



COUNTRY PROFILE

ON UNIVERSAL
ACCESS TO SEXUAL
AND REPRODUCTIVE
RIGHTS:

CHINA

Introduction

China, the world's most populous country and home to the oldest continuing civilization, has been currently experiencing rapid socio-economic changes and is becoming one of the fastest growing economies in the world.

Although the country's population growth rate has been slowing since the early 1990s, with 4.95 per 1,000 people in 2012 compared to 11.21 per 1,000 people in 1994, China's population is still steadily increasing due to the large base. By the end of 2012, the total population of China has reached 1.354 billion¹ people, increasing by 155 million people from 1.198 billion in 1994.

Demographic trends in China have experienced significant shifts over the past 50 years in terms of declining fertility rate, imbalance in the sex ratio of newborns, population aging, and increasing migration. Variations and inequities exist in terms of background characteristics of rural-urban areas, population groups, education, wealth, and geography.

The total fertility rate of women in China fell below the replacement level in the early 1990s and kept declining to about 1.6 at present,² an indication that China has transitioned into the group of low

fertility countries. At the same time, the sex ratio of the population has been increasing, from 104.51 in 1994 to 106.74 in 2000. The imbalanced sex ratio is due to the country's One Child policy and culture of "son preference."

Government measures and public involvement in schemes such as "caring for girls" and "rewards for families for having girls," however, have resulted in the sex ratio to drop to 105.13 in 2012. Sex ratio at birth (SRB) has started to reverse, but only to a very limited extent and is still far from the globally accepted range. In 2012, SRB in China was at a high 117.7.³ While China is not the only country with an imbalanced SRB, it has the most skewed SRB for the longest time.

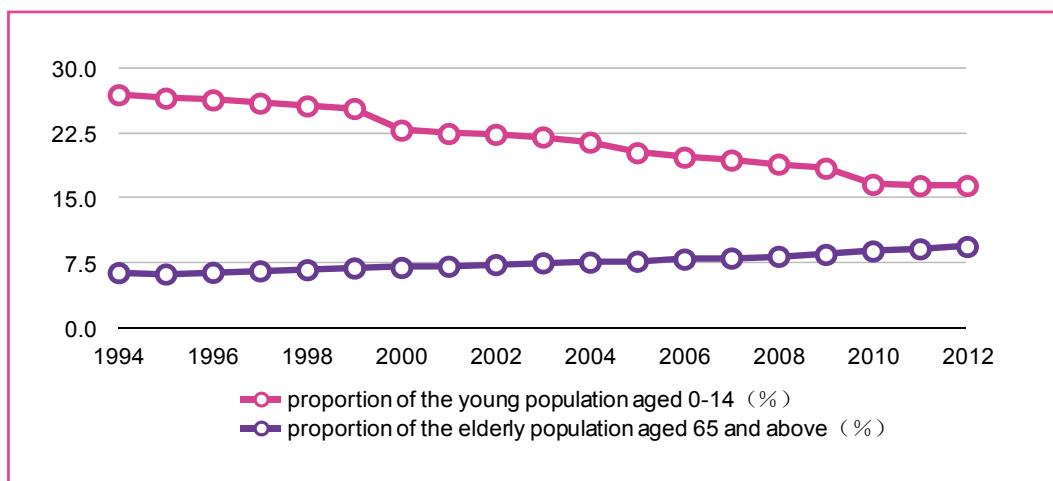
In the last two decades, the age structure of the population in China has experienced drastic changes. The proportion of population aged 0-14 declined continuously from 26% in 1994 to 16.46% in 2012, while the elderly population aged 65 and above went up steadily from 6.36% in 1994 to 9.39% in 2012 (see figure 1). This means China has entered into an aging society and an increasing elderly population can bring great challenges to the country's social security system, health service, commerce, and industry.

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Figure 1: Proportion of the elderly and young population



Source: National Bureau of Statistics of China: <http://data.stats.gov.cn>.

1. Includes the population of Mainland China; excludes Taiwan Province, Hong Kong SAR, and Macau SAR. In this report, demographic data without special notes all refer to those in Mainland China, which, unless otherwise noted, are cited from the website of National Bureau of Statistics (NBS) of the People's Republic of China: <http://data.stats.gov.cn>.

2. Country Report on Population and Development of China, September 2013, page 8.

3. Country Report on Population and Development of China, September 2013.

China is witnessing a significant increase of rural-to-urban internal migration (WHO, 2013), with 51% of the population living in urban areas (WHO, 2013). What was once a predominantly “rural China” is transforming into an “urban China.” According to the 6th National Population Census, migrants in China totaled 221 million in 2010.⁴ The proportion of migrants in total population grew from 9.2 percent in 2000 to 16.5 percent in 2010.⁵ The huge and increasing number of migrants brings great challenges and pressure to basic public services and social management due to the constraints of household registration management, land administration, social security, financial and taxation systems, and administrative regulations.

Facing all these challenges, the Government of China has set the goal of universal access to basic health services by 2020, and has increased input into the health sector since 2003 (see figure 2). In 2011, General Government Expenditure on Health consists 56 percent of the Total Health Expenditure (THE). The proportion of the Out-of-Pocket Expenditure reduced to 35 percent in 2011 from 60 percent in 2001.⁶

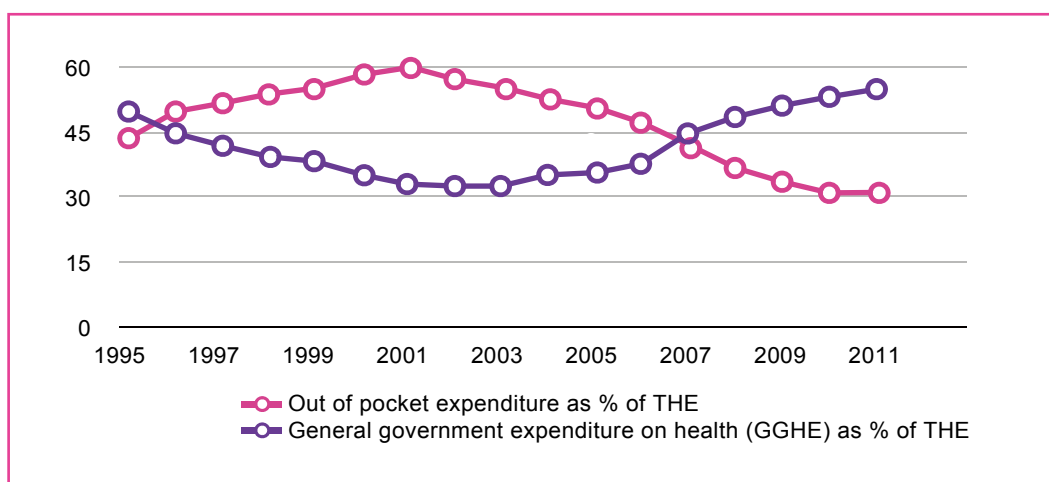
With the development of health services, life expectancy in China has been continuously rising during the last two decades. According to the national population census, the life expectancy in 2010 increased to 74.83 years from 68.55 years in

1990. The life expectancy of women (77.37 years in 2010) is higher than that of men (72.38 years in 2010).⁷

China was elected as a member of United Nations Human Rights Council on 12 November 2013, and thus far, has signed six Human Rights Conventions, and two Optional Protocols specifically concerning women and children’s rights. China has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 4 November 1980, the Convention on the Rights of the Child⁸ (CRC) on 2 March 1992, and two CRC optional protocols on 3 Dec 2002 and 20 Feb 2008. The country is yet to sign the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

This paper will discuss the sexual and reproductive health and rights (SRHR) in China, mainly along the areas of general sexual and reproductive health (SRH) policies, abortion policies, HIV/AIDS policies, adolescent SRH policies, policies related to gender-based violence, sexual orientation, gender identities, as well as grievance redress mechanisms for SRH services. China has been leading the path on issuing policy or legislative measures to protect vulnerable groups and promote social equality. However, the country has still a long way to go to achieve universal access to SRHR.

Figure 2: Health Financing



Source: <http://apps.who.int/nha/database/PreDataExplorer.aspx?d=1>

4. The definition of migrants here is in accordance with that used in the population census, referring to the population whose residences are inconsistent with the addresses indicated on their household registrations and have been away from their household registered localities for more than 6 months, but excluding the population within the urban jurisdiction whose current residences are different from those indicated on the household registrations (according to the census, in 2010 the population within the urban jurisdiction whose current residences are different from those indicated on household registration totaled 39.96 million).

5. The data related to migrants are from “The People’s Republic of China Country Report on Population and Development”, written by National Health and Family Planning Commission (NHFPC) of China, September 2013.

6. WHO National Health Accounts Database. Retrieved from <http://apps.who.int/nha/database/PreDataExplorer.aspx?r=1&d=1>.

7. NBS. Retrieved from <http://data.stats.gov.cn/workspace/index?a=q&type=adv&m=hgnd&x=index&y=time&z=region&index=A030401,A030402,A030403,A03060M,A03060N,A03060O®ion=000000&time=2002,-1&selectId=000000>.

8. With reservation: The People’s Republic of China shall fulfill its obligations provided by Article 6 of the Convention under the prerequisite that the Convention accords with the provisions of Article 25 concerning family planning of the Constitution of the People’s Republic of China and in conformity with the provisions of Article 2 of the Law of Minor Children of the People’s Republic of China.

Sexual and Reproductive Rights Status in China

China has committed itself to the International Conference on Population and Development (ICPD) and since then, has put in efforts to improve the SRHR of individuals. The ICPD Programme of Action urged governments to ensure the provision of the full range of comprehensive SRH information, education, and services, through the primary healthcare system to all individuals using rights-based perspectives.

Paragraph 7.6 of the ICPD Programme of Action notes that reproductive health services through primary healthcare should include:

- family planning counseling, information, education, communication, services, and referral;
- education and services for prenatal care;
- safe delivery and post-natal care;
- complications arising from pregnancy;
- treatment of infertility;
- prevention and management of consequences and complications of abortion;
- treatment of reproductive tract infections, sexually transmitted diseases, and other reproductive health conditions;
- information, education and counseling on human sexuality;
- breast cancer and cancers of reproductive system; and sexually transmitted infection including HIV/AIDS.

Progress made toward realizing SRHR is discussed below. Laws, policies, and strategies on maternal health, safe abortion services, HIV/AIDS, adolescent SRH services, gender-based violence, sexual orientation and gender identities, and grievance redress were reviewed.

Policies on Sexual and Reproductive Health

Over the last three decades, two ministries in China are mainly responsible for sexual and reproductive

health, namely the National Population and Family Planning Commission (NPFPC) and the Ministry of Health (MOH). Policies were issued separately to address two areas of SRH: family planning and maternal health. The Law on Maternal and Infant Health Care in 1994⁹ and Population and Family Planning Law in 2001¹⁰ provide the legal basis for the provision of reproductive health services in China. There are also a series of relevant policies or regulations that focus on priority areas such as quality of care (QoC) in family planning; maternal, pre-natal and child healthcare; adolescent SRH education and services; and the prevention and control of sexually transmitted diseases, including HIV/AIDS and STIs/RTIs. These include the Law on Maternal and Infant Health Care in effect since 1995, Population and Family Planning Law in effect since 2002, the Regulation on AIDS Prevention and Treatment for AIDS Initiatives in 2006, the Outline of the Guide of Health Education in Middle and Primary Schools in 2008, among others. However, China is yet to formulate an integrated SRH policy or strategy document.

China has prioritized family planning as a fundamental state policy. Citizens have a constitutional obligation to practice family planning. Based on this, a series of national policies, programs, and strategic plans have been formulated and implemented for ensuring safe child delivery, better health quality of newborns, safeguarding women's access to basic reproductive health services, and improving women's health status. These include the Law on Maternal and Infant Health Care in 1994, the Population and Family Planning Law in 2001, Regulation on Administration of Family Planning Technical Services¹¹ in 2001, and the Human Assisted Reproductive Technologies (ART)¹² in 2001.

Since 2002, the NPFPC has initiated the “national advanced county of quality of care in family planning” that aims to improve the QoC in the delivery of family planning services. This campaign has yielded great success and reformed the family planning program in China. By the end of 2012, the national government has awarded 1,156 national QoC advanced family planning counties, accounting for over 55 percent of all county units in China. Family planning services now aim to focus on QoC for clients and satisfaction of the “10 rights”¹³ in all urban and rural areas.

9. Issued on 27 October 1994 and became effective on 1 June 1995. Retrieved from http://www.gov.cn/banshi/2005-08/01/content_18943.htm. This law mandates premarital health exams for engaged men and women to check for hereditary illnesses, infectious diseases, major psychiatric disorders, and reproductive health problems to ensure the health of mothers and infants and improve the quality of the newborn population. However, this provision is deleted later in the amendment to the Regulation on Marriage Registration in 2003. Retrieved from <http://www.people.com.cn/GB/shizheng/1026/2023057.html>.
10. Issued on 29 December 2001 and became effective on 1 September 2002. Retrieved from http://www.gov.cn/banshi/2005-08/21/content_25059.htm. According to this law, couples of reproductive age that practice family planning shall receive, free of charge, the basic items of technical services specified by the State. Discrimination against and maltreatment of women who give birth to baby girls or who suffer from infertility are prohibited. Discrimination against, maltreatment, and abandonment of baby girls are also prohibited.
11. Issued on 13 June 2001 and became effective on the same day. Amended on 10 December 2004. Retrieved from http://www.gov.cn/banshi/2005-08/21/content_25060.htm.
12. Issued on 20 February 2001 and became effective on 1 August 2001. Retrieved from http://www.gov.cn/fwxw/bw/wsb/content_417654.htm. For the English version: http://english.gov.cn/laws/2005-08/24/content_25697.htm.
13. The ten users' rights include right to information, right to choice, right to safety, right to comfort, right to privacy, right to confidentiality, right to access, right to continual use, right to respect, and right to expression.

Family planning services for migrants have been an important issue since the 1990s. Several special regulations were issued successively,¹⁴ and gradually involved broader issues related to migrants' reproductive health, from the mere use of contraception alone to more comprehensive reproductive health services. Up to now, many provinces have initiated several local coping strategies, such as "equal services and administration" in Shanghai, Zhejiang, and other provinces, to achieve equal access of both migrants and local residents to basic public services, for migrants to enjoy the same services as local residents regardless of household registration.

Another policy entitled "Promoting Gradual Equalization of Basic Public Services," implemented since 2009, aims to ensure people's universal and equal rights to access basic public services, such as child and maternal healthcare, regardless of sex, region, and wealth. These include a range of services, including hospital delivery, pre-pregnancy and early pregnancy provision of folic acid for rural women to prevent neural tube defects, screening of breast and cervical cancers among rural women, and prevention of mother-to-infant transmission of HIV/AIDS.

With the effective implementation of such programs, the quality and coverage of maternal and

child healthcare in China have greatly improved. Prenatal checkup rate and maternal hospital delivery rate have increased to 94.95% and 99.2% respectively in 2012 (NHFPCC 2013: 34). In addition to family planning and child and maternal health, the government has also undertaken other measures, such as issuing regulations and policies on STDs, HIV/AIDS¹⁵ and adolescent SRH.¹⁶

Moreover, reproductive health services have become more professional with the government's promotion of their programs and provisions. The national profession of reproductive health consultants has been set up and corresponding national qualification examinations has been organized since 2010.

Significant achievements have been made on SRH under existing policies. However, disparities still exist within the country, from the east to the west, between urban and rural areas,¹⁷ between migrants and residents. Disparities also exist between majorities and ethnic minorities due to differences in culture and religion, language and education, geography, diet and nutrition, health behavior, and disease perception, which restrict equal access to the uniform health services. The case of Zhenzhen, a Jingpo woman (see Box 1) is a typical case that shows how culture may restrict the use of those "qualified" and "free" services.

Box 1: The Case of Zhenzhen

Zhenzhen, a 29-year-old Jingpo woman who was eight months pregnant, lived with her parents-in-law in a traditional Jingpo community in Yunnan province. She visited the doctor for prenatal care regularly since her third trimester. In the last visit, She was told that her baby did not look good and might come before the due date. The doctor suggested to get prepared for an institutional delivery in the next week.

When she discussed this with her families, however, they insisted that she should give birth at home instead of at the hospital. Her mother-in-law said, "Pregnancy or childbirth is a natural phenomenon for Jingpo women; it is not necessary to go to the hospital." Her sister-in-law told her, "Doctors will not give your baby's umbilical cord back but throw it into garbage can. It is terrible, isn't it? They do not know how unlucky it is for babies losing their umbilical cord."

According to the Jingpo people's traditions and beliefs, a baby boy's umbilical cord should be buried under the major pillar of the house, while a baby girl's should be buried under another pillar next to the major pillar after she was born, indicating that this is "my" place of birth. According to their belief, the loss of babies' umbilical cord will bring bad fortune to the baby as well as to the family. The free delivery policy has benefited lots of people, but it seems to have little or no effect on ethnic minorities or indigenous communities because of their traditional cultural beliefs.

Source: Adapted Qinghai, from *Study on Traditional Beliefs and Practices regarding Maternal and Child Health in Yunnan, Guizhou, Qinghai and Tibet*. CDPF Publication No.8 Research Team of Minzu University of China, April 2010. MDG Achievement Fund in China

14. In 1991, the NPFPC issued "Management Measures on Migrants' Family Planning" amended in 1998 with a new title of "Administrative Regulation of Migrants' Family Planning." In 2004, the NPFPC issued "Several Rules of Administration and Services Work on Migrants' Family Planning," which explicitly proposes the idea of "reproductive health services" for migrants instead of simple contraception. In 2008, a new "Administration Regulation on Migrants' Family Planning" replaced the policy issued in 1998.

15. See section on "HIV/AIDS".

16. See section on "Adolescent and Young People".

17. China-WHO Country Cooperation Strategy 2013–2015: Bridging the past towards a new era of collaboration. Beijing: Ministry of Health P.R.China. 2013.

Efforts are underway since 2013 to provide opportunities for the integration of reproductive health services. The MOH and the NPFPC merged into National Health and Family Planning Commission (NHFPC) in 2013, which, through resource integration and mutual complementation, hopes to improve accessibility and quality of grassroots family planning and reproductive health service. Before the advantage of the new Commission comes into practice, however, great challenges related to organization reconstruction, such as unclear responsibilities, resource contest, services vacuum, are faced within a relatively long period.

Furthermore, in 28 December 2013, the government announced that couples are allowed to have two children if either the husband or wife comes from a one-child family according to the “Decision of The Standing Committee of The National People’s Congress’s on Adjusting and Completing Family Planning Policy,”¹⁸ which means the loosening up of the so called “One Child” policy implemented in China for over 30 years.

Policies on Legal and Safe Abortion

The ICPD Programme of Action Paragraph 8.25 calls for

- the need to reduce the recourse to abortion through contraception,
- pre- and post-abortion counselling,
- access to safe abortion services, where abortion is not against the law, and
- access to services for the management of complications arising from abortion.

Abortion is legal on all grounds in China. Abortion services are provided in both public and private health facilities and no legal restrictions are placed on the availability of safe abortion services. Since the 1980s, abortion services are available on request for women, although it used to be prohibited in the 1950s.¹⁹ However, sex-selective abortion for nonmedical purposes is

strictly prohibited by the Population and Family Planning Law, which came into force on 1 September 2002.²⁰

Tradition and culture dictate the preference for male heirs to ensure the family line. This “son preference” has resulted in a skewed sex ratio at birth, with 119 males per 100 females, which is much higher than the global average (UNFPA, 2010). Using ultrasonic techniques to conduct non-medical sex determination has been strictly prohibited in the case of sex selection.²¹

Young girls used to need parental consent before obtaining an abortion. However, with the development of both public and private medical facilities that provide abortion services, parental consent is no longer a precondition. Further, assistance centers/ institutions have been set up in over 16 cities²² to support young girls experiencing unintended pregnancies, where they can get free services for SRH consultation, psychological consultation, pregnancy testing, post-coital contraception, and abortion surgery with privacy protection.

However challenges still exist on ensuring safe abortion services, improving post-abortion care and reducing repeat abortion rate among young girls. Due to the demand of health institutions for pursuing higher economic profits, induced abortion has become a profit-making activity, highly promoted by some, especially private hospitals, to unmarried young girls. In 2007, the NPFPC issued the “Basic Standards of Family Planning Technical Services Assessment (2)”²³ which particularly regulates abortion with suction evacuation under anesthesia.²⁴ Although China has implemented such policy to ensure the quality of abortion services, pre- and post-abortion counseling and care are not standardized as a necessary part of services.

18. See <http://www.chinacourt.org/article/detail/2013/12/id/1169696.shtml>.

19. China has experienced dramatic changes on population policy in the second half of the 20th century from encouraging birth in the 1950s to making family planning a basic national policy written into the Constitution in the late 1970s. On 20 April 1950, the Government’s Health Ministry and Military Health Ministry issued “Measures of Restricting Abortion in the Units and Army” which prohibited abortion without approval of the husband, doctors, and head of units. On 31 December 1952, the Health Ministry formulated another regulation for the whole country, the “Interim Procedure on Restrict Birth Control and Abortion” which prohibited abortion without medical purposes.

20. Article 35. Retrieved from http://www.gov.cn/banshi/2005-08/21/content_25059.htm.

21. Article 35. Retrieved from http://www.gov.cn/banshi/2005-08/21/content_25059.htm.

22. For example, Kunming, Beijing, Ningbo, Hainan, Shanghai, Xiamen, Fuyang, Wuhan, Chongqing, etc.

23. Retrieved from http://www.gsjsw.gov.cn/html/ldjh/17_08_17_604.html.

24. The induced abortion with suction evacuation under anesthesia is widely promoted by some private hospitals under the name “Painless Abortion.”

Box 2: The Case of Li Xiao

Li Xiao is a 19-year-old girl. She had her first sexual experience when she was 15. Due to lack of knowledge about contraception, she was pregnant after having sex with her first boyfriend. She was so afraid and had not enough money. So, she sought help from a private clinic who prescribed her a home-based medical abortion. Fortunately, there was no complication. Since then, she has realized that information on sexual health is very important to her but she has no place to seek help. She only got to know about condom and emergency pills from her friends.

Between 15 and 19, she has had three sexual partners. None of her male partners were willing to use condoms and she did not know how to negotiate with them. She has three successive induced abortions in a private hospital. She now suffers from pelvic inflammatory disease and endometritis as well as menstrual disorder associated with dysmenorrhea.

Source: As reported by an experienced obstetrician. Interviewed by Rui Deng. Unpublished.

Policies on HIV/AIDS

The discrimination on the basis of actual or presumed HIV status is prohibited by existing human rights standards as the UN Commission on Human Rights defined in 1996. The ICPD Programme of Action further called for non-discrimination towards people living with HIV.

HIV/AIDS prevalence remains low in China with a total of 780,000 (620,000-940,000) people in 2011 living with HIV, accounting for 0.058% (0.046-0.070%) of the total population.²⁵ Sex remains the primary mode of transmission. Of the 780,000 people living with HIV, 63.9% were infected by sexual transmission.

At the early stage of HIV epidemic, the Government of China's response was slow and passive. The turning point is the adoption of the Recommendations on Strengthening AIDS Prevention and Control approved by the China State Council and the Ministry of Health in September 1995. Since then, the government has increasingly acknowledged the magnitude of the HIV epidemic and its potentially destructive impact on socio-economic development and human health.

Strong policies and actions of wide range have been taken by the authority to respond to the epidemic with great support from international organizations (He & Detels, 2005; Wu, Rou, & Cui, 2004). For instance, in 1997, the government issued the Responsibilities of Ministries and Departments of State in AIDS Control and Prevention. One year later, the Medium- and Long-term Programs (1998-2010) for the Prevention and Control of AIDS was launched. Since 2001, the State Council Office has developed specific "Action Plan for Reducing and Preventing the Spread of HIV/AIDS" every five years. Between 2010 and 2011, while implementing

the national "Action Plan," the government issued the "State Council Notice on Further Strengthening the AIDS Response (the Notice)" to emphasize the implementation of IEC activities, surveillance and testing, comprehensive interventions, coverage of ART, and multisectoral coordination and collaboration (Ministry of Health of the PRC, 2012).

In early 2006, the State Council issued the first legal framework, "The Regulation on AIDS Prevention and Treatment (Decree No. 457) for AIDS initiatives," which emphasizes the accountability of government at all levels (State Council AIDS Working Committee Office & UN Theme Group on AIDS in China, 2007; Wu, Wang, Detels, & Rotheram-Borus, 2010). Article 3 of this regulation explicitly protects the legal rights of HIV patients, which includes the right to marriage, employment, assessment of medical treatment, and education. Based on this regulation, arbitrary discrimination on the basis of HIV status of an individual is prohibited. In April 2010, China cancelled its long-standing restrictions that confined all foreigners living with HIV/AIDS entry into China (UNAIDS, 2011).

Meanwhile, an anti-discrimination film entitled "Together" was widely disseminated for public campaigns. HIV/AIDS related stigma and discrimination, however, still exist. For example, in 2013, the Ministry of Commerce issued a draft guideline "Measures for the Administration of Bathing Industry,"²⁶ in which AIDS patients along with the patients of STD and infectious skin diseases are not allowed to enter into public bathing places.

There is also no explicit non-discrimination laws or regulations that specify protection for vulnerable subpopulations. The implementation of anti-discrimination policies and strategies regarding HIV/AIDS remain as one of the challenges confronted by China.

25. National Health and Family Planning Commission of China. (2013). *The People's Republic of China Country Report on Population and Development*, pp. 36-37.

26. Retrieved from <http://tfs.mofcom.gov.cn/article/as/201310/20131000341580.shtml>.

Policies on Adolescent Sexual and Reproductive Health Services

The right of adolescents to appropriate services to meet their SRH needs was acknowledged in a special section in the ICPD Programme of Action. Countries were called upon to protect and promote the rights of adolescents to reproductive health education, information, and care (7.44 and 7.46, ICPD Programme of Action).

At present, China has no specialized legislative measure to addresses adolescent SRH services, but formed a legal system with some relevant separate laws and regulations to guarantee adolescents' rights to development, education, and health since 1994 (see Table 1).

However, up to now, there is no specific policy or strategy document on provision of SRH services for Chinese adolescents specifying that SRH services should be available for all, irrespective of marital status. There is also no official document that permits minors to give informed consent on their own behalf in relation to their SRH.

Difference between Median Age at Marriage and Legal Minimum Age at Marriage

The China Marriage Law of 1981 stipulates that the legal minimum age of marriage is at 22 years for men and 20 years for women.²⁷ Irrespective of educational status, most women marry between the ages 20-24. But for men, approximately 53.8% percent with higher education tend to marry later, between the ages of 25 and 29. The rate of early marriage for young women aged 15-19 years fell from 4.6% in 1990 to 1.2% in 2000 and from 1.8% to 0.3% for young men.²⁸

However, some NGOs reported certain phenomenon of child brides in some small areas in Fujian and Hunan provinces of China. According to that NGO's investigation, it was estimated that there were 120,000 to 600,000 child brides²⁹ in Putian area of Fujian province alone. The large statistical sampling, however, means the estimation was too rough to make any reasonable judgment, regardless whether the sample was randomized. Further well-designed studies need to be undertaken to carefully examine the scale and causes of the phenomenon of child brides.

Table 1: Laws and regulations with regard to adolescent

Year	Law/regulation	Content related to adolescent sexual and reproductive health services	Data source
1994	Law of the People's Republic of China on Maternal and Infant Health Care	Article 7: Provide premarital counseling and checkups for all citizens	The central people's government of the PRC http://www.gov.cn/banshi/2005-08/01/content_18943.htm
2001	Law of the People's Republic of China on Population and Family Planning	Article 13: in accordance with characteristics of students, schools should develop specific plan to provide education of adolescence and sexual health.	The central people's government of the PRC http://www.gov.cn/banshi/2005-08/21/content_25059.htm
2006	Law of the People's Republic of China on the Protection of Minors	Article 3: Every Chinese minor (under age 18) has legal rights to life, development, protection, education and participation regardless of gender, ethnicity, racial, family background and religion. Article 10: Discrimination towards female and disable minor is severely forbidden.	The central people's government of the PRC http://www.gov.cn/flfg/2006-12/29/content_554397.htm
2006	China's Action Plan for Reducing and Preventing the Spread of HIV/AIDS (2006-2010)	High schools and university should conduct HIV-related health education, and organize students to participate in activities supporting and caring PLWH.	General Office of State Council
2008	Outline of the Guide of Health Education in Middle and Primary Schools	Provide health education and psychological counselling for all Middle and Primary students	Ministry of Education of the PRC http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s3325/201212/145679.html

27. WHO. Health of Adolescents in China. Retrieved from http://www.wpro.who.int/topics/adolescent_health/china_fs.pdf. 23 April 2014.

28. WHO. Health of Adolescents in China. Retrieved from http://www.wpro.who.int/topics/adolescent_health/china_fs.pdf. 23 April 2014.

29. The data were obtained from a personal blog and we could not find reliable resources reporting this social problem. It seems that the government has blocked such information so the reliability of the report should be further verified.

Extent and Policies on Gender-based Violence

The ICPD Programme of Action urges countries to take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents, and children.³⁰

Domestic violence is highly prevalent in China. Domestic violence here refers to the behaviors that bring family members physical and emotional injury by hitting, binding, doing harm to, restraining freedom, and other means.³¹ However, sexual violence is not explicitly defined within the domestic violence act.

According to the Third Survey on Women Social Status in China in 2010, 24.7% women aged 18-64 have suffered domestic violence and human rights violation from their husbands, including insult and abuse, hitting, restricting freedom, economic control, and forced sex during their marriage.³²

Domestic violence, psychological violence in particular, was found to be more common in rural areas than in urban areas. A sampling survey with 3,998 women aged 18 years old and above from rural areas in the three provinces of Jilin, Anhui, and Chongqing conducted in 2004-2005 shows that the prevalence of spousal violence against women was 64.8% in a lifetime. Psychological violence was the most common form, followed by physical violence and sexual abuse. The prevalence rates for psychological, physical and sexual violence in a life time were 58.1%, 29.7%, 16.7%, respectively.³³

Evidence shows women and men experience different forms of domestic violence. Ma Chunhua, an associate professor in China Academy of Social Sciences, argues that women suffer several times more than men from hitting and forced sex.³⁴

Sexual harassment and forced sex are typical forms of violence faced by women. An investigation shows that 7.8% of women have suffered sexual harassment during work and study.³⁵ In a study based on 11 big hospitals in Beijing, 32.5% of female adolescents aged 15-22 who went to the

hospitals for abortion services reported forced first sex.³⁶ During January to October 2007, 27,000 rape cases were recorded by police stations nationwide.³⁷

In recent years, child sexual abuse has gained public attention. According to a report by the Guangzhou intermediate peoples' court, there were more than 50 child abuse cases involving children under age 14 every year since 2010.³⁸ Another research in four provinces shows that 16.7% female students have experienced unwanted sex before the age of 16 years, while the number for male students is 10.5%.³⁹

Legislation Related to Gender-based Violence

To prevent domestic violence on women, China has put great efforts in legislation and amended several laws related to this issue since the Fourth World Conference of Women in 1995.

The "Marriage Law of the People's Republic of China" was amended in 2001 and later again in 2013, in which Article 3 adds the provision of "prohibiting domestic violence."⁴⁰ In 2005, "The Law on the Protection of the Rights and Interests of Women" was amended, in which Article 46 explicitly "prohibits domestic violence on women, and where the Government takes measures to prevent and deter domestic violence."⁴¹

In "On Preventing and Deterring Domestic Violence" jointly issued by the Supreme People's Procuratorate, the Ministry of Public Security, and five other major Government ministries in 2008, police intervention is permissible to deal with domestic violence cases; social agencies are mobilized to provide legal aid, medical verification, and social security assistance to victims. Many "Safeguarding women's rights collegial panels" and "Anti-domestic violence collegial panels" were set up in courts. Domestic violence shelter centers were established in almost 60 cities.⁴²

Since 2000, 28 provincial, district, and municipal

30. See ICPD Para 4.9 and 7.39.

31. See explanation of the Supreme People's Court on several questions related to application of "Marriage Law of People's Republic of China." Retrieved from <http://acwf.people.com.cn/GB/99061/102844/102881/6270754.html>.

32. "Major Statistics Report of the Third China Women Social Status Survey."

33. Fenmin Zhao et al. 2006, "Investigation on the patterns and knowledge regarding domestic violence among married women in rural areas of China." *Chinese Journal of Epidemiology*. 27 (8).

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37. Erdong Song and Huilin Sun. 2007. *Social public security report in 2007*; Song, Xin, Ru et al, eds. 2008. *Social Aspect Analysis and Forecast of China Society*.

38. Yangcheng Evening News. 11 November 2013, <http://www.chinanews.com/fz/2013/11-11/5488331.shtml>

39. Chen J, Dunne MP, Han P. "Child sexual abuse in China: a study of adolescents in four provinces", *Child Abuse and Neglect*, Volume 28, Issue 11. Among these unwanted sex experiences, sexual penetration was rarely reported (1%), while 7% reported at least one type of physical contact abuse (female 8.9%, male 5.0%)

40. See http://www.gov.cn/banshi/2005-08/21/content_25037.htm, and <http://china.findlaw.cn/info/hy/hunyinfagui/hunyinfalv/80924.html>.

41. See <http://www.jincaio.com/ja/03/law03.44.htm>.

42. "The Seventh and Eighth Report on Implementing Convention of Elimination All Forms of Discrimination against Women in People's Republic of China. Retrieved from <http://www.nwccw.gov.cn/?action-viewnews-itemid-160853-page-1>.

areas have formulated local anti-domestic violence law or policies. Currently, the national law especially on anti-domestic violence is on the way of legislation.⁴³

However, implementation of these anti-domestic violence laws is still facing significant challenges as we notice the large amount of occurrences of domestic violence. Effective enforcement and implementation of the legislation pertaining to gender-based violence should be focused on.

In China, rape is considered a crime according to the Criminal Law came into force in 1979. Rape is defined as violating the willingness of women to force them to have sexual intercourse with men by violence, coercion, and other means.⁴⁴ One of the core elements defining a rape is the motivation of behavior to have sexual intercourse.⁴⁵ Ordinarily, the burden of proof lies on the complainants. However, for rape to girls under 14 years old, the complainant has the responsibility to provide proof that the defendant knew the age of the victim, while the defendant has the responsibility to prove that he really did not know the age of victim.⁴⁶

There is no explicit provision that whether marital rape is considered a criminal or non-criminal act. However, marital rape has aroused heated debates in China in which three branches of opinions generally emerge: as crime, as a non-criminal, morally inappropriate act, and as a crime under certain circumstances.

Sexual harassment is explicitly prohibited in Article 40 of "The Law on the Protection of the Rights and Interest of women" amended in 2005,⁴⁷ which marked a milestone against sexual harassment. Some provincial regulations specifically make statutory provisions on sexual harassment in the workplace,⁴⁸ although no specific national law has ever addressed this issue. However, gender-biased social atmosphere and imbalanced power relationship between victims and offender block victims' rights to complain, and especially seek legal assistance.⁴⁹

China does not have any tradition of female genital mutilation, so there is no law to address this issue. However, there are laws prohibiting other forms of violence against women. For example, in Article 37 and 38 of "The Law on the Protection of the Rights and Interest of women," there are explicit provisions to prohibit restraining women's freedom, violating women's rights to health, discriminating against infertile women and women who delivered girls, harming women through violence or in the name of superstitious belief, and abusing or abandoning disabled, sick, and elderly women.⁵⁰

Legislation and Policies on Sexual Orientation

In China, there is no explicit legal provision determining if same-sex sexual activities between consenting adults is legal or illegal. Some advocates argue same-sex sexual activities was decriminalized when Article 160⁵¹ on hooliganism of the Criminal Law in 1979 was removed in the 1997,⁵² but this argument is questioned by scholars claiming China neither criminalized nor decriminalized homosexual behavior.⁵³

In actuality, same-sex sexual behavior has been more tolerated by the legal system. In 1991, the Ministry of Public Security made a decision concerning a co-habitant lesbian couple and a gay marriage case saying that there is no explicit provision towards homosexual behaviors, and hence by principle, the two cases were not accepted by courts as not suitable for penalizing in the name of hooliganism.⁵⁴

Furthermore, homosexuality is not even considered as an affliction in China currently. In 20 April 2001, the Chinese Psychosis Science Association issued a report on the "Categories and Diagnosis Standards of Mentally Disturb in China (3rd edition)," where homosexual behavior is not considered as a disease, but related to one's feeling

43. See <http://www.women.org.cn/allnews/02/3914.html>.

44. "Answers of the Supreme People's Court to the question of whether voluntary sexual behavior between girl under 14 age and actor who know for sure the age of the girl belongs to the crime of rape." See <http://www.szxingshi.com/298w.html>.

45. Difference between rape, forced obscenity, and insult women crime. See <http://www.szxingshi.com/70w.html>.

46. "Answers of the Supreme People's Court to the question of whether voluntary sexual behavior between girl under 14 age and actor who know for sure the age of the girl belongs to the crime of rape." See <http://www.szxingshi.com/298w.html>.

47. See <http://www.china.com.cn/chinese/PI-c/953097.htm>.

48. Like Article 33 of the Regulations on the Protection of the Rights and Interests of Women in Si Chuan province, which said "work units and employer should take measures to deter sexual harassment in the workplace." See http://www.npc.gov.cn/npc/xinwen/djrd/sichuan/2008-05/27/content_1430553.htm.

49. See the article by the research group of "sexual harassment at the workplace" in 2009, which studied 20 cases of sexual harassment, involving in perceptions of various stakeholders within these cases from gender perspective. "Sexual harassment at the workplace: Inequality in powers and identities shown in twenty cases", Collection of Women's Studies. 2009. Series No.96.

50. See <http://www.jincaoj.com/fa/03/law03.44.htm>

51. Article 160 of the Criminal Law in 1979 on hooliganism describes three kinds of behaviors related to same-sex sexual activities, such as sodomy with child, forced sodomy with adolescent, sodomy multiple times by violence, threat, and other means.

52. Criminal Law of the People's Republic of China, amended in 1997. Retrieved from <http://www.chinalawedu.com/falvfagui/fjg21994/182257.shtml>.

53. Guo Xiaofei. 2007. "Does China ever non-criminalize homosexual behavior." No. 26 of Sex Research in China, Wanyou press, Gaoxiong city. <http://sex-study.org/news.php?isweb=2&sort=76&id=1128>.

54. First lesbian case in China which shocks the Ministry of Public Security. See <http://www.douban.com/group/topic/1528392/> and the Legal News. See http://news.xinhuanet.com/legal/2005-10/27/content_3690990.htm.

55. Guo Xiaofei. 2007. "Does China ever non-criminalize homosexual behavior", No. 26 of Sex Research in China, Wanyou press, Gaoxiong city. <http://sex-study.org/news.php?isweb=2&sort=76&id=1128>.

of well-being.⁵⁵ In 2004, the government released the number of gays in China for the first time, acknowledging homosexuality.⁵⁶

Discrimination in employment based on sexual orientation is not addressed by any. The Labor Law of the People's Republic of China (2008)⁵⁷ and the Law of the People's Republic of China on Promotion of Employment (2008)⁵⁸ are two laws that have specific provisions to prohibit discrimination based on sex orientation, but in both laws, sex orientation is not included. In order to prevent discrimination based on sexual orientation, many renowned experts, law professors, and supporters are trying to broaden the scope of sex discrimination prohibition by submitting anti-employment discrimination law (Proposal), which includes the prohibition of discrimination based on sexual orientation.⁵⁹

The government does not acknowledge the legality of same-sex marriage. In the Marriage Law of the People's Republic of China, a marital relationship is considered to be between a man and a woman.⁶⁰ Many advocates like Professor Li Yinhe and other supporters of same-sex marriage are making great efforts to legalize the marriage between the same sex couples by proposing a bill of the marriage between the same-sex couples in China.⁶¹

The Adoption Law⁶² has no explicit provision that forbids joint adoption by same-sex couples. However, China has still a long way to go before its law, as well as social culture, accepts same-sex marriage.

discrimination from the public.

To regulate the market of gender reassignment, the Ministry of Health issued a regulation "Management Rules of Gender Reassignment Technology (draft for discussion)" in 2009, in which people who request gender reassignment surgery should satisfy several conditions.⁶³

There is no specific legal provision about transgender people changing their gender. However, some provinces, like Sichuan and Henan, have carried out active explorations to give new life to transgender people since 2002 by permitting them to undergo gender reassignment surgery. After surgery, some transgender people have successfully registered their new genders in the national registration system.⁶⁴ Furthermore, transgender people are able to marry the opposite sex and register in some cities, such as Chengdu and Lanzhou, after they changed their gender on their citizen identity card.⁶⁵ In March 2004, the first "gender-variant" couple was married and aroused nationwide attention.⁶⁶ Hong Kong will soon set the precedent of amending its law to explicitly accept the marriage of gender-variant people.⁶⁷

The current law does not explicitly address the issue of discrimination in employment based on gender identity, and there has been no lawsuit recorded relating to this issue, partly because the number of transgender people is still small. Most transgender people are self-employed (Li Yan 2010).⁶⁸ Some may be discriminated in the process of looking for jobs. Generally, there is still a long way to go for transgender people in China.

Legislation and Policies on Gender Identities

In China, cross-dressing and other activities of transgender people are not criminalized. Many hospitals provide the gender reassignment treatment/surgery or body modifications upon individual customer's request. Some transgender people got their new lives after undergoing gender reassignment surgery. However, they still suffer

56. See http://news.xinhuanet.com/health/2004-12/01/content_2280536.htm.

57. The Labor Law of the People's Republic of China came into force on 1 January 2008. See <http://www.womenofchina.cn/html/womenofchina/report/75433-1.htm>.

58. The Law of the People's Republic of China on Promotion of Employment was effective on 1 January 2008. See <http://www.lawinfochina.com/display.aspx?lib=law&id=6382&CGid=\>.

59. See <http://view.news.qq.com/a/20090309/000036.htm>.

60. See http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384064.htm.

61. See http://book.sina.com.cn/longbook/1103687662_tongxingliandiaochoa/78.shtml.

62. See http://www.gov.cn/banshi/2005-05/25/content_849.htm.

63. One of pre-condition is that the patient undergoes psychological treatment for more than one year before surgery can be approved. See http://www.gov.cn/jrzq/2009-06/16/content_1341988.htm.

64. "Answer to questions related to citizen changing the sex in registration system after having surgery" by the Ministry of Public Security in 2008. See <http://gafw.jl.gov.cn/fujian.jsp?id=297edff82e94b52a012e9938c91600ac>. Also see the article by Deng Zhihui, "Expecting social identity after changing sex," Police for People. 2003. See also the Ph.D. thesis of Li Yan "Research on the legal problems of changing sex." Fudan University. April 2010.

65. See <http://news.sina.com.cn/c/2003-09-12/0729736266s.shtml>. <http://news.sina.com.cn/c/2004-03-16/05512057255s.shtml>.

66. See <http://news.sina.com.cn/c/2004-03-16/05512057255s.shtml>.

67. See <http://news.163.com/13/0514/09/8UQVUHFI00014JB6.html>.

68. See Li Yan. 2010. Research on the Legal Problems of Changing Sex." PhD Thesis. Fudan University.

Recommendations

China has achieved great successes in promoting and realizing SRHR of individuals since the ICPD in 1994. General or specific laws, policies, and strategies addressing maternal health, safe abortion services, HIV/AIDS, adolescent SRH, gender-based violence, sexual orientation, gender identity, and grievance redress mechanisms have been issued or modified in succession. The notions of rights, comprehensive SRH services, gender equality, vulnerability, and cultural diversity have gradually been presented in those policies.

However, China still faces many challenges, such as disparity between different peoples and areas, services segmentation, cultural discrimination towards minority, and culturally vulnerable people, among others. To realize people's SRHR in China, we would like to make following recommendations:

- Improve culture sensitivity and appropriateness of SRH services to ensure the right of ethnic minority groups to these services.
- Explore a unified rural-urban healthcare service system to ensure the rights of migrants to SRH services.
- Ensure safe abortion services for adolescents and young girls and reduce risks to repeat abortions by provision of contraceptive information and services as well as comprehensive sexuality education, regardless of marital status.
- Push and strengthen pre- and post-abortion counseling and care while restricting commercial promotion of abortion for all young people.
- Ensure legislation prohibiting arbitrary discrimination on the basis of the HIV status of the individual in all areas including health.
- Continue to push forward anti-discrimination advocacy related to HIV/AIDS in civil society.
- Advocate for policy makers to develop a particular regulation that specifically addresses adolescent's SRHR to ensure accessibility, acceptability, and affordability of SRH services for all adolescents.
- Ensure legislation against gender-based violence to be effectively implemented.
- Expand the scope of sex discrimination prohibition in Labor Law and the Law on Promotion of Employment to include the prohibition of discrimination based on sexual orientation.
- Explore national legislation pertaining to identification, discrimination, and employment of transgender people.
- Continue efforts to ensure GRMs as powerful instrument for identification, assessment, and resolution of complaints, and to improve SRH services for all women, girls, and men in China.

- Strengthen policy of GRMs for more comprehensive SRH services rather than contraception operation only.
- Reframe medical appraisal mechanism to ensure impartial appraisal for complainant.

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About YHDRA

The Yunnan Health and Development Research Association (YHDRA), previously entitled the Yunnan Reproductive Health Research Association (YRHRA), was founded in March 1994. It is the first officially registered nongovernment academic organization focusing on multi-disciplinary reproductive health research in China. YHDRA is a centre for medical professionals and social scientists with 186 members from several dozens of colleges/universities, scientific research institutes, family planning departments, health facilities, and media.

YHDRA aims to promote synergy between the social sciences and medical sciences, conduct studies on social, cultural, and economic factors that influence human health and development, carry out theoretical researches and social services related to health and development, and provide scientific evidence for decision-making bodies and community-based organizations.

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