

BEFORE AND AFTER THE BARRIER-FREE LAW:  
LEGAL IMPLEMENTATION OF ACCESSIBILITY IN CHINA

GU Enqiao\*

Table of Contents

I.PRE-2023: CHINA’S ACCESSIBILITY LAWS AND STANDARDS .....	314
A. An Overview of China’s Pre-2023 Accessibility Regulatory System .....	314
B. Law-Making, Implementation and Enforcement.....	316
C. The Standards and the Regulations .....	320
II.A NATIONAL LAW TARGETED ON ACCESSIBILITY .....	324
A. Higher in Legal Hierarchy, Stronger in Power of Influence .....	324
B. Important Changes Brought by the Barrier-Free Law .....	326
C. The Barrier-Free Law from an International Perspective .....	328
III.POST-2023: THE BARRIER-FREE LAW INTO EFFECT .....	331
A. Legal Responsibilities: Ready for Action?.....	331
B. Legal Toolsets to Be Developed.....	332
C. The Ideal of a Social Law .....	334

---

\*GU Enqiao, LL.B. Candidate at Tsinghua University School of Law.

## BEFORE AND AFTER THE BARRIER-FREE LAW: LEGAL IMPLEMENTATION OF ACCESSIBILITY IN CHINA

GU Enqiao

### *Abstract*

*Changes have taken place in China's accessibility regulatory system since the Barrier-Free Environment Creation Law was promulgated last year. This new law, issued by a higher authority than that of its predecessor, the Barrier-Free Regulation, broadens the scope of beneficiaries of barrier-free environment, pays more attention to the importance of accessibility standards, authorizes the procuratorate to file public interest litigations, and brings many new articles in response to real-life needs. It has the potential to narrow regional gap, Digital Gap, and the gap between China's accessibility laws and international guidelines and practices. The "soft law" articles in the new law might be criticized for being impracticable, but may also be interpreted positively as a pursuit of the ideal of social law in a larger sense.*

*Keywords: Legal implementation of accessibility; Barrier-Free Law; standards; international perspective; regional disparities; actionability; legal toolset; social law*

### I. PRE-2023: CHINA'S ACCESSIBILITY LAWS AND STANDARDS

#### A. *An Overview of China's Pre-2023 Accessibility Regulatory System*

With over thirty years of development, China's accessibility regulation system spans a wide range of legal documents, including laws, administrative regulations, local regulations and multiple types of standards. This overview briefly depicts the regulatory system prior to the landmark year of 2023, in which the Barrier-free Environment Creation Law ("the Barrier-Free Law" or "the Law")<sup>1</sup> was adopted.

Below is a list of the laws and regulations, shown in a top-bottom order referring to the hierarchy of authority.<sup>2</sup>

---

<sup>1</sup> Wuzhangai Huanjing Jianshe Fa (无障碍环境建设法) [Barrier-free Environment Creation Law] (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 2023, effective Sept. 1, 2023) 2023 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. 5.

<sup>2</sup> The English names and texts of China's legal documents used in this article are from Chinalawinfo, unless given alongside the official texts of the documents or otherwise stated. Taking English names and texts from Chinalawinfo makes it easier to retrieve the documents, saving readers from wearisome searching and this article from unnecessary citations. Omissions are made within the names for the purposes of brevity.

TABLE 1. THE LIST OF THE LAWS AND REGULATIONS

Laws	Laws concern- ing persons faced with ac- cessibility problems	Ac- tiona- ble	Law on the Protection of Disabled Persons <sup>3</sup>	Adoption: 1990 Last revision: 2018
			Law on the Protection of the Rights and In- terests of the Elderly	Adoption: 1996 Last revision: 2018
	Laws for gen- eral public		*Non- action- able <sup>4</sup>	Copyright Law
		Film Industry Promo- tion Law		Adoption: 2016
			Law on Public Librar- ies	Adoption: 2017 Last revision: 2018
Adminis- trative regula- tions	Concerning only bar- rier-free issues		Regulation on the Construction of Bar- rier-Free Environ- ments	Adoption: 2012
	*Concerning not only barrier-free issues		Regulation on the Ed- ucation of the Disa- bled	Adoption: 1994 Last revision: 2017
*Local regulations			Beijing Municipality Regulations	Editions: 2000, 2004, 2021
			Xi'an Municipality Regulations	Editions: 2002 (Annulled in 2017)
			Liaoning Provincial Regulations	Editions: 2005, 2018

A list of standards is given separately here due to the fact that the system of standards theoretically and functionally stands apart from the system of laws and regulations.<sup>5</sup>

<sup>3</sup> Terms of “older persons” and “persons with disabilities” are used instead of other similar terms, except when the similar terms are used in cited works or legal documents. In the latter case, the terms are put as original.

<sup>4</sup> The asterisk (\*) is to indicate that the list for this category is incomplete. This notation will be used for the same reason afterwards.

<sup>5</sup> A more complete database-like list of standards can be found in Yu Yifan (于一凡), Liu Bing (刘冰), Wang Geyang (王舸洋), Zhongguo Wuzhangai Huanjing Jianshe Biaozhun Tixi Baogao (2021) (中国无障碍环境建设标准体系报告 (2021)) [Report on the System of Standards for Barrier-Free Environment Creation in China (2021)] in Zhongguo Wuzhangai Huanjing Fazhan Baogao (中国无障碍环境发展报告 (2021)) [Report on the Development of Accessible Environment in China (2021)] 116–128 (Ling Kang

National standards	Compulsory	Construction acceptance and maintenance standards of the barrier-free facilities (GB 50642 – 2011)
		Codes for accessibility design (GB 50763 – 2012)
Industry standards	*Recommended	General technical specification of accessible facilities for railway passenger cars and multiple unit (GB/T 37333 – 2019)
		Technical specification for slip resistance of building floor (JGJ/T 331 – 2014)
		Codes for design on accessibility of urban roads and buildings (JGJ 50 – 2001)
		Code for design of railway passenger station (TB 10100 – 2018)
Local standards		The barrier-free facility design code for urban rail transit (DB11/690 – 2016) (Beijing)
		Standard for barrier-free facility and service in restaurants (DB3301/T 0300 – 2019) (Hangzhou)
Group standards	*Voluntary	Banking accessible environment standard [T/CBA 202 – 2018 (W2022)] (China Banking Association)
Company standards		Personal banking application barrier-free service code (Q/PCNKRB001-2022) (A rural bank company)

These two tables should have contained most categories needed to understand China's accessibility regulatory system before the adoption of the Barrier-Free Law. The tables are based on relevant sources that are cited later in this article, with certain adjustments made and pieces of my own explanations added.

### *B. Law-Making, Implementation and Enforcement*

This section deals with the laws, administrative regulations, and local regulations on accessibility, as illustrated in the first table provided above.

Law-making has been the most discussed topic in studies of legal implementation of accessibility in China. First of all, in the strict sense, there was no law made specially for barrier-free issues. Not until the year of 2012 was the first administrative regulation, the Regulation on the Construction of Barrier-Free Environment (“the Barrier-Free Regulation” or “the Regulation”)<sup>6</sup>,

(凌亢) eds., 2021). However, the report did not make much explanation on the details of the standards. Also, the overall situation, especially the situation of company standards, has changed since the report was published.

<sup>6</sup> Wuzhangai Huanjing Jianshe Tiaoli (无障碍环境建设条例) [Regulation on the Construction of Barrier-Free Environment] (promulgated by the St. Council, June 28, 2012, effective Aug. 1, 2012) 2012 ST. COUNCIL GAZ. 20.

adopted and put into effect. In addition to the Barrier-Free Regulation, this lack of barrier-free laws was also compensated by non-actionable barrier-free provisions in some laws, as well as chapters codified in the two laws concerning two groups of persons facing accessibility problems.<sup>7</sup>

Generally speaking, there is a purist view believing that any other legal document than laws shall be excluded from the regulatory system, and that where a specially-made basic law is missing, legal effectiveness and seriousness is missing.<sup>8</sup> An opposite view, however, puts particularly great emphasis on pragmatic success rather than growth in the amount and completeness of legal articles. Taking neither stance, a compromise of these two views can be seen in the pre-2023 regulatory system. It is usual that in a new field where regulatory measures shall be taken, regulations are made before laws to allow trial and error. Although it is true that regulations are lower in the legal hierarchy, the Barrier-Free Regulation can still offer a basic structure or outline that guides policy-making, standard implementation and public understanding, leading to possible future legislation.<sup>9</sup>

Critical judgments have been made on the Barrier-Free Regulation. Frequently criticized are the provisions of it for being overly general and abstract, some of which are simply infeasible.<sup>10</sup> Many provisions are likened to blank checks or slogans.<sup>11</sup> This feature of impracticability is most obvious in the provisions regarding law enforcement responsibilities and legal liabilities. There is an overuse of “shall” and a lack of “must”, also too much ambiguous “encouragement” with few clearly imposed obligations.<sup>12</sup> Meanwhile, basically no right was given to stakeholders other than government agencies in case of violations; provisions on administrative penalties are too general to be effective,<sup>13</sup> and judicial remedies are on the whole unavailable.<sup>14</sup> Some other critiques focus on certain fundamental concepts, aims, and values of the Barrier-Free

<sup>7</sup> The chapters are, Chapter VII “Barrier-Free Environment” of Law on the Protection of Disabled Persons, and Chapter VI “Livable Environment” of Law on the Protection of the Rights and Interests of the Elderly, respectively.

<sup>8</sup> Li Mu (李牧), Ma Hui (马卉), Li Qundi (李群弟), Hu Zheming (胡哲铭), *Zhongguo Wuzhangai Huanjing Jianshe Lifa Yanjiu Baogao (2021)* (中国无障碍环境建设立法研究报告 (2021)) [*Report on the Law-Making for Barrier-Free Environment Creation in China (2021)*] in the same collection with the report in *supra* note 5, 59.

<sup>9</sup> Jin Xi (金希), *Zhongguo Canzhangfa Tixi Qianping* (中国残障法体系浅评) [*A Brief Review of China's Disability Law System*], 1 CANZHANG QUANLI YANJIU (残障权利研究) [DISABILITY RTS. STUD. IN CHINA] 20, 21–22 (2018).

<sup>10</sup> An Tianyi (安天义), *Woguo Wuzhangai Falü Huanjing Yanjiu ji Guoji Bijiao* (我国无障碍法律环境研究及国际比较) [*The Legal Environment of Barrier-Free in China and International Comparison*], thesis used for applying Master Degree of Engineering at Tsinghua University, 22 (2010).

<sup>11</sup> Jin, *supra* note 9, at 26–28.

<sup>12</sup> E.g., *The Barrier-Free Regulation*, art. 11 and art. 27.

<sup>13</sup> *The Barrier-Free Regulation*, Chapter V “Legal liabilities”. This Chapter consists of merely four articles, one of which repeats with no specification at all general criminal penalties on neglect of duty.

<sup>14</sup> Zhang Wanhong (张万洪), Ding Peng (丁鹏), *Zhongguo Canjiren Shiye Fazhi Jianshe Sanshinian zhi Huimo yu Qianzhan* (中国残疾人事业法治建设三十年之回眸与前瞻) [*30 Years' Development of Rule of Law System for the Disability Cause in China: Reviews and Prospects*], 1 CANJIREN YANJIU (残疾人研究) [DISABILITY RES.] 14, 17–18 (2021).

Regulation that differ from or even conflict with those in the Convention on the Rights of Persons with Disabilities (the CRPD), which leads to additional technical problems of the Regulation.<sup>15</sup> These are general criticisms. Additionally, detailed aspects such as the effectiveness of some provisions have been questioned. For instance, some criticized that the Regulation should not take such a soft attitude toward renovating previously-built facilities that do not meet current accessibility standards,<sup>16</sup> indicating that the traditional legal principle of *lex prospicit non respicit* may face challenges in social law areas such as accessibility laws.

The same problem of impracticability appears in other laws and regulations. For example, an article in the Film Industry Promotion Law states that “The state shall **encourage** cinemas [...] to adopt measures [...] to facilitate film watching by the minors, elderly, the disabled [...] and the people’s government of the place where such cinemas [...] are located **may** provide them with rewarding subsidies.”<sup>17</sup> (emphasis added). The “softness” in legal implementation of accessibility in China may lead to discontent, but it is more or less sensible and understandable, considering the fact that “soft laws” are not uncommon in Chinese law, public governance law in particular, and that soft laws do have a positive side.<sup>18</sup>

In terms of quantity, the number of administrative regulations is small. A natural result of this is that government agencies, including departments of the State Council, have no detailed guideline when undertaking accessibility works.<sup>19</sup> However, there are over 700 local regulations, administrative orders and other regulatory documents on this issue,<sup>20</sup> and the total shows a growing trend.<sup>21</sup> The quantity seems promising while the quality is concerning, in a way

<sup>15</sup> Research group on the effectiveness evaluation of the Regulation on the Construction of Barrier-Free Environments (《无障碍环境建设条例》立法后评估课题组), Zong Baogao: Zhongguo Wuzhangai Huanjing Jianshe Lifa Yanjiu Baogao (2021) (总报告: 中国无障碍环境发展报告 (2021)) [General Report: Report on the Development of China’s Barrier-Free Environments (2021)] in the same collection with the report in *supra* note 5, 5–11 [hereinafter *General Report*].

<sup>16</sup> The Barrier-Free Regulation, art. 11.

<sup>17</sup> The Film Industry Promotion Law, art. 28.

<sup>18</sup> Luo Haocai (罗豪才), Song Gongde (宋功德), Renzhen Duidai Ruanfa: Gongyu Ruanfa de Yiban Lilun ji qi Zhongguo Shijian (认真对待软法——公域软法的一般理论及其中国实践) [Take soft laws seriously: The general theory and Chinese practice of soft law in public governance], 2 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCI.] 3, 5–11 and 14–24 (2006); Jiang Mingan (姜明安), Ruanfa de Xingqi yu Ruanfa zhi (软法的兴起与软法之治) [The Rise of Soft Laws and Its Role in Governance], 2 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCI.] 25, 32–35 (2006); and, Li Jianfei (黎建飞), Wuzhangai Fazhi de Yuanyuan, Weijie yu Qianzhan (无障碍法治的渊源、位阶与前瞻) [The Legal Source, Precedence and Prospect of Barrier-free Rule of Law], 3 CANJIREN YANJIU (残疾人研究) [DISABILITY RES.] 19, 20–21 (2023).

<sup>19</sup> An, *supra* note 10, at 21–22.

<sup>20</sup> 2022Nian Canjiren Shiye Fazhan Tongji Gongbao (2022年残疾人事业发展统计公报) [2022 Statistical Gazette of Affairs Connected with Persons with Disabilities], CHINA DISABLED PERSONS’ FEDERATION (Apr. 6, 2023), <https://www.cdpf.org.cn/zwgk/zccx/tjgb/4d0dbde4ece7414f95e5dfa4873f3cb9.htm>.

<sup>21</sup> Yu Yifan (于一凡), Liu Bing (刘冰), Wang Geyang (王舸洋), Zhongguo Difang Wuzhangai Huanjing Jianshe Guanli Zhidu Baogao (2021) (中国地方无障碍环境建设管理制度报告 (2021)) [Report on Local Regulatory Rules for Barrier-Free Environment Creation in China (2021)] in the same collection with the report in *supra* note 5, 88–91.

similar to that of the Regulation. These are problems of underdeveloped “legal toolsets”, which will be discussed at greater length in the third part.

The implementation and enforcement of the laws and regulations are in a relatively unsound condition. Government actions often fall short of expectations, while non-government bodies are “disabled” because they lack legal grounds for taking action.

Observational results of accessibility construction after the Regulation and some local regulations became effective can help indicate whether and how the regulations are being followed. Observations by authorities<sup>22</sup> and researchers<sup>23</sup> have revealed many problems. Another indicator of legal implementation is the number and frequency of law enforcement examinations. From the birth of the first regional accessibility law in 2000 until the end of 2022, there are in total 761 regional accessibility legal documents, but only 9,996 enforcement examinations of the above regulatory files were conducted in the year 2022 – simple math tells that each law, on average, has been examined for enforcement for merely about 13 times a year.<sup>24</sup> Considering the unbalanced implementation of accessibility among different administrative regions,<sup>25</sup> this result implies it is highly likely that few examinations were organized in some regions. The lack or absence exists in the circumstances where administrative means are, generally speaking, the sole method of accessibility regulatory enforcement and the only remedies available to citizens, since almost all regulations are non-actionable.

It is reasonable to conclude that most regulations are non-actionable because of the status quo of China’s procedural law. Taking the Regulation as an example, we see that no specific rights are given to individuals to directly ask other individuals or private entities to comply with it. Only the “relevant standards or rules” as stated in some articles<sup>26</sup> may be cited as indirectly supportive rules when a person finds his/her ground in contracts or in other laws to be

<sup>22</sup> E.g., Shengrenda Changweihui Zhifajianchazu Guanyu Jiancha “Zhonghua Renmin Gongheguo Canjiren Baozhang Fa” ji “Fujiansheng Shishi ‘Zhonghua Renmin Gongheguo Canjiren Baozhang Fa’ Banfa” Shishi Qingkuang de Baogao (省人大常委会执法检查组关于检查《中华人民共和国残疾人保障法》及《福建省实施〈中华人民共和国残疾人保障法〉办法》实施情况的报告) [The Standing Comm. of Fujian Provincial People’s Cong.’s Report on Law Enforcement Examination of Law on the Protection of Disabled Persons and Its Provincial Implementation Measures in Fujian], 5 FUJIANSHENG RENMIN DAIBIAO DAHUI CHANGWU WEIYUANHUI GONGBAO (福建省人民代表大会常务委员会公报) [GAZ. OF THE STANDING COMM. OF FUJIAN PROVINCIAL PEOPLE’S CONG.] 104, 108 (2021).

<sup>23</sup> E.g., An, *supra* note 10, at 24–32.

<sup>24</sup> China Disabled Persons’ Federation, *supra* note 20.

<sup>25</sup> See Yuan Shuo (袁萌), Tian Tao (田涛), Jin Ershinian Woguo Wuzhangai Jianshe Jinzhan yu Chuangjian Tezheng Fenxi (近二十年我国无障碍建设进展与创建特征分析) [Analysis on the Progress and Characteristics of Accessible Construction in China in Recent 20 Years], S1 GONGCHENG JIANSHE BIAOZHUNHUA (工程建设标准化) [STANDARDIZATION OF ENGINEERING CONSTRUCTION] 164, 166–72 (2023). See also Tian Tao (田涛), Yang Cuixia (杨翠霞), Liu Hui (刘晖), Jin20nian Guonei Wuzhangai Huanjing Jianshe Yanjiu Redian ji Qushi Fenxi (近20年国内无障碍环境建设研究热点及趋势分析) [Research Hotspots and Development Trend of Accessibility Environment Construction in China in the Past 20 Years], 8 JIANSHE KEJI (建设科技) [CONSTRUCTION SCI. AND TECH.] 12, 15–16 (2021).

<sup>26</sup> E.g., “the construction engineering standards” as in art. 9, 11, 13, 14 and 31; “the requirements” as in art. 15; and, “the relevant provisions of the state” as in art. 8 and 16.

heard in a court. As for administrative litigation, individuals or organizations do not have standing unless they are subjected to or have an interest in an administrative action,<sup>27</sup> and when there is no such action, there is no standing. For most parts of administrative implementation of accessibility, there would not be “actions” but rather inactions or intra-office actions that are not suable. Lastly, public interest litigations can only be initiated by “an authority or relevant organization as prescribed by law” or by the people’s procuratorate.<sup>28</sup> No law prescribes any authority or organization other than the procuratorate to start litigations to enforce accessibility rules,<sup>29</sup> and even the procuratorate’s standing is still controversial to a certain degree.<sup>30</sup> These are major contributors to the aforementioned impracticability or softness in law-making.

### C. *The Standards and the Regulations*

This section comes to term with a variety of standards on accessibility in China, with a selected list provided as the second table above. The overall situation is as follows: The standards, as an indispensable part of accessibility legal toolsets, play a leading role in the practical side of accessibility regulatory system, in contrast with laws that are often viewed as simple statements of “empty” legal principles. Some say that the creation of standards are the actual beginning of accessibility regulation, rather than the making of laws or regulations.<sup>31</sup>

There surely is a functional complementarity between the mostly “empty” regulations and the compulsory standards. Undoubtedly, standards seem to be more about technology and engineering and less about rules and governance. But it is the rich system of standards, national compulsory ones in particular, that truly governs the legal implementation of accessibility in China. Despite the fact that standards categorically belong to neither laws nor regulations, standards are actually part of the laws and regulations. They fill up the blanks left in the overly general and abstract legal provisions, serve as the previously mentioned “relevant standards or rules”.

<sup>27</sup> Xingzheng Susong Fa (2017 Xiuzheng) (行政诉讼法 (2017修正)) [The Administrative Litigation Law (2017 Amendment)] (promulgated by the Standing Comm. Nat’l People’s Cong., June 27, 2017, effective July 1, 2017), art. 25 (Chinalawinfo).

<sup>28</sup> Minshi Susong Fa (2017 Xiuzheng) (民事诉讼法 (2017修正)) [Civil Procedure Law (2017 Amendment)] (promulgated by the Standing Comm. Nat’l People’s Cong., June 27, 2017, effective July 1, 2017), art. 55 (Chinalawinfo).

<sup>29</sup> Some local regulations serve as repeaters of national laws and regulations, and their functions are to be further analyzed. *E.g.*, Shanghai Shi Wuzhangai Huanjing Jianshe Tiaoli (上海市无障碍环境建设条例) [Regulations of Shanghai Municipality on Accessibility Construction] (promulgated by Shanghai Municipal People’s Congress, Jan. 15, 2023, effective Mar. 1, 2023), art. 71 (Chinalawinfo).

<sup>30</sup> Li Yue (李悦), *Wuzhangai Huanjing Jianshe Gongyi Susong zhi Shiyong Yanjiu* (无障碍环境建设行政公益诉讼之适用研究) [Research on the Application of Administrative Public Interest Litigation for Barrier-Free Environment Construction], thesis used for applying Master Degree of Laws at Southwestern University of Finance and Economics, 13–14 (2023).

<sup>31</sup> Li Jianfei (黎建飞), *Wuzhangai Fazhi de Yuanyuan, Weijie yu Qianzhan* (无障碍法治的渊源、位阶与前瞻) [The Legal Source, Precedence and Prospect of Barrier-free Rule of Law], 3 CANJIREN YANJIU (残疾人研究) [DISABILITY RES.] 19, 20–21 (2023).



The mechanism of complementarity can be illustrated with the example of Article 9 of the Regulation (“Article 9”), which states, “Urban roads, public buildings, public transportation facilities [...] that are newly built, renovated or expanded shall comply with **the construction engineering standards for barrier-free facilities.**” (emphasis added).

One of those “construction engineering standards for barrier-free facilities” is the Codes for accessibility design (“the Codes”), a national standard promulgated by the Ministry of Housing and Urban-Rural Development. The Codes applies to all constructions of new urban roads, public buildings, etc., but is not entirely compulsory. Only several articles are.<sup>32</sup> These articles constitute national compulsory standards. Just like all other compulsory standards, its force to enforce strict compliance comes from the Standardization Law.<sup>33</sup> The Regulation did not really make it mandatory also because the Codes was made public and effective earlier than the Regulation.

Then, for what reason, Article 9 reiterates what has already been said by the Announcement, i.e., the specified articles are compulsory so that constructions shall comply? Is such repeat of words meaningful? It is possible that this is to emphasize the importance of the standards, to make it more likely that the public acts in accordance with the standards.<sup>34</sup> But except for this outer social function, Article 9 is believed by some to play a highly valued inner role in connecting the standards with the world of law. An imagined simplified case would help clarify this idea: X signed a contract with Y to buy a building for public use, and the building is built by Y after the Regulations became effective. One contract term provides that Y has the responsibility to build the building in a way that every national law is strictly followed, and that if Y breaches such responsibility, X shall be properly compensated. In this case, contract law gives X standing; and Article 9 gives X an opportunity to claim that Y breach the agreement, for the reason that Article 9 is a national law; after this Article 9 provides X with the criteria on which X can judge whether Y is wrong or not,

<sup>32</sup> *Guanyu Fabu Guojia Biaozhun “Wuzhangai Sheji Guifan” de Gonggao* (关于发布国家标准《无障碍设计规范》的公告) [Announcement on the Issuance of the Codes for accessibility design], MINISTRY OF HOUSING AND URBAN-RURAL DEVELOPMENT (May 4, 2012), [https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/201205/20120504\\_209758.html](https://www.mohurd.gov.cn/gongkai/zhengce/zhengcefilelib/201205/20120504_209758.html) [hereinafter the Announcement].

<sup>33</sup> *Biaozhunhua Fa* (2017 Xiuding) (标准化法 (2017修订)) [The Standardization Law (2017 Revision)] (promulgated by the Standing Comm. Nat’l People’s Cong., Nov. 4, 2017, effective Jan. 1, 2018), art. 7 and 14 (Chinalawinfo). It is important to note that, an after-1988-and-before-2017 compulsory standard first gained its force from the old version of the Standardization Law, which was promulgated in 1988. The enforcement of standards is a highly contested issue and is of much delicacy. See Yu Lianchao (于连超), *Lun Qiangzhixing Guojia Biaozhun de Jishufaguihua Biange* (论强制性国家标准的技术法规化变革) [Research on the Reform of the Technical Regulation of Mandatory National Standards], 6 *DIANZI ZHISHI CHANQUAN* (电子知识产权) [ELECTRONICS INTELL. PROP.] 16, 16–18 (2023).

<sup>34</sup> *Wuzhangai Huanjing Jianshe Tiaoli Shiyi* (无障碍环境建设条例释义) [Interpretation on the Regulation on the Construction of Barrier-Free Environments], LEGISLATIVE AFFAIRS OFFICE OF THE STATE COUNCIL, MINISTRY OF HOUSING AND URBAN-RURAL DEVELOPMENT, MINISTRY OF INDUSTRY AND INFORMATION TECHNOLOGY, CHINA DISABLED PERSONS’ FEDERATION (国务院法制办公室、住房和城乡建设部、工业和信息化部、中国残疾人联合会) (interpretation on art. 9).

that is, “the construction engineering standards for barrier-free facilities”.<sup>35</sup> This logic chain seems sound.<sup>36</sup>

Nevertheless, this connecting function is a superficial one. As said before, the standards’ force to enforce strict compliance comes from the Standardization Law, not the Regulation. The connection is not a real one. This is due to the fact that Article 9 and other articles of the Regulation is written with systematic ambiguity. From the text and the context we cannot know it is a mandatory “shall” or a directory “shall”, and we cannot know if recommended and voluntary standards still count as “construction engineering standards for barrier-free facilities”. It is dangerous to think that it is Article 9 that clarifies the compulsory standards as laws, especially when the Standardization Law gives very clear instructions.<sup>37</sup> Faced with the ambiguity, Article 9 must be read together with the Standardization Law, and only with such a combination of both can one reach the reasonable conclusion that Article 9 have a two-layer meaning: (1) As a reiteration: Standards set as compulsory by the Standardization Law must be obeyed; (2) As an official suggestion: Standards classified as non-compulsory standards by the Standardization Law are recommended. The meaning of Article 9 (as well as Article 12 of the Barrier-Free Law) requires authorities’ interpretations.

Article 9 is only one of the many similar ambiguous rules.<sup>38</sup> Through the window of this article we may know better how the functional complementarity works. The complicated yet useful system of standards does complement the empty and soft system of laws and regulations, but such relation is achieved with the force of Standardization Law, not that of the accessibility regulations. Put simply, in terms of legal implementation of accessibility in China, those compulsory standards gain force not because the Regulation and other laws ostensibly say so. Citing the regulations as direct sources of ground for legal actions lacks legitimacy. Also, only compulsory standards can be imposed by the court, unless justified by a contract or an agreement stipulates that other standards should be followed, or justified by applying the “Principle of Fairness”, which means that the imposition of non-compulsory standards by the court is the only fair and reasonable solution.<sup>39</sup>

<sup>35</sup> An example case would be Zhang Shuli v. Ningxia Hailida Fangdichan Kaifa Youxian Gongsi, Ningxia Ningxinxiang Wuye Fuwu Youxian Gongsi Shangpinfang Xiaoshou Hetong Jiufen Yishen Minshi Panjueshu (张书丽与宁夏海利达房地产开发有限公司、宁夏宁馨祥物业服务有限公司商品房销售合同纠纷一审民事判决书) [Zhang Shuli v. Ningxia Hailida Real Estate Development Co., Ltd. & Ningxia Ningxinxiang Property Management Co., Ltd.], (2020)宁0104民初13773号 (Xingqing Dist. People’s Ct. of Yinchuan 2020). This case is only for reference, though, because the judgement is written in an ambiguous way.

<sup>36</sup> We can even see printed versions of the Barrier-Free Law and those of the national standards are packed and sold together on e-commerce platforms.

<sup>37</sup> The Standardization Law (2017 Revision) does not authorize administrative regulations to set certain standards as compulsory standards. The older version of the Standardization Law did authorize so (art. 7), but the Barrier-Free Regulation does not really make use of this authorization to set any standard as compulsory standard.

<sup>38</sup> Examples of similar rules are given in *supra* note 26.

<sup>39</sup> Some real cases lack legitimacy because the court imposed non-compulsory standards without proper justification. *E.g.*, *Hubei Gaoyuan Fabu Weihu Canjiren Hefa Quanyi Bada Dianxing Anli* (湖北高院发布维

The case of Article 9 reminds us to go back and figure out what standards essentially are. The answer only comes from the Standardization Law: “Standards are classified into national standards, industry standards, local standards, group standards, and company standards. National standards are divided into compulsory standards and recommended standards. Industry standards and local standards are all recommended standards. Compulsory standards must be implemented. The adoption of voluntary standards is encouraged.”<sup>40</sup> The table of standards given out in the very first part is made in accordance with this article. Different types of accessibility standards have a comprehensive coverage of nearly all necessary technical rules, and the compulsory ones set the minimum level of China’s accessibility requirements. After the adoption of the Regulation, published research papers in the field of construction and standardization are approximately as much as those in the field of law,<sup>41</sup> giving evidence of the unique function of standards that other regulatory tools do not necessarily have.

It is noteworthy that there was a revision of the Standardization Law in 2017 that modified certain crucial articles, and it has caused confusion because many standards (including many accessibility standards) are made before that year.<sup>42</sup> Notwithstanding the possible confusions, based on the legal principle that the newer law shall override the older law, and the fact that rules on company standards are being developed and followed with great expectations,<sup>43</sup> we look into the matter in the way provided by the revised law.

The above discussions are the reasons why in this article the standards are separated from other types of legal documents. Some researches see those standards as the lower part of the entire regulatory system, barely giving attention to their uniqueness or the simple fact that standards are not laws or

---

护残疾人合法权益八大典型案例) [*Hubei High Court Releases Ten Model Cases on Protecting Lawful Rights of Persons with Disabilities*], HIGH PEOPLE’S COURT OF HUBEI PROVINCE (May 22, 2023), <https://www.hbfy.gov.cn/DocManage/ViewDoc?docId=8ae414ff-1bbb-4e88-9d48-d1cf03fd29c8> (case no.4).

<sup>40</sup> The Standardization Law, art. 2. The English text is translated by the author.

<sup>41</sup> He Shi (何适), He Ye (何叶), *Wuzhangai Huanjing Yanjiu Jinzhan yu Redian Yanjin Fenxi – Jiyu “Wuzhangai Huanjing Jianshe Tiaoli” Banbu Shinianlai de Xiangguan Wenxian* (无障碍环境研究进展与热点演进分析——基于《无障碍环境建设条例》颁布十年来的相关文献) [*Research Progress and Hot Topics Evolution Analysis of a Barrier-free Environment: Based on Relevant Literature from the Past Decade since the Promulgation of the “Regulations on Building a Barrier-free Environment”*], 3 SHEHUI FULI (社会福利) [SOC. WELFARE] 24, 26–28 (2023).

<sup>42</sup> Liu Jingwei (柳经纬), Liu Yun (刘云), Zhou Yu (周宇), Xin “Biaozhunhua Fa” Shidai Biaozhunhua Falü Tixi de Wanshan (新《标准化法》时代标准化法律体系的完善) [*Improvement of the Standardization Legal System in the Era of the Revised Standardization Law of China*], 3 ZHONGGUO BIAOZHUNHUA (中国标准化) [CHINA STANDARDIZATION] 55, 57–58 (2021).

<sup>43</sup> See He Ting (何廷), Zhang Xiaomei (张晓梅), *Biaozhunhua Tuijin Gongsì Gaozhiliang Fazhan de Shixian Lujing he Duice Yanjiu* (标准化推进公司高质量发展的实现路径和对策研究) [*The Method and Measures of Using Standardization to Promote High-Quality Development of Companies*] in *Zhongguo Biaozhunhua Niandu Youxiu Lunwen* (2023) Lunwenji (中国标准化年度优秀论文(2023)论文集) [Collection of Yearly Theses on Standardization in China (2023)] 1133 (China Association for Standardization (中国标准化协会) ed., 2023). For readers’ convenience, the URL to the retrieval system of Chinese standards (<https://std.samr.gov.cn/tb/>) is given here. The system includes pathways to search for different categories of standards, including company standards.

regulations;<sup>44</sup> Others put standards of different qualities together indiscriminately, which might result us in neglecting the scarcity of national compulsory standards and the specialties in recommended/voluntary ones;<sup>45</sup> There is also a tendency of overlooking company standards.<sup>46</sup> These are over-simplification of the complexities that exist within the entire regulatory system and within the system of standards, and will do no good to both theoretical and practical sides of legal implementation of accessibility in China.

## II. A NATIONAL LAW TARGETED ON ACCESSIBILITY

The above Part I gives basic knowledge of the legal implementation of accessibility in China before the Barrier-Free Law was promulgated in June 2023. Before analyzing the Law in detail, I believe that it would be helpful to clarify that even though concepts of “barrier-free” and “accessibility” (and their Chinese equivalent “无障碍”) probably have very slight differences in their connotative meanings, they are used interchangeably here because this problem of word choice has not really come into the view of Chinese researchers, law-makers and standard-editors, at least for now.

This introduction to the newly-adopted Barrier-Free Law is constructed mostly in comparison with the old Barrier-Free Regulation due to their obvious hereditary relationship. The Barrier-Free Law’s position in the legal hierarchy, its important articles, and substantial differences between it and the Regulation are the focuses of this part. At last, an international perspective makes it possible to not only see how the Law represents China’s unique social policy but also how the Law (and the accessibility regulatory system as a whole) is part of China’s effort to improve by learning the best from the outer world.

### A. Higher in Legal Hierarchy, Stronger in Power of Influence

Before the enactment of the Barrier-Free Law, China’s accessibility regulatory system was headed by the Barrier-Free Regulation, an administrative regulation ordered by the State Council. The new law, by contrast, is issued by the Standing Committee of the National People’s Congress, a legislative authority higher than the State Council. The issuing authority indicates that the new national leading rule on accessibility is no longer an administrative rule, but a national law promulgated by the highest legislative body that every legal entity shall follow, just like the Law on the Protection of Disabled Persons and the Law on the Protection of the Rights and Interests of the Elderly. After over thirty years of waiting since the beginning of China’s legal implementation of accessibility, and eleven years since the Regulation was adopted, the country

---

<sup>44</sup> E.g., An, *supra* note 10, at 15–21.

<sup>45</sup> E.g., Li et al., *supra* note 8, at 60.

<sup>46</sup> E.g., He Bixian (何碧显), *Woguo Wuzhangai Huanjing Jianshe Biaozhunhua Xianzhuang, Wenti ji Duice Yanjiu* (我国无障碍环境建设标准化现状、问题及对策研究) [*Research on the Current Situation, Problems, and Countermeasures of Standardization of Accessible Environment Construction in China*], 11 BIAOZHUN KEXUE (标准科学) [STANDARD SCI.] 71, 72–73.

finally may benefit from a law (in the strict sense) exclusively made to govern barrier-free issues!

Such a rise in legal hierarchy provides a more favorable condition for the designed revolutionary changes to occur. Fast facts: In response of the Barrier-Free Law, local governments and different industries started to make new local standards, group standards, and guidelines;<sup>47</sup> online articles, research papers, interpretations and compilations, application guidebooks, and even casebooks on the new law are being published; education programs targeted at the general public has been happening in a large number, let alone all other kinds of publicizing actions. One of the possibilities indicated by these facts is that substituting a national law for the Regulation might help reduce non-compliance and the regional inequalities as discussed above.

Solution to one extremely important but difficult situation is still hanging in the air. The Regulation has been thus far not abrogated, or replaced by the Law. The Regulation, logically and lawfully, is still effective. A word-by-word and article-by-article comparison between the Regulation and the Law through which tests of consistency<sup>48</sup> are conducted shows that the Law is a complete renewal of the Regulation made by a higher authority. Explanatory remarks addressing the Standing Committee of the National People's Congress support this conclusion.<sup>49</sup> Therefore, the nominally effective old Regulation is in fact no longer a proper binding authority. Claims in court, if necessary, should find ground in the Barrier-Free Law, not the Regulation anymore.

---

<sup>47</sup> E.g., Sheng Jiansheting Guanyu Fabu Zhejiangsheng Gongcheng Jianshe Biaozhun "Gonggong Jianzhu Wuzhangai Sheji Biaozhun" de Gonggao (省建设厅关于发布浙江省工程建设标准《公共建筑无障碍设计标准》的公告) [Provincial Department of Housing and Urban-Rural Development's Announcement on the Issuance of Standard for Accessibility Design of Public Buildings as a Provincial Construction Standard], DEPARTMENT OF HOUSING AND URBAN-RURAL DEVELOPMENT OF ZHEJIANG PROVINCE (Sept. 1, 2023), [https://jst.zj.gov.cn/art/2023/12/7/art\\_1228990170\\_347.html](https://jst.zj.gov.cn/art/2023/12/7/art_1228990170_347.html) (making new local standard); Jiangxi Shouge Wuzhangai Huanjing Pingjia Tuantu Biaozhun Fabu (江西首个无障碍环境评价团体标准发布) [Release of the First Group Standard on Evaluation of Accessible Environment in Jiangxi Province], JIANGXI INSTITUTE OF QUALITY AND STANDARDIZATION (Jan. 22, 2024), [http://www.jxbz.org.cn/html/jdxw/article\\_860697.html](http://www.jxbz.org.cn/html/jdxw/article_860697.html) (making new group standard); and, Zuigao Renmin Fayuan, Zhongguo Canjiren Lianhehui Guanyu wei Canjiren Tigong Gengjia Youzhi Susong Furwu de Shitiao Yijian (最高人民法院 中国残疾人联合会关于为残疾人提供更加优质诉讼服务的十条意见) [The Supreme People's Court of The People's Republic of China, China Disabled Persons' Federation: Ten Directions on Providing Better Litigation Services to Persons with Disabilities], SUP. PEOPLE'S CT. (Feb. 26, 2024), <https://www.court.gov.cn/zixun/xiangqing/426872.html> (making new company standard and guideline). There is also new national recommended standard made in Lishui City, and local standards made in Shanghai City and Xiamen City, etc. Citations are omitted here and for the following points within this paragraph, as space is limited.

<sup>48</sup> See Yu Wentang (余文唐), *Xinfa Youxian: Guize Jiantao yu Tidai Guize* (新法优先：规则检讨与替代规则) [Priority of New Laws: Rules Reflection and Substitution], 3 FALÜ SHIYONG (法律适用) [J. OF LAW APPLICATION] 162, 163–64 (2021).

<sup>49</sup> Guanyu "Zhonghua Renmin Gongheguo Wuzhangai Huanjing Jianshe Fa (Caoan)" de Shuoming (关于《中华人民共和国无障碍环境建设法（草案）》的说明) [Explanatory Remarks on the Barrier-Free Environment Creation Law (Draft)], 5 STANDING COMM. NAT'L PEOPLE'S CONG. GAZ. (2023) 510, Part III.

### B. Important Changes Brought by the Barrier-Free Law

*Beneficiaries of the Law.* The purpose of building a barrier-free environment, as provided by the Barrier-Free Regulation, is to “ensur[e] that **disabled persons and other members of society** can equally participate in social life”.<sup>50</sup> (emphasis added). Unlike the Regulation, the Law states that its aim is to “supporting **persons with disabilities and elderly persons** in equally, fully, and easily participating in and being included in public life, promoting the sharing of economic and social development achievements by **all members of society**”.<sup>51</sup> (emphasis added). An obvious change is that older persons are included so that they are legally entitled to benefit from the creation of barrier-free conditions. Both groups of persons are entitled to increased participation and channels of proposal.<sup>52</sup>

Article 2 of the Law also mentions that other persons in need may benefit. This should be understood in a reasonably constrictive sense, rather than as an ambiguous all-equally-included approach.<sup>53</sup> Higher priority shall be given to persons with disabilities and elderly persons, just as the new rule of precedence made for barrier-free parking spaces,<sup>54</sup> which used to be exclusively reserved for drivers or passengers with disabilities.<sup>55</sup> Distinction must be drawn to maintain consistency of rules within the Law.

*The importance of standards.* As noted in Part I, the Regulation reminds us to pay attention to standards. The Law, by contrast, put much greater emphasis on them. Better making of all types of standards, making of leading group and company standards, as well as the establishment of “a system of standards for the creation of barrier-free environments”, are legally expected.<sup>56</sup> Taking further steps, the Law stipulates that, during the design, construction and acceptance of relevant structures, all compulsory standards must be followed. Failure to follow will result in administrative disapproval and other legal consequences.<sup>57</sup> Professional courses and qualification examinations might have standards as a part.<sup>58</sup>

*Procuratorate's roles.* Before the Barrier-Free Law, procuratorate's standing in public interest litigations on accessibility issues had never been explicitly established by law, but only by some local regulations<sup>59</sup>, prompted by national

<sup>50</sup> *The Barrier-Free Regulation*, art. 1.

<sup>51</sup> *The Barrier-Free Law*, art. 1.

<sup>52</sup> E.g., *The Barrier-Free Law*, art. 9 and 17.

<sup>53</sup> See Li Jianfei, *supra* note 18, at 23.

<sup>54</sup> *The Barrier-Free Law*, art. 24.

<sup>55</sup> *The Barrier-Free Regulation*, art. 14.

<sup>56</sup> *The Barrier-Free Law*, art. 51.

<sup>57</sup> E.g., *The Barrier-Free Law*, art. 12, 15 and 16.

<sup>58</sup> *The Barrier-Free Law*, art. 55.

<sup>59</sup> E.g., *Regulations of Shanghai Municipality on Accessibility Construction*, art. 71; and, *Regulations of Zhuhai Special Economic Zone on Barrier-Free City Construction*, art. 47 (Chinalawinfo).

and local procuratorates.<sup>60</sup> Policy-driven<sup>61</sup> practices of procuratorates' taking legal actions against non-compliance with accessibility regulations started on general authorizations<sup>62</sup>. The policy support is strong. The number of public interest litigations in this field soars to 1,983 in the year of 2023, a nearly 3.7 times increase from about 527 cases in 2019.<sup>63</sup>

This situation of uncertainties in the standing ended with the new Barrier-Free Law, as its Article 63 clearly authorizes procuratorates to give official recommendations and file public interest lawsuits to legally implement the Law. This article takes effect quickly. Model cases<sup>64</sup> and interpretations<sup>65</sup> on this article are released by the Supreme People's Procuratorate within months after the law became effective. The model cases and interpretations enrich the accessibility "legal toolsets" (see later for details), facilitating the application of the Law.

*Response to real-life needs.* The Barrier-Free Law has particular focuses on accessibility in information, home accessibility facilities, employment of persons with disabilities, service dogs and many other specific needs.

The legislature acknowledges the Digital Divide and made efforts to address this issue.<sup>66</sup> Chapter III, consisting of ten articles, encompasses release of public information and emergency information, television programs, books and newspapers, websites and map applications, labelling and package leaflet of medicinal products, non-machine service, etc. In March, 2024, the State Council's annual work report was transcribed into Braille and provided in the

<sup>60</sup> Li Yue, *supra* note 30, at 2.

<sup>61</sup> Qiu Jinghui (邱景辉), *Wuzhangai Huanjing Jianshe Jiancha Gongyi Susong Huigu yu Zhanwang* (无障碍环境建设检察公益诉讼回顾与展望) [Review on and Prospects of Procuratorate Public Interest Litigation on Accessibility Issues] in *Zhongguo Wuzhangai Huanjing Fazhan Baogao* (中国无障碍环境发展报告 (2022)) [Report on the Development of Accessible Environment in China (2022)] 227, 239–40 (Ling Kang (凌亢) eds., 2022). See Zhao Xiaoming (赵晓明), *Rang Tamen Wuzhangai di Gongxiang Meihao Shenghuo* (让他们无障碍地共享美好生活) [Let them enjoy their share of good life free of barriers], *JIANCHA RIBAO* (检察日报) [PROCURATORATE DAILY], July 17, 2023, at 4.

<sup>62</sup> *The Administrative Litigation Law*, art. 25; and, *Civil Procedure Law*, art. 55. These two procedural laws authorize the procuratorate to file lawsuits in order to protect public interests, examples of which are given and legal implementation of accessibility is not included.

<sup>63</sup> Qiu, *supra* note 61, at 229; and, *Gongyi Susong Jiancha Gongzuo Baipishu* (2023) (公益诉讼检察工作白皮书 (2023)) [White Paper on Procuratorate Public Interest Litigations (2023)], THE SUPREME PEOPLE'S PROCURATORATE OF THE PEOPLE'S REPUBLIC OF CHINA (Mar. 9, 2024), [https://www.spp.gov.cn/xwfbh/wsfbh/202403/t20240309\\_648329.shtml](https://www.spp.gov.cn/xwfbh/wsfbh/202403/t20240309_648329.shtml).

<sup>64</sup> *Zuigaojian Huitong Zhufang Chengxiang Jianshe Bu & Zhongguo Canlian Fabu Wuzhangai Huanjing Jianshe Jiancha Gongyi Susong Dianxing Anli* (最高检会同住房和城乡建设部、中国残联发布无障碍环境建设检察公益诉讼典型案例) [The Supreme People's Procuratorate, Ministry of Housing and Urban-Rural Development, and China Disabled Persons' Federation: Public Interest Litigation Model Cases on Barrier-Free Environment], SUP. PEOPLE'S PROC. (Nov. 13, 2023), [https://www.spp.gov.cn/xwfbh/wsfbh/202311/t20231113\\_633597.shtml](https://www.spp.gov.cn/xwfbh/wsfbh/202311/t20231113_633597.shtml).

<sup>65</sup> E.g., Qiu Jinghui (邱景辉), *Wuzhangai Huanjing Jianshe Fa Jiancha Gongyi Susong Tiaokuan de Lijie yu Shiyong* (无障碍环境建设法检察公益诉讼条款的理解与适用) [Understanding and Application of the Public Interest Litigation Article in the Barrier-Free Law], 17 *RENMIN JIANCHA* (人民检察) [PEOPLE'S PROCURATORIAL SEMIMONTHLY] 32, 34–36 (2023).

<sup>66</sup> *Supra* note 49, at 510.

National Congress Session.<sup>67</sup> The Law takes special measures on public entities (entities funded by public funds), where transformations on accessibility shall initiate.

*Regional disparities.*<sup>68</sup> Last but not least, we return to the regional differences briefly mentioned above and take a social perspective to see what changes the Barrier-Free Law could possibly bring. Most articles in the Barrier-Free Regulation only apply to urban areas.<sup>69</sup> Rural areas are left on purpose: “Construction and development in **villages** shall **progressively** satisfy the construction engineering standards for barrier-free facilities.”<sup>70</sup> (emphasis added). No other comments were made on rural areas (villages). In other words, double standard against underdeveloped areas was written into accessibility regulations.

Things have changed since the Barrier-Free Law was promulgated, whose Article 5 admits the existence of urban-rural disparities by providing that “the gap in the creation of barrier-free environments between urban and rural areas” should be “gradually narrow[ed]”. The Law also takes the next step – it cancels the double standard. Take, for example, Article 12 of the Law (corresponding to Article 9 of the Regulation), in which rural constructions are no longer excluded. This reflects a policy orientation that regional disparities in accessibility shall be reduced step by step, or, to “fit the level of economic and social development”<sup>71</sup>

There are also existing analysis concerning other aspects, including safeguard of implementation, administrative mechanisms, and more.<sup>72</sup>

### C. *The Barrier-Free Law from an International Perspective*

The making of the Barrier-Free Law is commented as an important measure China has taken to fulfill its international law obligations, in particular with those set by the CRPD,<sup>73</sup> on which China submits periodic reports to be

<sup>67</sup> “Kandejian de Xingfu, Modezhao de Minzhu”: Ji Mangwenban Zhengfu Gongzuo Baogao Shouci Liangxiang Quanguo Renda Huiyi (“看得见的幸福，摸得着的民主”——记盲文版政府工作报告首次亮相全国人大会议) [“Visible Happiness and Touchable Democracy”: The First Appearance of the State Council’s Annual Work Report in Braille at National Congress Session], XINHUA NET (Mar. 5, 2024), <http://www.news.cn/20240305/30f665ab8bb94b03896fbc348cb3a6a2/c.html>.

<sup>68</sup> Numbers of accessibility public interest litigations can also serve as an indicator of regional disparity. A coefficient can be calculated with urban population and urban land area data by region. A percentage can be calculated by dividing the total number of nationwide public interest litigations with regional numbers. Difference between the coefficients and the percentages might suggest the regional disparity. The length limit and lack of precise data does not allow verification of the hypothesis.

<sup>69</sup> E.g., *The Barrier-Free Regulation*, art. 11, 13 and 14.

<sup>70</sup> *The Barrier-Free Regulation*, art. 9.

<sup>71</sup> *The Barrier-Free Law*, art. 5.

<sup>72</sup> E.g., CHINA DISABLED PERSONS’ FEDERATION (中国残疾人联合会), WUZHANGAI HUANJING JIANSHE FA ZHUANJIA JIEDU WENJI (《无障碍环境建设法》专家解读文集) [PROFESSIONALS’ INTERPRETATION ON THE BARRIER-FREE LAW] (2023); and, Pu Xiaolei (蒲晓磊), *Wei Tisheng Wuzhangai Huanjing Jianshe Zhiliang Tigong Youli Baozhang* (为提升无障碍环境建设质量提供有力保障) [Providing Effective Safeguard to the Improvement of Barrier-Free Environment Quality], FAZHI RIBAO (法治日报) [LEGAL DAILY], June 29, 2023, at 2.

<sup>73</sup> *Supra* note 49, at 511.



reviewed by the international society<sup>74</sup> Many articles that the Regulation does not have but the Law does are similar to the articles of the CRPD<sup>75</sup> or foreign laws.<sup>76</sup> Also, the Law is believed to stand as proof of China's efforts to comply with international human rights requirements.<sup>77</sup> Apart from the regulatory system, hosting international sports games and conferences in fact helped with China's accessibility construction,<sup>78</sup> which is to some extent a universal rule for many countries.<sup>79</sup> Many other aspects of the relations between China's accessibility regulatory system and international conventions have been discussed, for example, their inconsistencies in definitions, contents and approaches.<sup>80</sup>

In a nutshell, China's legal implementation of accessibility is deeply connected with the outer world, which necessitates an international perspective to see more of the whole picture of the Barrier-Free Law.

In defining the scope of the beneficiaries, China's barrier-free law-making takes a different approach from that of the United Nations. The United Nations handles accessibility issues mainly in the context of persons with disabilities. This could be seen from its major legal documents regarding accessibility, most of which are efforts to improve including the influential CRPD.<sup>81</sup> China's new Barrier-Free Law shows a clearly different approach by explicitly welcoming elderly persons and inviting other members of society to benefit. This can be explained as China's idea and action to cope with an aging society. However,

<sup>74</sup> E.g., *Experts of the Committee on the Rights of Persons with Disabilities Commend China on Reforms Made since the Initial Review, Ask Questions on the Independence of Persons with Disabilities in the Community and on Home Schooling*, THE UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Aug. 19, 2022), <https://www.ohchr.org/en/news/2022/08/experts-committee-rights-persons-disabilities-commend-china-reforms-made-initial>.

<sup>75</sup> E.g., art. 20 of the Law and art. 27.1.9 of the CRPD, art. 32 of the Law and art. 21.3-4 of the CRPD, and, art. 41 of the Law and art. 13 of the CRPD. Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 12, 2006).

<sup>76</sup> E.g., The Barrier-Free Law's special arrangement for entity funded by public funds has a predisposition similar with the Americans with Disabilities Act's attitude toward "public entity".

<sup>77</sup> Chen Bin (陈斌), *Jujiao "Wuzhangai Huanjing Jianshe Fa" Shishi zhi yi: Wuzhangai Yuanze zai Zhongguo - Kejian de Renquan yu Juti de Zunyan* (聚焦《无障碍环境建设法》实施 | 之一: 无障碍原则在中国——可见的人权与具体的尊严) [*Focus on the Implement of the Barrier-Free Law Episode 1: The Principle of Accessibility in China: Visible Human Rights and Concrete Dignity*], CHINA HUM. RTS. (Aug. 29, 2023), [https://www.humanrights.cn/html/2023/4\\_0829/71460.html](https://www.humanrights.cn/html/2023/4_0829/71460.html).

<sup>78</sup> E.g., Li Weiping (李卫平), Long Guoqiang (龙国强), Li Xiaoming (李晓明), *2008Aoyunhui dui Beijingshi Renwen Huanjing Yingxiang de Yanjiu* (2008奥运会对北京市人文环境影响的研究) [*Research on the Effect of the 2008 Olympic Games to the Humanism Circumstance of Beijing*], 1 TIYU YU KEXUE (体育与科学) [SPORTS & SCI.] 44, 45 (2007); and, Qiu, *supra* note 61, at 228, a microcosm of the 2022 Winter Olympic case.

<sup>79</sup> E.g., 2020 Games Preparation – Tokyo 2020 Accessibility Guidelines, OLYMPIC AND PARALYMPIC GAMES TOKYO2020 WEBSITE OF TOKYO METROPOLITAN GOVERNMENT, <https://www.2020games.metro.tokyo.lg.jp/eng/taikaijyunbi/kanren/accessibility/index.html> (last visited Mar. 15, 2024).

<sup>80</sup> E.g., *General Report*, *supra* note 15, at 4–11. Its text accompanying notes also include relevant researches.

<sup>81</sup> U. N. Department of Economic and Social Affairs Division for Social Policy and Development, *Accessibility and Development: Mainstreaming disability in the post-2015 development agenda*, U. N. Doc. ST/ESA/350 (Dec., 2013) (Specific date unavailable).

the difference first appeared at an earlier time,<sup>82</sup> years before China's ratification of CRPD in 2008.

In terms of access to information and communications, Chinese law is greatly influenced by international conventions. CRPD's articles on information accessibility were previously made into administrative guidelines,<sup>83</sup> and some articles of the Barrier-Free Law do share the same concerns. As for a barrier-free Internet environment, the guidelines provided by World Wide Web Consortium (W3C) make special reference to accessibility issues in information and communications technologies. The fundamental ones of these guidelines are the Web Content Accessibility Guidelines (WCAG). WCAG 2.0 has become an ISO and IEC standard that China shall follow.<sup>84</sup> As a matter of fact, some standards and standardized technical documents are made in line with WCAG 2.0.<sup>85</sup> Moreover, China's copyright law learns likewise from international legal achievements, such as the terms and rules for the blind, visually impaired, and otherwise print disabled as beneficiaries of the limitations and exceptions to traditional copyright law, which were established by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.<sup>86</sup>

The "models of disabilities", representing people's different perceptions of disability, are worthy of being briefly discussed. The models are much talked about by Chinese researchers through comparing the model adopted by China's accessibility regulatory system (e.g., the medical model and the recently-adopted social model) with other possibilities, making particular reference to the social model on which the CRPD was fundamentally built, and the human

<sup>82</sup> *Law on the Protection of the Rights and Interests of the Elderly*, art. 30. Made in 1996, the article says: "When public facilities, residential quarters and houses are built or renovated in cities and towns, the special needs of the elderly should be taken into consideration and facilities suited to the daily life and activities of the elderly shall be installed." Notion of accessibility is fairly obvious.

<sup>83</sup> Li Dongxiao (李东晓), Xiong Mengqi (熊梦琪), *Xinzhongguo Xinxi Wuzhangai 70Nian: Linian, Shijian, Bianqian* (新中国信息无障碍70年：理念、实践与变迁) [70 Years of Development of Information Accessibility in New China: Concepts, Practices and Changes], 5 ZHEJIANG XUEKAN (浙江学刊) [ZHEJIANG ACADEMIC J.] 14, 17 (2019).

<sup>84</sup> *Id.* at 21–22.

<sup>85</sup> The standards and documents include: (1) Information technology – Internet content accessibility technical requirements and conformance testing (GB/T 37668 – 2019) and (2) Information accessibility – Testing specification for web content accessibility evaluation (GB/Z 41284 – 2022). See Liu Yuan (刘远), *Jujiao "Wuzhangai Huanjing Jianshe Fa" Shishi zhi san: Wangshang Chonglang Heyi Wuzhangai? – "Wuzhangai Huanjing Jianshe Fa" zhi Wangluo Wuzhangai Jiedu* (聚焦《无障碍环境建设法》实施 | 之三：网上冲浪何以无障碍？——《无障碍环境建设法》之网络无障碍解读) [Focus on the Implement of the Barrier-Free Law Episode 3: How can surfing the Internet be barrier-free? Interpretation of the Barrier-Free Law articles on Internet accessibility], CHINA HUM. RTS. (Aug. 31, 2023), [https://www.human-rights.cn/html/2023/4\\_0831/71474.html](https://www.human-rights.cn/html/2023/4_0831/71474.html). See also Zhejiang University Research Group of Prof. Bu Jiajun (浙江大学卜佳俊教授课题组), *Xinxi Wuzhangai Quanguo Lifa Qingkuang ji Woguo Xinxi Wuzhangai Lifa Kexingxing Fenxi* (信息无障碍全球立法情况及我国信息无障碍立法可行性分析) [Report on Global Law-Making on Accessibility to Information and China's Feasibility of Such Law-Making] in the same collection with the report in *supra* note 5, 178.

<sup>86</sup> *Zhonghua Renmin Gongheguo Zhuzuoquan Fa Daodu yu Shiyi* (中华人民共和国著作权法导读与释义) [Guidebook and Interpretation on Copyright Law of the People's Republic of China], ZHONGGUO MINZHU FAZHI CHUBANSHE (中国民主法制出版社) (interpretation on art. 24).

rights model that the CRPD was construed to have qualities of.<sup>87</sup> Among all models, human rights model is a relatively recent and modern one.

The most distinctive feature of the human rights model is that while social factors of disabilities are acknowledged, human dignity and real sufferings shall not be ignored, and equal rights should be given to persons with disabilities as are given to persons without disabilities.<sup>88</sup> To give persons with disabilities rights is at the core. A typical example of transition to human rights model is the replacement of no education and segregated education with inclusive education. Article 12 of the Regulation prioritizes the barrier-free environment of special education and rehabilitation facilities rather than common schools, which is thought of as against the human rights model.<sup>89</sup> This article does not appear in the Law. Some other elements of human rights model are written into the Law as well, e.g., the concept of universal design, the principle of reasonable accommodation<sup>90</sup>, and the rights to participate, to propose and to supervise.<sup>91</sup> China's law-making and research on barrier-free issues has been trying to stay in step with the best.

Above is a short analysis of the Barrier-Free Law's most distinctive designs from an international perspective, and many other details are to be covered. In a more straight-forward way, Article 10 and 55 of the Barrier-Free Law illustrate to us the country's willingness to build relationship between China's accessibility regulation and the international society. Regardless of their no-legal-force nature, they are new articles that the old Regulation does not have, and they can, to a certain extent, reflect China's open-mindedness and internationalism in building a barrier-free society.

### III. POST-2023: THE BARRIER-FREE LAW INTO EFFECT

#### A. *Legal Responsibilities: Ready for Action?*

The old regulatory system headed by the Barrier-Free Regulation has seen lots of criticism, largely due to its softness. The critics believe that the "obligations" set by the system are inadequate or impracticable, and the "rights" given are not sufficient for legal actions.<sup>92</sup> These are problems of non-actionability, which have been talked about in Part I. Over-worrying about the non-actionability, however, is also subject to critical comments for relying too much on the

<sup>87</sup> THERESIA DEGENER, *A human rights model of disability*, in ROUTLEDGE HANDBOOK OF DISABILITY LAW AND HUMAN RIGHTS 31 (Peter Blanck & Eilionóir Flynn eds., 2017).

<sup>88</sup> *Id.* main body; Li Yue, *supra* note 30, at 17–18;

<sup>89</sup> *General Report*, *supra* note 15, at 6.

<sup>90</sup> The concept of "reasonable accommodation" is not spelled out in the Barrier-Free Law, but is scattered into multiple articles, including but not limited to art. 20, 22, 43 and 44. We can credibly say that the Law adopts the concept in its own way, though there is still much to improve.

<sup>91</sup> Lü Hongliang (吕洪良), *Zhongguo Wuzhangai Fazhi Jianshe Jiazhi Quxiang Baogao (2021)* (中国无障碍法制建设价值取向报告 (2021)) [*Report on the Value Orientation of Law-Making on Barrier-Free Environments in China (2021)*] in the same collection with the report in *supra* note 5, 78–79.

<sup>92</sup> Li et al., *supra* note 8, at 61–62.

judicial remedies and being centered around the court system.<sup>93</sup> The believers of good soft laws are, as far as this article is concerned, setting their expectations very low. What we are seeing in the legal implementation of accessibility are systematic ambiguity within regulations and virtual non-performance of the administrations, deliberately or unintentionally,<sup>94</sup> and as a result, obstacles keep in the way of lawful rights and both individual and social development. In such situations, arguing for clearly stated rules of responsibilities and the right to legal actions is totally necessary. After all, rights are protected only when remedies are readily available.

In view of this concern, the Barrier-Free Law is found with many improvements, except for the public interest litigations and procuratorial recommendations. Clear instructions are made on how and by whom should barrier-free facilities be maintained, and violators are subject to fines.<sup>95</sup> New chapters on “Guarantee Measures” and “Supervision and Administration” are added, with regulations on enforcement examinations, accountability based on goal-setting frameworks, third-party evaluations, and information disclosure.<sup>96</sup> Authorities are provided with real power to ensure observance of the Law.<sup>97</sup>

Nonetheless, there is still a long way to make rules into truth. Lawsuits still cannot be filed by individuals and non-government organizations, but they are able to seek cooperation with procuratorates, and if the threshold is met, the procuratorates can start litigations.<sup>98</sup> Concrete rules on how individuals and groups can speak up under the Law<sup>99</sup> should be provided. Some of the model cases released by the authorities are too over-simplified to give detailed directions, and may even misguide.<sup>100</sup> Also, since the authorization given to certain government agencies by the Regulation to act accordingly has mostly failed to have actual effects, express orders and instructions from upper governments should be given.

### B. Legal Toolsets to Be Developed

The orders and instructions given to the executive are part of what this article calls accessibility legal toolsets. What exactly are legal toolsets? Toolsets are normally used in the context of computer science or construction, referring

<sup>93</sup> Luo & Song, *supra* note 18, at 6–7.

<sup>94</sup> Lü, *supra* note 91, at 75–76.

<sup>95</sup> *The Barrier-Free Law*, art. 18, 26 and 65.

<sup>96</sup> *The Barrier-Free Law*, Chapter V and VI.

<sup>97</sup> *The Barrier-Free Law*, art. 16 and 64–69.

<sup>98</sup> Renmin Jianchayuan Gongyi Susong Banan Guize (人民检察院公益诉讼办案规则) [Rules for the Handling of Public Interest Litigation Cases by People’s Procuratorates] (promulgated by Sup. People’s Proc. June 29, 2021, effective July 1, 2021) (Chinalawinfo); and Renmin Jianchayuan Jiancha Jianyi Gongzuo Guiding (人民检察院检察建议工作规定) [Provisions on the Procuratorial Proposal Work of People’s Procuratorates] (promulgated by Sup. People’s Proc. Feb. 26, 2019, effective Feb. 26, 2019) (Chinalawinfo). See Hu Weili (胡卫丽), *Wuzhangai Huanjing Jianshe Jiancha Gongyi Susong de Tuozhan Lujing* (无障碍环境建设检察公益诉讼的拓展路径) [Pathways to extend the procuratorate’s public interest litigations in the creation of barrier-free environment], JIANCHA RIBAO (检察日报) [PROCURATORATE DAILY], Sept. 7, 2023, at 7.

<sup>99</sup> *The Barrier-Free Law*, art. 9, 17, 52 and 62.

<sup>100</sup> See *supra* note 39.

to collections of different practical implements used for the same purpose. Legal toolsets, then, are defined in this article as collections of different types of legal documents that serve the implementation of a certain law or legal policy. A concept of similar meaning is used by Thomson Reuters as in its “Practical Law legal toolkits”, which are “resource packages focused on specific legal topics” comprised of “basic overviews, current law explanations, document templates, articles, and checklists”.<sup>101</sup> The International Criminal Court (ICC) also has an ICC Legal Tools Database where retrievals of ICC documents, files from national criminal jurisdictions, publications, etc. can be made.<sup>102</sup>

A rudiment version example of an accessibility legal toolset can be found in the United States, where **Americans with Disabilities Act (ADA)** is the law that sets obligations and protects the civil rights of persons with disabilities, the right to barrier-free enjoyment of all public services included. Under Titles II and III of the ADA, the Department of Justice (DOJ) issues **regulations** that include enforceable accessibility standards, and enforce the ADA by explaining the rights and obligations. Under the ADA, other federal agencies may also issue regulations. **Standards** are made as appendixes to the regulations, to be applied to the extent required by regulations (how the standards are made is omitted here). The revised 2010 ADA Standards is accompanied by the **Guidance** on the 2010 Standards, which is made up of the changes and the reasoning behind them, and more. Together with the above legal documents, many **resources** are provided, e.g., checklists, informal guidance documents, and technical assistance manuals.<sup>103</sup> In this case, ADA.gov serves as an accessibility legal toolset that includes the ADA, regulations, standards, guidance on the standards, and many other resources not listed above.

Several proposals have been made to develop legal tools for better implementation of the Barrier-Free Law, just not in the form of a legal toolset. Some of them also made explanations on the necessities of and rationale for an accessibility legal toolset.<sup>104</sup> A legal tool set for the Barrier-Free Law can have judicial interpretations, a variety of standards, local regulations, guidance documents of different natures...

Most importantly, a legal toolset is not only a comprehensive collection of legal tools on a certain topic that helps legal practitioners, law professors and

<sup>101</sup> *Practical Law legal toolkits*, THOMSON REUTERS, <https://legal.thomsonreuters.com/en/products/practical-law/toolkits> (last visited Mar. 15, 2024). The company and product names and the link are shown for academic integrity only. This article does not endorse or recommend this or any other service provider or product.

<sup>102</sup> ICC LEGAL TOOLS DATABASE, <https://www.legal-tools.org/> (last visited March. 15, 2024).

<sup>103</sup> ADA.GOV, <https://www.ada.gov/> (last visited Mar. 15, 2024).

<sup>104</sup> E.g., Zhang & Ding, *supra* note 14, at 17–19; Li Jianfei, *supra* note 18, at 26–27; “Wuzhangai Huanjing Jianshe Fa” Shishi Zuotanhui zai Jing Zhaokai, Duo Bumen Fali Rang “Wu Ai” Geng “You Ai” (《无障碍环境建设法》实施座谈会在京召开 多部门发力让“无碍”更“有爱”) [*Forum on Implementation of the Barrier-Free Law Took Place in Beijing, Multiple Authorities Take Steps to Make Accessibility Lovelier*], WWW.CHINATIMES.NET.CN (Sept. 5, 2023), <https://www.chinatimes.net.cn/article/130329.html>. Another reason for the development of a legal toolset is that the CRPD Article 9 – Accessibility requires State Parties to “take appropriate measures to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public”.

law students with their understanding and implementation of the relevant law(s). A legal toolset focused on a public law entails public participation. It should be well-organized in a clear way and be made free and easily accessible to the public, both laypersons and professionals, to comply with information accessibility rules set by the CRPD, the Barrier-Free Law, and others. Only in this way can a true barrier-free environment be created. The principles of the CRPD and China's whole-process people's democracy are in support of the development of such toolsets.

### C. *The Ideal of a Social Law*

Many of the articles of the Barrier-Free Law remind us of its nature as an administrative law. Any reasonable person would agree that administrative law alone is not enough. The creation of a barrier-free environment requires full participation of all members of society.

Compared with accessibility legal toolsets made by the United States, China's Barrier-Free Law seems to mostly deal with the public sector or the "public" side of the society, and does not really touch on private sectors.<sup>105</sup> This leads to many questions, one of which is how to define "public building" and "public place" in Article 12 of the Barrier-Free Law. Are "public buildings" buildings owned or used by government agencies, or buildings invested by public funds? Is a private hair salon near city street a "public building"?

The legal implementation of accessibility does not have to hurry somewhere, just as stipulated in Article 5 of the Barrier-Free Law. It would be expensive and impracticable to impose all standards at one time on all sectors of society. But the Law has to be prepared for foreseeable problems. The preventive measures we have now are to both further develop the legal toolset and invite broader participation of the private sector. To do the latter, the barrier-free regulatory system shall be aimed at the ideal of a social law.

Social law and administrative law are on opposite sides of how law works. The very essence of the ideal of a social law is that law is a tool that serves social aims which can function more efficiently not by depending on administrative measures but by collaborating with the civil society. For instance, tax incentives can be created to encourage investments in accessibility facilities and services from private sectors, which is similar to what China does with the employment of persons with disabilities,<sup>106</sup> and also what the United States

<sup>105</sup> Cai Cong (蔡聪), *Woguo Shixian Canzhangren Xinxi Wuzhangai de Tiaozhan yu Xin Fangxiang* (我国实现残障人信息无障碍的挑战与新方向：以《残疾人权利公约》为视角) [*The Challenges and New Directions of Information Accessibility for Persons with Disabilities in China*], 2 RENQUAN (人权) [HUM. RTS.] 70, 78–80 (2018).

<sup>106</sup> E.g., Caizheng Bu, *Guojia Shuiwu Zongju Guanyu Cujin Canjiren Jiuye Zengzhishui Youhui Zhengce de Tongzhi* (财政部、国家税务总局关于促进残疾人就业增值税优惠政策的通知) [*Notice of the Ministry of Finance and the State Administration of Taxation on Preferential Value-Added Tax Policies for Promoting the Employment of Disabled Persons*], ST. TAX'N ADMIN. (May 5, 2016), <https://fgk.chinatax.gov.cn/zcfgk/c102416/c5203716/content.html>.

does.<sup>107</sup> Guidelines, checklists and other legal tools shall be made and shared in order to guide governments as well as businesses. Soft laws, once criticized for the systematic ambiguity and too many “shall”s, may be better understood in the context of social law, that it is because of societal constraints that law-makers make them as soft laws rather than forceful actionable ones, that soft laws are reminders of widespread inequalities and model clauses of contracts for future use, and that they are buffers against possible harms of harshness and hastiness.<sup>108</sup> The ideal of a social law might make up for shortcomings of the administrative traits of China’s legal implementation of accessibility.

---

<sup>107</sup> *E.g.*, Tax benefits of making a business accessible to workers and customers with disabilities, IRS, <https://www.irs.gov/newsroom/tax-benefits-of-making-a-business-accessible-to-workers-and-customers-with-disabilities> (last visited Mar. 16, 2024).

<sup>108</sup> *Cf.* Jiang, *supra* note 18, at 32–35.