

LEGAL GENDER RECOGNITION IN CHINA

A Legal and Policy Review



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Forewords



Transgender people in China confront significant challenges. They lack legal recognition and protection, which makes them both vulnerable and marginalized. Social stigma and discrimination are a common feature of many schools and universities, businesses and public offices.

This report, *Legal Gender Recognition in China: A Legal and Policy Review*, provides an important foundation for the inclusion of transgender people in Chinese laws and policies. The report provides specific recommendations and suggested actions that will promote legal gender recognition and inclusion for transgender people and, if adopted, will facilitate an enabling environment for transgender people to access education, employment, health and other public services.

The report also highlights transgender community efforts and initiatives that could serve as new platforms for asserting transgender inclusion and those which could open the doors for more enhanced collaboration among the various sectors.

The 2030 Agenda for Sustainable Development calls for an integrated approach, and reducing gender inequalities and empowering vulnerable groups is vital to achieving the Sustainable Development Goals. I am confident that this review will contribute to the important endeavour of meeting the needs of vulnerable and marginalized groups such as LGBTI people, ensuring that they can be equal members of the society, and are protected and free from any forms of violence and discrimination. In doing so, China will deliver on its commitment to “leave no one behind” by 2030.

A handwritten signature in blue ink, appearing to read 'Agi Veres', written on a white background.

Agi Veres
Country Director
UNDP China



In 2016, I took up the dual role of scholar and lawyer and wrote *Legal Gender Recognition in China: A Legal and Policy Review* on the basis of my extensive experience working on behalf of legal reform to promote gender equality and my knowledge of the LGBT equal rights movement, thanks to the UNDP programme, “Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia.”

This report describes the current legal framework and all laws and policies relevant to this important issue. Unfortunately, as of this writing, there is not a single Chinese law that uses the word “transgender.” In fact, the use of this word is currently limited to one policy only – the Sex reassignment surgery regulatory guidelines (National Health and Family Planning

Commission Document No. 7 (2017)) – which is not a positive one as it places various restrictions on transgender people pursuing gender-affirming surgery (GAS). These include that a transgender person may not apply for the gender marker on their identity documents to be changed until they undergo full genital reconstruction surgery, and that transgender people pursuing GAS must “provide relevant proof that they have informed their close relatives of their intention to have sexual reassignment surgery” (basically parental approval), “be over the age of 20 years,” and “be in an unmarried state.”

The result of the requirements are serious mental and physical costs, including a few recorded cases of severe self-mutilation, either because the person wanting to pursue GAS does not meet these myriad requirements or because they cannot afford the high cost of such procedures. This denial of legitimate medical attention impacts the ability of transgender people to affirm their gender. It makes it difficult for transgender people to live and work free of discrimination or violence, and thereby amounts to a violation of their fundamental human rights.

During the writing of this report, I successfully represented the plaintiff in China’s first employment discrimination case involving a transgender man, “Mr. C.” The court’s final judgment included the following groundbreaking declaration: “An employee should not be subject to disparate treatment in the course of performing a job as a result of the individual’s gender identity and gender expression ... An individual’s gender recognition and gender expression are included in the protected category of ‘ordinary civil rights,’ and an individual’s gender identity and gender recognition should therefore be respected.” A full description of this case is included in this report.

As demonstrated, Mr. C was discriminated against and dismissed by his employer primarily because he had not undergone GAS and therefore was not afforded the opportunity to apply for legal gender recognition. In my in-depth interviews with Mr. C and other transgender people, the widespread neglect of the transgender community in China became clear and I learned from one after the other of their hopes to be able to change the gender marker on their identity documents without first undergoing invasive and extensive surgical procedures, as is possible in other parts of the world.

Legal gender recognition is an important step in the long journey to ensuring that the rights of transgender people are comprehensively and effectively protected, and so I hope that this report will help promote reforms to the relevant laws and policies to provide comprehensive protections for China’s transgender community.

Liu Minghui
Professor
China Women’s University

Acknowledgements

The *Legal Gender Recognition in China: A Legal and Policy Review* was developed by UNDP and China Women's University to compressively review the laws, regulations and policies related to gender recognition in China.

The author of this review is Professor Liu Minghui with support of Zhang Tingting and Xu Yaying from China Women's University.

The research team would like to thank Xu Bin, Director of Common Language; Karen Liao, Founder of Little Tree; and Siodhbhra Parkin, Yale Law School Paul Tsai China Center for their inputs, edits and translation support throughout the research and writing of this review.

Special thanks to Jack Byrne and Eszter Kismodi who provided overall guidance on the implementation of the Assessment Tool and support to the author during the research and writing of the China review, and to Cianán Russell, Human Rights and Advocacy Officer, Asia Pacific Transgender Network (APTN) who provided a technical peer review.

Jensen Byrne, Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) and Human Rights Project Officer, UNDP Bangkok Regional Hub is a contributing author of the review, while Andy Quan, Angel Treesa Roni, Research Assistant, and Nicholas Zinter, UNDP Bangkok Regional Hub edited the review.

The report team would like to acknowledge and thank all the following organizations which participated in the various consultations and provided technical review and substantive contributions to this review:

Academia

- China University of Political Science and Law
- China Women's University
- Peking University
- People's University

Civil society

- Beijing Gender Health Education Institute
- Beijing LGBT Center
- Common Language (Beijing)
- LGBTI Rights Promotion Association (Guangzhou)
- Shenyang HIV Health Consultation Center
- Xinjiang Tiantong LGBT Center
- Asia Catalyst
- Asia Pacific Transgender Network

International organizations

- American Bar Association
- UNAIDS China
- International Labour Organization (ILO)
- US Center for Disease Control (US CDC)

The development of this review benefited from two 'Experts Roundtables on Gender Identity Recognition in China' hosted by UNDP in Beijing, China on 2 March 2016 and 19 July 2016. During the first roundtable, participants from the transgender community and legal experts provided invaluable insight into China's laws and policies and their effects on transgender people. The follow-up roundtable provided participants with the opportunity to provide input to the draft review, its findings and draft recommendations.

Edmund Settle, Policy Advisor for HIV, Human Rights and Governance, Katri Kivioja, Programme Specialist, Bangkok Regional Hub and James Yang, National Programme Analyst on SOGIE and HIV for UNDP China managed the development of the review.

Legal Gender Recognition in China: A Legal and Policy Review is part of a regional project, jointly implemented by UNDP and APTN, which reviewed the law, regulations and policies in relation to legal gender recognition in Bangladesh, China, India, Nepal, Pakistan, Philippines and Thailand. APTN conducted equivalent reviews in Indonesia and Malaysia.

The regional report is available here: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html

The development of the review in China was supported by UNDP through the Being LGBTI in Asia programme, a regional programme aimed at addressing inequality, violence and discrimination on the basis of sexual orientation, gender identity or intersex status, which promotes universal access to health and social services. It is a collaboration between governments, civil society, regional institutions and other stakeholders to advance the social inclusion of LGBTI people. The programme recognizes that LGBTI people are highly marginalized and face varied forms of stigma and discrimination based on their distinct sexual orientations and gender identities and expressions. The programme is supported by UNDP, the Embassy of Sweden in Bangkok, the U.S. Agency for International Development and the Faith in Love Foundation (Hong Kong).

Acronyms

| | |
|--------|--|
| APTN | Asia Pacific Transgender Network |
| CCMD | Chinese Classification of Mental Disorders |
| CEDAW | Convention on the Elimination of all forms of Discrimination Against Women |
| CNY | Chinese Yuan |
| GAS | Gender-affirming surgeries |
| GLAC | Gay and Lesbian Campus Association in China |
| HPP | Health Policy Project |
| ICD | International Classification of Diseases and Related Health Problems |
| LGBTI | Lesbian, Gay, Bisexual, Transgender and Intersex people |
| LGR | Legal gender recognition |
| MCA | Ministry of Civil Affairs |
| MOE | Ministry of Education |
| MOHRSS | Ministry of Human Resources and Social Security |
| MOJ | Ministry of Justice |
| NHFPC | National Health and Family Planning Commission |
| NPC | National People's Congress |
| NPCSC | Standing Committee of the National People's Congress |
| OGI | Open government information |
| RTL | Re-education through labour |
| SDG | Sustainable Development Goals |
| SOGIE | Sexual orientation and gender identity and expression |
| UNDP | United Nations Development Programme |
| UNOCHR | Office of the United Nations High Commissioner for Human Rights |
| UPR | Universal Periodic Review |
| USAID | United States Agency for International Development |
| WHO | World Health Organization |
| WPATH | World Professional Association for Transgender Health |

Terminology

| 英文 English | 中文 Chinese | 备注 Notes |
|---|----------------|--|
| Gender-affirming surgery(ies) | 性别肯定手术 | Surgery that supports a transgender person's gender identity through the changing of physical sexual characteristics. |
| Gender expression | 性别表达 | A person's way of externally communicating gender, for example, through androgyny, masculinity and/or femininity. This is done through physical appearance (including clothing, hairstyle and the use of cosmetics), mannerisms, ways of speaking, and behavioural patterns when interacting with others. |
| Gender identity | 性别认同 | A person's internal sense of being a man, a woman, a third or some alternative gender, a combination of genders or no gender. Everyone has a gender identity. A person's gender identity does not always not correspond with their sex assigned at birth. |
| Legal gender recognition | 性别认同的法律承认 | The official recognition of a transgender person's gender identity, including gender marker(s) and name(s), in public registries and key documents. Amending a gender marker or name may involve an administrative or legal process, and the changes made are legally recognized. |
| Sex reassignment surgery | 性别重置手术 | As defined in recent official policy ("Sex Reassignment Procedural Management Standards" (2017)), sex reassignment surgery refers to the surgical methods (tissue transplants and organ reconstruction) used to bring the surgical patient's biological and psychological sex into conformity with their desires. So, these are the medical interventions involved in the excising of a patient's congenital sex organs and the construction of new sex organs and accompanying secondary sex characteristics. |
| Sex reconstruction surgery | 性别重建/再赋手术 | An outdated term for gender-affirming surgery. In China, often colloquially referred to as "sex change surgery". |
| Sexual orientation and gender identity and expression | 性倾向、性别认同、和性别表达 | Sexual orientation relates to sexual attraction to one or more genders. Gender identity and expression relates to how people identify or express themselves (or not) in relation to gender. |
| Transgender | 跨性别 | An individual whose gender identity differs from their assigned sex (the sex assigned at birth based on the infant's sex characteristics, or the sex registered on official documents). Some transgender individuals will pursue medical interventions to align their assigned sex with their gender identity. |
| Transgender man (female-to-male) | 女跨男 | A term used to refer to a transgender person who identifies as male (i.e. a person whose sex was assigned female at birth but who identifies as male). |
| Transgender woman (male-to-female) | 男跨女 | A term used to refer to a transgender person who identifies as female (i.e. a person whose sex was assigned male at birth who identifies as female). |
| Transsexual | 变性人 | An individual whose gender identity differs from their assigned sex, and who has changed or desires to change their sexual characteristics through medical interventions. |

Executive summary

This report, *Legal Gender Recognition in China: A Legal and Policy Review*, was funded by the United Nations Development Programme (UNDP) and is part of an ongoing series of related studies active in eight other countries in Asia.¹ This study is both groundbreaking and challenging. The report considers a wide range of legal and other materials, including specific provisions of laws and policies and their accompanying implementing regulations; arbitration rulings; judicial decisions; evidence on the state of current laws and policies; and the cumulative impact of these policies and practices on the Chinese transgender community.

The major goal of this legal and policy review is to shed light on the current laws and policies in China regulating the recognition of gender identity and inclusion of transgender people. This report also seeks to accomplish the following:

1. Define and describe China's legal hierarchy and lawmaking bodies
2. Identify and assess Constitutional and other provisions in laws and policies safeguarding human rights applicable to transgender people
3. Discuss three cases involving transgender people
4. Analyse the enforcement of laws and policies governing transgender people in China
5. Provide concrete recommendations to improve the implementation of these laws and policies.

The research team responsible for this report made a number of crucial findings, summarized below:

Legal gender recognition. The research team discovered that while it is indeed possible for Chinese transgender people to change their names and gender markers on official identity documents, they must undergo gender-affirming surgeries (GAS) as a necessary precondition. Secondly, schools, universities and other educational institutions lack the authority to change the gender markers displayed on student diplomas, certificates and other academic materials. This has a direct impact on the ability of transgender people to pursue their studies, obtain employment and receive promotions. Thirdly, the research team concluded that transgender individuals suffer serious consequences as a result of these and other onerous legal requirements to be eligible for legal gender recognition (LGR). For example, transgender people are in effect forced to choose between either “outing” themselves to co-workers and facing the subsequent risk of employment discrimination, or repeatedly delaying or abandoning the LGR process as a result of requirements in law that they obtain approval from, among others, the human resource departments of their workplaces as part of the LGR process.

Health services. Research demonstrated that hospitals require transgender patients pursuing gender-affirming surgeries or other gender-affirming health services to not only demonstrate that they have an official diagnosis of “transsexualism” but also to satisfy a number of other humiliating criteria. In particular, a number of transgender people whose families refuse to submit proof that they consent to a transgender person's application to undergo GAS, as commonly required by many hospitals, have taken extreme steps resulting in life-endangering self-harm or self-mutilation.

Additionally, the requirement that candidates for GAS must be at least 20 years old conflicts directly with the General Principles of the Civil Law of the People's Republic of China (1986), which clearly provides that citizens with normal cognitive functions are to be considered full adults at the age of 18. Further, hospitals also require candidates for GAS to submit verification that they have no criminal background, a stipulation that has no medical significance and amounts to discrimination in its own right.

1 Bangladesh, China, India, Indonesia, Malaysia, Nepal, Pakistan, the Philippines and Thailand. UNDP, APTN (December 2017). *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*. Available at: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html

Employment. In its assessment of employment, the research team discovered that although there is no shortage of laws that prohibit discrimination on the basis of gender, when it comes to extending protections to transgender people, these provisions are at best unevenly applied. There is no explicit protection for transgender people. Due to this inconsistency, many individuals, particularly transgender women, may face difficulty in securing employment. In response, a number of transgender people engage in sex work, where they face the added humiliation and danger of near-constant administrative sanctions and penalties in addition to having to bear all of the other risks associated with this form of employment.

Education. There is a lack of provisions prohibiting discrimination in Chinese schools. Further, at the time of writing, few, if any educational materials in use provide information on gender diversity. During consultations for this study, participants noted that the lack of clear policies prohibiting discrimination and appropriate educational materials has resulted in the persistence of school bullying and discrimination against transgender students. Some of these students consequently drop out and do not complete their education.

Physical violence. China does not have laws that specifically provide transgender people with protection against physical violence. Instead, the same laws against violence that apply to Chinese citizens generally are in theory used to protect transgender people. Transgender people frequently encounter domestic violence. Survivors of domestic violence, including transgender people, may now make use of the recently passed Anti-Domestic Violence Law (2015).

In accordance with Article 37 of this law, transgender people cohabitating with their abusive partner may a) report the abuse to the police, who may in turn issue a written warning, and b) apply to the courts for a personal protection order. To date, however, there have been no reported cases involving transgender people, and it remains unclear if these protections will in fact be extended to transgender people.

Sexual violence. With the Ninth Amendment of the Criminal Procedure Law of the People's Republic of China (2015), China's criminal code now recognizes that victims of sexual harassment may not be female.² This is an important step, but to date, related laws and policies do not recognize that males may be victims of other sexual crimes such as rape and sexual harassment.

Reproduction. The Administrative Measures for Assisted Human Reproductive Technology, Order of the Ministry of Health Order of the People's Republic of China, No. 14 of 2001 rigidly defines the use of assisted reproductive technology as a form of medical treatment for patients who meet the strict qualifications for reproduction under Chinese law and are having medical difficulty with conception and pregnancy. According to this law, transgender people or their partners may receive the benefits of assisted reproductive technology and therapy only if they are in a legal, heterosexual marriage. To be in such a union necessitates that transgender people have undergone GAS, and are legally recognized according to the gender that makes them united in a heterosexual marriage. Unmarried individuals in China may not access assisted reproductive technology and therapy in China under any circumstance, and this restriction extends to unmarried transgender people.

Coerced medical interventions. Currently, Chinese law does not explicitly protect transgender people from being the victims of involuntary medical intervention or therapy. As a result, it was noted by transgender participants³ that there have been reports where families have taken transgender people to hospitals or other medical institutions for involuntary medical procedures, against their will.

Accessing public facilities. There are no legal provisions that protect the rights of transgender people to access public facilities. For example, public restrooms and social service facilities intended for use by all Chinese citizens may not be accessible by transgender people.

Based on these findings, the research team proposes the following recommendations:

-
- 2 "Amendment (IX) to the Criminal Law of the People's Republic of China" (2015) amended Article 237 to read: 'Whoever, by violence, coercion or other means, forces or molests any **other person** [emphasis added] or humiliates a woman shall be sentenced to imprisonment of not more than five years or criminal detention...'"
 - 3 During the development of this study, the author engaged a number of transgender people during consultation and key informant interviews.

Legislative recommendations:

- Issue regulations to remove unnecessary medical barriers to transgender people wishing to receive GAS and other medical treatment related to gender transition (National Health and Family Planning Commission and Ministry of Public Security).
- Affirm in law and in practice the right of all people to determine their own gender markers and names, without the precondition of GAS or other related health services.
- Revise national insurance policies to incorporate GAS and other transgender health services.
- Develop standards of care for transgender health services.
- Develop an Anti-Employment Discrimination Law, designating the term “gender” to include transgender people.
- Amend regulations to allow transgender people and their partners to receive the benefits of assisted reproductive technology, or pursue surrogate pregnancy options (e.g. Administrative Measures for Assisted Human Reproductive Technology, Order of the Ministry of Health Order of the People’s Republic of China, No. 14 of 2001).

Policy recommendations

- Revise regulations to avoid any institution or person from coercing transgender people into being subject to medical treatment (National Health and Family Planning Commission).
- Review and amend use of gender markers on all academic certificates, diplomas and other documents; or allow gender marker and name change on official documents. In cases where the gender marker on a diploma is recorded before an individual’s transition, schools and educational institutions shall be granted the authority in law to change the identified gender and names of transgender individuals on these documents based on the request of the individual (Ministry of Education).
- Review and develop comprehensive anti-bullying policies in schools against transgender students (Ministry of Education).
- Develop an anti-discriminatory approach to transgender people, for example through educational materials (Ministry of Education).
- Introduce gender-neutral bathrooms (Ministry of Civil Affairs).
- Develop policies and conduct training for law enforcement officials to respect transgender individuals’ sex and gender identity and expression (Ministry of Justice).

Enforcement recommendations

- Establish mechanisms to screen existing policies and laws for provisions that discriminate or permit discrimination against transgender people, and widely solicit opinions from the transgender community on how to improve such laws and policies.
- Encourage the drafting and adoption of laws and policies based on the respect and protection of the human rights of transgender people.
- Promote improved practices within private and public enterprises, so that all of society is able to equally and freely enjoy the benefits of Chinese economic reform (Reform and Opening Up Policy).⁴

⁴ The programme of economic reforms started in December 1978 by the Communist Party of China.

Recommendations for non-government actors

- Engage in strategic litigation to raise public awareness of transgender rights and interests.
- Engage in and support education campaigns to raise general awareness about transgender issues in China to reduce stigmatization in all sectors.

1. Introduction

1.1 Research background and goals

1.1.1 Research background

The rights to self-determination and recognition before the law are fundamental human rights belonging to everyone without distinction, including transgender people. However, the human rights of transgender people in this regard continue to be violated and disrespected across the world, in the Asia-Pacific region and within China itself. This report reviews the current laws and policies in China regulating the recognition of gender identity and inclusion of transgender people. Now, more than 10 years after the drafting of the Yogyakarta Principles, much remains to be achieved if the human rights of transgender people are to be respected.⁵

In addition, the commitment to “leave no one behind” is a key feature of the post-2015 Sustainable Development Goals (SDGs),⁶ and although transgender people are not specifically mentioned in the SDGs, the UN is committed to ensuring that the SDGs benefit all populations globally with a focus on marginalized populations, including transgender people.

This report is supported by the Being LGBTI in Asia programme,⁷ a regional programme aimed at addressing inequality, violence and discrimination on the basis of sexual orientation, gender identity and expression, or sex characteristics, and promotes universal access to health and social services in Asia and the Pacific. In 2013, the Being LGBT⁸ in Asia programme held a national dialogue in Beijing, China.⁹ This dialogue was designed to review the legal and social environment faced by lesbian, gay, bisexual, transgender and intersex (LGBTI) people in China. One of the key challenges identified by transgender participants at this dialogue was a lack of legal gender recognition or ability to change official documents to reflect their gender identity.

This identification of legal gender recognition for transgender people as a primary human rights concern was replicated across the region in national dialogues held across Asia and at the regional level.¹⁰ In response to this identified need, the Being LGBTI in Asia programme initiated a multi-country study on legal gender recognition for transgender people in the region. This report is one of nine country-specific reports as part of this multi-country project.¹¹ These country-specific reports were used to inform a regional discussion paper that examined legal gender recognition in a regional and international context.¹²

5 The Yogyakarta Principles (Principles on the application of international human rights law in relation to sexual orientation and gender identity) reflect the existing state of binding international human rights law in relation to issues of sexual orientation and gender identity with which all States must comply; International Commission of Jurists (ICJ) (2007) *Yogyakarta Principles – Principles on the application of international human rights law in relation to sexual orientation and gender identity*.

6 The Sustainable Development Goals are a set of 17 goals and 169 targets with the aim of “transforming our world” and achieving the 2030 Agenda for Sustainable Development. They seek to build on the Millennium Development Goals (2000–2015) and complete what these did not achieve.

7 The Being LGBTI in Asia programme is a regional partnership between UNDP, the Swedish Embassy in Bangkok and USAID.

8 The title of the programme was updated to Being LGBTI in Asia in 2015 to reflect the inclusion of intersex people.

9 UNDP, USAID (2014). *Being LGBT in Asia: China Country Report*. Bangkok. Available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/-being-lgbt-in-asia--china-country-report.html>

10 National Dialogues were held in Cambodia, China, Indonesia, Mongolia, Nepal, Philippines, Thailand and Viet Nam. Each national dialogue led to a country-specific report as well as feeding into a regional dialogue and subsequent regional dialogue report. These reports can be found at: <http://www.asia-pacific.undp.org/content/rbap/en/home/operations/projects/overview/being-lgbt-in-asia.html>

11 Bangladesh, China, India, Nepal, Pakistan, the Philippines and Thailand.

12 UNDP, APTN (December 2017). *Legal Gender Recognition: A Multi-Country Legal and Policy Review in Asia*. Available at: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/legal-gender-recognition--a-multi-country-legal-and-policy-revie.html

The China research team was comprised of Professor Liu Minghui and two postgraduate research fellows, Zhang Tingting and Xu Yaying, who produced the country study with support from the Chinese LGBTI community and UNDP China.¹³

1.1.2 Research goals

The goal of this report is to shed light on the laws, policies and practices in China currently in place regulating transgender people (including transgender men, transgender women, gender-queer people and others).¹⁴ Laws and policies assessed in this report include those governing gender identity and human rights protections. The report considers a wide range of legal and other material, including specific provisions of laws and policies and accompanying implementing regulations; arbitration rulings; judicial decisions; evidence demonstrating the deficiencies of current laws and policies; and their cumulative implications for the Chinese transgender community.

This report closely examines all provisions in Chinese laws, statutes and other regulations and policies that affect the lives and experiences of transgender people. The report also provides an analysis of the current enforcement of these laws and policies, and their impact on China's transgender community (often referred to under the broader term of sexual orientation and gender identity minorities). This report was written in the hope of revealing the ways in which China's laws and policies both protect and fail transgender citizens in order to inspire dialogue between all stakeholders, and ultimately, reform these laws and policies so they better protect members of the transgender community. The report thus strives to comprehensively improve the lives and circumstances of transgender people and encourage the development of an equal, accepting, respectful, understanding and diverse society.

1.2 Research scope

The research team evaluated current laws, policies and their enforcement status regarding legal gender recognition of transgender people. The team assessed to what degree these laws and policies conformed with human rights standards, and suggested recommendations for improvement. As there are currently no laws explicitly relating to transgender people, the research team also focused on examining relevant policies to make note of the deficiencies in explicit legal provisions. At present, there are some regulations issued by government departments that directly mention transgender people, including regulation of GAS; altering gender markers, names and numbers on identity documents; and handling divorce proceedings. Currently, there are only three known cases that openly deal with transgender parties, as discussed in detail in the following sections.

1.3 Research methods

1.3.1 Document review and analysis

The research team collected and closely examined all Chinese laws and policies relevant to legal gender recognition and human rights protection as they might possibly relate to transgender individuals. The team also looked at arbitration rulings and court decisions, considering them fundamental to their research. Once the team had clearly defined its research parameters, they conducted in-depth analysis of the content to identify all instances in which the legal framework's treatment of transgender people deviates from established human rights standards.

¹³ See Annex A and Annex B for a full list of all in-country experts consulted.

¹⁴ The scope of this report does not include intersex people, i.e. "people born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies" (as defined by the United Nations Office of the High Commissioner for Human Rights).

1.3.2 Multi-stakeholder meetings

On 26 January 2016, UNDP and the ILO convened a dialogue on employment discrimination against LGBTI people in China. At this meeting, UNDP announced the goals and expected results of this research project, and solicited community stakeholders to provide inputs that would be of use to the project research team. Representatives from the community voiced their support for the research team and provided contact information for the research team to begin a broad-based effort to consult with experts in this area.

On 2 March 2016, UNDP convened a meeting for members of the transgender community and organizations, academics and other groups working on transgender human rights to discuss this research project. Information was shared regarding the nature and objectives of the project. Organizations and individuals used this platform to review and provide their own impressions of China's laws and policies governing transgender people. Stakeholders also provided information necessary for the successful delivery of the report. Following the event, the research team secured the support and contact information of community leaders, and thereafter initiated wide-ranging consultations as part of its research.

On 19 July 2016, UNDP hosted a second follow-up expert meeting, and shared copies of this report to solicit feedback and comments. Participants included transgender people and others working on transgender human rights who offered invaluable opinions and concrete suggestions for the finalization process.

1.3.3 In-depth interviews

The research team interviewed the Director of Common Language, Xu Bin, who shared an incredible wealth of information and resources. In addition, the research team interviewed five transgender people in the course of this project based on their variety of lived experiences: Mr. C, Ran Ran, Chen Min, Yan Yan and Ms. Juan.¹⁵ From these sources, the research team was able to learn a great deal about the lived reality of transgender people in pursuing gender recognition and expression on their own terms. Interviewees also shared their experiences and impressions of the onerous processes involved in obtaining gender-affirmation health services. They also identified the current advantages and deficiencies of laws and policies that govern legal gender recognition and equal access to employment, social security, and other important state services.

1.4 Data limitations

In the Chinese system, there is still no law that specifically mentions transgender people. To date, there is currently only one policy that explicitly mentions the words “transgender” or “transsexual”: the Sex Reassignment Procedural Management Standards (2017) issued by the National Health and Family Planning Commission.¹⁶ Because of this dearth of material, the research team could only search provisions in general gender-related laws and policies. There is also a lack of comprehensive evaluations of Chinese laws and provisions on the topic, although there are a number of academic articles that widely cite foreign legal provisions. Three cases involving transgender people were located, though one of these has yet to have a final decision rendered.

In addition to the lack of primary materials, the secondary sources and research that did exist were often found to exhibit explicit discrimination against transgender people. For example, in the words of one author:

“Although transsexuals should not be viewed as ‘others’ or rejects, transsexuals enjoy equal access to the right to raise children, though in terms of social values and psychological factors, allowing transgender people to do so is likely to leave a definite impression upon the child. Because of this, the author feels that the partner who has not undergone a gender transition should raise the child, except in cases where that would be inappropriate.”¹⁷

¹⁵ Some names have been changed to protect privacy.

¹⁶ On 14 February 2017, these standards replaced another set of standards, the Sex Reassignment Surgery Technical Management Standards (Provisional) issued by the Ministry of Health in November 2009.

¹⁷ Gao Ran. “Research on marriage and family law questions concerning sex changes within an existing marriage in China” in *Legal System and Society* (2015), Vol. 32, p. 87.

Given the noticeable absence of primary source material, to draw a more comprehensive picture of China's transgender community, the research team recommends that future research projects include quantitative analyses of the country's transgender population and, in particular, their interactions with the health care system.

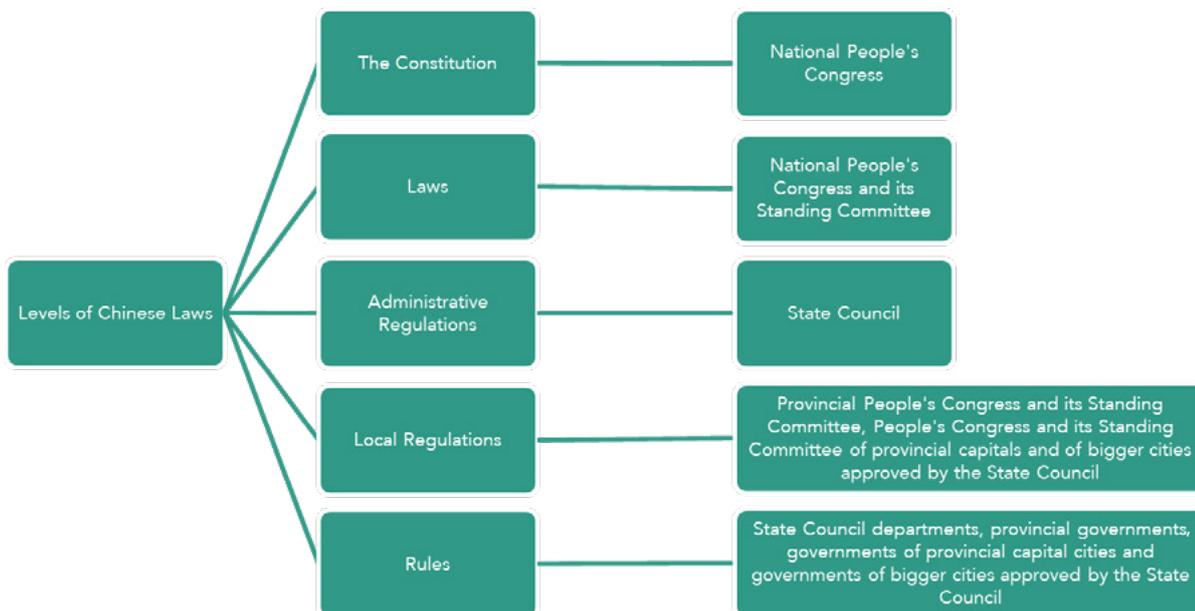
2. Chinese laws and policies on human rights protections

As of the time this report was produced, there was no single provision in any Chinese law that uses the word “transgender”, much less any specialized law pertaining to transgender people. However, in theory, all laws protecting the human rights of Chinese citizens may be extended to the Chinese transgender community.

2.1 Hierarchy of Chinese laws and law-making bodies

As set forth in the Legislation Law of the People’s Republic of China (2000), Chinese laws are assigned to different, hierarchical levels based on the law-making body. The Constitution, which was enacted by the National People’s Congress (NPC), enjoys the highest legal force. Strictly interpreted, laws that are enacted according to the Constitution and passed at the NPC or its Standing Committee are effective nationwide, as are the administrative regulations passed by the State Council. Local regulations that are enacted based on the Constitution, strictly interpreted laws, and administrative regulations that are passed at the provincial NPC are effective within the jurisdiction of the province. Rules include administrative rules and local rules. Administrative rules, which are promulgated by agencies under the State Council based on higher-level laws, are applicable nationwide and are administered by the promulgating agencies. Local rules, which are promulgated based on higher-level laws by local governments that have legislative power, are only effective within the jurisdiction of the relevant local governments.

The chart below demonstrates the levels of Chinese laws and enactment organs:



Within the multi-level structure, a lower-level law cannot be contrary to provisions of a higher-level law. New laws supersede old laws and special laws supersede general laws. Laws and policies occupying various positions in this complex hierarchy apply to transgender people, as will be discussed at length in this report.

This hierarchy demonstrates how laws and policies at different levels may apply to and impact transgender people across various jurisdictions in China. For instance, relevant local regulations would apply only to transgender people within those localities, while the Constitution would apply across jurisdictions. The hierarchy also illustrates how legal reforms promoting the rights of transgender people might be pursued to

the greatest effect. It may be easier, for example, to issue new laws higher up in the law and policy hierarchy that would render lower-level or older less progressive policies ineffective.

For example, the Population and Family Planning Law of the People's Republic of China (2015) dropped a provision that appeared in an earlier draft version that would "prohibit the selling or purchase of sperm, ova, fertilized ova, and embryos; [and also] prohibit any form of surrogate pregnancy." While this provision was dropped primarily in order to allow infertile couples who lose their only child (in compliance with China's two-child policy) to pursue alternate means to have another child, it objectively also leaves space for eligible transgender people to pursue their wishes for a family.

Following the passage of this law, the lower-level Administrative Measures on Assisted Human Reproductive Technology, Order of the Ministry of Health of the People's Republic of China, Order No. 14 of 2001 (which denied this opportunity to transgender people by prohibiting the buying and selling of sex cells, zygotes and embryos, and restricting the use of technology for surrogate pregnancy), should have been rendered obsolete as of 1 January 2016, when a higher-level law rejecting such provisions came into effect. Thus, moving forward, strategically targeting higher-level policy for reform may prove a fruitful approach.

2.2 Constitutional provisions on human right

Article 33 of the Constitution of the People's Republic of China¹⁸ (2004) provides:

"All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China.

All citizens of the People's Republic of China are equal before the law.

The State respects and preserves human rights.

Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and other laws."

The phrase "the State respects and preserves human rights" was added in the 2004 Amendment to the Constitution of the People's Republic of China, when China adopted international human rights norms in its Constitution.¹⁹ According to the principle of universality of human rights, the rights of transgender people should be covered by this newly added paragraph.

2.3 National Human Rights Action Plan of China

In June 2012, upon completion of the National Human Rights Action Plan (2009–2010), the Information Office of the State Council published the National Human Rights Action Plan (2012–2015) with the goal of more effectively protecting citizens' rights to work, basic living standards, social security, health and education. The National Human Rights Action Plan (2012–2015) provides that the rights of ethnic minorities, women, children, the elderly and the disabled are to be sufficiently protected. Although this action plan does not mention transgender people (or other broader terms used for sexual and gender minorities in China), their rights are covered by the Action Plan insofar as they are included in these groups.

In 2013, China underwent the second Universal Periodic Review (UPR) of its human rights record before the United Nation's Human Rights Council.²⁰ When responding to the recommendation that China "prohibit discrimination of any kind, including discrimination based on sexual orientation and gender identity", the Chinese government stated that relevant rights protection measures had already been implemented. However, reference to "prohibition of discrimination of any kind, including discrimination based on sexual orientation

18 The Constitution of the People's Republic of China (14 March 2004). Available at: http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987458.htm

19 Ibid.

20 The UPR is a mechanism of the UN Human Rights Council and involves a periodic review of the human rights records of all 193 UN Member States. Under this mechanism, UN Member States review each other's human rights performance every 4.5 years. UNOCHR. *Basics facts about the UPR*. Available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>

and gender identity” was not found anywhere in Chinese law. Therefore, the research team could only list relevant provisions based on the argument that “the idea of human rights must be the idea that there are certain rights which, whether or not recognized, belong to all human beings at all times and in all places. These are the rights they have solely in virtue of being human, irrespective of nationality, region, sex, social status, occupation, wealth, property, or any other differentiating ethnic, cultural, or social characteristics.”²¹

As for the Chinese government’s responses to the UN UPR recommendation on the prohibition of discrimination of any kind, including discrimination based on sexual orientation and gender identity, it is assumed that all Chinese laws and policies that protect human rights are applicable to transgender people and sexual minorities.

21 Milne, A. J. (1995). *Human Rights and Human Diversity: An Essay in the Philosophy of Human Rights* (Y. Xia & Z. Zhang, Trans.) Beijing: Encyclopedia of China Publishing House, p. 218.

3. Alteration of gender markers and names

Chinese law extends citizens the freedom to change one's name in accordance with relevant regulations, but has not extended the freedom to determine one's gender markers. The Ministry of Public Security has issued directives requiring individuals seeking to change their gender markers on official documents to first undergo gender-affirming surgeries, and to demonstrate this by producing a certificate of gender authentication issued by a hospital authorized to conduct GAS along with a verification of the certificate from the office of a notary public or a judicial accreditation body.

Furthermore, in the course of applying for GAS, transgender people are required to produce evidence that they have received approval to pursue gender transition from the human resource offices of their workplace or educational institution. This infringes directly on their privacy rights. After changing gender markers on identity documents, transgender people still need to change the gender markers on their diplomas and other educational certificates. At the time of writing, this has only happened in a few rare cases and in direct communication with the Ministry of Education itself, rather than through a local school or educational institution.

3.1 Regulations governing alteration of gender markers and names

3.1.1 General Principles of the Civil Law of the People's Republic of China (1986)

Article 99 of the General Principles of the Civil Law of the People's Republic of China (1986)²² states: "Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited."

However, gender markers on identity cards are limited to two categories (male and female), as are birth certificates, with no alternative gender choices provided.

3.1.2 Law of the People's Republic of China on Resident Identity Cards (2003)

Article 3 of the Law of the People's Republic of China on Resident Identity Cards²³ (2003) states: "Items to be registered on a resident identity card include name, gender, nationality, date of birth, address of permanent domicile, citizen's identity number, photograph, fingerprints, term of validity, and issuing authority. The citizen's identity number is the sole and inalterable permanent identity code of a citizen, which is designed by the public security organ according to the national standard for citizens' identity numbers."

The National Standards for Citizen Identification Numbers (GB 11643-1999), which came into effect on 1 July 1999 and was ratified and passed by the State Bureau of Quality and Technical Supervision, also has provisions regulating the assignation of gender on resident identity cards. According to these standards, the order code, or sequence of numbers in the middle of an individual's resident identification number (the 15th through 17th

22 General Principles of the Civil Law of the People's Republic of China (1986). Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383941.htm

23 Law of the People's Republic of China on Resident Identity Cards (2003). Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/05/content_1381969.htm

digits in the full identification number), differentiates individuals with the same date of birth and address code. An odd number in the 17th digit of the identity number designates a male; an even number designates a female.

3.1.3 Ministry of Public Security Order No. 478 (2008) and Ministry of Public Security Order No. 131 (2002)

There are two regulations from the Ministry of Public Security providing guidance to local departments for managing the process of changing gender markers. These two regulations, the Reply to Questions Concerning the Alteration of Assigned Sex on Household Registration for Citizens following Sex Change (MPS Ordinance No. 478 (2008)) and the Ministry of Public Security Reply to Questions Concerning the Alteration of Assigned Sex on Household Registration for Citizens following Sex Change Surgery (MPS Ordinance No. 131 (2002)), require transgender people to submit the following documentation after undergoing GAS procedures to formally apply for changing the gender marker on official documentation:

1. A formal written request from the applicant,
2. Household Registration Book and Resident Identity Card (which may need to be retrieved from the applicant's hometown or family),
3. A certificate of gender authentication issued by a domestic tertiary²⁴ hospital, along with a verification of the certificate from a notary public office or judicial accreditation body, and
4. A notice of permission for alteration [of the document] from the human resources office of the institution, collective, school, enterprise or other work unit of the individual (if the individual belongs to such a unit).

These regulations further specify that:

- If the transgender person underwent gender-affirming surgery outside of the country or at a domestic hospital at the county level (including in a different province) or at a lower level, a gender-determination certificate issued by a hospital that has been authorized to do so by the Public Security Bureau and designated by the Health Administrative Department of the provincial seat must also be presented.

After changing the sex on identity documents, the citizen identification number should be reissued, and a note of the change made on the Alterations and Corrections of Registration Record column on the reverse side of the Regular Residence Registration Form. For those who already have a resident identity card, the Public Security Bureau should permit them to return their cards and have the cards disposed of, as well as have issued a new resident identity card with the new identification information.

Guidance provided to the Ministry of Public Security includes the following:

1. The Public Security Bureau with jurisdiction over the location of the household registration has 50 working days to approve the application upon its receipt.
2. The local police station of the household registration location should inform the applicant within two working days once it has been informed of the approval of the application by the higher-level household administration department of the Ministry of Public Security.
3. The local police station should begin processing the alteration in accordance with the approval documents issued by the higher-level household registration administration department with all due haste.

24 In accordance with the Measures on the Administration of Hospital Classification (1989) issued by the Ministry of Health, hospitals in China are classified as belonging to one of three different categories: primary, secondary and tertiary institutions. Tertiary institutions are comprehensive or general hospitals at the city, provincial or national level with a large capacity of beds that are capable of providing specialist health services. They also play an important role in medical education and research. Under previous National Health and Family Planning Commission regulations, only tertiary institutions were permitted to perform GAS; as of February 2017, this requirement was lifted. However, as the process of changing gender markers is overseen by the Ministry of Security, not the Health and Family Planning Commission, people seeking to change gender markers may still need to abide by the Ministry of Security provisions.

3.2 Impact of regulations governing alteration of gender markers and names

According to the above regulations, after the transgender person who has undergone gender-affirming surgeries requests the Household Registration Administration Department of the Ministry of Public Security to alter their name and sex on identity documents, the name and gender markers on all other official documents should also be changed to match the official identity card. It is possible to alter this information on passports, work documents, driving licenses, bank cards, social insurance cards and other documents only once the official identity card has been changed.

However, it is very difficult to change the name and gender markers on diplomas, certificates and other academic qualifications as schools and educational institutions do not have the authority to do so. In practice, transgender individuals who have been able to change the gender markers on their diplomas did so by going through their educational institution to communicate directly with the Ministry of Education.

However, in the experience of most transgender people who have undergone gender-affirming surgeries, the gender markers on their residential identity cards and diplomas are different, and employers routinely refuse to recognize their educational qualifications. Although transgender people may opt to authenticate their gender transition through the services of a notary public, this will inevitably cause them to have to reveal their transgender identity and thereby face the risk of employment discrimination. Thus, there is an inherent conflict between the preservation of their right to privacy and the alteration of their gender markers on educational qualifications. As a result, many transgender people hesitate in making a choice.

China's policies regarding the alteration of gender marker and names for some transgender people may be said to be progressive, insofar as the Ministry of Public Security allows such alterations to be made following GAS. However, as identified below, three issues represent major shortcomings to this approach.

3.2.1 Making GAS a precondition for altering gender markers on identity cards

Gender-affirming surgery is a precondition for altering gender markers on identity cards. This approach is now heavily critiqued from a human rights perspective as it amounts to coerced sterilization for transgender men and does not recognize the physical integrity or self-determination of transgender people. The earliest types of gender recognition laws, introduced at a time when many countries still allowed forced sterilization for other groups too, followed this approach. One example of this outdated approach is a law passed in the Kingdom of Sweden on 21 April 1972. It permitted transgender individuals who satisfied a number of special conditions to change their official gender marker. Article 1 of this law stated that individuals who meet the following criteria (in addition to a few others, not reproduced here) should be permitted to undergo gender-affirming surgeries:

- Felt since childhood that their gender and the gender on their educational records were different
- Lived for a certain length of time as their preferred gender
- Expected to continue to express that gender in future.

A major issue with this approach, of course, is that whether they wish to or not, it requires transgender persons to undergo a serious medical procedure that carries a considerable financial cost in order to have their gender recognized legally. The cost in these cases is approximately CNY 100,000 at private or public hospitals. Furthermore, the technology is still not yet fully developed, so the results of the procedures are often unsatisfactory. For these reasons, most transgender persons prefer not to undergo GAS, or if they do, do not undergo all possible surgical procedures.

3.2.2 A lack of guidance in relation to academic certificates and diplomas.

A lack of a clear guiding policy from the Ministry of Education on the alteration of gender markers on educational certificates and diplomas means that many transgender people find it difficult to verify their gender transition at their place of prospective or current employment. Educational institutions themselves are not authorized to alter the gender markers of transgender people on academic certificates and diplomas. As a result, given the resulting mismatch between the expressed and official gender of the individual and the gender marker on the diploma or other educational certificates, these individuals are subject to considerable discrimination in the workplace.

Li's academic credentials

After receiving a postgraduate degree, a transgender man surnamed Li underwent GAS. After the procedure, a new employer required him to submit his academic credentials. Both his undergraduate and postgraduate qualifications identified Li as female. Because of this, Li consulted with the related government departments, but all of them said that it was impossible to change the gender marker on these documents. Li could only “forge” academic qualifications that were in fact genuine. Another transgender individual was unwilling to create any kind of a false document, and therefore felt they had no choice but to enroll in a different college and obtain another degree. If relevant laws authorized schools to change the gender marker on academic qualifications, or eradicate the gender markers on diplomas altogether, these problems would not exist.

– Key informant interview

3.2.3 A lack of protections for the right to privacy

Requiring transgender people to produce evidence that they have received approval to pursue gender transition by the human resource offices of their workplace forces transgender people to make the impossible choice of either “outing” themselves to co-workers and subsequently facing the risk of employment discrimination, or endlessly delaying or abandoning gender-transition procedures. This effectively creates obstacles for those who are unwilling to openly reveal their transgender identity.

4. Regulations relevant to health services for transgender people in China and their enforcement

China's National Health and Family Planning Commission and other government bodies have issued regulations governing the performance of gender-affirming surgery, including setting eligibility criteria for candidates and standards for the performance of such procedures. However, there is room for improvement in these and other directives regulating gender-affirming health services in China.

Firstly, substantial barriers exist for transgender people who wish to pursue GAS. Directives issued by the Ministry of Health and Family Planning Commission (MHFPC) regulating GAS pathologize transgender people and identify them as “transsexuals” with a specific psychiatric diagnosis. Further, they set forth a list of excessive requirements that make accessing GAS in China inordinately difficult for many transgender people – to the point that many of them ultimately choose to pursue GAS overseas. For example, the regulations stipulate that candidates for GAS must produce evidence verifying that they have no prior criminal record, issued by the local Public Security Bureau. For the many transgender people who engage in sex work (see Section 5.4.3), this already puts GAS out of their reach. In addition, candidates for GAS must also produce evidence that they have notified their family of their intention to undergo the procedure.²⁵ The MHFPC also mandates that candidates for GAS must be either unmarried or divorced, be over the age of 20, and possess complete civil capacity, among other requirements.

With regards to health care providers seeking to perform GAS, the regulatory bodies have not issued specific standards of care or medical technology usage codes, though they do strictly regulate what types of institutions may perform GAS. The end result of this confusing regulatory framework is that there are very few institutions in China that can and are willing to perform the procedure, and often only do so at a prohibitively high price. It is also important to note that GAS fees and costs are not covered by medical insurance.

4.1 Pathologization of transgender people

This report uses the term “pathologization” to refer to the processes whereby transgender people’s identity, including the legal recognition of that gender identity, depends on the concept that being transgender is an illness. This is the basis of regulatory approaches to transgender people in China where transgender people have been defined by using mental health diagnoses. This is sometimes specifically referred to as “psychopathologization.” As a result, in order to be recognized as transgender in China, you must be diagnosed with a mental illness. Following this diagnosis, access to any form of legal gender recognition in China requires transgender people to undergo a medical transition process including gender-affirming surgeries that result in sterilization. It is important to note that while individual transgender people may choose to take such steps to personally affirm their gender, not all transgender people wish to pursue this process. Others may elect only to undergo some of the available processes. As a result, imposing GAS on all transgender people as a requirement for the fundamental recognition and equality before the law undermines their dignity, privacy, right to self-determination and recognition before the law as well as other human rights.

On an international level, there is an active advocacy movement to depathologize gender diversity so that it is not considered to be a sign of illness. This includes calling for transgender health needs to no longer be defined by a mental health diagnosis (depsychopathologization). In May 2010, the World Professional Association for Transgender Health’s Board of Directors issued a strong statement calling for governments

²⁵ In practice, these familial notifications amount to familial consent. Signatures must be solicited from, at minimum, parents or guardians; an unsigned notification prevents the GAS candidate from moving forward with the procedures. Therefore, instead of the word “notification,” the term “consent” will be used hereafter.

and medical professionals and facilities worldwide to amend or pass policies that would facilitate the depsychopathologisation of gender variance, and reduce stigmatization of transgender people.²⁶

The World Health Organization is in the process of revising the International Classification of Diseases and Related Health Problems (ICD). Current proposals of the WHO Secretariat include that codes relating to transgender people's gender identity and expression be removed from the ICD chapter on Mental and Behavioural Disorders and that new codes, titled 'gender incongruence', be placed in a new chapter on Conditions Related to Sexual Health. These recommended revisions aim to recognize gender identity and expression as a matter of self-determination, and transgender people's decision-making autonomy in regard to gender-affirming health care. They acknowledge the need for available, accessible, affordable and quality transgender health services.²⁷

However, in China, there is progress that needs to be made. Transgender people continue to be pathologized as "transsexuals". On 13 November 2009, the General Office of the Ministry of Health issued the Notice Regarding the Publication of Sex Change Surgery Procedural Management Standards (Health Office Medical Care Administration File No. 185 (2009)).²⁸ These standards were agency-issued policies with a binding effect on all medical professions in China involved in providing or overseeing gender-affirming health services, including GAS. The Notice read in part that "the term 'sex change operation' referred to in these standards refers to the performance of plastic surgery (tissue transplant and organ reshaping) on the organs of individuals with transsexualism, that their biological sex and psychological sex might be aligned. Specifically, this means that the original biological sexual organs are excised and the new physical sexual organs and secondary sex characteristics are constructed." As stated here, the Notice categorizes candidates for GAS as "individuals with transsexualism."

Over eight years later, on 14 February 2017, the National Health and Family Planning Commission²⁹ replaced this set of regulations with the Sex Reassignment Procedural Management Standards (2017).³⁰ These new standards made several significant changes, including the terminology used to refer to GAS³¹ (from "sex change surgery" to "sex reassignment procedures") and referring to GAS candidates as "surgical patients" rather than "individuals with transsexualism." On 20 April 2001, the 3rd Edition of the Chinese Classification of Mental Disorders (CCMD-3) was published. In this edition, the term used to pathologize transgender people was "transsexualism," which was classified as a type of gender identity disorder. Two diagnostic criteria for "gender identity disorder" were set out in the CCMD-3, namely, behavioural expression and time duration, as explored below.

- Behavioural expression:
 - The individual's behaviour in dress, manner of speaking, and other external expression conformed to that expected of the "gender opposite their own physiological sex".
 - The individual refused to participate in activities expected of the individual's gender.
 - Persistent and firm rejection of their physiological sex characteristics.

26 WPATH De-Psychopathologisation Statement, issued by the WPATH Board of Directors, 26 May 2010. Available at: https://amo_hub_content.s3.amazonaws.com/Association140/files/de-psycho-pathologisation%205-26-10%20on%20letterhead.pdf

27 WHO (2015) ICD-11 Beta Version. Available at: <http://apps.who.int/classifications/icd11/browse/l-m/en>; Drescher J., P. Cohen-Kettenis and S. Winter (2012) "Minding the body: Situating gender identity diagnoses in the ICD-11", *Int. Rev. Psychiatr.*, 24 (6), pp. 568–571.

28 These standards expired on 14 February 2017.

29 In 2013, the Ministry of Health was reorganized and renamed the National Health and Family Planning Commission. The mandate of these organizations is approximately the same, and thus, despite the name change, the same department is in charge of the management of gender-affirming health services.

30 The Sex Reassignment Procedural Management Standards (2017) were issued by the General Office of the National Health and Family Planning Commission as National Health and Family Planning Commission Order No. 7 (2017), Announcement from the National Health and Family Planning Commission General Office Concerning 15 'Restricted Clinical Application' Medical Treatment Technical Management Standards and Quality Control Targets, Including Blood Generating Stem Cell Transplant Technical Management Standards (2017 Version).

31 For a side-by-side comparison of the 2009 and 2017 regulations, including the definitions of GAS, please see Appendix E.

- Time duration:
 - Behavioural symptoms, as identified above, should persist for longer than six months.

If the criteria above were confirmed, the individual might be diagnosed with gender identity disorder according to the CCMD-3.

Diagnostic criteria for “transsexualism” are defined as a psychological tension between one’s gender identity and one’s physiological characteristics, a persistent disgust for one’s own original physiological characteristics, and a desire to change one’s physiological characteristics (through surgery or use of hormones of the opposite sex), and exclusively heterosexual sexual orientation (defined as sexual attraction to others whose sex matches the transgender person’s sex assigned at birth). This diagnosis is only meant to be made after checking for diagnoses of mental illnesses, intersex variations that have altered sexual organs, or endocrinal abnormalities.³²

Therapists and doctors often believe that all transgender people are “sufferers of transsexualism.”

Xiao Hui, a high school student, described her parents’ reaction to their discovery of her cross-dressing in female clothing and when they heard her say that she wanted to undergo gender-affirming surgeries. “They were extremely alarmed and completely resisted. Every time they heard me say such things, my mother would just cry, and my father would fly into a rage and beat me so hard as though he had become my enemy.” She was forced by her father to consult a psychologist who diagnosed her with gender identity disorder. Ultimately, the psychologist recommended that she and her father reach a “gentlemen’s agreement”, that the father will no longer use violence, and she will no longer wear female clothing or run away from home, and will temporarily set aside the notion of changing sex.³³

Liu Ting once achieved national fame as a “moral model” for simultaneously pursuing her university degree and single-handedly caring for her mother, who had late-stage uremia. Later, in December 2014, a psychologist diagnosed Liu with “natural transsexualism” and recommended she begin openly living as a woman. In a news conference hosted by the Mei Lai hospital to announce a charity drive to raise funds “and assist Liu in obtaining a sex change surgery,” the hospital’s vice-president Song Jigui called on the public to respect the right of individuals with transsexualism to pursue their right to align their bodies and minds.

– Key Informant interview

It is also worth noting that the CCMD-3 diagnostic criteria require that a transgender person be attracted to the binary gender other than their gender identity. This is incredibly problematic as it denies lesbian, gay, and bisexual transgender people access to gender-affirming surgeries. It assumes that sexual orientation and gender identity are linked and that in order to be transgender, one cannot be attracted to the gender of one’s gender identity. It attempts to limit or deny the sexual orientations and expressions of transgender people and refuses to recognize their diversity.

4.2 Requirements for gender-affirming surgery candidates

The Hospital Work System (issued by the Ministry of Health on 7 April 1981) states that “before performing surgery, it is necessary to have written agreement [for the procedure] from the patient’s family or work unit. This contrasts with cosmetic surgeries that are not linked to gender affirmation, that do not require such

32 Zhang Xiaohui, Tong Huijie. “Diagnosing gender identity disorder: Perspectives from the DSM-4, CCMD-3, ICD-10”, *Journal of Neuroscience and Mental Health* (2006), Vol. 5, p. 376.

33 Cai Limei. “Eyes on juvenile mental health (second edition): Why a 17-year-old became a ‘fake girl,’” *Southern Country Morning News*, 7 November 2011.

authorization. Specifically, in urgent situations where surgery cannot wait for signatures from family members or work institutions, surgery may be carried out with a signature from the resident physician and approval from the hospital department director or head and vice-president of administrative affairs.”

The Sex Reassignment Procedural Management Standards (2017)³⁴ require that patients must submit the following materials and meet the following preconditions to be eligible for surgery:

“Before performing the main surgery, the surgical patient should submit the following materials and enter them into the medical record:

1. Verification issued by the local Public Security Bureau that the patient has no prior criminal record.
2. Verification issued by a psychologist or psychiatrist of a diagnosis of transsexualism.
3. Verified written request from the surgical patient requesting the surgery.
4. Verification that the surgical patient has already notified family of the intention to undergo sex reassignment surgery.”

The second requirement in this list formally showed the discontinuing of requirements under the 2009 regulations for the surgical candidate to provide additional evidence of their psychiatric conditions beyond a diagnosis of transsexualism (see Appendix E). In comparison, the 2017 regulations offer fewer grounds for refusing access to GAS beyond those necessary to receive a diagnosis of transsexualism under the CCMD-3. While laudable, this still does not remove many barriers for transgender people seeking to access GAS and is not in line with international standards.

The 2017 Standards go on to read:

“Before surgery, the surgical patient should fulfil the following requirements:

1. The desire to change sex has existed, and been persistent, for over five years with no history of hesitation in pursuing this desire.
2. Psychological/psychiatric therapy has been provided for over a year prior to surgery, with no effect.
3. [The patient is] in an unmarried state.
4. [The patient is] older than 20 years of age, and has complete civil capacity.
5. [The patient has] no other contraindications to surgery.”

Here the 2017 standards depart from what is considered to be international best practices. It presents significant obstacles to transgender individuals in the following four ways.

4.2.1 Familial consent

The familial consent requirement is quite strict in China, and applies regardless of the age of the candidate. Even candidates who are not minors must demonstrate some level of proof of familial consent. Close kin must be informed and provide a signature signing off on the procedure. If their parents are deceased, other kin must be notified instead. If the family members refuse to sign the notice, the procedure cannot go forward.

³⁴ The 2017 Standards discussed at length here were only recently adopted, so where applicable, references to the Sex Reassignment Surgery Technical Management Standards (Provisional) (2009) are provided for purposes of comparison. It should also be noted that the 2017 Standards are quite new and therefore, in terms of implementation, professionals in the field are much more likely to be acquainted with the 2009 rather than the 2017 provisions.

A transgender woman named Yan Yan was refused consent from her parents, and thus, was rejected multiple times by hospitals from undergoing gender-affirming surgery. In the end, she chose to try and perform surgery on herself to cut away parts of her sexual organs. She lost a tremendous amount of blood and caused irreparable injuries to herself. In her words, “at the time, I was losing a lot of blood, but I was actually very excited, as I had finally succeeded in cutting [the sexual organ] off, and would no longer need to take hormone pills. I thought my skin would get better and better, my voice would get more and more delicate, and I would finally reach the result I had always wanted. Before, I used to take medicine recklessly, and there were many side effects. Even if I died three days after the surgery, at least for those three days, I would be a woman. I actually didn’t want to do this surgery, but if I didn’t do it, I would have died.” At last, in order to undergo GAS, Yan Yan falsified evidence of her parents’ consent.

– Key informant interview

Some transgender individuals attempt suicide when they cannot get parental permission for gender-affirming surgeries.

A transgender woman named Chao Chao strongly desired GAS, but faced opposition from her father. This made her feel very depressed and she thought that death was better than living. Chao Chao was upset at her father’s ignorance and narrow mindedness. She said that after she had knelt on the ground and begged [her parents], to no effect, she appeared to lose all hope completely, and secretly took over 10 sleeping pills in an attempt to commit suicide. Fortunately, right after she took the pills, her boyfriend called her on the phone. After he found out what had happened, he notified Chao Chao’s family immediately, and they were able to save her life.³⁵

4.2.2 To be over 20 years of age

The General Office of the Ministry of Health requires that candidates for GAS be “older than 20 years of age, and [have] complete civic capacity.” However, this requirement conflicts with the General Principles of the Civil Law of the People’s Republic of China (1986), which provides that individuals who are 18 years of age have full civil capacity (and are adults). The age of consent for GAS candidates should be reconsidered and be changed to 18 years. In instances where minors urgently press for gender transition, the minor should only need the guardian’s consent before receiving the right to undergo gender-affirming health services, including puberty-suppressing hormone treatment, sex hormone treatment, and other procedures in line with international good practice and standards of care.³⁶ It is imperative that the child’s best interests and evolving capacities be taken into account in accordance with the Convention on the Rights of the Child. In turn, those with full civil capacity³⁷ should have the right of self-determination in making these medical decisions.

4.2.3 To be unmarried

The requirement of the General Office of the National Health and Family Planning Commission that candidates for GAS “must be in an unmarried state” has resulted in a number of transgender people who are not yet divorced to be unable to complete GAS in standard hospitals. One legal case illustrates this difficulty.

35 “Changing sex to avoid becoming one of the guys: Choosing not to commit suicide for the sake of his father,” *Southern Metropolis Daily*, 3 April 2007.

36 For more information on international best practice visit World Professional Association for Transgender Health (WPATH) at <https://wpath.org/>.

37 Under the “General Principles of the Civil Law of the People’s Republic of China” (1986), an individual who is a) over the age of 18 (or over the age of 16 and whose primary source of income is his or her own labour), and b) is not mentally ill and therefore unable to account for his or her own conduct is recognized to be in their full civil capacity and therefore enjoy and exert their civil rights under Chinese law.

In the case, the plaintiff, Gao Tingting sued the Oriental Hospital in Nanjing for violating a “sex change agreement.” In 2004, Gao and the Oriental Hospital signed an agreement stipulating that the hospital would perform a complete set of gender-affirming surgeries. The parties arranged for the surgery fee to be paid by the hospital, and in exchange, following the operation, Gao would give exclusive reporting rights to the hospital. However, following completion of a nose reconstruction and laser hair removal, the hospital refused to continue to provide surgeries on the basis that the plaintiff had not completed the necessary procedures to be eligible. The court of first instance held in its decision that “the plaintiff clearly knew that in order to undergo sex change surgery, proof of divorce must be presented, but to date, the plaintiff has failed to provide evidence of a legal divorce from the wife ... The defendant holds that the evidence presented by the plaintiff was in fact improper, and thus, the defendant’s defense that it has temporarily suspended continuing surgical procedures is upheld.” The court further noted that should Gao complete “sex change procedures” while still married, it would constitute a de facto marriage between two females, a violation of China’s Marriage Law, and cited this as the basis in its judgment for siding against Gao. As to the matter of freeing the hospital from its contract, because the hospital did not countersue, the court determined not to hear the case.

Dissatisfied with the first court’s decision, Gao appealed the decision to the Intermediate People’s Court of Nanjing City. This court subsequently held in its judgment that the agreement signed by both parties was legitimate. In the appeal, Gao argued that the Oriental Hospital in Nanjing halted the surgeries on the basis that Gao had not provided the necessary legal documents evidencing Gao’s divorce in violation of their contract and without legal basis, as Gao had already submitted documentation showing that Gao’s wife understood and agreed to the gender transition. Further, in support of the appeal, Gao also held that the first court’s decision to side with the hospital because undergoing GAS while a married individual would result in a de facto homosexual marriage in violation of China’s Marriage Law was inappropriate. The Nanjing City Intermediate People’s Court accepted Gao’s arguments. Whereas the Oriental Hospital had clearly expressed it would refuse to provide further gender-affirming health services for Gao, the basis for continued execution of the contract no longer existed, and therefore should be dissolved.

Because Oriental Hospital had failed to execute the contract, and had thereby infringed on Gao’s contractual rights, the hospital was found to be responsible for compensating Gao Tingting for breaking the contract. According to the agreement reached by both parties originally, the Oriental Hospital was responsible for Gao’s GAS fees. The Nanjing City Intermediate People’s Court consulted clinical medical records of related procedures, and determined that the hospital owed damages to Gao in the amount of CNY 50,000. The final judgment held: “The decision of the first court is overturned; and the Oriental Hospital has 15 days from the date this judgment is entered to pay CNY 50,000 to the order of Gao Tingting.”³⁸

This case clearly demonstrates the negative impact of the requirements of the General Office of the National Health and Family Planning Commission that candidates for GAS be unmarried. While Gao received compensation in the amount of CNY 50,000, the first court’s argument that “a sex change operation performed between two already legally married individuals would perforce constitute a marriage between two individuals of the same sex, in violation of China’s Marriage Law” is an inference based on subjective assumption.

At the same time, the appellate court’s decision in the Gao case demonstrated an unexpectedly progressive stance in its staunch defence of the rights of transgender people to marry and to pursue gender transition – even in cases where a same-sex marriage may be the final result. Its final decision reads:

“The Marriage Law recognizes a man and a woman as subjects of marriage. If one spouse changed his or her sex during a lawful marriage, such a same-sex marriage is not protected. However, the fact that same-sex marriage is not protected should not be used as an excuse to prevent a married person from undergoing sex reassignment surgery. Law regulates behaviours instead of the consequences of them. When the law does not prohibit a certain behaviour, its legality as such should not be negated simply because its consequence is illegal. Gao decided to change her sex, which is a lawful disposal of her own body, and is not part of spousal rights.

38 Yin Wenjing. “Client in ‘Nanjing’s first transsexual case’ receives compensation of CNY 50,000,” *Jiangnan Times*, 17 May 2005.

In other words, the right to dispose one's body should not be derogated by the claim that his or her spouse's marital interests might be influenced.”³⁹

4.2.4 No criminal record

The requirement of the General Office of the National Health and Family Planning Commission that candidates for GAS submit “a record of no criminal offense issued by the local Public Security Bureau” prevents all individuals suspected of a crime or who have committed a crime in the past from receiving the procedure. This regulation is overly broad and uniformly limits the right to pursue GAS for anyone who cannot produce “evidence of a lack of a criminal record.”

This approach has two major defects: First, there is no differentiation in the type of offence committed. There is no exception made for light offences, such as traffic infractions; offences where there was no intent by the offender; or offenders whose risks of re-offending or otherwise harming society are comparatively low. Gender-affirming surgery will also not allow offenders to escape prosecution by changing their legal names and records or otherwise endanger society. When someone has undergone GAS and applies to change their gender marker, the evidence required would enable the relevant agencies to maintain a link between a person's original record and amended details. Second, this regulation creates “discrimination against those with prior records,” which is equivalent to branding those with prior offences, and deprives them of fundamental human rights to receive medical treatment to pursue gender affirmation. In order to pursue more just outcomes, responsible government departments should regulate and standardize this policy.

4.3 Institutional qualifications for hospitals performing gender-affirming surgeries

According to the Sex Reassignment Procedural Management Standards (2017):

“Doctor(s) performing gender-reassignment procedures must:

1. Have a valid licence to practise medicine, and be a registered doctor with the medical facility's surgical department.
2. Have over 10 years of clinical medical work experience specializing in plastic surgery, and have held a professional position of deputy director of the department or higher professional technical qualification for over five years.
3. Have independently completed no fewer than 10 sexual organ reconstruction procedures (those performing female-to-male gender-reassignment surgeries need to have completed no fewer than five penis reconstruction surgeries).
4. Have undergone systematic training certified by the province-level Health and Family Planning Commission administrative department, and possess the necessary skills to perform gender-reassignment procedures.”

It remains to be seen how many currently practising medical professionals in China meet these strict requirements. However, in practice, there are many examples of medical accidents caused by surgeons with inadequate skills.

When Huang Wei was 19 years old, she strongly wanted to undergo gender transition, and as a result found herself the victim of malpractice. In a small clinic in Hainan, Huang found a traditional Chinese medicine doctor who offered to perform the surgery. “That doctor used a surgical knife, and within five minutes had cut off Huang's testicle, and casually threw it into a trash can,”⁴⁰ but did not otherwise complete the surgery, leaving Huang castrated but without female genitals.

39 Reproduced in Guo Xiaofei and Zhu Jingshu, “LGBTI Rights and Legal Reform: A Comparative Approach; Silent Changes: Transsexuals' Right to Marry in China's Mainland and Hong Kong,” *Frontiers of Law in China*, Vol. 11, No. 3 (September 2016).

40 “Easily done with a surgical knife, a matter of a few moments,” *Shenzhen Evening Newspaper*, 17 July 2010.

4.4 Standards of care for gender-affirming surgeries

To date, there are no detailed standards of care for transgender people in China. The only document providing official guidance to medical professionals is the Sex Reassignment Procedural Management Standards (2017) issued by the National Health and Family Planning Commission. The guidance offered in this document is in turn itself very general. For example, in its section on Minimum Requirements for Procedural Management, doctors are advised to:

1. “Strictly comply with the standards and medical guidance governing the application of gender-reassignment procedures. Ensure thorough comprehension of the indications and contraindications of gender-reassignment procedures.”

The document itself offers no further information as to what specifically those “standards and medical guidance” are, leaving considerable room for a wide range of interpretation by individual medical facilities. Nevertheless, these new standards are an improvement over those issued in the past. The Sex Change Surgery Procedural Management Standards (Provisional) (2009) provided the following guidelines for procedural management:

1. “Comply with the clinical standards of plastic surgery and related disciplines, and the conventional application of such procedures.
2. The proper order of sex change operations: The main element of sex change operations is the removal and reconstruction of the sexual organs. Any surgery to alter secondary sex characteristics must be performed after or at the same time as removal of the sex glands.”

It is important to note here that this second requirement concerning the order of GAS procedures is not at all in line with international health standards. For example, chest reconstruction for transgender men is usually performed relatively early on in a transgender man’s medical transition, and WPATH standards of care do not require hormone treatment as a prerequisite. There is no requirement that transgender men who choose to have chest reconstruction need to undergo any other gender-affirming surgery. It is also troubling that, as written, these 2009 standards mandated sterilization before secondary sex reconstruction surgeries. In fact, this requirement was rarely adhered to in practice as many transgender people in China pursued GAS at private facilities that were likely to allow trans men to undertake chest reconstruction and trans women to have breast augmentation without having undergone genital reconstruction surgeries or sterilization. The new standards therefore mark a significant improvement, at least in this specific area, conceding the important point that GAS standards should not mandate the order in which transgender people pursue surgical intervention.

Still, the lack of specificity of the new standards is still far from ideal. They still fail to address an already widely recognized problem. The absence of detailed standards of care prevented courts from being able to reach decisions in medical treatment disputes as there simply was not enough information provided in relevant policy to identify the legal extent of the duty of care of medical facilities practicing GAS. The 2002 medical dispute case of Li Ying vs. Hangzhou City Plastic Surgery Hospital, for example, clearly exemplifies the risks that emerge in the absence of more detailed regulation.

On 27 February 1992, Li Ying underwent male-to-female gender-affirming surgery at Hangzhou City Plastic Surgery Hospital. Twenty days following the procedure, she noticed some inflammation at the incision site. She sought a consultation at a nearby hospital, where she was told by the doctor, “The vagina has atrophied, and around the vulva, a hard, round growth has emerged, which requires surgery to fix.” As a result, Li Ying underwent surgery for a second time at the Hangzhou City Plastic Surgery Hospital. A week after this procedure, when the stitches were removed, she discovered that not only had the “round growth” not been excised, there were large gashes on her vulva. In January 2000, Li Ying sued the Hangzhou City Plastic Surgery Hospital, and during court proceedings in March, both sides proved resolute in their version of events. “The key point of the debate was this: Was the surgery ultimately successful, or a failure? What should the standards be to determine that? Had the statute of limitations on legal action already passed?”⁴¹

41 Chen Hongbiao. “Why a transsexual singer is suing the hospital,” *Information Daily*, 11 May 2001.

In April 2002, the court of first instance found that because it lacked specific standards in policy to act on as a guide, in its judgment, it withdrew the plaintiff's demand that the defendant pay compensation in the form of ongoing medical treatment fees and psychological damages. Li Ying's lawyer "called on relevant government organs to draft relevant laws and policies, and at the same time, set up a system to rigorously evaluate whether hospitals have the relevant experts on staff and technical equipment to perform sex change operations."⁴²

Legal experts are also concerned that because gender-affirming surgeries are still not an open or widely offered medical procedure, the Chinese Ministry of Health administrative departments have not yet formulated related policies and standards to regulate the practice of such operations. Neither doctors nor patients have regulations to respect or laws to rely on, making it difficult to protect the lawful rights and interests of patients seeking such treatments.⁴³ This remains the situation under the new 2017 standards.

4.5 Financial burdens of gender-affirming surgeries and hormone therapy

The majority of gender-affirming health services are not covered by either public or private health insurance systems. Transgender people are often required to pay for their own medical consultations, clinical visits, laboratory testing, hormone therapy, hair removal, and/or surgeries. As these medical services are not cheap, most transgender people are forced to select medical services that are relatively inexpensive but may also be unreliable, or otherwise be unable to complete or receive long-term treatments. Most people obtain and use sex hormones outside of the formal medical system, without a doctor's prescription or oversight, and as a result, are exposed to significant health risks. Only transgender people who have already completed or are in the course of completing gender-affirming surgeries may access hormone therapy through formal medical channels. According to a 2014 study by UNDP and USAID in China,⁴⁴ transgender people frequently go through unregistered merchants to purchase sex hormones. Furthermore, transgender people usually rely on suggestions from other members of the transgender community when making decisions about the types of sex hormones to buy and the quantities to use.⁴⁵ These may not be based on accurate or up-to-date information about specific hormones and their side effects.

Through interviews with members of the transgender community, the research team learned that most sex hormones used as part of gender-affirming health services require a doctor's prescription, and in China, very few doctors will write such prescriptions for transgender people. As a result, transgender people often seek out informal channels to acquire sex hormones, such as pharmacies in small cities, online retailers, or from individuals who acquired the sex hormones while overseas. Given these methods, the risks of fraud are very high. At the lower range, these sex hormones cost on average over CNY 1,000 per year. Since hormonal birth control is available without a doctor's prescription in China and is heavily subsidized by the national health care system, even if paying out of pocket, some transgender women simply buy birth control over the counter. This is not the recommended form of hormone therapy for transgender women.⁴⁶ There is no equivalent subsidized form of hormone therapy for transgender men. Because of these and other significant obstacles, many transgender people opt not to pursue hormone therapy.

42 "First transsexual to sue hospital is defeated: Because of a lack of publicly available standards, Li Ying's requests for legal relief were rejected by the court during the first instance trial," *Southern Metropolis Daily* (national edition), 27 April 2002.

43 Chen Hongbiao. "Why a transsexual singer is suing the hospital," *Information Daily*, 11 May 2001.

44 UNDP, USAID (2014). *Being LGBT in Asia: China Country Report*. Available at: <http://www.undp.org/content/undp/en/home/librarypage/hiv-aids/-being-lgbt-in-asia--china-country-report.html>

45 USAID, UNDP, APTN & HPP (2015). *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities*. Available at: http://www.asia-pacific.undp.org/content/rbap/en/home/library/democratic_governance/hiv_aids/blueprint-for-the-provision-of-comprehensive-care-for-trans-peop.html, p. 51

46 *Ibid.* Appendix A, p. 135.

5. Regulations relevant to the employment of transgender people and their enforcement

China has many legal provisions prohibiting discrimination in the workplace, but to date, they lack any mention of the terms “transgender,” “gender identity” or “gender expression.” In academic circles, legal scholars have theorized that provisions prohibiting workplace discrimination on the basis of gender should include transgender people, because the term “gender” should, in theory, include sexual orientation and gender identity and expression (SOGIE) minorities. Further, some scholars argue that the term “etc.” included in legal provisions enumerating the categories individuals protected from gender discrimination should include groups such as SOGIE minorities. However, at this time, there has been no confirmation or testing of such theories in practice. With regard to legal provisions relating to sexual harassment, only females receive explicit protection. Debate continues whether legally guaranteed workplace protections for pregnant or nursing women are applicable to transgender women.

5.1 Equal employment regulations prohibiting discrimination on the basis of gender

Equal employment regulations that could potentially prohibit discrimination against transgender people in China are primarily scattered across the following four laws and one regulation:

5.1.1 Labour Law of the People’s Republic of China (1994)

In the Labour Law of the People’s Republic of China (1994),⁴⁷ Article 12 holds that “labourers shall not be discriminated against in employment due to their nationality, race, sex, or religious belief.”

Article 13 states that “women shall enjoy equal rights as men in employment. Sex shall not be used as a pretext for excluding women from employment during recruitment of workers unless the types of work or posts for which workers are being recruited are not suitable for women according to State regulations. Nor shall the standards of recruitment be raised when it comes to women.”

5.1.2 Employment Promotion Law of the People’s Republic of China (2015 Amendment)

In the Employment Promotion Law of the People’s Republic of China (2015 Amendment),⁴⁸ Article 3 states that “labourers shall have the right to equal employment and to choose jobs on their own initiative in accordance with the law.

Labourers seeking employment shall not be subject to discrimination based on factors such as ethnicity, race, gender, religious belief, etc.”

As this provision uses the term “gender,” this provision arguably should not be limited to women and men, but should also include transgender people, including transgender men, transgender women and others. In addition, “factors such as ethnicity, race, gender, religious belief etc.” should properly be interpreted as

47 Labour Law of the People’s Republic of China (5 July 1994). Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383754.htm

48 Employment Promotion Law of the People’s Republic of China (2015 Amendment). Available at: <http://lawinfochina.com/display.aspx?id=19793&lib=law>

an open term. This in theory would allow gender identity to be included in the list of prohibited grounds of discrimination.

Article 27 states that “the state shall ensure that women enjoy labour rights equal to those of men ...

When an employer recruits employees, it shall not refuse to recruit women or increase the thresholds for recruitment of women under the excuse of gender ... When an employer recruits female employees, it shall not stipulate in the employment contract any content, which restricts female employees from getting married or bearing a child.”

Article 62 provides “for anyone who violates this Law due to employment discrimination, workers may lodge a lawsuit in the People’s Court.”

5.1.3 Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (2005)

Article 23 provides “with the exception of the special types of work or posts unsuitable to women [see section 5.3 below], no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women ... When an entity employs a woman, it shall sign a labour (employment) contract or service agreement with her. The labour (employment) contract or service agreement shall not contain restrictions on her matrimony and child-bearing.”

Although this law prohibits the denial of employment opportunities to women on the basis of their sex (except in specific incidences), there is no legal provision that identify sex as a “genuine occupational qualification” and thereby promote the employment of individuals in certain occupational categories based on their sex.

While the law is silent on transgender people, in theory, transgender women with female gender markers on their official legal documents should be protected by this law.

5.1.4 Advertising Law of the People’s Republic of China (2015)

In the Advertising Law of the People’s Republic of China (2015),⁴⁹ Article 9 provides that “an advertisement shall be prohibited from ... containing any ethnically, racially, religiously, or sexually discriminatory content...”

5.1.5 Provisions on Employment Services and Employment Management (Ministry of Labour and Social Security Order No. 28 (2007))

In the Provisions on Employment Services and Employment Management (Ministry of Labour and Social Security Order No. 28 (2007)),⁵⁰ Article 58 holds that “a job intermediary agency is prohibited from ... issuing job information that contains any discriminatory content...”

If a job intermediary agency violates this provision, according to Article 74 of the same law, “...the administrative department of labour and social security shall order it to make correction and may impose on it a fine of less than 10,000 yuan if there is no illegal proceeds; or may impose on it a fine of less than three times the illegal proceeds but no more than 30,000 yuan if there is illegal proceeds; and shall request the administrative department of industry and commerce to revoke the business license where the circumstances are serious; and the agency shall assume the liability of compensation if it causes damage to the party concerned.”

49 Advertising Law of the People’s Republic of China (2015). Available at: https://www.hfgip.com/sites/default/files/law/advertising_law_16.02.2016.pdf

50 Provisions on Employment Services and Employment Management (Ministry of Labour and Social Security Order No. 28 (2007)). Available at: <http://en.pkulaw.cn/display.aspx?cgid=99090&lib=law>

If a job advertisement discriminates against transgender people, the victim has the right to report it to the labour security supervision authorities, who in turn may impose an administrative sanction on the offending party. The victim of such discrimination may also sue the offender in court in accordance with Article 62 of the Employment Promotion Law (2015).

Arguably, the above laws may be applicable for transgender people with female gender markers on official documents.

5.2 Legal provisions prohibiting sexual harassment

In 2005, the Law on the Protection of Women’s Rights and Interests of the People’s Republic of China⁵¹ was amended to read, “Article 40: Sexual harassment against women is banned. The victims shall be entitled to complain to the entity or the relevant organs.” Article 58 holds that “if anyone commits sexual harassment or family violence against a woman to violate this Law, and if his act constitutes a violation of the public security administration, the victim may require the public security organ to give the violator an administrative punishment or may initiate a civil action in the People’s Court.”

The Special Rules on the Labour Protection of Female Employees (State Council Order No. 619 (2012)), which came into effect on 28 April 2012, holds in Article 11 that “employers shall prevent and prohibit the sexual harassment of female employees in their workplaces.”

To date, the above provision concerning sexual harassment protects only those individuals with a female gender marker on their official documents, and overlooks individuals of other genders – and in theory would apply if a transgender person has a female gender marker.

5.3 Special labour regulations protecting female employees

The appendix to the Special Rules on the Labour Protection of Female Employees (State Council Order No. 619 (2012))⁵² contains protective provisions that prohibit female employees from being required to bear a load of 25 kilograms or more, and also prohibit female employees from being required to work in environments where they may be exposed to hazardous or noxious substances during pregnancy, their menstrual cycle or when breastfeeding. The Law on the Protection of Women’s Rights and Interests of the People’s Republic of China (2005) also provides that “women shall be under special protection during menstrual period, pregnancy, obstetrical period and nursing period”, and that “no entity may, for the reason of matrimony, pregnancy, maternity leave or breast-feeding, decrease a female employee’s wage, dismiss her or unilaterally terminate the labour (employment) contract or service agreement, with the exception that the female employee requests to terminate the labour (employment) contract or service agreement.”

Legislators have previously debated whether the provisions above apply to transgender people. For example, in 2008, as the Fourth Meeting of the Standing Committee of the 11th People’s Congress of Henan Province debated passage of the Measures of Henan Province for the Implementation of the Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (Amendment Draft), vigorous debate broke out on this issue. The first opinion that emerged from the meeting was that if a transgender woman had already undergone gender-affirming surgeries, and public security authorities changed the individual’s gender marker on their household registration (*hukou*) following verification of the medical procedure, such individuals should receive the protection of law. The second opinion held that it should instead depend on whether the individual in question exhibited female characteristics, for example, the capacity to reproduce or breastfeed; without these characteristics, these legislators felt that the individual should not receive corresponding legal protections. Some cast doubt on this line of thinking, retorting that there are many women who are unable to reproduce – is that to say that they do not have female characteristics? The mainstream opinion was that transgender women were a minority group, and these measures were meant to benefit “normal” women and

51 Law on the Protection of Women’s Rights and Interests of the People’s Republic of China (2005). Available at: <https://www.justice.gov/sites/default/files/eoir/legacy/2013/11/08/Protection%20of%20Women%27s%20Rights.pdf>

52 Special Rules on the Labour Protection of Female Employees (2012). Available at: <http://en.acftu.org/28616/201408/26/140826131330762.shtml>

girls from inequalities, not a special group. Accordingly, this argument concluded, transgender women should not be included in the protective scope of these measures.⁵³ This type of opinion stems from refusal, and likely, personal prejudice, among certain legislators to recognize transgender people according to their gender identity.

5.4 Enforcement of equal employment regulations prohibiting discrimination on the basis of gender

As will be demonstrated in the following sections, transgender people do not enjoy the protection of their work by equal employment regulations, and are subject to discrimination on an ongoing and pervasive basis.

5.4.1 Transgender people and employment discrimination

In June 1998, a well-known professor at a famous university in Beijing underwent gender-affirming surgery. Subsequently, the university moved to fire her. The chief surgeon involved in the professor's surgery, Dr. Chen Huanran, went to the school campus in the southern suburbs of Beijing many times to meet with the university's management. On each occasion, he used his identity as a well-known expert in the area to point out that medical transition in China is recognized as a medically necessary step for some transgender people and that the professor should be treated with compassion and understanding. The university eventually came around to Dr. Chen's explanation, and assisted the professor in changing the gender marker on her documents. However, they put forward one requirement that for three or four years, she would not be allowed to give public lectures, and must wait until those students who were familiar with her before her gender transition would graduate before she could publicly lecture again.⁵⁴ This deeply problematic request demonstrates the manner in which many employers in China approach transgender employees, that the professor should be obliged to remain hidden and refrain from public lectures, which would have an effect on her career as an academic, in order to have her gender recognized and her employment protected.

Called "East China's first transgender beauty," Huang Zhuqian underwent gender-affirming surgeries in early 2004 at the Nanjing Drum Tower Hospital. At the same time, Huang actively sought out the media, informing journalists that her efforts to find a job had met difficulties at every turn. In Nanjing, she had previously had positions as a beauty stylist, retail worker and hotel receptionist. Each time an employer learned she was a transgender woman, she was fired. To survive, she was left with no option but to move to Hangzhou city and become an escort.⁵⁵

He Qiang, a transgender woman from Sichuan Province, successfully passed exams to get into the Nanhua College of Industry and Commerce in Guangdong Province in 2003 to study tourism. As a successful student, she earned numerous accolades from the university. However, each time she participated in job fairs and callbacks, employers would do a double take. They would inevitably ask, "Didn't you write your gender wrong?" He Qiang would explain each time, "my current gender is male, but I plan on undergoing sex reassignment surgery to become female. If your company would do me the honour of accepting me as a candidate, I will do an exemplary job." Not a single company hired her.⁵⁶

Transgender people already in employment also face discrimination if they transition or their gender identity is exposed.

53 "Six arguments for protecting women's rights and interests," *Dahe News*, 29 July 2008.

54 "Applying for a sex change operation is harder than getting into Tsinghua," *Changsha Evening Newspaper*, 31 October 2001.

55 "Huang Zhuqian: Longing for a normal life," *New Business*, 15 August 2009.

56 "The prettiest girl on campus with the rising dress is a boy," *Southern Metropolis Daily*, 17 May 2006.

characteristics. In the second half of 2015, he sought employment at an e-commerce firm in the Wukesong neighborhood of Beijing, and was accepted with a three-month probationary period to start. Close to the end of the third month of his probation, Ran Ran was dismissed, after receiving only one month's salary and no benefits. His employers never provided a reason or written explanation for his dismissal. Ran Ran was open about his identity as a transgender person at his workplace, using the male restroom facilities, answering honestly that he was a bisexual transgender man when asked by coworkers about his sexual orientation and gender identity. A co-worker at the company suggested that one of the reasons Ran Ran was dismissed was that he was too open about his identity as a transgender person. Ultimately, Ran Ran did not sue his employer, in part, because of the difficulties inherent in demonstrating evidence of discrimination.

5.4.2 First case of employment discrimination against a transgender person

Although many transgender people encounter discrimination, until now, there has only been one case taken to court. Thus, this case is a milestone as the first case involving employment discrimination against a transgender person, and is the reason why it is discussed here in depth.

According to Article 3 of the Employment Promotion Law of the People's Republic of China (2007),⁵⁷ "Workers shall have the right to equal employment and to choose job on their own initiative in accordance with the law ... Workers seeking employment shall not be subject to discrimination based on factors such as ethnicity, race, gender, religious belief etc."

One of the bases for this case was the single term "etc." in Article 3 of this law, which advocates hope to cite as a demonstration that the list provided in law is not all-encompassing. However, because there is no specific provision preventing discrimination on the basis of gender identity or expression, and further, no definition provided to "employment discrimination" itself, it is very difficult to establish in court the reason for dismissal and, beyond this, to verify this specific category of employment discrimination. That is one reason why so many individuals who encounter employment discrimination ultimately choose not to pursue litigation.

In this case, a young transgender man called "Mr. C" chose to litigate against his former employers. Mr. C offers this frank approach to his gender identity and expression: "My identity is male, and I have always lived as a male. I really hate it when it is implied that I am female. In the future, if possible, I really do wish to change my own biological sex. So the only common ground I have with 'tomboys'⁵⁸ is that I like women. We differ on whether we accept our own bodies." After accepting work as a sales consultant, Mr. C was on the job for only seven working days before being told by a superior he was not allowed to come to work anymore. "They said, because I was a homosexual, I was hurting the company's image."⁵⁹

On 12 April 2016, Mr. C filed a lawsuit at the Guizhou Province Guiyang City Yunyan District People's Court arguing that he had been wrongfully terminated, and on the same day received notification that his case had been accepted. In his complaint, Mr. C claimed that on 21 April 2015, the plaintiff (Mr. C) accepted a position as a sales representative at the Guiyang City Ciming Health Checkup Center Co., Ltd. On 29 April, the defendant dismissed the plaintiff on the grounds that his gender expression was impacting the company's image. According to the complaint, the defendant also alleged that the plaintiff was a homosexual woman, which the plaintiff considered particularly inappropriate. The plaintiff further stated in the complaint that his human dignity had been violated, and after his dismissal, he had been unable to find other work, and subsequently, as a result of the mental as well as economic stress, had lost sleep and suffered emotionally. The plaintiff held that the defendant's behaviour was illegal, and constituted an infringement of rights. The defendant had not only violated the principles of equality in the Constitution, but also violated the Labour

57 Employment Promotion Law of the People's Republic of China (2007). Available at: <https://www.cecc.gov/resources/legal-provisions/employment-promotion-law-of-the-peoples-republic-of-china>

58 Translator's note: A term in Chinese meaning "butch" or "masculine" lesbians.

59 "A girl dressed up in men's clothing: An employee is fired," *Guiyang Capital News*, 16 March 2016.

Law (1994), Employment Promotion Law (2007), Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005) and other laws.

The plaintiff lodged a lawsuit in the court to protect his rights to equal employment and human dignity. The plaintiff asked the court to order the defendant to issue a formal, written public apology, and pay compensation for psychological damages in the amount of CNY 50,000. To date, this case is currently effectively suspended as Mr. C will need to file a labour dispute case with the court following a disappointing labour arbitration panel ruling.

On 7 March 2016, Mr. C applied for the case to be heard by an arbitration committee, submitting an application to the Guizhou Province Guiyang City Yunyan District Labour Dispute Arbitration Committee. The labour arbitration panel issued a ruling on 9 May 2016 (Yunyan District Labour Arbitration Committee Decision No. 195 (2016)). The key content of the decision is summarized below.

The plaintiff claimed that on 29 April 2015, the defendant unlawfully dismissed the plaintiff from the plaintiff's position on the flimsy basis that the plaintiff was masculine in dress and behaviours and that this was impacting the company's image. The plaintiff further claimed that the defendant was behind on its payments to the plaintiff for salary and compensation. On this basis, the applicant requested that the arbitration committee rule that the defendant must pay the plaintiff for wages due, in the amount of CNY 643, and an additional CNY 2,000 in compensation for unlawfully terminating a labour relationship.

In the course of the case hearings, the arbitration committee held that the defendant had not paid the plaintiff a salary for seven days of work during his probationary period, in violation of relevant labour laws. It was also determined that the company had been underpaying Mr. C, as their payment was well below the mandated minimum wages for workers in Guiyang City. The committee finally determined that the award for Mr. C for seven days of labour should be calculated against the minimum city standard, and in total, Mr. C was awarded CNY 402.3 for his seven days of work.

Next, the arbitration panel considered the question as to whether the defendant had unlawfully dismissed the plaintiff, and therefore owed the defendant compensatory damages. For this claim, the panel was presented with six recordings made featuring conversations between Mr. C and various coworkers and company representatives and a report from the *Guiyang Evening News* in which a spokesperson for the company stated that "Mr. C's dress failed to meet our [company's] standard."

Lawyers for the company argued that at least some of the recordings were unlawful and actually constituted an invasion of privacy. One of the company's human resources managers further argued that the recording of the dialogue between herself and Mr. C, as a conversation between two co-workers, did not reflect the attitude or human resource policies of the company. The committee held that these recordings were a demonstration of employees' personal opinions and did not reflect the company's true attitudes or opinions. The media report was also ruled as inadmissible. Thus, the panel ultimately found for the defendant and denied Mr. C's claim that his termination of employment was based on his gender expression. Instead, the panel agreed with evidence produced by the company that Mr. C's performance failed to meet the company's standards, and his termination was therefore lawful.

Mr. C disagreed with the ruling and sued the company in court. On 18 December 2016, the Yunyan District People's Court of Guiyang City in Guizhou Province issued a ruling that did not recognize the claim of workplace discrimination, and merely confirmed that there had been an illegal dissolution of a labour relationship, and required the defendant to pay the plaintiff CNY 483 in salary and CNY 1,500 in economic compensation. Mr. C is currently preparing to bring a tort suit to court. In that case, Mr. C hopes to have the court recognize that the company's actions constituted discrimination against transgender identity in dismissing Mr. C on the basis of not wearing a work uniform and alleging that Mr. C's masculine dress and behaviour caused a problem for the company and reflected poorly on its image. Mr. C further hopes that the court will order the defendant to issue an open, written apology to Mr. C, and compensate him in the amount of CNY 50,000 for psychological damages.

Speaking to the earlier arbitration panel's ruling on payment of salary, Mr. C says, "Actually, the money part of this case is no longer important to me. The final result I hope to achieve is a written, formal apology from the company. I want more people to know that a person cannot be fired for inappropriate reasons, and that everyone enjoys equal rights to employment. When Sun Xiaomei proposed the Anti-Discrimination Law draft

at the 2015 National People's Congress session, I really felt as though I saw hope. If the Anti-Discrimination Law is passed, it would not only protect my own personal rights and interests, but also the employment rights of other marginalized groups.”

5.4.3 Administrative sanctions and punishment of sex workers

In China, organized sex work is a crime. However, individuals working independently, in contrast, are subject to administrative sanctions. These administrative sanctions include fines, short periods in police custody or administrative detention – which may last as long as two years for repeat offenders. In reality, sex work is rarely prosecuted as a criminal offence, and instead police use their discretion to penalize sex workers using their broad administrative powers. For the transgender community, it is primarily transgender women who are affected by the government's hostile attitudes towards sex work and sex workers.

This includes the crime of intentional “transmission of sexually transmitted infections,” which is occasionally used in rare instances in which a sex worker is subject to criminal as well as administrative punishment.

A study in Hong Kong found the unemployment rate among the 91 transgender people participating to be 15 percent, over four times as high as the general unemployment rate.⁶⁰ The majority of transgender people, and in particular transgender women, have difficulty finding employment.

Yan Yan of Shanghai, following completion of GAS, sent out over 300 resumes seeking employment as a janitor. Not a one was successful. As a result, she turned to sex work. In her words, “I couldn't find other work. I put on makeup, made myself look very pretty, but the moment I opened my mouth and spoke, people would tell me to get out of there. I went to over 29 places, one by one. I definitely had the skills to do cleaning work, but not even one employer would take me.”

Following her surgery, Yan Yan felt that she had finally become a woman, yet people still saw her as a man in women's clothing. In her words, “Even when I went to the bathroom, I wouldn't so much as answer my phone, for fear someone would report me and I would wind up being taken by the police. Female sex workers also discriminate us [transgender women], thinking that we are just men who have come to steal their work. They even think that even if you have had surgery. If they find out you're a transgender woman, they still think you're a man. Even though I worked hard for them, to help them pass out condoms, to help them get health checks, behind my back they still said I was a pervert ... They'd say to my face that they understood me, that they looked on me as a woman, but behind my back they called me a damn pervert...”

She continued, “From 2002 to 2003, I was beaten by the police severely on many occasions. I'd be beaten while on the street, for no better reason than my identity. Even when I was already being taken on my way to the police station, they'd still curse me, saying things like ‘Good men don't do this, why are you doing it?’ When I'd respond, ‘Is there another way for me to make money?’ They'd just start beating me again.”

While being held in a detention center, Yan Yan was forced by police to cut her long hair. She shouted at them angrily, “My hair is mine, what right do you have to cut it?”

For more than 50 years until recently, sex workers have faced the administrative penalty of “re-education through labour” (RTL). This is a form of administrative punishment, which means that individuals are sentenced to terms as long as one to three years in the absence of any court judgment or decision. Sentences may be extended to four years, also without judicial oversight. On 28 December 2013, the practice of RTL was ended by the Decision of the Standing Committee of the National People's Congress on Repealing Legislation on Re-education through Labour.⁶¹ This means sex workers will never face RTL penalties again. However, in accordance with Article 66 of the Public Security Administration Punishments Law of the People's Republic of

60 USAID, UNDP, APTN & Health Policy Project (2015). *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities*. Washington, DC: Futures Group, Health Policy Project.

61 Decision of the Standing Committee of the National People's Congress on Repealing Legislation on Re-education through Labour (2013). Available at: <http://en.pkulaw.cn/display.aspx?cgid=215347&dlib=law>

China (2005):⁶² “Anyone who whores or goes whoring shall be detained for not less than 10 days but not more than 15 days, and may be concurrently fined not more than CNY 5,000. If the circumstances are relatively lenient, he (she) shall be detained for not more than 5 days or shall be fined not more than CNY 500 ... Anyone who finds customers for any prostitute at a public place shall be detained for not more than 5 days or shall be fined not less than CNY 500.”

Sex workers who become victims of violence during the course of their work are often still “imprisoned” by their fears. They often do not report incidents of violence or abuse to police for fear of being detained or punished. Transgender women who engage in sex work therefore experience considerable difficulty in accessing their rights and justice. Data is lacking with regards to the experiences of any transgender men who engage in sex work, but it is likely that the same would hold true for transgender male sex workers, given the general opposition to sex work and lack of awareness towards gender identity minorities in China.

In its 50th Session (20 October 2014 to 7 November 2014), the UN Committee on the Elimination of Discrimination against Women (CEDAW) submitted its Concluding Observations on the Combined Seventh and Eighth Periodic Reports of China.⁶³ The report stated that “the Committee is further concerned that notwithstanding the abolition of the Re-education Through Labour (RTL) system, the State party continues to use the Custody and Education Programme that involves incarceration of women, which disproportionately affects women in prostitution.” The Committee further recommended “(to) ensure that all women who were subjected to RTL receive adequate compensation; and consider abolishing the Custody and Education Programme, which may be used to justify the arbitrary detention of women.”

Article 2, Paragraph 1 of the Measures on Custody and Education for Prostitutes and their Clients (State Council Order No. 127 (2011)) provides: “The term ‘custody and education,’ as used in this law, refers to coercive administrative measures taken against prostitutes and their clients to educate them on laws and morality, organize them to perform productive labour, and perform medical checks and treatment on them.”

In actuality, custody and education is simply another form of detention. Article 38 of the Measures for Management of Custody and Education Centers (Ministry of Public Security Order No. 50 (2000)) sets out basic requirements for the functionality of RTL detention centers. However, there is no requirement that the accommodations provided to transgender people reflect their gender identity. Transgender people are assigned accommodation according to the gender designated on their official identification cards, a clear violation of their human dignity. Further, unless they have been able to change the gender marker on their identity card, transgender women who are in prison serving time for criminal sentences are put in male facilities.

62 Public Security Administration Punishments Law of the People’s Republic of China (2005). Available at: <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=59774>

63 OHCHR (2014). Concluding observations on the combined seventh and eighth periodic reports of China.

6. Other regulations relevant to transgender people and their enforcement

Transgender people are largely invisible in Chinese laws and policies governing areas other than the ones previously outlined in this report. There are no provisions prohibiting the bullying of transgender students in schools; educational materials such as textbooks continue to lack accurate information on gender identity and sexual orientation; there are no prohibitions against institutions or individuals carrying out conversion therapy against transgender people; there are no clear prohibitions against the slandering of transgender people in mass media; the crime of rape is still defined as a crime against women exclusively; and same-sex marriages or partnerships are not recognized (including those performed overseas). The Measures on Administration of Assisted Human Reproduction Technology (2001) issued by the Ministry of Health require that individuals seeking reproductive assistance meet with the extremely demanding requirements of the two-child policy, which excludes transgender people in couples outside of a legally recognized, heterosexual marriage; while unmarried males seeking to adopt children must meet strict age requirements; and public facilities, including bathrooms, accommodations, shelters and prisons, are segregated by sex and often do not meet the needs of transgender people.

6.1 Education policies and treatment of transgender people

The three major areas identified affecting transgender people in relation to regulations and education are a lack of clarity in legal provisions prohibiting discrimination in schools, a lack of policies prohibiting violence on school campuses, and university education materials that discriminate against gender-diverse people.

6.1.1 Lack of clarity in legal provisions prohibiting discrimination in schools

Article 9 of the Education Law of the People's Republic of China (2015)⁶⁴ states that “citizens of the People's Republic of China shall have the right and obligation to receive education. All citizens, regardless of ethnic group, race, sex, occupation, property status or religious belief, shall enjoy equal opportunities for education according to law.” However, because the law does not clearly specify that transgender people may not be discriminated against, this has resulted in a number of individuals being discriminated against on the basis of their gender identity or expression. For example, at least one school has deprived transgender students of the right to enter doctoral programmes by refusing to let them sit the final stages of their entrance exams.

6.1.2 Lack of policies prohibiting bullying and violence on school campuses

There are currently no specific legal provisions prohibiting or addressing bullying and violence on campus in the Education Law of the People's Republic of China (2015), the Higher Education Law of the People's Republic of China (2015), or the Teachers Law of the People's Republic of China (2009). This has a disproportionate impact on transgender and gender-diverse students given the high levels of discrimination and bullying they face, to the point that a number of transgender students have dropped out of school. In one case, the parents of a transgender woman named Xu Li sent her to a military academy in an attempt to suppress her gender identity. A number of male students mistakenly thought she was a female dressing up to be a boy and aggressively pursued her romantically. The school only recognized the severity of the harassment nearly a year

⁶⁴ Education Law of the People's Republic of China (2015). Available at: <http://www.china.org.cn/english/education/184669.htm>

after Xu was enrolled, when a group of male classmates physically attacked Xu. Immediately after the incident, one instructor suggested they resolve the problem by forcing Xu to undergo a “physical investigation,” which Xu objected to in the strongest possible terms. As a result, the school expelled her.⁶⁵

6.1.3 Lack of policies relating to discriminatory materials in educational materials

Scientific, objective information on gender identity and sexual orientation is not included in educational materials and teaching curriculum.⁶⁶ On the contrary, textbooks often contain a considerable amount of information discriminatory to sexual and gender minorities, which is offensive to the human dignity of these communities.

On 27 August 2014, the Guangzhou branch of the Gay and Lesbian Campus Association in China (GLAC) hosted a press event titled “Rejecting Homophobia Starts with Textbooks.” At the event, the Association released the Investigation and Report on Misinformation and Defamatory Information Regarding Homosexuals in College Textbooks.⁶⁷ The report showed that in an assessment of 90 college textbooks, approximately 40 percent identified homosexuality as a type of illness, and over 50 percent indicated that homosexuals should undergo “conversion therapy” to achieve the goal of becoming heterosexual.

On 19 May 2015, a college junior associated with GLAC, Qiu Bai, submitted a complaint to the Tianhe District People’s Court of Guangzhou City stating that the Guangdong Province Higher Education Press had defamed homosexuals by publishing a large number of textbooks containing “homophobic” content. The Tianhe District People’s court responded that “the act of publishing the abovementioned books and the complainant have no direct relationship in law, and in the complaint, the complainant has failed to produce any evidence that the abovementioned books have directly or indirectly harmed the complainant’s interest. The grounds are insufficient for a lawsuit and the case should not be accepted.”⁶⁸

Consequently, Qiu submitted an Open Government Information (OGI) request for supervisory materials related to the publication of these textbooks to the Ministry of Education. The Ministry failed to respond to the OGI request within the legally mandated time. On 14 August 2015, Qiu submitted a complaint demanding that the Ministry of Education fulfil its OGI obligations. Shortly thereafter, she received a response from the Ministry of Education citing Article 34 of the Higher Education Law of the People’s Republic of China (2015), which emphasized the right of educational institutions to select their own textbooks and educational materials, and ignored the managing department’s obligation to conduct oversight over such selections.

While the courts failed to side with Qiu in these or other legal actions against the publishers or the local government departments, Qiu’s efforts were ultimately not in vain. In March 2017, Qiu embarked on a letter-writing campaign to inform 10 educational publishers about the problematic content in their published texts. On 22 April 2017, Qiu announced through GLAC that China Renmin University Press, one of the country’s largest educational publishing houses, promised to revise the offending content in its university psychology textbook. “Our deepest apologies to you and other affected readers,” the publisher said. “We’ll soon commence revising the text, striving to produce material that conveys scientific knowledge and respects the values of diversity.”⁶⁹ However, there are not laws or policies that prohibit discriminatory educational materials.

65 “19-year-old boy successfully completes sex change after four harrowing episodes: Before changing sex, within three months the boy attempted suicide four times,” in *Modern Living Newspaper*, 6 January 2006.

66 Article 34 of the Higher Education Law of the People’s Republic of China (2015) states: “Higher education institutions shall, on the basis of the needs of teaching, act on their own in drawing up their teaching programmes, compiling teaching materials and making arrangements for their teaching activities.”

67 A Chinese language version is available at: <https://max.book118.com/html/2017/0611/113596772.shtm>.

68 “Homophobic Textbooks Lead to lawsuits by College Student”, China Youth Daily, 20 August 2015, http://edu.163.com/15/0820/11/B1F7B5F600294MP6_all.html

69 “China’s Homophobic Textbooks Turn Over a New Leaf,” *Sixth Tone*, 24 April 2017.

6.2 Policies prohibiting violence and their enforcement

Transgender people are at a higher risk of violence than the general population. While some laws and policies could theoretically apply to transgender people to protect them from violence, there is no evidence that these have been used in practice. There are some regulations around counselling with one successful court case in relation to homosexual conversion therapy. But there are not specific policies that prohibit this harmful practice, which could be applied to same-sex attracted transgender people or theoretically used in relation to gender identity and expression.

6.2.1 General violence

Currently, no Chinese law or policy which protects people from violence specifically mentions transgender people. Recently introduced general laws prohibiting violence are not gender-specific and may apply to transgender people too. However, given the reported levels of police harassment of transgender sex workers, it is likely that this particularly vulnerable group of transgender women may be hesitant to approach police for assistance.

Domestic violence perpetrated against transgender people is common. Survivors of domestic violence may use the Anti-Domestic Violence Law of the People's Republic of China (2015), which came into effect on 1 March 2016. Article 37 of this law permits individuals who are not in a formal marital or familial relationship with their abuser to seek redress.⁷⁰ This could include, for example, a transgender person who is living with but not married to an abusive intimate partner. Possible responses include applying for warnings from local Public Security Bureaus and applying for “personal protection orders” from the courts. Transgender people who are physically beaten, verbally abused, have their personal freedom restricted or are committed to mental institutions by their guardians may in accordance with Article 21⁷¹ of this law apply to be emancipated from their guardian's care. However, since the provisions were introduced earlier this year, there have yet to be any cases of transgender people making applications under this law.

In the course of their schooling, young transgender students often face discrimination and violence from their peers and school officials.⁷² It is also possible for them to face physical violence in other public spaces. For example, one transgender person named Gao Tingting reported facing numerous attacks and physical assaults from local bullies and ruffians while living in Jinan, Shandong Province.⁷³ For this type of offence, transgender people may make a report to the local public security bureau. Under Article 43 of the Public Security Administration Punishments Law of the People's Republic of China (2005),⁷⁴ public security authorities are authorized to detain individuals who have inflicted “light harm” on others for 5 to 10 days, and/or levy a fine between CNY 200 and CNY 1,000.

In situations where there is judicial verification that “light harm” or more severe injury has been inflicted, transgender people may pursue criminal liability for intentional harm in accordance with the “Criminal Law of the People's Republic of China” (1997), in addition to filing a supplementary civil action to seek compensation.

70 Article 37: “Where persons living together other than family members commit acts of violence against each other, proceed with reference to this law.”

71 Article 21: “Where guardians commit domestic violence and seriously encroach their wards' lawful rights and interests, the people's courts may revoke guardianship credentials in accordance with law and separately appoint another guardian on the basis of an application by relevant persons or units such as the wards' close relatives, residents' committees, villagers' committees, or civil affairs departments of county level people's governments ... Perpetrators who have their guardianship qualifications revoked shall continue to bear the costs of maintenance, support, or custody for their wards.”

72 UNESCO (2015) *From insult to inclusion: Asia-Pacific report on school bullying, violence and discrimination on the basis of sexual orientation and gender identity*. Available at: <http://unesdoc.unesco.org/images/0023/002354/235414e.pdf>

73 “After breast augmentation surgery, a mother refuses to see her transsexual son again,” *Beijing Evening News*, 7 August 2006.

74 Public Security Administration Punishments Law of the People's Republic of China (2005). Available at: <http://www.lawinfochina.com/Display.aspx?lib=law&Cgid=59774>

6.2.2 Coerced conversion therapy

In the course of our interviews, we discovered a number of accounts of parents who attempted to or forcibly committed their children to psychological institutions for coerced conversion therapy to address the child's non-conforming gender identity and/or sexuality.

According to Article 51 of the Mental Health Law of the People's Republic of China (2012),⁷⁵ “psychotherapeutic activities shall be carried out in medical institutions. The personnel specialized in psychotherapy shall not engage in the diagnosis of mental disorders,⁷⁶ and shall not prescribe or provide surgical treatment for patients with mental disorders.” As to the matter of psychological counsellors engaging in psychotherapy or the diagnosis of mental disorders, Article 76 of the same law provides that “the health administrative department and the administrative department of industry and commerce of the people's government at or above the county level shall, in accordance with their respective duties, order rectifications, give a warning and impose a fine of not less than 5,000 CNY but not more than 10,000 CNY, and if there is any illegal income, confiscate the illegal income; and if serious consequences are caused, order such person to suspend the practicing activities for a period of not less than six months but not more than one year, or even revoke the practising certificate or business licence.”

In spite of these legal restrictions, psychological counsellors still engage in illegal psychotherapeutic activities. In a particularly well-known example, plaintiff Yan Zi (name changed) sued the Chongqing Xinyu Piaoxiang Psychotherapy Center for conducting “homosexual conversion therapy” in the form of hypnotherapy and electric shock therapy on the grounds that it infringed on the right to human dignity. Yan Zi also sued the Beijing Baidu Network Information Technology Co., Ltd. for engaging in false advertising for the clinic. In its judgment (Hai Min Chu Zi No. 16680 (2014)), the Beijing Municipality Haidian District People's Court required the Chongqing Xinyu Piaoxiang Psychotherapy Center to issue an open apology to the plaintiff on its website and provide compensation to the plaintiff for the treatment payments in the amount of CNY 3,500.⁷⁷

When performing conversion therapy at the clinic, at each session the counsellor would administer painful electrical shock to Yan Zi's left arm a total of three or four times whenever Yan Zi imagined homosexual relations with other men. In total, Yan Zi endured over 100 such sessions, averaging 3 per week. In Yan Zi's words, “I would be given an electric shock at those moments when I felt most free and comfortable. This will not make you straight – it will give you a mental disorder. That's what's really terrifying.”⁷⁸

To date, the research team is yet to find any examples of judgments regarding coerced conversion therapy administered to transgender people, although many community members say that their family members would try any number of strategies in an attempt to try and force them to change their sexual orientation, gender identity, and/or gender expression. However, the team did come to understand clearly that coerced conversion therapy targeted at transgender and homosexual people is a serious social problem, with data from other countries demonstrating that conversion therapy actually causes harm to the patient, and there are currently no legal or policy provisions that prohibit or punish psychotherapy institutions that carry out conversion therapy.⁷⁹

6.3 Policies related to media content

Media outlets have been known to infringe on the rights of transgender people by producing content that slanders the transgender community and individuals. Current laws do not clearly prohibit the media from

75 Mental Health Law of the People's Republic of China (2012). Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4198897/>

76 In China, diagnosis and treatment of psychological conditions are performed independently and by different providers. Treatment may only be carried out at properly licensed facilities, and diagnosis is performed elsewhere and by different (state licensed and regulated) staff.

77 Jiang Jie. “Clinic, Baidu on trial over gay ‘conversion’ in landmark case”, *Global Times*. 1 August 2014. Available at <http://www.globaltimes.cn/content/873733.shtml>

78 “Conversion Therapy Case Reveals Gay Person's Predicaments”, *Jinghua Times* (Beijing), 11 August 2014, <http://news.163.com/14/0811/05/A3BIRADU00014SEH.html>

79 Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme (2016) Promoting and Protecting Human Rights in relation to Sexual Orientation, Gender Identity and Sex Characteristics: A Manual for National Human Rights Institutions.

stigmatizing or slandering transgender people, and as a result, the problem of such media content is extensive. Victims of such attacks can only look to the General Principles of the Civil Law of the People's Republic of China (1986) and the Tort Law of the People's Republic of China (2009) for financial recourse. Because of ignorance and prejudice, in some cases, the media harms rather than helps the transgender community, and strict state guidelines prevent LGBT-positive content from being aired. For example, on 18 and 25 December 2015, China Central Television (CCTV) Channel 12 aired two segments of a psychology-themed talk show program: "A Boy Wearing Women's Clothing."⁸⁰ In the programme, a transgender woman named Xiao Fang endured humiliating treatment from one of the show's hosts, who repeatedly bullied and interrupted her, openly mocking her for her "simpering manner, which really only shows what a fraud you are. Your attempt to act the part of a woman, given your appearance, is really laughable." The Chinese LGBT community roundly condemned the programme for its cruel treatment of Xiao Fang and her family.⁸¹

Media outlets are also guilty of falsely advertising sexual orientation conversion therapy to gay men and their families. From the above-mentioned legal case touching on this issue, "the advertisements disseminated for the psychotherapy center's services on the defendant's website were false advertisements. These false advertisements misled the plaintiff, who then went on to arrange for consultation, therapy and conversion therapy, resulting in a financial loss. The obligation for bearing that loss in the form of compensation should be borne by the defendant."⁸²

However, the court's failure to find that the Beijing Baidu Network Information Technology Co., Ltd. had any responsibility beyond erasing the false advertising was incorrect. The law, Article 36⁸³ of the Tort Law of the People's Republic of China (2009), was incorrectly cited by the court. Since advertising conversion therapy to homosexuals has been firmly established as false advertising, provisions such as Article 45⁸⁴ of the Law of the People's Republic of China on the Protection of Consumer Rights and Interest (2013) should have instead been applied.⁸⁵ Such behaviour is a form of for-profit advertising of false medical services that may endanger consumers' life and health and therefore is expressly forbidden in this law, and the plaintiff should use application of "no-fault liability" to determine the liability of the advertiser responsible for disseminating false advertising. The plaintiff in this case has the right to petition the court to rule that both defendants should bear joint and several liability.

6.4 Regulations governing sexual assault and sexual harassment

Regulations governing sexual assault apply only to transgender women who have their legal gender identity officially recognized as such. A change in laws relating to sexual harassment means that both transgender women and transgender men should be protected against sexual harassment.

80 China Central Television, *Discussing Mental Health*, 25 December 2017: <https://www.youtube.com/watch?v=sBIMEK-umgY>

81 Ah Qiang, "Open humiliation for a transgender person on national television," 29 December 2015 (http://blog.sina.com.cn/s/blog_482404000102w1vx.html).

82 Yang Lixin, "Judges' conservatism and innovation," *Law Science Magazine* (2015), Vol. 5, p. 5

83 Article 36: "A network user or network service provider who infringes upon the civil right or interest of another person through network shall assume the tort liability. Where a network user commits a tort through the network services, the victim of the tort shall be entitled to notify the network service provider to take such necessary measures as deletion, block or disconnection. If, after being notified, the network service provider fails to take necessary measures in a timely manner, it shall be jointly and severally liable for any additional harm with the network user. Where a network service provider knows that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable for any additional harm with the network user..."

84 Article 45: "Where the false advertising of commodities or services involving the life and health of consumers designed, produced, or published by advertising agents or publishers has caused damage to consumers, they shall be jointly and severally liable with the business operators providing the commodities or services."

85 Yang Lixin and Wu Ye, "Liability for violating the human dignity of homosexuals and their access to medical treatment: Two opinions on the liability of internet search engines disseminating fake advertisements for homosexual conversion therapy," *Jiangtan Forum* (2015), Vol. 1, p. 128.

6.4.1 Sexual assault

In Article 236, the Criminal Law of the People’s Republic of China (1997)⁸⁶ holds that “whoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment.”

Note that only women are protected in this law. If a male is raped, courts only have the option of administering punishment under the crime of “intentional harm.” This is of course assuming an investigation into sexual harassment or assault against a transgender person is carried out at all, which in some contexts (particularly sex work) is unlikely.

6.4.2 Sexual harassment

Article 237 of the Criminal Law of the People’s Republic of China (1997)⁸⁷ holds that “whoever, by violence, coercion or other means, forces, molests or humiliates a woman is to be sentenced to not more than five years of fixed-term imprisonment or criminal detention.” Once again, only “women” are protected in the law from indecency and humiliation. There is a recent development worth praising, however. On 29 August 2015, the 16th Session of the 12th National People’s Congress Standing Committee passed a motion to amend the “Criminal Law” for the ninth time, to expand the scope of protection, and to change Article 237 of the Law to read that “whoever, by violence, coercion or other means, forces or molests any other person or humiliates a woman shall be sentenced to imprisonment of not more than five years or criminal detention.” Starting on 1 November 2015, when Amendment IX of the Law came into effect, women were no longer the only individuals protected by this law.

6.5 Regulations governing marriage, family, reproduction and adoption

Regulations governing marriage, family, reproduction and adoption are complex, and while some may theoretically allow transgender persons some rights, they are generally untested.

6.5.1 Marriage and family

The Marriage Law of the People’s Republic of China (2001)⁸⁸ adheres to the “one husband, one wife” principle, and does not recognize same-sex marriage. To date, there is no law recognizing same-sex partnerships. Transgender people may marry a person only if the pair’s gender markers are different, and it is worth reiterating that a gender marker may only be changed if the individual undergoes gender-affirming surgery. If the gender markers are different, regardless if any change was made from either individual’s marker from birth, there is no valid legal claim to oppose the marriage. No such cases have been found. In other words, if a transgender person has been successful in changing his or her gender marker, he or she may marry a person with the opposite gender marker without incident.

On the subject of how a transgender person is expected to end a legal marriage, the Response to Inquiries about Termination of the Marriage Relationship Following the Sex Change of One of the Parties, (Ministry of Civil Affairs General Office Letter No. 127 (2002)) reads:

“When one party to a marriage undergoes a sex change and also completes procedures to change the gender marker on their legal identification to the opposite sex, the originally registered marriage is still lawful and has effect, and a party to the marriage cannot merely declare the marriage void. If no disputes

86 Criminal Law of the People’s Republic of China (1997). Available at: <http://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>

87 Ibid.

88 Marriage Law of the People’s Republic of China (2001). Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384064.htm

over asset division between the parties exists, marriage registration authorities may process a formal divorce with the agreement of the parties.”

It is important to recall that according to a strict reading of Chinese policies, an individual may only undergo GAS if they are unmarried (i.e. never married or divorced). However, there have been instances where a married person has undergone GAS (both domestically and abroad), without their marriage having been immediately and spontaneously dissolved.

6.5.2 Reproduction and adoption

Article 28, Paragraph 2 of the local-level regulation, Jilin Province Regulations on Population and Family Planning (2014) reads that “women who have reached the legal age of marriage and decide not to marry and do not already have children may make use of lawful medical assisted reproductive technology to bear a child.”

Article 3 of the regulation Measures on Administration of Assistive Human Reproduction Technology (Ministry of Health Order No. 14 (2001)) provides that “Assistive human reproduction technology should only be employed in medical institutions for the purpose of medical treatment and in a manner that complies with relevant national family planning policies, ethical principles, and laws and regulations. It is prohibited to, in any form, buy or sell gametes, zygotes, or fetuses. Medical institutions and medical personnel may not, in any form, use technology to assist in a surrogate pregnancy arrangement.”⁸⁹

However, a new law means that that these measures should have lost their effect as of 1 January 2016, whereby the draft version of the Population and Family Planning Law of the People’s Republic of China (2015)⁹⁰ became final. This law dropped the provision that would “prohibit the selling or purchase of sperm, ova, fertilized ova, and embryos; [and also] prohibit any form of surrogate pregnancy” and sits at a higher level in the Chinese legislative hierarchy than the measures. This signals that surrogate pregnancy may eventually be made legal in China – and, possibly, accessible to so-called “non-traditional” families.

Parts of the measures may still be valid, however, which were not superseded by the newer law. These define human-assisted reproductive technology as a method of medical treatment for individuals who as a precondition satisfy the relevant laws and policies regarding reproduction and are having difficulty conceiving or carrying children to term. This means that transgender people or their partners may only receive the benefits of assisted reproductive technology and therapy if they are in a legal (i.e. heterosexual) marriage. To be in such a union, the transgender person or people in question must have undergone GAS and completed administrative procedures for legal gender recognition. This also points out that reproductive technology is not made available to anyone who is not in a legal marriage, regardless of SOGIE.

Article 6 of the Adoption Law of the People’s Republic of China (1998)⁹¹ holds that “Prospective adopters shall meet all of the following requirements simultaneously: 1) Be childless; 2) be capable of raising and educating the adoptee; 3) Suffering no such disease as is medically regarded as unfit for adopting a child; and 4) be at least 30 years of age.”

Article 9 of the Adoption Law (1991) states that “where a male person without a spouse adopts a female child, the age difference between the prospective adopter and adoptee shall not be less than 40 years.”

These provisions were intentionally designed to set high standards for adopters in order to protect the adoptee children, particularly so that young girls who were adopted would not face the risk of sexual harassment or assault. Arguably, transgender people who satisfy the above requirements may adopt; however, no clear

89 According to Article 22 of this regulation, persons who buy or sell gametes, zygotes, or fetuses; use technology to assist a surrogate pregnancy arrangement; or use sperm that was provided by an institution without a proper “Human sperm bank permit” may receive a warning, be fined up to CNY 30,000, or receive an administrative punishment meted out by the Ministry of Health Administrative Department of the province, autonomous zone, or municipal people’s government. If the act constitutes a crime, criminal liability may be pursued in accordance with the law.

90 Population and Family Planning Law of the People’s Republic of China (2015). Available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=20845>

91 Adoption Law of the People’s Republic of China (1998). Available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383868.htm

information is available to confirm this assumption other than anecdotal evidence that at least one prominent, public transgender woman has been able to adopt children under Chinese law.

6.6 Regulations governing public facilities

Chinese laws and policies governing public services were not formulated with the needs of transgender people in mind. This has resulted in considerable difficulty for many members of the transgender community in public spaces, including considerable inconvenience and awkwardness in using public restrooms.

A transgender woman named Juan (name changed) became involved in a dispute when she attempted to use the restroom in a shopping mall, and was subsequently detained, taken to a local police station, and lectured at by police officers for over an hour. Juan, who was wearing a dress at the time, had first attempted to enter the female restroom but voluntarily left when her gender was questioned. Since she still needed to use the facilities, she immediately went to the men's restroom instead, where a janitor saw her and then reported to police that a woman was forcibly entering the male's restroom. The police did not afford Juan the opportunity to explain, and instead, immediately began humiliating her and calling her names. Juan was, of course, outraged at this treatment.

- Key Informant Interview

Article 50 of the Interim Measures for Social Assistance (State Council Order No. 649 (2014))⁹² provides “that the state shall provide assistance in terms of temporary accommodation, acute disease treatment, and assistance in returning home for indigent vagrants and beggars.” Article 8 of the Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities (State Council Order No. 391 (2003))⁹³ reads that “a relief station shall provide recipients with lodging places according to their different sexes, and female recipients shall be managed by female functionary.” None of the temporary accommodations and relief stations established in accordance with these laws consider the needs of transgender people; individuals are given access only to gender-restricted facilities when gender markers on official documents correspond to the requirements of the facility in question.

92 Interim Measures for Social Assistance (State Council Order No. 649 (2014)). Available at: <http://lawinfochina.com/Display.aspx?lib=law&Cgid=219511>

93 Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities (State Council Order No. 391 (2003)). Available at: <http://en.pkulaw.cn/display.aspx?cgid=46998&dlib=law>

7. Legal and policy considerations

This report considers a wide range of legal and other materials, including specific provisions of laws and policies and their accompanying implementing regulations, arbitration rulings, judicial decisions, evidence demonstrating the deficiencies of current laws and policies, and the cumulative impact of these policies and practices on the Chinese transgender community.

Through the process of writing this report and in consultation with key stakeholders as part of the multi-stakeholder roundtable discussions, the following key issues and recommendations have been identified. They are listed here with the body that the recommendation is targeted at.

Legislators

- Pass laws and policies to ensure:
 - Legal persons have the right to determine their own names and gender markers, without precondition of gender-affirming surgeries,
 - Insurance policies cover gender-affirming health services, including hormonal treatment, and
 - Anti-discrimination provisions that protect against discrimination on the basis of gender include transgender people in the definition of “gender.”

Ministry of Health

- Prohibit any organization from subjecting transgender people to coerced therapy of any kind.

Ministry of Education

- Remove and/or make it easier to change gender markers from diplomas and educational certificates, and make all efforts to eliminate bullying against transgender students in general.

Ministry of Civil Affairs

- Establish gender-neutral restroom facilities.

Ministry of Justice

- Require all law enforcement agents to respect individuals’ gender identity and expression.
- Establish a law and policy task force or body to remove all content discriminating on the basis of gender (including gender identity or expression).

Non-government organizations

- Engage in strategic litigation to promote the rights and interests of transgender people, and make their issues more widely visible to society.

Business enterprises

- Follow internationally established best practices to promote a more accepting work environment for staff.

If implemented, these actions will enable transgender people to equally and freely enjoy the benefits of China’s Reform and Opening Policy.⁹⁴ More detailed recommendations for each section of the report are outlined below.

⁹⁴ For more information see http://www.china.org.cn/china/reform-opening-up/node_7054978.htm

7.1 Legal gender recognition

- All appropriate measures shall be made to ensure that laws and regulations affirm the right to autonomy of individuals to designate their gender markers and names on official documents.
- The second edition of the Civil Code of China shall affirm the right of persons to designate their own gender and name. This right may be specifically included in the section on Rights to Human Dignity in Chapter 3, Personal Naming Rights, to stipulate that any person over the age of sixteen shall have the right to apply to the Ministry of Public Security to change their first and/or last names without first securing their guardian’s approval.
- Legal gender recognition and name change shall not depend on the permission of any work unit, educational institute or other organization. In other words, the requirement that transgender individuals produce evidence that they have received approval to pursue gender transition by the human resource offices of their workplace forces shall be removed.
- Gender-affirming surgeries shall no longer be a prerequisite for changing the gender markers on a person’s identity documents.
- Consideration should be given to removing gender markers on all academic certificates and diplomas. In cases where the gender marker on a diploma is recorded before an individual’s transition, schools and educational institutions shall be granted the authority in law to change the identified gender and names of transgender individuals on these documents based on the request of the individual.

7.2 Legal definition of “gender” shall include transgender

- The Supreme People’s Court may issue judicial interpretations to clarify in the following laws that the term “gender,” as used in the context of “prohibiting discrimination on the basis of gender,” clearly includes transgender and intersex people, and covers people of any sex, gender, gender identity, gender expression, or intersex variations/sex characteristics, in order to provide legal basis for decision-making in relevant cases by the courts:
 - Labour Law of the People’s Republic of China (1994)
 - Employment Promotion Law of the People’s Republic of China (2015)
 - Law of the People’s Republic of China on the Protection of Women’s Rights and Interests (2005).

By clarifying these laws, transgender people will be able to cite them when seeking to protect their rights, and it will provide guidance to units employing individuals to fulfil their social obligations, and safeguard against the legal risks of employment discrimination that would otherwise be faced by transgender people.

7.3 Access to gender transition-related services

- Laws, regulations and policies shall ensure that access to transition-related services, including gender-affirming surgeries, are based on the principle of informed consent.
- Relevant authorities, including the National Health and Family Planning Commission and Ministry of Public Security may jointly issue regulations to remove barriers that prevent transgender people from undergoing gender transition, including the existing economic and psychological burdens they currently face. This may include:
 - Removing the requirement that the applicant for surgery shall “be in an unmarried state” from the Sex Reassignment Procedural Management Standards (2017).
 - Deleting the requirement that the applicant shall submit “verification that the surgical patient has already notified family of the intention to undergo sex reassignment surgery” from the Sex Reassignment Procedural Management Standards (2017).

- The age restriction should be lowered to 18, and minors may also be permitted to undergo transition-related health care treatment, based on international standards of care.
- Medical insurance coverage for transition-related services may not be dependent on the existence of a psychopathological (mental health) diagnosis of a transgender person.
- There is an urgent and pressing need to properly regulate and standardize medical practices in performing gender-affirming surgeries. The *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* published by the World Professional Association for Transgender Health (WPATH) offers invaluable guidance as a resource for defining high standards for medical care for transgender people. It also explicitly describes conversion therapies as unethical.

7.4 Prohibit discrimination on the basis of gender identity and expression

- Gender discrimination should be eliminated by law and in practice. Legislative authorities need to review and put anti-discrimination laws into upcoming legislation plans, and develop an anti-discrimination law which objects to all forms of discrimination, including those based on sexual orientation, gender identity, gender expression and other differences, and should provide effective supervision and punishment against discriminatory acts, so as to ensure all citizens enjoy equal rights.

7.5 Ensure the implementation of anti-discriminatory laws and policies

- Effective mechanisms for implementing anti-discriminatory laws and policies need to be ensured. For example, the Women's Federations or Women and Children Working Committees that have been established in 19 locations have taken the lead in establishing province-level assessment agencies tasked with screening existing laws and policies at the local level that contain provisions that discriminate on the basis of gender or otherwise lack protections for the rights of women and girls. The work of these agencies shall be expanded to include gender-diverse perspectives and the staff of these agencies shall receive professional training from transgender equality experts.

7.6 Prohibit discrimination on the basis of gender identity and expression in the employment sector

- The Standing Committee of the National People's Congress shall include clear provisions prohibiting discrimination on the basis of gender identity or expression, including discrimination against transgender individuals, in the forthcoming Anti-Employment Discrimination Law of the People's Republic of China. Accordingly:
 - Discrimination on the basis of an employee's "gender identity" or "gender expression" shall be illegal. This will consolidate protections for gender non-conforming individuals, which are currently scattered in many different provisions at lower legislative levels.
 - A specialized entity may be created to eradicate gender-based employment discrimination. Such protections would not only ensure the prohibition of discriminatory behaviours against transgender people at all stages of the employment process in all workplaces, but also ensure the burden of preventing and stopping discriminatory practices is borne by employment units, to the extent that non-complying units would be held jointly liable in civil actions.
- Encourage enterprises to voluntarily adopt policies at the workplace to promote equality for transgender people and ensure a positive work environment that respects gender diversity as a part of corporate social responsibility programmes. For example, Goldman Sachs and IBM both have excellent policies for staff from sexual orientation and gender minority communities, including prohibitions against workplace

discrimination and giving partner benefits. These measures are invaluable in creating a society of tolerance, respect, understanding and mutual consideration.

7.7 Prohibit discrimination in the education sector

- Discrimination against transgender people in the education system should be prohibited, including bullying faced by transgender students. Accordingly, the Standing Committee of the National People's Congress shall pass a Gender Equality Education Law that prohibits all forms of discrimination and violence against transgender people and assigns legal liability to schools and educational institutions that fail to properly prevent and stop discriminatory actions.

7.8 Prohibit discrimination in the military

- Discrimination and violence against transgender people in the military should be prohibited, including physical and verbal abuse.
- Forced military service, which is sometimes used as a form of punishment and a site for coerced "conversion" therapy for transgender adolescents, shall be eliminated.
- The Military Service Law of the People's Republic of China (2011) be amended to ensure that in the course of recruitment and barracks management, transgender men and women are not being coerced to serve; individuals are not being discriminated against on the basis of gender identity or expression; and non-complying managers and other individuals directly responsible for military personnel face both administrative penalties and joint civil liability.

7.9 Protect the reproductive rights of transgender people and their right to marry and form a family

- Legal protections for transgender people would affirm the right of transgender individuals to marry, their rights of inheritance, adoption of children, the ability to act as legal guardians, and extension of legal responsibilities to support their families.
- Transgender people should have the right to marry and form a family and shall not be subjected to forced divorce as a condition of legal gender recognition of transition-related services.
- Transgender people should be eligible for social benefits including the social safety net on the basis of marriage and partnership and they should be able to inherit and have access to property rights on an equal basis to others.
- Transgender people shall be able to enjoy rights as next-of-kin or as a guardianship on an equal basis to others, including in the case of illness of a partner or child.
- Laws and regulations should permit transgender people to have access to surrogate pregnancy and not be discriminated against in receiving the benefits of assisted reproductive technology.

7.10 Prohibit involuntary "treatment" of transgender people

- All forms of conversion therapy practised against transgender people should be discontinued. This includes electric shock therapy and other methods that are harmful to both physical and psychological health.
- The National Health and Family Planning Commission issue the necessary policies to prevent any institution or person from forcing transgender people to undergo conversion therapy.

- Psychological professionals and therapists should be prohibited in engaging in any kind of therapy that is offensive to the human dignity of transgender people.

7.11 Improve the circumstances of transgender students

- The Ministry of Education can play a crucial role through directives to eliminate barriers that transgender students face. In particular:
 - Prohibit discrimination against transgender students, and make schools and academic institutions liable for creating a safe environment for all students and taking responsibility to address discrimination if it occurs.
 - Change academic curricula to add more content on gender diversity and equality and develop and disseminate related educational resources.
 - Educational materials that contain information on gender diversity and gender equality, in addition to increased publicity and training efforts, are the best ways to correct widespread misinformation about transgender individuals.

7.12 Establish gender-neutral restrooms and other public facilities

- Local government policies shall support the creation of gender-neutral restrooms in order to resolve the problems for transgender people in accessing public services, in schools, train and bus stations, transport hubs, convention centres, government buildings, shelters, detention centres, prisons and other public facilities.
- When making plans for temporary relief shelters and natural disaster relief centres, consideration should also be made to ensure that transgender people have the ability to access a safe space that respects their gender identity.

7.13 Increase public awareness of the rights and interests of transgender people

- Public awareness of the rights and interests of transgender people needs to be ensured in policies and in practice, including:
 - Public education about transgender equality.
 - Training of media professionals about transgender equality.
 - Increased strategic litigation on transgender issues, e.g. in relation to prohibiting employment discrimination and conversion therapy and improving policies on gender-affirming surgeries.
 - Widespread social attention to the issue of the rights and interests of the transgender community.

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Appendix A: List of attendees at key consultations

The first multi-stakeholder meeting was held on **2 March 2016** and was attended by **32 experts and activists** from the following organizations:

American Bar Association

APTN

Asia Catalyst

Beijing Gender Health Education Institute

Beijing LGBT Center

China Women's University

Common Language

LGBTI Rights Promotion Association

Peking University

Renmin University Law School

Shenyang HIV Consultation Center

UNAIDS China

UNDP China

UNDP Consultant

University of Politics and Law

US CDC

Xinjiang Tiantong LGBT Center

13 experts and activists from the following organizations attended the initial draft consultative meeting on **19 July 2016**:

American Bar Association

Asia Catalyst

Beijing Gender Health Education Institute

Beijing LGBT Center

China Women's University

Common Language

Peking University

UNDP China

Appendix B: Provisions of relevant laws and policies

1. Constitution of the People’s Republic of China (2004 Amendment)

Article 33:

“All persons holding the nationality of the People’s Republic of China are citizens of the People’s Republic of China.

All citizens of the People’s Republic of China are equal before the law.

The state respects and protects human rights.

Every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law.”

2. General Principles of the Civil Law of the People’s Republic of China (1986)

Article 99:

“Citizens shall enjoy the right of personal name and shall be entitled to determine, use or change their personal names in accordance with relevant provisions. Interference with, usurpation of and false representation of personal names shall be prohibited.”

3. Law of the People’s Republic of China on the Identity Card of Residents (2003)

Article 3:

“The name, sex, nationality, date of birth, permanent domicile, number the identity card, photograph of the citizen himself (herself), the card’s valid term and the issuing organ shall be registered on the identity card of that citizen.

The identity card number of each citizen is his (her) unique and life-long identity code, which shall be given by the public security organs according to the state’s standards on the identity card of residents.”

4. Hospital Work System (issued by the Ministry of Health on 7 April 1981)

“Before performing surgery, it is necessary to have written agreement [for the procedure] from the patient’s family or work unit (it is possible to not have signatures for surgery to alter the physical appearance). In urgent situations where surgery cannot wait for signatures from family or office agreement, surgery may be carried out with a signature from the resident physician and approval from the hospital department director or head and vice-president of administrative affairs.”

5. Sex reassignment surgery Procedural Management Standards (Provisional)

On 13 November 2009, the General Office of the Ministry of Health issued the Notice Regarding the Publication of Sex Change Surgery Procedural Management Standards (Health Office Medical Care Administration File No. 185 (2009)). These standards require that patients must submit the following materials and meet the following preconditions to be eligible for surgery:

1. Materials patients are required to submit prior to surgery:
 - 1) Verification that the patient has no prior criminal record, issued by the local Public Security Bureau.
 - 2) Verification of the patient’s diagnosis of transsexualism issued and signed by a psychiatrist, along with verification that the patient does not exhibit symptoms of any other psychological abnormality. Further proof is also required to demonstrate that a psychological expert has tested the patient to ensure their sexual orientation is directed at the opposite of their target gender, and has no additional psychological abnormalities.
 - 3) Written request from the patient requesting the surgery, which has been verified by a notary.
 - 4) Proof demonstrating the patient has already informed their next of kin they intend to request a sex change surgery.

The above materials are perforce included in the patient’s medical history and related materials.

2. Conditions that the patient must fulfil prior to surgery:
 - 1) The desire to change sex has existed, and been persistent, for over five years, with no history of hesitation in pursuing this desire.
 - 2) Prior to surgery, the patient must have received psychological and/or psychiatric therapy for over a year, without effect.
 - 3) The patient is unmarried.
 - 4) The patient is older than 20 years of age, and has complete civil capacity.
 - 5) The patient has no other contraindications to surgery.

Minimum requirements for medical institutions

1. Medical institutions offering sex reassignment surgery should have the suitable capabilities and mandate.
2. [Medical institutions offering sex reassignment surgery should be] Grade A Class III general hospitals or plastic surgery hospitals, and have plastic surgery departments authorized by and registered with the Ministry of Health Administrative Office.
3. [Medical institutions offering sex reassignment surgery should have] functioning ethics committees governed by established administrative standards to regulate the use of sex reassignment surgery. These committees should be composed of experts from disciplines including medicine, law, and ethics.
4. Plastic surgery department [should satisfy the following requirements]:
 - 1) Have had a dedicated plastic surgery department for at least 10 years, have space for at least 20 beds, and have a relatively strong plastic surgery work foundation.
 - 2) Be able to independently complete every type of plastic surgery, including organ reconstruction and tissue transplantation.
 - 3) Ward facilities should be able to protect the privacy of sex reassignment surgery patients, and be able to offer psychotherapy and related treatment.
5. Have at least two attending physicians capable of performing sex reassignment surgery and relevant clinical work on staff, and trained technical staff who have been evaluated and found to be qualified in general knowledge of and technical skills involved in performing sex reassignment surgery and related procedures.

Minimum requirements for staff

1. The surgical team shall be led by a plastic surgeon, and if needed, other doctors from relevant units may participate.
2. Primary surgeon: be registered attending physicians at the hospital where the procedure is to take place, with valid professional credentials; be specialists in plastic surgery, and hold a professional position of deputy director of the department or higher professional and technical qualifications; have at least 10 years of clinical experience in plastic surgery, at least 5 of which were spent performing clinical work related to sex change operations, and has independently completed at least 10 sexual organ reconstruction surgeries.
3. First assisting surgeon: have at least 5 years of clinical experience in plastic surgery, or have attending physician or higher professional and technical qualifications in a related discipline.

Minimum requirements for technical management

1. Comply with the clinical standards of plastic surgery and related disciplines, and the conventional operational use of technology.

2. The proper order of sex change operations: The main element of sex change operations is the removal and reconstruction of the sexual organs. Any surgery to alter secondary sex characteristics must be performed after or at the same time as removal of the sex glands.

6. Labour Law of the People's Republic of China (1994)

Article 12:

“Labourers shall not be discriminated against in employment due to their nationality, race, sex or religious belief.”

Article 13:

“Women shall enjoy equal rights as men in employment. Sex shall not be used as a pretext for excluding women from employment during recruitment of workers unless the types of work or posts for which workers are being recruited are not suitable for women according to State regulations. Nor shall the standards of recruitment be raised when it comes to women.”

7. Employment Promotion Law of the People's Republic of China (2015 Amendment)

Article 3:

“Workers shall have the right to equal employment and to choose job on their own initiative in accordance with the law.

Workers seeking employment shall not be subject to discrimination based on factors such as ethnicity, race, gender, religious belief etc.”

Article 27:

“The state shall ensure that women enjoy labour rights equal to those of men.

When an employer recruits employees, it shall not refuse to recruit women or increase the thresholds for recruitment of women under the excuse of gender.

When an employer recruits female employees, it shall not stipulate in the employment contract any content, which restricts female employees from getting married or bearing child.”

Article 62:

“For anyone who violates this Law due to employment discrimination, workers may lodge a lawsuit in the people's court.”

8. Law of the People's Republic of China on the Protection of Women's Rights and Interests (2005)

Article 23:

“With the exception of the special types of work or post unsuitable to women, no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment standards for women.

When an entity employs a woman, it shall sign a labour (employment) contract or service agreement with her. The labour (employment) contract or service agreement shall not contain restrictions on her matrimony and child-bearing.”

Article 26:

“All units shall, in line with women's characteristics and according to law, protect women's safety and health during their work or physical labour, and shall not assign them any work or physical labour not suitable to women.

Women shall be under special protection during menstrual period, pregnancy, obstetrical period and nursing period.”

Article 27:

“No entity may, for the reason of matrimony, pregnancy, maternity leave or breast-feeding, decrease a female employee's wage, dismiss her or unilaterally terminate the labour (employment) contract or service agreement, with the exception that the female employee requests to terminate the labour (employment) contract or service agreement.

No entity may discriminate against women for the reason of gender when implementing the retirement system of the state.”

Article 40:

“Sexual harassment against women is banned. The victims shall be entitled to complain to the entity or the relevant organs.”

Article 58:

“If anyone commits sexual harassment or family violence against a woman to violate this Law, and if his act constitutes a violation of the public security administration, the victim may require the public security organ to give the violator an administrative punishment or may initiate a civil action in the people’s court.”

9. Advertising Law of the People’s Republic of China (2015)

Article 9:

“An advertisement shall be prohibited from...containing any ethnically, racially, religiously, or sexually discriminatory content...”

Article 57:

“For any of the following conduct, the administrative department for industry and commerce shall order cessation of publishing the advertisement and impose a fine of not less than 200,000 yuan nor more than one million yuan on the advertiser, and if there is any serious circumstance, the administrative department for industry and commerce may revoke its business license, and the advertisement censoring authority shall revoke its advertisement censorship approval document and decline to accept its advertisement censorship application within one year; and the administrative department for industry and commerce shall confiscate the advertising expenses received by the advertising agent or advertisement publisher and impose a fine of not less than 200,000 yuan nor more than one million yuan on it, and if there is any serious circumstance, may revoke its business license or advertisement publishing registration certificate.

(1) An advertisement falling under the prohibitive circumstances as set out in Article 9 or 10 of this Law is published;...”

10. Provisions on Employment Services and Employment Management (Ministry of Labour and Social Security Order No. 28 (2007))

Article 58:

“A job intermediary agency is prohibited from any of the following acts:

1. Providing false job information;
2. Issuing job information that contains any discriminatory content; ...”

Article 74:

“If a job intermediary agency violates Item (1), (3), (4) or (8) of Article 58 in the present Provisions, it shall be punished according to Articles 65 and 66 of the Employment Promotion Law. If it violates Item (5) of Article 58 in the present Provisions, it shall be punished according to the state provisions on prohibiting the use of child labour. If it violates any other item in Article 58 of the present Provisions, the administrative department of labour and social security shall order it to make correction and may impose on it a fine of less than 10,000 yuan if there is no illegal proceeds; or may impose on it a fine of less than three times the illegal proceeds but no more than 30,000 yuan if there is illegal proceeds; and shall request the administrative department of industry and commerce for revoking the business license where the circumstances are serious; and the agency shall assume the liability of compensation if it causes damage to the party concerned.”

11. Special Rules on the Labour Protection of Female Employees (State Council Order No. 619 (2012))

Article 5:

“No employer shall reduce the wages of, dismiss, or rescind the labour or employment contract with a female employee due to pregnancy, childbirth or breastfeeding.”

Article 11:

“Employers shall prevent and prohibit the sexual harassment of female employees in their work places.”

“Annex: Scope of Prohibited Labour for Female Employees: ...”

3. Work bearing a load of 20 kilograms or more each time, six times or more each hour, or discontinuously bearing a load of 25 kilograms or more each time.”

12. Public Security Administration Punishments Law of the People’s Republic of China (2005)

Article 43:

“Anyone who blows any person or intentionally injures the body of any person shall be detained for not less than 5 days but not more than 10 days, and shall be fined not less than 200 yuan but not more than 500 yuan. If the circumstances are lenient, he (she) shall be detained for not more than 5 days or shall be fined not more than 500 yuan.

Anyone who commits any of the following acts shall be detained for not less than 10 days but not more than 15 days, and shall be fined not less than 500 yuan but not more than 1,000 yuan:

- (1) Beating or injuring any person by forming a group;
- (2) Beating or injuring any person who is disabled, pregnant, under the age of 14 or more than 60 years old; or
- (3) Beating or injuring any person for two or more times, or beating or injuring several people at a time.”

Article 66:

“Anyone who whores or goes whoring shall be detained for not less than 10 days but not more than 15 days, and may be concurrently fined not more than 5,000 yuan. If the circumstances are relatively lenient, he (she) shall be detained for not more than 5 days or shall be fined not more than CNY 500.

Anyone who finds customers for any prostitute at a public place shall be detained for not more than 5 days or shall be fined not less than CNY 500.”

13. Measures on Custody and Education for Prostitutes and their Clients (State Council Order No. 127 (2011))

Article 2 Paragraph 1: “The term ‘custody and education,’ as used in this law, refers to coercive administrative measures taken against prostitutes and their clients to educate them on laws and morality, organize them to perform productive labour, and perform medical checks and treatment on them.”

14. Measures for Management of Custody and Education Centers (Ministry of Public Security Order No. 50 (2000))

Article 38:

“Accommodations for individuals undergoing custody and education should be ventilated, well-lit, be adequately outfitted for heat, cold, and dampness. The custody and education center should have safety inspections at fixed intervals to take precautions against fire and other natural disasters. Accommodations should also provide each individual with not less than 3 square meters of space for their use.”

15. Education Law of the People’s Republic of China (2015)

Article 9:

“Citizens of the People’s Republic of China shall have the right and obligation to receive education.

All citizens, regardless of ethnic group, race, sex, occupation, property status or religious belief, shall enjoy equal opportunities for education according to law.”

16. Higher Education Law of the People’s Republic of China (2015)

Article 34:

“Higher education institutions shall, on the basis of the needs of teaching, act on their own in drawing up their teaching programmes, compiling teaching materials and making arrangements for their teaching activities.”

17. Anti-Domestic Violence Law of the People’s Republic of China (2015)

Article 37:

“This Law shall apply, mutatis mutandis, to the violence inflicted between those living together who are not family members.”

18. Tort Law of the People's Republic of China (2009)

Article 36:

“A network user or network service provider who infringes upon the civil right or interest of another person through network shall assume the tort liability.

Where a network user commits a tort through the network services, the victim of the tort shall be entitled to notify the network service provider to take such necessary measures as deletion, block or disconnection. If, after being notified, the network service provider fails to take necessary measures in a timely manner, it shall be jointly and severally liable for any additional harm with the network user.

Where a network service provider knows that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable for any additional harm with the network user.”

19. Law of the People's Republic of China on the Protection of Consumer Rights and Interests (2013)

Article 45:

“Consumers whose lawful rights and interests are infringed upon by business operators providing commodities or services by false advertising or any other means of falsified promotion may claim compensation from business operators. Consumers may request the competent administrative departments to punish advertising agents or publishers which engage in false advertising. Advertising agents or publishers which fail to provide the true names and addresses and valid contact methods of business operators shall assume compensatory liability.

Where the false advertising of commodities or services involving the life and health of consumers designed, produced, or published by advertising agents or publishers has caused damage to consumers, they shall be jointly and severally liable with the business operators providing the commodities or services.

Where, in the false advertising or any other falsified promotion of commodities and services involving the life and health of consumers, social groups or other organizations or individuals recommend the commodities or services to consumers, causing damage to consumers, they shall be jointly and severally liable with the business operators providing the commodities or services.”

20. Criminal Law of the People's Republic of China (1997)

Article 236:

“Whoever, by violence, coercion or other means, rapes a woman is to be sentenced to not less than three years and not more than 10 years of fixed-term imprisonment...”

Article 237:

“Whoever, by violence, coercion or other means, forces, molests, or humiliates a woman is to be sentenced to not more than five years of fixed-term imprisonment or criminal detention...”

Amendment (IX) to the Criminal Law of the People's Republic of China” (2015) amended Article 237 to read:

“Whoever, by violence, coercion or other means, forces or molests any other person or humiliates a woman shall be sentenced to imprisonment of not more than five years or criminal detention...”

21. Jilin Province Regulations on Population and Family Planning (2014)

Article 28, Paragraph 2:

“Women who have reached the legal age of marriage and decide not to marry and do not already have children may make use of lawful medical reproductive assistive technology to bear a child.”

22. Measures on Administration of Assistive Human Reproduction Technology (Ministry of Health Order No. 14 (2001))

Article 3:

“Assistive human reproduction technology should only be employed only in medical institutions for the purpose of medical treatment and in a manner that complies with relevant national family planning policies, ethical principles, and laws and regulations. It is prohibited to, in any form, buy or sell gametes, zygotes, or fetuses.

Medical institutions and medical personnel may not, in any form, use technology to assist in a surrogate pregnancy arrangement.”

Article 22:

“An organization’s use of human assistive reproductive technology in violation of this law, as identified by the items below, may receive a warning or be fined up to CNY 30,000. Responsible parties may receive an administrative punishment meted out by the Ministry of Health Administrative Department of the province, autonomous zone, or municipal people’s government, and if the act constitutes a crime, criminal liability may be pursued in accordance with the law.

1. Buying or selling gametes, zygotes, or fetuses;
2. Using technology to assist a surrogate pregnancy arrangement;
3. Using sperm that was provided by an institution without a proper “Human sperm bank permit” may receive a warning;
4. Illegally conducting sex selection [of a fetus];
5. Using human assistive reproductive technology for a candidate with an incomplete file;
6. Using equipment that does not meet the standards set by a designated evaluation institution;
7. Engaging in behaviour that otherwise violates this law.”

23. Response to Inquiries about Termination of the Marriage Relationship Following the Sex Change of One of the Parties (Ministry of Civil Affairs General Office Letter No. 127 (2002))

“When one party to a marriage undergoes a sex change and also completes procedures to change the gender marker on their legal identification to the opposite sex, the originally registered marriage is still lawful and has effect, and a party to the marriage cannot merely declare the marriage void. If no disputes over asset division between the parties exists, marriage registration authorities may process a formal divorce with the agreement of the parties.”

24. Adoption Law of the People’s Republic of China (1991)

Article 3:

“Adoption shall not contravene laws and regulations on family planning.”

Article 6:

“Adopters shall meet simultaneously the following requirements:

- (1) childless;
- (2) capable of rearing and educating the adoptee;
- (3) suffering no such disease as is medically regarded as unfit for adopting a child;
- (4) having reached the age of 30.

25. Mental Health Law of the People’s Republic of China (2012)

Article 51:

“Psychotherapeutic activities shall be carried out in medical institutions. The personnel specialized in psychotherapy shall not engage in the diagnosis of mental disorders, and shall not prescribe or provide surgical treatment for patients with mental disorders. The technical specifications for psychotherapy shall be formulated by the health administrative department of the State Council.”

Article 75:

“Where a medical institution and its staff have committed any of the following acts, the health administrative department of the people’s government at or above the county level shall order rectifications, and impose or order the imposition of disciplinary actions of demotion or removal from office on the directly responsible person in charge and other directly liable persons according to law; order the relevant medical staff members to suspend the practicing activities for a period of not less than six months but not more than one year; and if the circumstances are serious, impose or order the imposition of disciplinary actions of dismissal, and revoke the practicing certificates of the relevant medical staff members: ...

- 1) going against the diagnostic standards for mental disorders through diagnosing a patient without mental disorders as a patient with mental disorders.”

Article 76:

“Where anyone falls under any of the following circumstances, the health administrative department and the administrative department of industry and commerce of the people’s government at or above the county level shall, in accordance with their respective duties, order rectifications, give a warning and impose a fine of not less than 5,000 yuan but not more than 10, 000 yuan, and if there is any illegal income, confiscate the illegal income; and if serious consequences are caused, order such person to suspend the practicing activities for a period of not less than six months but not more than one year, or even revoke the practicing certificate or business licence:

- (1) A psychological counselor engages in psychotherapy or the diagnosis or treatment of mental disorders;
- (2) A person engaging in psychotherapy carries out psychotherapeutic activities outside a medical institution;
- (3) A person specialized in psychotherapy engages in the diagnosis of mental disorders; or
- (4) A person specialized in psychotherapy prescribes for or provides surgical treatment for patients with mental disorders.

Where a psychological counselor or a person specialized in psychotherapy causes personal, property or other damages to others, he or she shall bear civil liability according to law.”

26. Interim Measures for Social Assistance (State Council Order No. 649 (2014))

Article 22:

“After a natural disaster occurs, the people’s government above the county level or the comprehensive emergency coordination agency for the relief of natural disasters under the people’s government shall, in light of the actual circumstances, conduct urgent evacuation, transfer, and resettlement of victims and provide victims with such indispensable emergency assistance as food, drinking water, clothes and quilts, heating equipment, temporary residence, and health and epidemic prevention.”

Article 50:

“The state shall provide assistance in terms of temporary accommodation, acute disease treatment, and assistance in returning home for indigent vagrants and beggars.”

27. Interim Measures for Social Assistance (State Council Order No. 649 (2014))

Article 8:

“A relief station shall provide recipients with lodging places according to their different sexes, and female recipients shall be managed by female functionary.”

Appendix C: Literature review

As discussed in this report, there is little data available in China at present regarding legal gender recognition. The material that does exist primarily focuses on issues such as the legal provisions governing gender-affirming surgeries and the impact of legal gender recognition on the legal institutions of marriage and family. Other studies touch on the rights of transgender people in the context of gender-based employment discrimination.

Research conducted by scholars Weng Li and Wan Xiao suggest that there are currently over 100,000 individuals in China who have sought some form of medical diagnosis or treatment because of their gender identity, and that over 1,000 individuals have undergone GAS.⁹⁵ Another expert, Zhang Li, writes that gender-affirming surgeries are not only an effective therapy for transgender people, but are based on the universal principles of personal dignity and freedom as well as the specific rights of individuals to life, health and bodily integrity. Zhang argues that laws and policies should therefore both protect and actively seek to promote the ability of transgender people to access GAS and other medical assistance to pursue gender transition and remove barriers to psychological and physiological well-being.⁹⁶

Chinese academic studies on legal gender recognition have identified three broad categories of how a country legally recognizes gender:

1. Laws and policies that do not recognize the alteration of an individual's sex or gender marker under any circumstances, including GAS, such as in Thailand;
2. Laws and policies that recognize alteration of an individual's sex or gender marker only after undergoing GAS, such as in China; and
3. Laws and policies that recognize alteration of an individual's sex or gender marker without any medical or surgical interventions, including GAS, such as in the United Kingdom.

In the view of another expert, Li Yan, countries in categories 1 and 3 could be said to discourage GAS in their related laws and policies, whereas laws and policies in countries in category 2 could be said to actively encourage GAS. Category 1 denies the right of individuals to change their gender altogether and thereby violates important principles of human rights. Category 2, on the other hand, which offers legal gender recognition only after GAS, fails to protect transgender people who do not wish to pursue GAS (which, by its nature, causes sterilization) or who cannot access medical assistance because of economic or other barriers. Thus, the law fails to protect their rights and interests, even if legal gender recognition is in theory possible. Category 3 is the preferred legal framework, as it is successful in the dual aims of minimizing the pressure placed on individuals to undergo invasive medical procedures while respecting the right of transgender people to pursue gender transition. However, this third type of legal framework requires certain legal and social provisions that China still lacks.⁹⁷

It is important to note that the three approaches analysed above do not incorporate the most progressive forms of legal gender recognition that are founded on the right to recognition before the law based on one's self-defined gender identity. This concept of self-determination is found, for example, in gender recognition laws in Argentina, Denmark, Ireland, Malta and Norway and in some parts of Australia, and in Supreme Court decisions in parts of South Asia that relate primarily to people who identify as a third gender.

As previously mentioned, the Chinese legal academy is mostly silent on the subject of transgender rights and issues. Existing research focuses on the legal questions surrounding GAS. Legal scholars have put forward legislative recommendations containing conceptions of human rights protections, but there are still no definitive works. There are also no public debates between scholars of law on pressing questions, such as

95 Weng Li and Wan Xiao. "Research concerning the rights of transsexuals to alter their sex and legal implications for marriage and family laws," *Ningxia University Journal* (Humanities and Social Science Press: 2016), Vol. 1, p. 101.

96 Zhang Li. "Civil law foundations and legal regulations on sex change operations for transsexuals," *Fujian Normal University Journal* (Philosophy and Social Sciences Press: 2012), Vol. 2, p. 25.

97 Li Yan. "Research on legal standards for sex change operations," in *Social Sciences* (2012), Vol. 1, p. 105.

whether the desire to pursue gender transition is a medical condition; the legality of the many preconditions for undergoing GAS; whether the medical fees for GAS and transition-related therapies should be paid for by public or private insurance; and whether the law ought to permit surrogate pregnancy so that all citizens might be able to enjoy family life.

The focus in China on whether or not transgender people are able to access to GAS has meant there has been no academic debate about legal gender recognition in its own right, irrespective of the medical steps an individual may have taken. Instead, there has been discussion over whether or not gender-affirming surgeries are medically necessary or beneficial for transgender people. Scholar Liu Changqiu does not recognize GAS as medically necessary, and argues that only those suffering from illness have the right to draw upon the resources of medicine and medical technology to preserve health. Liu Changqiu describes transgender people as healthy individuals who should not be permitted to indulge in voluntary procedures that are not medically necessary. Based on this assessment, in Liu Changqiu's view, medically transitioning should not be something advocated for or encouraged in law.⁹⁸

In contrast, expert Ma Debin notes that transgender people may have psychological suffering that may be alleviated through surgery. Similarly, Wu Guoping believes that gender transition is a medical procedure, and should be affirmed, protected and regulated by law. Wu argues that society should treat and accept transgender people with understanding and acceptance.

To date, China has yet to draft or pass laws that provide for the rights and interests of transgender people. This should be rectified as soon as possible, based on the practical needs of the community, starting with promulgation of a Recognition and Protection of Gender Identity Law, as well as specific provisions in laws regulating marriage, family, labour and other areas extending specific protections to transgender people.⁹⁹ When it comes to reproduction, however, surrogate pregnancy arrangements represent a definite challenge. According to traditional interpretations of Chinese civil law, it is almost impossible to extricate the relationship of the birth mother from her subsequent parental role, owing to the complex legal and policy frameworks governing reproduction in China. Indeed, regulations governing reproduction are quite strict, as without careful restrictions, there are fears that the current system would be open to widespread abuses, including the use of reproductive capacity as a for-profit activity and other such issues. To avoid these problems, in February 2001 the Ministry of Health passed the Measures on Administration of Assisted Human Reproduction Technology (Ministry of Health Order No. 14 (2001)), which clearly prohibited any type of use of such technology for surrogacy purposes. The "Measures" also placed restrictions on the use of sperm banks and artificial insemination. These measures made illegal surrogate pregnancy arrangements making use of reproductive technologies, even in instances where all parties agreed to the practice. Further, as per these measures, any child born of an illegal surrogate pregnancy arrangement is not identified as a child born within wedlock, and thereby would have difficulty accessing basic social services, including public schools and hospitals, and obtaining official identity documents.¹⁰⁰

With regard to the impact of law on transgender people in China, Ma Debin writes, "*Hukou* (a type of Chinese identity document that regulates where one may live, work, access government services and other key functions) registration requires selection of one of only two genders; the Marriage Law only permits people of different genders to marry (limited to male and female); males and females are required to retire at different ages; rape laws only recognize females as victims, and thus only explicitly protect females; and there are also the particular problems of transgender people in prison facilities." Considering that China has not yet established a special legal regime to protect this special community, Ma feels that transgender individuals should be kept in facilities appropriate for their self-identified gender.¹⁰¹

Zhou Dan and He Miao have previously written on the various types of employment discrimination faced by transgender people, including those individuals forced by circumstance to become "transgender performers/artists." For example, the artist Meng Qi led a life of such hardship following her gender transition that she ultimately committed suicide. In her suicide note, she wrote how following her transition, she faced public

98 Liu Changqiu. "Reflections on the right to change sex," in *Prosecutorial View* (2016), Vol. 4, p. 28.

99 Wu Guoping. "Initial explorations on the legal protections of the civil rights and interests of transsexuals," in *China University of Political Science and Law Journal* (2012), Vol. 4, p. 108.

100 Wu Guoping. *New Theories on Marriage and Family Law* (Law Press China: 2005), pp. 232–33.

101 Ma Debin. "Research on questions related to the imprisonment of transsexuals," in *Legality Vision* (2016), Vol. 5, p. 254.

ridicule, pervasive unhappiness, and a feeling that she must always live privately and quietly. In their writings, Zhou and He call on China to adopt an anti-discrimination law to promote equal rights in the workplace and provide independent protections to transgender people.¹⁰²

Common Language research fellow Gao Wenqian authored a report titled *Comparative Research on LGBT Anti-Employment Discrimination Laws*, which discusses in detail laws, policies and court decisions in some regions and countries, including Hong Kong, Macau, Taiwan, South Africa, the United Kingdom and the United States that have extended anti-discrimination protections to LGBT individuals. In her view, China's failure to adopt legislation that a) defines "gender identity" and "gender expression," and b) prohibits discrimination on those grounds, means that the right to equal employment of sexual orientation and gender identity minorities (particularly intersex and transgender people) will continue to be ignored, and SOGIESC people continue to be marginalized.¹⁰³

The 2015 report, *Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific*¹⁰⁴ summarizes findings from various Asian country reports concerning the discrimination faced by transgender people in obtaining legal gender recognition, education, employment and other vital rights. Authors of this report have found that in this region, outside of the Hong Kong SAR and a few states in India, neither public nor private health insurance systems cover expenses specifically incurred by transgender people. This means that transgender people, who are already among the most economically vulnerable members of society, must pay for their own health consultations, therapy, test results, hormone therapy, hair removal, surgery and other medical treatment. Further, the deficiencies in health insurance coverage, lack of qualified medical experts, and lack of standards in medical treatment for transgender people, in combination with the negative, uninformed attitudes of many health care workers, all too often force transgender patients to visit unlicensed, unsupervised and unqualified medical providers for both care directly related to transition and other, unrelated forms of medical care.

As this report describes in detail, it is particularly easy for transgender people to fall victim to fraud and violence because of shortcomings in law and policies, particularly those transgender people who support themselves in the legally marginalized world of sex work. Seeing this vulnerability, participants at dialogues for the Being LGBTI in Asia programme in 2013 and 2014 emphasized the importance of passing anti-discrimination legislation. In some countries, it remains unclear whether pre-existing laws prohibiting discrimination based on gender may be extended to provide protections to transgender individuals. Laws protecting the rights of individuals are, after all, only effective when these rights are clearly defined, the public is widely informed, and the laws themselves consistently enforced.¹⁰⁵

A 2016 report by Common Language entitled *Assessing the Rights of Transgender and Intersex People and Communities in Mainland China* seeks to provide expert assessment of the instances of discrimination faced by transgender and intersex people as reported in the media. The report analyses reported cases of violence, domestic abuse and discrimination within communities, educational institutions and at each stage of the employment process. The report seeks to discuss the issues of mainstreaming transgender and intersex cultural experiences, in addition to the ongoing problems of realizing rights to health and gender legal identity.

In August 2009, Tom Mountford mentioned GAS in China's legal context in his report, *The Legal Position and Status of Lesbian, Gay, Bisexual, and Transgender People in the People's Republic of China*. Specifically, Mountford wrote that China's treatment of transgender people in this area has failed to meet the international standards of respect for human freedom, dignity, and privacy.

In January 2015, Asia Catalyst coordinated with two community-based organizations working with individuals impacted by HIV, the Beijing Zuoyou Center and the Shanghai Commercial Sex Worker and Men who have Sex with Men Center (Shanghai CSW & MSM Center), the publication of a report based on interviews with 70 people from these communities, *My Life is Too Dark to See the Light*. As vividly captured in this report,

102 Zhou Dan, He Miao. "Research on the difficulties related to sex change operations and their countermeasures," in *Medicine and Philosophy* (2013) Vol. 12B, No. 1, p. 88.

103 Gao Wenqian. "Comparative research on LGBT anti-discrimination employment laws," in *Commentary on Opposing Employment Discrimination* Vol. 1 (Liu Xiaonan, ed.: Law Press China, August 2015), pp. 130-151.

104 Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme. "Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities." Washington, DC: Futures Group, Health Policy Project, 2015.

105 Ibid.

transgender women engaged in sex work describe their experiences living within one of the most marginalized and disadvantaged communities in China. Interviewees extensively describe their experiences being mistreated and blackmailed by police. The report calls on the government to recognize the issues faced by transgender individuals in China and take action to improve anti-discrimination provisions in related laws, simplify procedures to change gender markers and names on official documents, and to provide more medical services to the community. The report also recommends that the government inserts a section on the needs of the transgender community into the HIV/AIDS action plan for 2016–2020, which was ultimately published (without this section) in April 2015.

In May 2016, UNDP published another report: *Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity and Gender Expression*. The report included a detailed analysis of data collected from 30,910 surveys undertaken with citizens from each Chinese province and autonomous region. According to this report, transgender people frequently encounter serious obstacles in obtaining medical care, treatment and other social services. At the same time, the report also revealed that the majority of survey participants, mostly heterosexual and cisgender, felt that sexual orientation and gender minorities had every right to equally enjoy access to medical and other social services. Over 70 percent of respondents stated that they recognized the right of sexual orientation and gender minorities to use every type of social service. Over 90 percent indicated that sex and gender minorities had an equal right to social assistance, to list their partner as a beneficiary on an insurance policy, and to receive equal treatment in the workplace. However, only approximately 50 percent of respondents indicated that they supported the right of transgender people to access relevant social services, with roughly 25 to 30 percent of respondents responding instead that they “couldn’t clearly say.”¹⁰⁶ The same report found that within the LGBTI community, transgender people faced the most severe discrimination at school because of their minority status, with over 20 percent of transgender respondents indicating that they had dropped out of school or quit their studies. Compared to other sexual and gender minorities, transgender people were found in this report to be the most likely to face discrimination within the family, school or workplace.¹⁰⁷

These reports and materials are invaluable in terms of both their scope and quality of analysis. They have provided important insights and input for policymakers, including first-hand, direct reports on the circumstances, experiences and hoped-for legislative changes from members of the transgender community. This report seeks to supplement these materials with a legal perspective, enriching the social science angle of these reports with a careful and thorough assessment of the laws, policies, and implementation status that characterize the laws and policies governing this area. In general, the problems faced by China’s transgender community demand more attention from the law practitioners and academics. Only together can social scientists, lawyers and legal scholars effectively call for the urgent social reforms needed to protect the rights of one of China’s most vulnerable social groups.

106 UNDP, Peking University and Beijing LGBT Center (2016), “Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity and Gender Expression”, pp. 21–22.

107 Ibid. p. 27.

Appendix D: Comparison of the Sex Change Operation Procedural Management Standards (Provisional) (2009) and the Sex Reassignment Procedural Management Standards (2017)

Following the submission of this report, a new regulatory document was issued concerning gender-affirming surgeries: the Sex Reassignment Procedural Management Standards (2017), which were issued under National Health and Family Planning Commission General Office Order No. 7 (2017), Announcement from the National Health and Family Planning Commission General Office Concerning 15 ‘Restricted Clinical Application’ Medical Treatment Technical Management Standards and Quality Control Targets, Including Blood Generating Stem Cell Transplant Technical Management Standards (2017 Version). The Sex Change Operation Procedural Management Standards (Provisional) (2009) were thus replaced and rendered ineffective as of 14 February 2017.

The 2017 “Standards” define basic requirements or standards for medical facilities, medical professionals, technical management, and training management. At the same time, the Sex Reassignment Procedural Clinical Application Quality Control Standards (2017), issued along with the Sex Reassignment Procedural Management Standards (2017) clearly define the quality and standards of care for gender-affirming surgeries. These quality control measures ensure that only those medical facilities meeting a set of clear requirements are permitted to carry out gender-affirming surgeries, and also require those facilities to perform quality control on necessary medical treatment procedures.

Parts of these new regulations, such as the “sex reassignment surgery post-operation follow-up system” and refinement of quality control standards, will be useful in avoiding instances such as those that caused Li Ying’s lawsuit against the Hangzhou City Plastic Surgery Hospital (see Section 4.4 of this report, Standards of care for gender-affirming surgeries), which were ultimately caused by a failure of medical professionals to follow up with Li Ying after surgery. The new regulations also fill the remaining gaps in current regulations in determining the standards by which success or failure of GAS may be determined. However, these new regulations still fail to substantively change many of the requirements that transgender people must meet and the materials they must submit before they are permitted to access GAS.

For reference, below is a side-by-side comparison of the 2009 and 2017 Standards regulating GAS.

| | 2009 | 2017 |
|-------------------|---|---|
| Title | Sex Change Operation Procedural Management Standards (Provisional) | Sex Reassignment Procedural Management Standards |
| Definition | The term ‘sex change operation’ as used in these standards refers to the plastic surgery methods (tissue transplant and organ reconstruction) to align the biological sex and psychological sex of patients with transsexualism, that is, to excise the original biological sexual organs and reconstruct new physical sexual organs and secondary sex characteristics. | The term ‘sex reassignment procedures’ as used in these standards refer to the surgical methods (tissue transplant and organ reconstruction) to align the biological sex and psychological sex of surgical candidates, that is, the medical treatment procedures used to excise the original sexual organs and reconstruct new physical sexual organs and accompanying secondary sex characteristics. |

| | 2009 | 2017 |
|---|---|--|
| 1. Medical Facility Basic Requirements | <p>(1) Medical facilities that perform sex change surgery should have suitable capabilities and mandates.</p> <p>(2) Tertiary-level general hospitals or plastic surgery hospitals with plastic surgery clinical programmes authorized and registered with the health administration department.</p> <p>(3) The hospital has functioning ethics committees governed by established administrative standards and composed of experts from disciplines including medicine, law, and ethics to regulate the clinical application of sex change surgery.</p> <p>(4) Plastic surgery department:</p> <ol style="list-style-type: none"> 1. Have had a dedicated plastic surgery department for over 10 years, have space for at least 20 beds, and have a relatively strong plastic surgery work foundation. 2. Be able to independently complete every type of plastic surgery, including organ reconstruction and tissue transplantation. 3. Ward facilities should be able to protect the privacy of sex reassignment surgery patients, and be able to offer psychological and related treatment. <p>(5) Have at least two attending physicians capable of performing sex reassignment surgery and relevant clinical work on staff, and trained technical staff who have been evaluated and found to be qualified in general knowledge of and technical skills involved in performing sex reassignment surgery and related procedures.</p> | <p>(1) Medical facilities that perform sex reassignment surgery should have suitable capabilities, mandates, and technical ability.</p> <p>(2) Plastic surgery, urology, or gynaecology clinical programmes authorized and registered with the health administration department. [Must] have independent supplementary departments including an anesthesiology department, intensive care unit, blood transfusion department, etc.</p> <p>(3) Has an ethics committee composed of experts from disciplines including medicine, law, ethics, etc. governed by administrative standards.</p> <p>(4) Plastic surgery department:</p> <ol style="list-style-type: none"> 1. Performed plastic surgery clinical work for over 10 years, and have at least 30 beds. Be capable of independently completing all kinds of plastic surgery procedures (including organ reconstruction and tissue transplant surgeries), and every year complete no fewer than 1,000 plastic surgeries. 2. Ward facilities should be able to protect the privacy of surgery patients, and be able to offer psychological and related treatment. <p>(5) Have at least two doctors registered at the medical facility with the ability to perform gender-reassignment surgery and related clinical work, and have other expert technical staff trained and qualified in the general knowledge and use of the technology used in gender-reassignment surgeries.</p> <p>(6) Be equipped with the surgical microscopes, blood vessel detectors, and other equipment used in microsurgeries.</p> |

| | 2009 | 2017 |
|---|---|--|
| <p>2. Minimum requirements for staff</p> | <p>(1) The surgical team shall be led by a plastic surgeon, and if needed, other doctors from relevant units may participate.</p> <p>(2) Surgeon: be a registered attending physicians at the hospital where the procedure is to take place, with a valid licence to practice medicine; be a specialist in plastic surgery, and hold a professional position of deputy director of the department or higher professional and technical qualifications; have at least 10 years of clinical experience in plastic surgery, at least 5 of which were spent performing clinical work related to sex change operations, and has independently completed at least 10 sexual organ reconstruction surgeries.</p> <p>(3) First assisting surgeon: have at least five years of clinical experience in plastic surgery, or be an attending physician or higher professional and technical qualifications in a related discipline.</p> | <p>(1) Doctor performing gender-reassignment surgery:</p> <ol style="list-style-type: none"> 1. Doctor registered to primarily practise surgery at the medical facility with a valid licence to practice medicine. 2. Have over 10 years of clinical medical work experience specializing in plastic surgery, and have held a professional position of deputy director of the department or higher professional and technical qualification for over five years. 3. Have independently completed no fewer than 10 sexual organ reconstruction procedures (those performing female-to-male gender-reassignment surgeries need to have completed no fewer than 5 penis reconstruction surgeries). 4. Undergo trainings on gender-reassignment surgery procedures and related systems designated by the province-level Health and Family Planning Commission administrative department, and possess the necessary skills to perform gender-reassignment procedures. <p>(3) Other related health specialist technical staff:</p> <p>Undergo gender-reassignment procedures-related specialized systems training, and fulfil the necessary conditions to utilize the technology for gender-reassignment clinical use.</p> |

| | 2009 | 2017 |
|---|--|---|
| <p>3. Minimum requirements for procedural management</p> | <p>(1) Comply with the clinical standards of plastic surgery and related disciplines, and the conventional application of such procedures.</p> <p>(2) The proper order of sex change operations: The main element of sex change operations is the removal and reconstruction of the sexual organs. Any surgery to alter secondary sex characteristics must be performed after or at the same time as removal of the sex glands.</p> <p>(3) Before surgery, patients are required to provide the following materials and meet the following conditions:</p> <ol style="list-style-type: none"> 1. Before surgery, patients are required to provide the following materials: <ol style="list-style-type: none"> 1. Verification issued by the local Public Security Bureau that the patient has no prior criminal record. 2. Verification of the patient's diagnosis of transsexualism, issued by a doctor of psychiatry, along with verification that the patient does not exhibit symptoms of any other psychological abnormality. Further proof is also required to demonstrate that a psychiatric expert has tested the patient to ensure their sexual orientation is directed at the opposite of their target gender, and that there are no additional psychological abnormalities. 3. Verified written request from the surgical patient requesting the surgery. 4. Verification that the surgical patient has already notified family of the intention to undergo sex reassignment surgery. <p>The abovementioned materials [are to be] entered into the medical history.</p> | <p>(1) Strictly comply with the standards and medical guidance governing the application of gender-reassignment procedures. Ensure thorough comprehension of the indications and contraindications of gender-reassignment procedures.</p> <p>(2) Excision of external genitalia and excision of the breasts in female-to-male procedures are the main surgeries involved in gender-reassignment procedures.</p> <p>(3) Before performing the main surgery, the surgical patient should submit the following materials and enter them into the medical record: <ol style="list-style-type: none"> 1. Verification issued by the local Public Security Bureau that the patient has no prior criminal record. 2. Verification issued by a psychologist or psychiatrist of a diagnosis of transsexualism. 3. Verified written request from the surgical patient requesting the surgery. 4. Verification that the surgical patient has already notified family of the intention to undergo sex reassignment surgery </p> <p>(4) Before surgery, the surgical patient should fulfil the following requirements: <ol style="list-style-type: none"> 1. The desire to change sex has existed, and been persistent, for over five years with no history of hesitation in pursuing this desire. 2. Psychological/psychiatric therapy has been provided for over a year prior to surgery, with no effect. 3. [The patient is] in an unmarried state. 4. [The patient is] older than 20 years of age, and has complete civil capacity. 5. [The patient has] no other contraindications to surgery </p> |

| 2009 | 2017 |
|------|--|
| | <p>2. Before surgery, the surgical patient should fulfil the following requirements:</p> <ol style="list-style-type: none"> 1. The desire to change sex has existed, and been persistent, for over five years with no history of hesitation in pursuing this desire 2. Psychological/psychiatric therapy has been provided for over a year prior to surgery, with no effect 3. [The patient is] in an unmarried state. 4. [The patient is] older than 20 years of age, and has complete civil capacity. 5. [The patient has] no other contraindications to surgery. <p>(4) Before performing the gender-reassignment surgery, the surgeon should fully explain to the patient the goal of the surgery, the risks of the surgery, follow-up medical treatment following surgery, items to take note of, the possible complications and prevention measures, the effects of gender-reassignment surgery, and have the surgical patient sign an informed consent notice.</p> <p>(5) Hospital management</p> <ol style="list-style-type: none"> 1. Agreement of the hospital ethics committee to the procedure must be secured prior to performing gender-reassignment surgery. After this agreement is obtained, the surgeon may begin the procedure. 2. Each quarter, all information related to each incident of sex change operations should in accordance with regulations be reported to the corresponding administrative department of the Ministry of Health. 3. Following removal, sex glands should be examined for pathologies, and other tissues should also be subject to examination for pathology according to their appearance. 4. Following a sex change operation, the hospital should provide a certification verifying related medical treatment to facilitate the patient in managing follow-up legal procedures. <p>(5) Before performing the gender-reassignment surgery, the surgeon should fully explain to the surgical candidate the goal of the surgery, the risks of the surgery, follow-up medical treatment following surgery, items to take note of, possible complications, the effects of gender-reassignment surgery, and have the surgical patient sign an informed consent notice.</p> <p>(6) Hospital management:</p> <ol style="list-style-type: none"> 1. Agreement of the hospital ethics committee to the procedure must be secured prior to performing gender-reassignment surgery. After this agreement is obtained, the surgeon may begin the procedure. 2. After completing each gender-reassignment surgery, each quarter, the hospital should as required preserve and report in a timely fashion the related medical case data information to a constructed medical case information database. 3. Excised tissue should be inspected for pathology. 4. After completing external reproductive organ reconstruction such that the procedure constitutes transformation of biological sex, the hospital should issue certification verifying the related medical treatment in order to facilitate the surgical patient in managing related legal procedures. 5. Medical facilities and their medical personnel should respect the privacy rights of surgical patients. <p>(7) Medical facilities performing gender-reassignment procedures should construct comprehensive systems for post-op follow-up, and should engage in follow-up and record-taking in accordance with regulations.</p> |

| 2009 | 2017 |
|------|--|
| | <p>5. Medical personnel should respect the privacy rights of patients.</p> <p>(6) Medical facilities performing sex change operations should construct comprehensive systems for post-op follow-up, and should engage in follow-up and record-taking in accordance with regulations.</p> <p>(7) Medical facilities and doctors shall in accordance with regulations be subject to gender-reassignment clinical application capability investigations at regular intervals, which include case studies, surgery success rates, serious complications, mortality rates, medical accident assessment, post-operative patient management, patient quality of life, follow-up performance and medical record quality, etc.</p> |
| | <p>(8) Medical facilities and doctors shall in accordance with regulations be subject to gender-reassignment clinical application capability assessments at regular intervals, which include case studies, surgery success rates, serious complications, mortality rates, medical accident assessment, post-operative patient management, patient quality of life, follow-up performance and medical record quality, etc.</p> <p>(9) Other management requirements:</p> <ol style="list-style-type: none"> 1. Use equipment for gender-reassignment procedures that has been approved by the State Food and Drug Administration. It is not permitted to reuse equipment in violation of regulations for equipment intended for single use in gender-reassignment procedures. 2. Establish a registration system for equipment for gender-reassignment procedures to ensure that equipment origins can be traced. Record the barcodes or other quality certification information for the surgical equipment in the surgical record portion of the surgical candidate's medical history initiated after admission to the medical facility. |

| | | 2009 | 2017 |
|--|------|------|---|
| 4. Training management requirements | None | | <p>(1) Training requirements for doctors intending to perform gender-reassignment procedures.</p> <ol style="list-style-type: none"> 1. Possess valid medical licence, hold a specialized technical professional post at the rank of department deputy or higher, and possess the operational capacity to perform microsurgery. 2. Receive at least six months of system training. Under the guidance of the guiding doctor, participate in over two gender-reassignment surgeries, participate in over 10 cases of managing surgical patients throughout the gender-reassignment surgical process, including pre-operative diagnosis, sexual organ reconstruction procedures, and patient management during and after surgery, and meet the requisite standards in evaluation. 3. If receiving gender-reassignment procedure training in a foreign jurisdiction: Receive training for over six months, possess a certificate from the foreign training facility, and undergo evaluation to validate foreign credentials at a facility designated by the province-level Health and Family Planning Commission administrative department to observe whether the training meets regulated training requirements. 4. Prior to the day these regulations were promulgated, doctors who have a record of at least 15 years of clinical work, hold a specialized technical professional post at the rank of department director, who have independently performed at least 5 gender-reassignment surgeries in the past 5 years, and have no record of poor surgical outcomes, are exempted from training. |

| | 2009 | 2017 |
|--|------|---|
| | | <p>(2) Training facility requirements:</p> <ol style="list-style-type: none"> 1. Training facility conditions. The province-level administrative departments of the National Health and Family Planning Commission shall determine the training facilities. Training facilities should possess the following qualifications: <ol style="list-style-type: none"> 1. Tertiary hospitals with plastic surgery treatment departments authorized and registered with the Health and Family Planning Commission administrative department that are in compliance with the requirements of the standards managing gender-reassignment procedures. 2. Plastic surgery department with capacity for 60 beds and over 6 doctors holding specialized technical qualifications at the deputy director level or higher of the plastic surgery department. In the past 3 years, there must have been at least 120 reproductive organ reconstruction (over 15 penis reconstruction surgeries). 3. Possess a professional team that performs vaginoplasty. 2. Training work fundamental requirements: <ol style="list-style-type: none"> 1. Training materials and training syllabus fulfils training requirements, with a curriculum design that includes ethics and clinical applications. 2. Guarantee that doctors receiving training complete the training within the mandated timeframe. 3. Following training, doctors participating in training should participate in an examination, be evaluated, and be provided with the results for being certified. 4. Establish a training, examination, and qualification record system for every doctor receiving training. |



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