally has the following steps:

1. Project establishment. Since the Eighth NPC Standing Committee in 1994, every NPC Standing Committee develops their legislation working plan for the coming five years. Each year, they develop another annual working plan. If you want to make a law, you need to make sure the project is incorporated into the annual plans. Common people could propose a motion, but before it is incorporated into the annual plans, the motion needs at least 30 signatures from Congress. People with disabilities and organisations working on disabilities could propose and lobby the Congress, through projects, activities and research.
2. Law drafting team establishment. If a project is incorporated into the plans, it is usually the responsibility of the department initiating the idea to form a law draft team. The team is usually made up of related leaders, experts and practitioners in the field.
3. Research. The law draft team will conduct a series of research activities in a variety of forms, including seminars and workshops, and they will normally go to the community level to collect information. Their research usually includes a review of relevant laws, regulations, rules, policies and provisions related to the legislative matters; equivalent legislations in relevant foreign countries; theoretical research on the legislative matters; the main practical approaches and key successes and failures; and the perspectives of the working departments, experts and scholars.
4. Draft the framework and present the main issues.
5. Draft the provisions of the law for internal discussion.
6. Solicit opinions from different spheres of life and through different channels such as public hearing, seminars, forums, letters and emails.
7. Prepare final draft for NPC discussion and voting. The National People's Congress and its Standing Committee would then receive the case and organise the discussion and the voting process.

Annex 2: The policy and legal system in China, with a focus on disability

- 1. National level laws issued by the National People's Congress.** Special Laws on the Protection of Persons with Disabilities. In 1990, the National People's Congress passed the People's Republic of China on the Law on the Protection of Persons with Disabilities, which was revised in 2008. It outlines government duties towards people with disabilities including: protecting their interests; programmes for people with disabilities; the development of disability rehabilitation, education, and employment; cultural undertakings; the provision of social welfare for people with disabilities; and community integration to create a positive social environment for the equal participation of people with disabilities. There are also more than 50 comprehensive national laws and special provisions for people with disabilities, including more than 20 with more specific stipulations related to the rights and obligations of people with disabilities – for example, the National Fundamental Law of the People's Constitution of the Republic, as well as the basic law of the General Principles of Civil Law, Criminal Law, Civil Procedure Law and Criminal Procedure Law, Education Law, Compulsory Education Law, Labour Law, Employment Promotion Law, Marriage Law, Inheritance Law, and Public Security Administration Law on Road Traffic Safety Law. They are closely related to the legal education, the employment and life of people with disabilities. However, no law mentions the sexual rights of people with disabilities.
- 2. Administrative rules and regulations were formulated by the State Council.** These include the orders to protect the rights of people with disabilities to education and employment rights, specifically the *Individuals with Disabilities Education Ordinance* and *Disabled Employment Ordinance*, the *Legal Aid Ordinance*, the *Minimum Living Guarantee for Urban Residents Ordinance*, and the injury insurance regulations. In addition, the State Council also developed four consecutive Five-Year Plans for the development of people with disabilities.
- 3. State Council regulations.** A large number of departments under the State Council developed regulations and documents within their own authorities on the protection of the rights and interests of people with disabilities. These include: the Ministry of Education with respect to special education; the Labour Department on the promotion of the employment of people with disabilities; the Department for Civil Affairs in relation to the promotion of social welfare enterprises and welfare agencies; the Ministry of Finance on the financial support to encourage more employment of people with disabilities; and the Ministry of Construction on the construction of accessible facilities for people with disabilities.
- 4. Provincial level rules and regulations.** This includes the People's Congress of the provinces, autonomous regions and municipalities, who are responsible for implementing the Law on the Protection of Persons with Disabilities. The provinces, autonomous regions and municipalities fall directly under the central government with respect to the employment of people with disabilities. Some local governments at or above the county level must conform to the Five-Year Plan of the central government to develop the cause for the people with disabilities, and many provinces provide special assistance for people with disabilities.

Annex 3: Disabled Protection Act Article IX

Legal fosterers of disabled persons must fulfil their duties towards their charges.

Guardians of disabled persons must fulfil their duties of guardianship and protect the lawful rights and interests of their charges.

Family members and guardians of disabled persons should encourage and assist disabled persons to enhance their capability of self-reliance.

Maltreatment and abandoning of disabled persons shall be prohibited.

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