

International Disability Alliance (IDA)

Member Organisations:

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
World Blind Union, World Federation of the Deaf,
World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS), Pacific Disability Forum

IDA proposals for the list of issues on China CRPD Committee, 7th Session

Introduction

This submission seeks to provide supplementary information to the Committee on implementation of the CRPD in mainland China for the purposes of compiling the list of issues. The submission is based on consultations with mainland China organisations of persons with disabilities and NGOs, and research carried out by independent experts, who wish to keep their identities anonymous.

Transversal issues

Despite China's ratification of the CRPD and increased rights rhetoric in new and reformed pieces of legislation, the approach to disability rights remains entrenched in the medical model as seen in the definition of persons with disabilities¹ and enduring terminology and language of disability rights discourse. The dominating medical model view of persons with disabilities, reflected in the population survey, is what leads to the very small official figure of 6.34% of the population being recognised as persons with disabilities, leaving millions of people out of the scope of protection of rights provided by the CRPD.

Laws and policies on disability rights are in place, and on paper appear to provide protection against discrimination, and the promotion of the broad enjoyment and exercise of civil, political, social, economic and cultural rights of persons with disabilities. However, laws and policies are often formulated as sets of principles which do not provide clear guidance on essential elements of implementation such as through definitions or indicating criteria to clarify the concrete meaning of provisions, sanctions to be imposed for infringements of laws, remedies available for victims, in secondary and operational legislation and policy instruments. The first article of the Law on the Protection of Disabled Persons LPDP states "This Law is formulated in accordance with the Constitution for the purposes of protecting the lawful rights and interests of, and developing undertakings for disabled persons, and ensuring their equal and full participation in social life and their share in the material and cultural wealth of the society." This provision stresses "lawful rights and interests", which is different from "the full and equal enjoyment of all human rights and fundamental freedoms by

¹ The basic definition of disability, first stated in China's Law on the Protection of Disabled Persons in 1990, is retained in current legislation, regardless of incompatibility with the CRPD, after its revision in 2008: A person with disabilities refers to one who has abnormalities of loss of a certain organ or function, psychologically or physiologically, or in anatomical structure and has lost wholly or in part the ability to perform an activity in the way considered normal. The term "a person with disabilities" refers to one with visual, or hearing, or speech, or physical, or intellectual, or psychiatric disability, multiple disability and/or other disabilities (Article 2, Law on the Protection of Disabled Persons- LPDP)

all persons with disabilities” which is used in the UN Convention. “Lawful rights and interests” refer to rights and interests that are defined by Chinese government legislation, such as social welfare and policies that benefit disabled people which essentially differs from the full scope of basic human rights. In general, the emphasis is on rights being granted or safeguarded by the State, rather than asserting the principle of inalienable rights guaranteed by the law, and hence laws lack enforceability. As a consequence, individuals are rarely able to invoke their rights before the authorities or before courts, and the granting of rights is heavily reliant on the positive measures taken by the State through disability specific provisions such as employment quotas, welfare factories and special education institutions, which themselves restrict the range of educational and vocational choices open to persons with disabilities, infringing their self determination and autonomy.

Initiatives targeting persons with disabilities are concentrated in the urban centres much to the detriment of the larger proportion of persons with disabilities who live in rural areas (75%). Furthermore, while laws and policies are set at the national level, resources for public social services do not come entirely from the central government and there is a heavy responsibility and burden on the local authorities at and above county level to raise local revenue in order to implement these policies on the ground, leading to significant regional discrepancy of provision of services and enjoyment and exercise of rights. Particularly, poorer rural regions cannot fill resource gaps resulting in the absence or lower provision of services and assistance available to persons with disabilities in those regions. Implementation on the ground is also exacerbated by corruption at the local level where local officials exercise wide discretion in managing goods and services directed at persons with disabilities.

There is a stark lack of diversified consultation by the government with organisations of persons with disabilities: the sole official representative of disabled people in China remains the China Disabled Person’s Federation (CDPF) which in practice has been co-opted by the Government and dominates the disability rights agenda. The CDPF’s status as the representative body of persons with disabilities is affirmed by law.² There is no independent body to monitor cases of disability-based discrimination, and DPOs face enormous risks and challenges in raising disability-based discrimination and rights violations.

Finally, terminology and language employed to refer to persons with disabilities in government and public discourse belong to the medical, welfare and charity model and are today viewed as pejorative, e.g. “old, weak, sick and disabled” (*Laorubingcan*); “impaired and sick” (*canji*). The latter term has now become the term most widely used to represent “disabled” or “disability”, as in the *Canjiren Lianhehui* (Disabled Person’s Federation) or the *Canjiren Baozhangfa* (Law on the Protection of Disabled Persons, LPDP). Even the CRPD is translated in all government documents using the term *canji*. However, some DPOs and rights activists in China now prefer to use the more progressive term *canzhang* (impaired and obstructed) which approximates more closely to the modern concept of “disabled” and better reflects the social model. Many have suggested that *canzhang* should be promoted as a way of asserting more progressive values and making a break with the past. But the Chinese authorities, including the CDPF leadership, have decided to retain the older terminology, arguing that the words *canji* and *canjiren* (lit. “impaired and sick person”) are more widely accepted throughout Chinese society. This argument seems to highlight a basic unwillingness to abandon the medical model of disability and challenge deep-seated social stigma. It is particularly unfortunate that the older terminology should be applied throughout

² The China Disabled Persons’ Federation (CDPF) is mandated under the auspices of Article 8 of the Law of the People’s Republic of China on the Protection of Disabled Persons (1990). Article 8 states that: «China Disabled Persons’ Federation (CDPF) and its local branches shall represent the common interests of disabled persons, protect their lawful rights and interests, unite, educate disabled persons, and provide service for disabled persons. »

the Chinese version of the CRPD and China's first report to the CRPD Committee (though this will not be obvious to those who read the report in translation).

Purpose and General Obligations (arts. 1 – 4)

1. How does the Government account for the significant divergence from WHO statistics that estimate 15% of persons are persons with disabilities, whereas in China the figure is estimated at 6.34% (para 3 of State report)?
2. What steps are being taken to amend the definition of persons with disabilities in the Law on the Protection of Disabled Persons (LPDP) (paras 1-2) to eliminate a medical model approach to disability and promote a social and human rights approach in compliance with Article 1 of the CRPD?
3. Please indicate what steps are being taken to eliminate the use of derogatory terminology and language concerning persons with disabilities and to promote the use of more progressive language advocated by DPOs which is more in line with the social model of the CRPD.
4. Please indicate how the State Party consults and engages directly with a diversified range of persons with disabilities and their representative organisations, beyond the CDPF, in the development and implementation of legislation and policies and in other decision-making processes concerning them, including persons with psychosocial disabilities, persons with intellectual disabilities and children and adolescents with disabilities.

Equality and non discrimination (article 5)

While the prohibition of disability-based discrimination is embedded into laws (LPDP, education law, employment, paras 23-26 of State report), the law is unclear as to what constitutes a discriminatory act, what legal recourse is available to victims of discrimination, or what penalties can be imposed when such act is proven. In general, there is no definition in the law or guidance provided by policy of what would constitute unlawful discrimination. As such, persons with disabilities cannot use the LPDP to protect their rights nor to challenge discrimination before the courts. For example, under a non-discrimination article, the regulation on the implementation of LPDP in the Beijing area states: "insulting, abusing, abandoning or hurting disabled people are strictly forbidden." These actions, as well as actions aimed to support disabled people do not equate with the concept of discrimination. Mentioning these concepts simultaneously, as if they are in the same category, can lead to misunderstandings as to what discrimination actually means.

There is no indication that the protection against disability based discrimination also extends to situations of indirect discrimination, to persons associated with persons with disabilities, persons who are perceived as having a disability, or who had a disability in the past.

Furthermore, many local laws and regulations are at odds with national law; where national law may prohibit disability-based discrimination, local legislation and regulations have not been harmonised with national law.

Chinese law and policy do not appear to provide and promote reasonable accommodation in accordance with the CRPD as an obligation on the State, service provider, employer, and the

like, arising from the prohibition of discrimination, and the State report understands reasonable accommodation as either measures of accessibility or the provision of convenient facilities (paras 17-22 ; 25-26 of State report). In China's Criminal Procedure Law, Compulsory Education Law, and Employment Promotion Law, what the law defines as "reasonable accommodation" are merely the basic legal rights of citizens which do not match the Convention's definition of reasonable accommodation, nor fulfil the right to non-discrimination.

Specific law and regulations on employment and education make no reference to the provision of reasonable accommodation, which results in a lack of protection from disability-based discrimination when reasonable accommodation is denied in education, including higher education, and with respect to the right to work. For example, Chinese law fails to mention that employers need to provide reasonable accommodation, disability equality management and other related services. Neither the LPDP nor Employment Promotion Law has detailed articles on employers' legal obligations in providing these services and consequences when they fail to do so. Article 60 of the LPDP states, "Where any of the lawful rights and interests of a disabled person is infringed upon, the disabled person shall have the right to require the relevant department to deal with it, or apply to the appropriate institution for arbitration, or bring a lawsuit in the people's court according to law." Again, the law does not indicate details such as basic standards for the court to follow in making its judgments, or supervision of whether employers have made adjustments according to the court's ruling.

5. What steps are being taken to clarify the law on prohibition of disability-based discrimination in order to ensure that it can be practically invoked by victims of discrimination before the authorities and the courts, and that offending parties are duly sanctioned? Please provide data on the number of cases involving disability based discrimination and their conclusions (area concerned – education, employment, social protection, civil and political rights, etc; findings of discrimination, penalties imposed, remedies provided to victims) in the past four years.
6. What steps have been taken to harmonise local legislation and regulations with national laws and the provisions of the CRPD?
7. Is there a definition of reasonable accommodation in Chinese law which reflects the CRPD's definition covering necessary and appropriate modification and adjustments applicable in a particular case beyond general accessibility? Please cite the laws and specific provisions which promote the provision of reasonable accommodation (para 17). Does law prohibiting discrimination on the basis of disability explicitly recognise that the denial of reasonable accommodation constitutes discrimination?

Awareness raising (article 8)

Government propaganda and law use concepts like “自强不息” (self-strengthening) when trying to raise public awareness of disability. This is a fundamental form of discrimination as it assumes that disabled people are “broken” and “incompetent” and need to compensate through their own efforts. It also creates misunderstandings about disabled people, as the concept places them in a different category from the rest of society. Section 38 of the State

report mentions “全国残疾人职业技能竞赛” (national disabled people's vocational skills competition) and “自强与助残先进事迹报告团” (Reporting Group on Progressive Actions on Self-strengthening and Provision of help for people with disability) as ways of raising awareness. This is fundamentally different from concepts of rights and equality expressed in the CRPD.

Section 39 of the State report mentions “百万青年志愿者助残” (Million-strong Youth Volunteers for Disability) and various other events organized by the government. The emphasis is on “taking care of the disabled”, instead of trying to identify a response to their needs that would prevent barriers to inclusion and participation, too much “爱心” (love) and over-protection often undermines the independence and real abilities of disabled people. These activities often teach the public to treat disabled people differently, and ignore their right to dignity and equal treatment.

There is limited awareness by persons with disabilities of their rights, in particular in rural regions. The minimum welfare subsidy (*dibao*) which targets the poorest families in rural areas, is often unknown by persons with disabilities and their families, and thus not systematically sought after by those who are in need. Similarly, families of children with disabilities living in rural areas are often not aware that their child has a right to go to school and presume that they would never be admitted. Frequently, the local authorities and Disabled Persons' Federations (branches of CDPF) fail to inform parents or help them access their children's rights on account that encouraging parents to send their disabled children to school would put a strain on tight resources.

8. What steps are being taken to promote the positive image of children and adults with disabilities as independent and autonomous rights holders amongst government personnel, the public and families? What campaigns are being designed and led together with organisations of persons with disabilities to raise awareness about persons with disabilities as equal citizens and contributors to society
9. Please provide information on awareness raising programmes targeting rural regions, and how local authorities are proactively informing citizens of opportunities and benefits available to exercise the full range of rights as set out in the CRPD.

Accessibility (article 9)

Accessibility is addressed in the law and in various plans developed at the national level and by some urban municipalities (Beijing). These initiatives are almost exclusively focused on creating a barrier-free urban environment and little information is available on projects to render rural areas accessible (paras 41-45 of State report). Moreover, barrier-free conversion projects in cities appear to be targeting infrastructure most frequented by persons with disabilities such as special schools, welfare enterprises, rehabilitation centres, elderly care institutions (para 44). There is no system of monitoring or evaluation of accessibility measures rendering accessibility plans and laws ineffective. It is not clear how the law can be used to challenge non-compliance with accessibility measures, nor the penalties to be applied in cases of non-compliance, and remedies available to persons with disabilities whose rights are violated in this respect.

10. Is there a national accessibility plan:

- a. to eliminate all existing barriers,
- b. complete with intermediate benchmarks and indicators to allow for monitoring of progress,
- c. which directly engages all levels of government, urban and rural regions, and provincial, county and local municipalities,
- d. with adequate budget allocation to ensure effective implementation?

How is the government cooperating with a diversified range of organisations of persons with disabilities in ensuring the implementation of accessibility measures, including the effective monitoring and evaluation of implementation?

11. Please provide information on cases in which the authorities have ordered penalties on persons/organisations which do not comply with national construction standards for barrier-free facilities or those who have not carried out timely repair and protection of barrier-free facilities. What do these penalties or punishments consist of? What remedies are available for persons with disabilities whose rights are denied on the basis of inaccessible environments, information, communications and services?

Right to life (article 10)

One of the most alarming human rights abuses to reach public attention in China in recent years has been the abduction and forced labour of thousands of people with intellectual disabilities. Since 2007, when a major case of slave labour in the brick kilns of Shanxi and Henan came to light, involving over 450 children and youths, a series of similar cases have been reported, many involving people with intellectual disabilities. In December 2009, Chinese police arrested nine people suspected of trafficking intellectually disabled people from Leibo County in southwest China's Sichuan Province. After being taken to work in mines in other areas, victims were then murdered in staged "mining accidents" in order to claim compensation from mine owners. This case involved areas as far apart as Hebei, Fujian, Liaoning and Sichuan.³

12. Please provide detailed information on what steps have been taken to investigate the deaths of persons with intellectual disabilities in "mining accidents", and whether any of these cases have led to prosecution and conviction of perpetrators. Furthermore, what steps are taken to identify other such incidents and prevent future ones?

13. Please provide additional information on how the Marriage Law and the Law on the Protection of Minors are implemented with respect to the prevention of infanticide, maltreatment, deserting and other serious harmful acts against disabled children (para 47), with data on the number of prosecution of such acts and penalties applied.

Equal recognition before the law (article 12)

³ See, among others, Xinhua report of 30/12/2009: http://news.xinhuanet.com/english/2009-12/30/content_12729720.htm

In China, there is no official process of deprivation of legal capacity. A guardian is not someone who is officially appointed by a court through guardianship proceedings, but is someone viewed as responsible for the person with a disability usually through family ties.

In some regions of China, when being designated with their disability card through a local administrative procedure, persons with disabilities are obliged to give the name of a contact person (usually a relative) whose identity and contact number then appears on the card itself. This person is treated in practice as the person's guardian and is authorised to make decisions on the individual's behalf. This procedure is not limited to persons with intellectual disabilities or psychosocial disabilities, but extends to all persons with disabilities who receive a disability card in those regions.

The draft national mental health law, published by the Chinese National People's Congress in October 2011, stipulates that the right of informed consent on medical treatment (articles 33, 35, 36, 39, etc.), the right to privacy and communication (article 42) shall be exercised by the person with mental disability **and** his/her guardian; in other words the individual, and his or her guardian, are perceived as interchangeable. More importantly, article 26 of the draft law authorizes involuntary commitment to be decided by "closely connected relative who has the responsibility of guardianship" (负有监护职责的近亲属). These provisions expressly show that the draft mental health law presumes persons with psychosocial disabilities do not have legal capacity and are automatically viewed as wards of their relatives.⁴

Persons with intellectual disabilities and persons with communication difficulties are denied the right to testify as their testimonies are seen as not reliable or credible. Women with intellectual disabilities are presumed incapable of giving consent to have sex meaning that any sexual partner can be prosecuted for the crime of rape whether or not the woman consented to the act.

Persons with visual impairments are not permitted to carry out financial transactions or to set up electronic banking transactions given that their signature is put in doubt.

14. What steps are being taken to eliminate the de facto system of guardianship and ensure the recognition of the legal capacity of persons with disabilities as equal to that of others, and to provide support to exercise that capacity, subject to the will and preferences of the person? Does this extend to all rights, including the right to give and withdraw informed consent for medical treatment, give evidence in a court proceeding, choose one's sexual partner, conduct one's banking and financial affairs, etc? What steps will be taken to ensure compliance with Article 12 of the CRPD in the current development of a national mental health law?

Access to justice (article 13)

Although provisions in Chinese law purport to ensure that protection of access to justice of persons with disabilities throughout the legal process, including measures of accessibility for persons with hearing and visual impairments, and the guarantee of rights of prisoners and detainees with disabilities, these provisions are often violated. As cited above, persons with intellectual disabilities are denied the right to testify in court and no measures exist to enable them to partake in the legal process.

⁴ In addition to the current development of a national mental health law, since 2001, six major cities of China have passed legislation on mental health. These ordinances deprive persons with psychosocial disabilities of their right to refuse medical care. Once a person is diagnosed as having mental illness, his/her legal capacity is automatically designated to the person who commits them (i.e. their guardian).

The figures in the State report divulge that in 2009, 2,870 legal aid service centres were established for persons with disabilities and 46,435 cases involving legal aid for disabled people were recorded, accounting for 7.2% of all legal aid cases (para 56). Yet these legal aid centres do not operate on an independent basis. Particularly below the county level, legal aid centres for persons with disabilities suffer from a lack of financial and human resources and often the centres are run by part time staff from the government's legal management departments. There is no qualitative evidence of these cases in official reports or the press. Nor has any qualitative assessment been taken regarding legal aid cases concerning persons with disabilities in an effort to understand the current state of access to justice for persons with disabilities in different parts of China. It has been observed that there is a general lack of basic legal knowledge and a reluctance of CDPF offices and legal aid centres to engage with rights issues, and when there are such issues being put forward, more often than not, legal aid centres fail to provide assistance.

15. What steps are being taken to guarantee fair trial proceedings and the right of appeal to persons with disabilities, including the right for persons with intellectual disabilities and persons with communication difficulties to give evidence in court? Are there provisions in place which foresee procedural accommodations for the meaningful investigation and testimony by persons with intellectual disabilities including the use of plain language?

Liberty and security of the person (article 14)

Deprivation of liberty on the grounds of disability is permitted in China. While there is no national mental health law, drafting of a national mental health law has been ongoing since 1985. Meanwhile, six cities have issued local 'mental health regulations' (*tiaoli*) which have been drafted largely by psychiatrists and officials without consultation of persons with psychosocial disabilities and their representative organisations. In most regions, mental health affairs are determined by local doctors, psychiatrists, officials and public security bureaux. Under local regulations, people deemed to have mental illnesses can only be committed or released from psychiatric incarceration by their "legal guardian", i.e. the person who had them committed in the first place. According to China's General Principles of the Civil Law, this might be a family member, relative, neighbour, local official or even the police.

It has been documented as a widespread practice that individuals without psychiatric illnesses have been and continue to be incarcerated in asylums for political, financial or family reasons. A large proportion of the latter group is made up of petitioners: individuals who have brought grievances through the government's petitioning offices (*xinfangju*), only to encounter harassment and psychiatric incarceration by police and local officials. The practice has been condemned by the UN Committee against Torture which expressed concern about China's criminal law which permits authorities to make use of "compulsory medical treatment" of persons who commit crimes.⁵

This is most clearly demonstrated by the case of blind activist Chen Guangcheng imprisoned in inhuman conditions for over four years and currently detained illegally under house arrest. On 24 August 2006, blind activist Chen Guangcheng was convicted of "intentionally damaging property and gathering crowds to obstruct traffic" and sentenced to four years and three months in prison. The court proceedings and sentence were widely condemned as unjust and illegal. While in prison Chen was beaten, held in solitary confinement, denied access to Braille or audio reading materials and denied basic medical treatment. Since his release from prison he and his wife have been illegally held under house arrest, beaten up by local officials and plain-clothes policemen and denied access to lawyers. Chen's treatment

⁵ UN Committee against Torture, Concluding Observations on China, CAT/C/CHN/CO/4, November 2008, para 35.

not only ignores all legal guarantees to respect the needs of disabled people, it also violates many of the basic principles of Chinese and international law.

During some significant events, such as the Beijing Olympic Games 2008, Shanghai World Expo 2010, Shenzhen Universiad 2011, some mental health patients and persons documented as having psychosocial disabilities, intellectual disabilities and autism were hospitalised by the police. Involuntary commitment is used as a tool for maintaining social stability and keeping public order. The latest Mental Health Law (Draft) at the time of writing, issued in October 2011, employs “disrupting public order” as a substantive standard for involuntary psychiatric treatment, too. Article 26 of this Draft sets out that, “Suspected mental disability sufferers who harm or are going to harm themselves, who endanger public safety or the personal safety of others, or whose conduct disturbs public order, must immediately be stopped by their guardian(s) or close relatives, local employers, village committee, residential committee, and the local Public Security Bureau. The person's guardian(s) and close relatives must also send the suspected mental disability sufferer to a medical treatment institution for a diagnostic mental disability examination.”

16. What steps are being taken to repeal legislation allowing for detention based on disability (whether actual or perceived) and to develop community based services and support for persons with disabilities?
17. Please provide data on the number and percentage of disabled prisoners in Chinese prisons. How many disabled persons are detained in civil and administrative institutions? (para 60).
18. Please provide additional information on psychological correction and cure programmes and psychological guidance, for the purpose of correcting and curing prisoners with disabilities who show bad psychological tendencies (para 60 of State report).

Freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15), Freedom from exploitation, violence and abuse (article 16), Protection of personal integrity (article 17)

As mentioned above (Article 10), persons with intellectual disabilities have been subjected to abduction and forced labour, trafficked from Sichuan, Shannxi, Hunan and other provinces to mines and brick kilns in areas as distant as Xinjian. And despite widespread publicity and several landmark legal cases, complicity between traffickers, employers and local officials appears to persist.⁶

Along with the practice and threat of ordering mental health detention with respect to potential petitioners, the use of violence is commonplace to deter persons from making complaints. A case was documented in which three men with disabilities had applied for the minimum welfare subsidy (*dibao*) at their rural township and upon several visits to follow up their application, they were badly beaten up by persons employed by the local municipality and ended up in hospital.

⁶ This is borne out by Channel 4's 'Unreported World' documentary "China's Lost Sons", in which Oliver Steeds investigates cases of abductions in Shaanxi and Sichuan. In Qu County, Sichuan he meets obstruction by local police. See <http://www.channel4.com/programss/unreported-world/episodeguide/series-2011/episode-5>

Another problem arising from stigma, lack of awareness and information, and the absence of services and support to families of persons with psychosocial disabilities, particularly in rural areas, families are often led to restrain and detain individuals with psychosocial disabilities in their own home where they remain excluded and hidden from the community.

19. Please indicate the concrete measures taken to eliminate the exploitation of persons with disabilities, and to convict and punish perpetrators. Please provide information on the conviction of perpetrators of forced labour, trafficking and sexual exploitation of persons with disabilities, the sanctions concluded and the remedies provided to victims.
20. What steps are being taken to eliminate the use of violence, forced treatment and detention and to ensure that petitioners can lodge claims without any risk to their physical and mental integrity?
21. Please provide additional information on the reform of the Mental Health Law regarding medical experimentation (para 64).
22. Please provide information on legal grounds and practice for correctional forced medical treatment (para 64). How is the State planning to amend legislation to abolish third party authorisation for medical and other interventions done against the will of the individual or without full free and informed consent provided by the individual concerned?
23. Please provide additional information on how the Law on the Protection of Persons with Disabilities, the Marriage Law and the Law on the Protection of Minors are implemented with regard to persons with disabilities and their protection against violence. Is data available which shows the prevalence of exploitation, abuse and violence against disabled persons? How does the work of Shenyang City's "110 Domestic Violence Report Centre" reflect upon the incidences of violence against persons with disabilities (para 65)?
24. What steps are being taken to address the heightened risk of violence for women and girls with disabilities of becoming victims of domestic violence and abuse, including corporal punishment of children with disabilities in the home? What urgent measures are being adopted to ensure that both services and information for victims are made accessible to women and children with disabilities, including setting up complaints mechanisms such as hotlines accessible to deaf women and girls, conducting training for all police, setting up specialised police units and victim support services sensitive to gender and disability?
25. Please provide data on forced sterilisation used as a method of family planning. Please explain how the right to right to informed choice of methods of contraception is implemented with regard to disabled persons (para 71).

Living independently and being included in the community (article 19)

According to the State report, it is acknowledged that in order to promote independent living of persons with disabilities, there is a prerequisite to develop community services including home help services and the establishment of a home help services subsidy system (para 75). However, the only information provided on this point relates to "sunshine homes" and it is unclear what 'sunshine homes' consist of – whether they are indeed community based services, or whether they provide institutional care. In general, the negligible support provided, if at all, to persons with disabilities who have daily support needs prevents them

from living in dignity and being integrated into the community. The assumption is that the family is and should be providing that support, regardless of whether the family has the means to do so and if there is a family in the picture at all.

The rehabilitation for people recovered from leprosy is lacking in China, lepers colonies still exist in secluded parts of the land which became known as “lepers’ villages’ to where persons recovering from leprosy were banished. People in the villages have limited access to the outside world and they live their lives in isolation. Leprosy is a disease that can be treated with modern medical treatment but it does not automatically mean people can be reintegrated back into the society once they recover from it. The one important goal of rehabilitation is to provide social supports and eliminate stigma via social connection, so that they can live their lives like the others in the community.

26. Please provide additional information on what kind of services and support are available for disabled persons to live independently and to participate and be included in the community. What steps are being taken to consult with organisations of persons with disabilities on developing these services, in particular services of personal assistance? Please provide more information on the sunshine home project.
27. What is the current program to help residents living in lepers’ villages, such as the Dayinpan Village⁷ and Dajin Island,⁸ to reintegrate in society? What steps are being taken to make available rehabilitation programmes in the community including for persons with leprosy and to engage in awareness raising campaigns to facilitate their return to the community?

Respect for home and the family (article 23)

China’s laws actively encourage abortion if a foetus appears to have an abnormality, something widely accepted throughout Chinese society.⁹

There have been some allegations heard from DPOs of women with disabilities, in particular intellectual disabilities, being forcibly sterilised.

28. What safeguards exist in the law and policy to prevent and guarantee protection from forced interventions such as forced contraception, forced abortion and forced sterilisation? Is it possible for a guardian or parent to provide consent for these interventions concerning a child/adolescent or an adult who is deprived of their legal capacity?
29. Please provide further information on the right to marry for persons with disabilities. Do disabled couples have to undergo genetic counselling before they can marry? (para 88) Can persons who have been deprived of their legal capacity freely contract in marriage, or is the authorisation of the guardian necessary to approve the act?

⁷ <http://www.china.org.cn/english/China/238373.htm>

⁸ http://www.usatoday.com/news/world/2010-12-28-chinalepers28_ST_N.htm

⁹ Carole J. Petersen, Disability is Political: Implications of China’s Ratification of the Convention on the Rights of Persons with Disabilities (Proceedings of the Pacific Rim International Forum: Securing the Human Rights of Persons with Disabilities, pp 15-17)

30. Under what circumstances may a disability hinder a parent to have guardianship over their own or an adopted child? Are there any programmes that provide support to disabled parents? (para 90)
31. There is evidence of a plan to include electronic information about psychosocial (mental) disability in individuals' identification cards, which then shows up whenever a person is asked to present an ID – when checking into a hotel, traveling on plane or train. Please provide information about whether such a plan is indeed being developed and implemented.

Education (article 24)

Official statistics on the education of children with disabilities are mutually contradictory, hard to verify and often at odds with anecdotal sources.¹⁰ Figures quoted in the State report indicate that the total number of disabled children between the ages of 0 – 14 is 3.87 million. Other government sources, however, put this figure at 9 million and suggest that only about 33% of school age children with sensory, intellectual, mental or multiple disabilities are receiving schooling.¹¹ Yet the State report states, “The school attendance rate for children with disabilities of all different ages is nearly 80%” (para 96).

While the law supports a mixed system of education for children with special needs, combining inclusive education (i.e. integration by disabled children in mainstream classrooms or the provision of ‘special education classes’ in mainstream schools) with the maintenance and promotion of ‘special education schools’, mainly for children with visual, hearing, intellectual or multiple disabilities, in practice the vast majority of disabled students enrolled in mainstream schools or colleges are those with physical disabilities and mild visual disabilities (i.e. people usually categorized as “third grade disabled”). Most children with more severe sensory or intellectual disabilities either enter one of the country's 1,672 ‘special schools’ (which include 35 schools for the blind, 541 schools for the deaf, 401 schools for intellectually disabled children and 695 combined disability schools), or remain excluded from school altogether.

Special needs provision in mainstream schools is far from adequate; some primary schools admit disabled children without ensuring an inclusive environment. All responsibility is placed on teachers who are not trained in special needs education and cannot provide individualised attention to students when classes consist of 70-100 children. The attendance of pupils with disabilities in these primary schools is far from an inclusive model of education and DPOs have observed that often children with disabilities bide their time in these classes or drop out altogether.

A large amount of money is allocated to prestige special schools in big cities, such as schools for the blind in Beijing, Shanghai, Guangzhou and Qingdao. These schools absorb

¹⁰ For example, there seem to be confusing inconsistencies between figures published on the CDPF's own website, reflecting the number of special schools, special classes and disabled students enrolled, and those stated in the State report.

¹¹ See official report on Chinese government white paper (1996), “Protection of Children with Disabilities” <http://www.china.org.cn/e-white/children/c-5.htm>, which puts the number of disabled children from 0 – 14 years at 9 million. Even with draconian family planning laws, the numbers could not possibly have fallen to this extent. Even taking the much more conservative figure in the report, deducting the number of children of preschool age and also the number of children with physical disabilities (who might not be considered targets for ‘special education’), the number of school age children with sensory, intellectual, mental or multiple disabilities in China comes out at around 1.28 million. The Chinese government white paper states that the number of children in ‘special schools’ (i.e. schools for children with sensory, intellectual and mental or multiple disabilities) is 159,000, while the number of disabled children attending mainstream schools is 269,000, making a total of 428,000.

large amounts of the special education budget and easily attract charitable funding from overseas Chinese donors and other sources. They draw attention away from the massive, largely hidden problems of inadequate access to education for most disabled people, particularly those living in rural areas.

In 2008, 57% of students (6 million) who took the college entry exam were admitted by universities, but there were only 6300 disabled students admitted by universities the same year, which is 0.11% of the total number of admitted students. Many of the students with disabilities attending mainstream universities are streamlined into 'special education departments'. In 2008, the Ministry of Education adopted "Guidelines for Medical Testing of Students Applying to Mainstream Universities", which stipulates in exhaustive detail which courses may be taken by which kinds of disabled students. The Guidelines are outright discriminatory and present less a means to safeguard the rights of the individual than a way to systematically discriminate on the grounds of particular disabilities. For example, section 8 of the Guidelines states that: "Those with impaired sense of smell, stutter, irregular gait, hunchback, facial scarring, facial blotches or psoriasis are not suited to studying education, public security, diplomacy, media, law, musical performance or performing arts". And section 9 states: "Those with squint, stutter or impaired sense of smell are not suited to study medicine."¹²

32. Please provide additional data on the number and ratio of inclusive schools and disabled students attending them as compared to disabled learners attending special schools. (para 96 of the State Party's report.)
33. Please provide China's educational rationale for 'actively developing special education schools' (paras 95, 98).
34. What steps are being taken to reallocate resources from the special education system to inclusive education in mainstream schools? Please indicate how policies, planning and budget is being engaged to ensure compulsory training on inclusive education for all teachers (beyond special education teachers), the development of individual education plans for all students (both with or without disabilities); the availability of technical equipment, accessories and aids within schools; accessibility both in terms of the physical environment and with respect to the curricula and pedagogical materials; inclusion of hard of hearing and deaf children by having sign language interpreters placed into schools; teaching of sign languages and disability rights awareness in schools, across all regions, in particular rural regions?
35. Please indicate the steps being taken to repeal policies and guidelines and eliminate practices which prevent persons with disabilities from exercising their freedom of choice with respect to vocational and secondary education and training and that individuals have an enforceable legal right to non-discrimination with respect to education and vocational training.

Work and employment (article 27)

While the quota system has helped to increase the number of organisations providing employment for persons with disabilities, more often the employment offered is only symbolic, with minimum wages paid to disabled people who are then required to stay at home. More often than not, companies and government bodies opt to pay the employment levy rather than employing persons with disabilities. Furthermore, the type of jobs which are

¹² <http://yz.chsi.com.cn/kyzx/zcdh/200809/20080903/8145649.html>

open for persons with disabilities through the quota system are commonly positions which do not require many qualifications thereby encouraging employers to hire non-skilled persons with disabilities and reducing opportunities for skilled persons with disabilities from finding employment.

There is a growing awareness amongst disabled people that this quota system is not effectively addressing the chronic problem of unemployment, even less so the deep rooted problems of discrimination. An open letter to the government, signed by over one thousand 'disabled people and their families', published on 15 May 2011 (China's "International Day of the Disabled"), explains that, according to these regulations, state organs must also comply with the 1.5% quota, however very few persons with disabilities are employed as civil servants.¹³

The practice of targeted employment which has been developed over many years by the government and CDPF is a principal factor in the exercise of discrimination against persons with disabilities in their vocational and career choices. Similar to the restrictions in place concerning the courses of study available according to impairment group within secondary education and vocational training, persons with disabilities face employment typecasting. This is most apparent in the field of "blind massage" (see below). Other targeted work includes handicrafts for people with physical disabilities and computer programming and graphic design for people with hearing disabilities, though these areas are not as highly institutionalised a "blind massage".

Although discrimination is prohibited in employment, as stated above, it is unclear what constitutes an unlawful discriminatory act, and there is no explicit reference to reasonable accommodation in employment law which adheres to the definition set out in the CRPD.

According to a survey conducted by a Chinese DPO, 84% of respondents were within the age of employment (i.e. 18-60 years), but only about a half were employed. The majority of these were blind people, almost all of who were practicing massage. Disabled people living in rural areas, who make up over 75% of all people with disabilities in China, are regarded as being in employment if they have the ability to work on the land. So according to government statistics, the employment rate for disabled people in China is very much higher than in any developed western country, though in reality it remains very low.

36. Please provide further information on the legal protection against employment discrimination: does denial of reasonable accommodation constitute a form of discrimination? (para 112)
37. Please provide data on cases of employment discrimination on the basis of disability. Please provide gender disaggregated data on the employment /unemployment rate of disabled persons compared to the rate of non disabled persons in China (para 115).
38. Please provide further data on the employment quota: how many employers do not fulfil the quotas of 1.5 %? (para 113)
39. What steps are being taken to protect and promote the self determination of persons with disabilities concerning their freedom of choice to pursue vocations according to their wills and preferences, and to ensure they receive the necessary educational support and

¹³ As stated in the open letter, « According to the 'Legal Daily' of 29 Jan 2011, employment of disabled civil servants currently falls well below the 1.5% quota, with some rates as low as 0.39%. According to official figures the rate of disabled people employed in government bodies in Shanghai is 1.3%; in Wuhan it is 0.39%; and in Kunming, of the 5,917 civil servants employed since 2005, only one was disabled. »

training to that end to enter into the workplace and have wages and conditions of work equal to those of other persons?

40. Please provide information on the number of disabled persons in sheltered workshops. What steps are being taken to ensure that sheltered workshops are open to individuals according to their wills and preferences, and will not be imposed or constitute an obligatory stage for persons with disabilities wishing to enter employment? What steps will be taken to ensure that they will not replace the opportunities for persons with disabilities to enter employment in the mainstream workforce? Do sheltered workshops pay equivalent wages to similar industries in the mainstream? Are there any measures taken to promote the inclusion of persons with disability in the open workforce through supported employment?
41. What measures have been adopted to combat forced labour and to monitor the rights of persons with disabilities in the workplace?

Adequate standard of living and social protection (article 28)

While a policy exists for providing welfare benefits and subsidies targeting persons with disabilities in rural areas, it appears that the most deprived families are rarely able to benefit from this system. Levels of *dibao* vary hugely between urban and rural areas and between different regions, reaching as high as US\$60 per person per month in Beijing and Shanghai, and as low as US\$8 per person per month in rural Shanxi. Besides the concern that those who are the most in need of the *dibao* are unaware and uninformed of their right to the benefit, the practice of widespread corruption renders the whole system of benefits practically ineffective. Each village, township or district fixes an annual quota for the number of people who can benefit from *dibao* and the amount of benefit given, based on local budgets and national welfare policies. It is then up to local officials to prioritise who receives *dibao*, and all too often this money is misappropriated.

42. Please inform the Committee whether the Chinese government plans to act upon the State Council's request that efforts be made to ensure that policies on development oriented poverty reduction and policies on supporting and benefiting the rural areas can reach poor families having persons with disabilities, and that poverty reduction policies tailored to the needs of persons with disabilities be formulated and improved. Please provide information on programs specifically targeted at the reduction of the poverty of disabled women (Para 123).
43. Please provide additional and disaggregated information and statistics (by gender, age, disability, geographical location- urban or rural zone, etc) on disabled persons that fall under the term "three withouts" (para 92). What is the proportion of persons benefitting from support and assistance provided by the Government living in urban centres compared to rural areas?
44. Please indicate current and planned measures to combat corruption in the context of allocation and distribution of welfare benefits, in particular by local authorities in rural areas.

Participation in political and public life (article 29)

The Election Law of People's Republic of China excludes from the voter registry persons with psychosocial disabilities. Article 26 of this law states :

*"Voting registration shall be held before every election for people who have reached the age of 18 since the last election, and for people whose forfeited political rights have been restored. People who have died, or whose political rights have been forfeited in accordance with the law, shall be removed from the name lists of voters. **Citizens who suffer from mental illness and are incapable of exercising their electoral rights shall, upon determination by the election committee, not be included in the roll of voters.**"¹⁴*

45. Please provide information on the number of disabled persons deprived of political rights and the grounds thereof as mentioned in para 129 of the State report.
46. Do all persons with disabilities have the right to vote, be elected, and perform public service on an equal basis with others? What steps are being taken to repeal Article 26 of the Election Law of People's Republic of China to guarantee that persons with disabilities, including psychosocial disabilities, have the right to vote on an equal basis with others?
47. Please provide information on the accessibility of the voting process in China. Please explain why persons who have job responsibilities for persons with disabilities are considered as representatives of disabled persons? (para 129)
48. Do persons with disabilities have the right to form and join associations based on their free choice? What measures are envisaged to diversify the range of DPOs with which the State engages in consultation and cooperation, and to move beyond unique consultation with CDPF as stipulated in the law?¹⁵

Women and Children with Disabilities (art. 6 & 7)

The widespread stigma attached to persons with disabilities, combined with the strict family planning policy in China renders children with disabilities at a high risk of being abandoned by parents and placed into institutions where they are segregated from society and rendered more vulnerable by neglect, violence and abuse.

For families which take care of children with disabilities in the home, there are very few community based services and assistance available, particularly in rural communities in which the most part of children with disabilities live. Heavily reliant on the local governments and their resources to access social services and benefits, children with disabilities and their families living in the poorer rural regions are denied assistance and support from the State much to the detriment of the child's healthy development.

49. What steps are being taken to strengthen awareness raising, assistance and support to families in order to ensure that children are raised within family environments and to ensure their full and effective participation of a child within the life of the family and community? Please provide information on how resources are allocated to rural regions in order to ensure that children with disabilities and their families can access social services and benefits which are essential to their healthy development and participation in society.

¹⁴ Article 26, Election Law of People's Republic of China (1979, last amended 2010)

¹⁵ Article 8 of the Law of the People's Republic of China on the Protection of Disabled Persons (1990)

50. Please provide additional data on the Programme for the Development of Chinese Women (2001-2010) and what way it has improved the situation of women and girls with disabilities? (para 28 of the State Party's report.)

International cooperation (article 32)

51. Please provide additional information on the degree of mainstreamed action towards persons with disabilities in the general programmes and projects developed in international cooperation (Para 147 – 149 of the State Party's report.)

National implementation and monitoring (article 33)

52. Please provide further information on the independent monitoring mechanism appointed by the Chinese government. Which organisation or entity, besides the CDPF, is designated to participate in the independent monitoring mechanism of Article 33(2) (paras 151 – 153)?
53. What measures are being taken to facilitate the formation of diversified groups of self-representative organisations of persons with disabilities and parents of children with disabilities and to ensure their participation in the implementation and monitoring of the implementation of the CRPD?