# Equity and Justice Initiative

# China: Discrimination on the Dual Grounds of Gender and

# Psychosocial or Intellectual Disability

## Forced abortion imposed on women with a psychosocial or intellectual disability

**Issues**

In China, persons with a psychosocial/intellectual disability are erroneously seen as persons with no capacity. They have almost been robbed of all their basic rights and freedoms by the law. As a result of the discrimination on the dual grounds of gender and psychosocial/intellectual disability, nothing is left for the rights of women with a psychosocial/intellectual disability. Among all infringements of rights, forced abortion, which is conducted without the woman’s consent, is the commonest, most inhumane and illegal form of rights violation.

In spite of a policy regulation that women have to obtain permission from the family planning departments to get an abortion, parents, husbands or even the social care institutions which they attend can obtain the permission with no consent from the woman herself, and then force her to have an abortion. In reality, a woman’s autonomy and free will can be totally disregarded. According to mass media reports, forced abortion mostly happens later than six months after conception. This causes unimaginably torturous suffering.

Several reports of relevant cases are as follows.

1. China Radio: A man raped his 16-year-old niece, who had an intellectual disability; a 6-month-old foetus was induced. http://news.sohu.com/20060415/n242821950.shtml
2. People’s Net: An intellectually disabled girl was raped, and a six-month-old foetus was induced. http://news.sina.com.cn/s/285129.html
3. South Sea Net: A 18-year-old girl with 7-month pregnancy was induced. http://www.hinews.cn/news/system/2010/11/13/011467444.shtml
4. Guangzhou Daily: Concealment of a woman’s psychosocial history led to forced abortion after marrage. http://gzdaily.dayoo.com/html/2013-07/26/content\_2332083.htm
5. Dahe Net: A social care institution induced an abortion in a pregnant, intellectually-disabled girl who was under its care. http://news.dahe.cn/2011/06-15/100742907.html

**Conflicts with CEDAW**

Forced abortion imposed on women with a psychosocial/intellectual disability constitutes a serious violation of the state’s obligation under Article 3 and Article 16 of CEDAW. Also, the misconduct may constitute a violation of the UN Convention Against Torture.

1. Art 3 of CEDAW requires that state parties shall take all appropriate measures to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. Self-determination of their bodies is one of the basic human rights and fundamental freedoms of women.
2. Art 16 of CEDAW also stipulates that women have the rights to freely and responsibly decide the number and spacing of their children and to have access to the information, education and means to enable them to exercise the rights.
3. Notwithstanding the foregoing articles, forcing women to have abortions six months after conception, is by nature cruel, degrading and inhumane treatment. The duty-bearers are suspected of violating the Convention against Torture.

**Recommendations to the Chinese government**

1. To train workers at the family planning departments. Without self-consent, family planning departments shall not grant permission to anyone else to carry out the “abortion operation”. Except for the woman herself, no other person has the right to force her to have an abortion.
2. According to Art 10 (h) of CEDAW, women shall have “access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning”. This should equally apply to women with psychosocial/intellectual disabilities.
3. According to Art 12 of CEDAW, the state party shall ensure that women have access to health-care services, including those related to family planning. The state party shall ensure appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.
4. According to Art 16 of CEDAW, the state shall ensure that women with a psychosocial/intellectual disability have access to information, education and the means to exercise their rights to freely decide the number and spacing of their children.

## Sexual Autonomy of Women with a Psychosocial/Intellectual Disability

**Law and Practice**

In Article 1 (2) of “the Explanations of Several Questions in Applying Existing Laws to Handling Cases of Rape” put forth by the People’s Supreme Court, the People’s Supreme Procuratorate, and the Ministry of Public Security on the 26th April 1984: with clear knowledge about a woman’s psychiatric disability or (severe) mental retardation, a person shall be sentenced for criminal of rape for having sexual relations with this woman, regardless of the means used by the criminal.

According to Art 52(5) of China’s Law on the Protection of Disabled Persons enacted in 1991, anyone who has sexual relations with a woman with a psychosocial/intellectual disability, who is unable to recognise her behaviour as a result of her disability, shall be deemed as having committed the crime of rape. The criminal responsibility of this person shall be pursued in accordance with Art 139 of the Criminal Law of the People’s Republic of China. The Criminal Law, first enacted in 1979 and revised in 2006, defines rape as whoever rapes a woman by violence, coercion or any other means.

Based upon the above judicial interpretation, the Law on the Protection of Persons with Disabilities, and the Criminal Law, it can be evidenced that Chinese laws prohibit women with a psychosocial/intellectual disability from having sexual relations with anybody. They have no right to enjoy their sexual autonomy; otherwise the other party has to bear criminal responsibility.

Although the foregoing judicial interpretation has been abolished and the article in the Protection Law has been removed in legislative amendments, in legal practice, relevant legal regulations are still over-simplified, and the old mindsets of judiciaries have little change. According to cases on mass media during 2007 to 2014, it reveals that, in China’s legislative practice, once a women is diagnosed as psychosocialally or intellectually disabled, she will have no right to “consent” to sexual relations. Exposure of such relations will subject the other party to criminal responsibility and punishment.

Several media reports of such cases are as follows.

1. Southern Metropolitan Daily: “An elserly man ‘raped’ a woman with a psychosocial disability; while both sides admitted a voluntary relationship, the elderly man was given a criminal sentence”. http://news.sohu.com/20071106/n253086169.shtml
2. Hai Xia Dao Paper: “A man was given a criminal sentenced for having sex with a psychosocialally disabled woman, though she had agreed to having sex.” http://fj.qq.com/a/20130622/003488.htm
3. China Net: “Intellectually disabled girls consenting to sex still means rape.” http://health.china.com/html/jiankangkuaixun/jbkx/jsb/200909/02-51962.html
4. Northeast News: “Though she agreed, he was still a criminal and has been sentenced.” http://www.nen.com.cn/72344626702319616/20070207/2151633.shtml
5. International Online: “Two men had sex with a mad girl, and have been sentenced for the crime of rape.”
6. http://gb.cri.cn/3821/2004/11/05/301@350189.htm

**Conflicts with CEDAW**

According to the definition of discrimination in Art 1 and Art 2(g) of CEDAW, all state parties agree to abolish any existing domestic laws which constitute discrimination against women. China’s legislative practice imposes certain restrictions on women’s rights to enjoy sex. These restrictions, first, are not imposed on men, and thus constitute direct discrimination against women. Second, these restrictions are based on the ground of disability, so have robbed disabled women of their right to sexual autonomy, and thus constitute direct discrimination against persons with disabilities.

**Recommendations to Chinese government**

1. To provide training for judicial personnel on the basis of CEDAW and CRPD, in order that they will not deprive women of their sexual autonomy on the grounds of gender and disability.
2. Chinese government shall, based upon the requirements of CRPD, provide women with a psychosocial/intellectual disability with appropriate support (supported decision-making), in order to enable them to have sexual autonomy while they are protected from sexual violence.

*Translation from Chinese draft*

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