

Submission to Universal Periodic Review of China (3rd Cycle) on Discrimination Based on Sexual Orientation and Gender Identity in China

March 15, 2018

1. The Chinese government has not made any substantive progress in law or practice towards ensuring Chinese citizens enjoy equal rights regardless of their sexual orientation or gender identity. This contradicts the Chinese government's claim that it had already implemented all three UPR recommendations made in the previous UPR on these issues (186.85, 186.89, 186.90). In accepting the UPR recommendations, China asserted that various existing laws ban discrimination, including the Labor Law.¹ However, current laws and regulations do not prohibit discrimination based on sexual orientation or gender identity.
2. Without legal protection for LGBTQ individuals, they remain vulnerable to systematic discrimination and violence, and are excluded from government services without recourse to justice. Due to the absence of legal protection prohibiting discrimination based on sexual orientation or gender identity, LGBTQ persons have faced challenges in seeking equal treatment in schools and workplaces, and in obtaining legal redress. According to a 2016 survey published by UNDP China, over half the of LGBTQ respondents had experienced discrimination based on their sexual orientation or gender identity.²
3. *We suggest Member States make the following recommendations to China on the issue of discrimination based on sexual orientation:*
 - Expedite adoption of a proposed "Employment Anti-Discrimination Law" and ensure prohibitions against discrimination based on sexual orientation and gender identity are included and robustly enforced;
 - Adhere to international standards by completely depathologizing homosexuality in the Chinese Classification of Medical Disorders-3, as well as in school education curricula, and follow the Yogyakarta Principles to ensure sexual orientation and gender identity are incorporated into public education;
 - Ban "gay conversion therapy" treatments throughout China through legal statute, penalize hospitals or clinics that utilize the "therapy," and provide remedies to individuals who were forced to undergo the illegal therapy.

No Marriage Equality

4. Chinese authorities perpetuate discrimination against LGBTQ persons by denying marriage equality and equal protection under the law. In a landmark case from 2016, a Chinese court decided against a same-sex couple who wished to marry.³ The government's failure to legally protect the rights of LGBTQ individuals to equal marriage appears to run counter to public opinion. According to the 2016 UNDP survey, 85% of heterosexual respondents supported legalizing same-sex marriage, a figure that rose to 95% among LGBTQ individuals.⁴ Individuals in same-sex relationships also do not receive the same legal

protections against violence that heterosexual couples enjoy. Officials stated unequivocally that same-sex partners are not covered by the Anti-Domestic Violence Law after its passage in 2015, despite optimism in the early drafts that the law would be more inclusive.⁵ According to the NPC Standing Committee spokesperson, the reason the law excludes homosexual couples is because “in China we have never discovered violence in homosexual relationships.”⁶ However, Chinese NGOs have publicly released ample evidence of violence in same-sex relationships and the need for legal protection.⁷ This was a major setback in advancing the protection of LGBT rights and reflected the lack of political willpower by the government to ensure equal treatment for all.

Involuntary “Conversion Therapies”

5. In China, private and public clinics and hospitals promote treatments to “correct” one’s gender identity and sexual orientation through “conversion therapy,” which often involves psychiatric therapy, aversion therapy, hormone therapy, drug treatment, and the use of electric shocks.⁸ In its 2015 Concluding Observations, the UN Committee against Torture (CAT) raised concerns over clinics in China that offered “gay conversion therapy” to change the sexual orientation of homosexual individuals, and the failure of the government to outlaw such a practice or legally guarantee the respect and integrity of LGBTQ persons.⁹ The Chinese government has to date taken no steps to outlaw “gay conversion therapy,” and victims of this so-called “treatment” still have no access to legal recourse.
6. LGBTQ individuals have been involuntarily sent to psychiatric hospitals or clinics, often by family members, to undergo “treatment.” Between 2016 and 2017, we have documented 169 allegations of forced conversion therapy, of which 49 government-run hospitals were involved. The individuals affected were subjected to electric shocks, forced medication, hypnosis, aversion therapy, and coercion. In July 2017, a Henan court found in favor of a man subjected to forced conversion therapy, ordering the clinic to pay 5,000 RMB (approx. USD \$790) in compensation and issue a public apology.¹⁰ However, to date, the clinic has still not issued the court-ordered apology.
7. In another example from 2015, a gay man was involuntarily sent to a psychiatric hospital by his family because he wanted to divorce his wife.¹¹ Without any communication or evaluation, the hospital committed him for 19 days on grounds of “sexual preference disorder,” during which he was drugged, forcibly injected with medicines, and harassed. This type of involuntary “treatment” is the result of government policies, which continue to classify some form of homosexuality and bisexuality as a mental perversion in the Chinese Classification of Medical Disorders (CCMD-3).¹² It is also a violation of China’s Mental Health Law, which prescribes comprehensive examination by qualified doctors and voluntary participation to receive psychological treatment.
8. In 2014, there were many reports of cases involving clinics and hospitals that subjected individuals to “gay conversion therapy” in cities around China, including Beijing, Chongqing, Guangzhou, Nanchong, Xi’an, and Zhuhai. Volunteers from the Gays’ Charity Organization reported the psychiatric clinics that offer “gay conversion therapy” to the offices of the Trade and Industry Bureau and Health Bureau in 10 cities (including Beijing,

Guangzhou, Hangzhou, Nanning, Shenzhen, and Xi'an). In 2013, a gay man who went to a clinic to seek psychological counselling in 2013 was subjected to hypnosis and electric shocks for more than a month in Shenzhen City, Guangdong Province.¹³

Discrimination and Inequality in Employment for LGBTQ Persons

9. In 2015, the LGBTQ community celebrated language in the proposed “Employment Anti-Discrimination Law” (“proposal”), which stipulates that gender identity and sexual orientation should not be factors considered by employers when recruiting, hiring, training, paying, promoting, and providing benefits to employees.¹⁴ If passed, it has the potential to be a legal breakthrough that could offer official protections for LGBT individuals in the workforce. However, there is no clear timeline for adopting this proposal as law. There is also no guarantee that the final version will include the stipulations regarding gender identity and sexual orientation, or that they will be implemented.
10. Discrimination against LGBTQ individuals in the workplace is widespread and officially endorsed due to the lack of legal recognition of gender diversity. According a 2013 survey of 2,161 LGBT individuals by Aibai Culture and Education Center, 38.5% of them were subjected to discrimination and unequal treatment in the workplace because of their gender identity or sexual orientation.¹⁵ A 2017 survey from UNDP found that 14% of the LGBTI respondents had been denied employment because of their sexual orientation or gender identity.¹⁶
11. While Chinese authorities have taken some small steps to prevent discrimination in the workplace, they have not yet taken concrete or substantial steps in law or practice to prevent discrimination based on gender identity or sexual orientation. When authorities accepted all three UPR recommendations, they claimed laws already prohibited discrimination against different groups. Authorities argued that “the Labor Law of China stipulates that workers shall not be discriminated against on grounds of ethnicity, race, sex and religious beliefs”; and that “the Employment Promotion Law contains systematic stipulations against employment discriminations.” Neither the Labor Law nor the Employment Promotion Law, however, offer any legal protection for LGBTQ persons, since gender identity and sexual orientation are not listed as grounds for discrimination.¹⁷
12. The lack of legal protections for LGBTQ individuals has also led to unequal treatment when they seek legal redress in employment discrimination cases. In 2014, a man in Shenzhen lost his job after his sexual orientation was revealed.¹⁸ He filed a lawsuit against his employer, in what was China’s first employment discrimination suit based on sexual orientation. The judge indirectly admitted sexual orientation had played a role in the termination of employment, but still ruled against him.¹⁹ In 2015, a transgender person was fired because the employer feared the individual gave customers an impression of being “unfit.”²⁰ The victim brought the case to a labor arbitration committee in 2016, but they ruled in favor of the employer.²¹ The individual sued, and the court found that the victim had been illegally fired but not that discrimination played a role.²² In both of these landmark cases, the lack of legislation prohibiting discrimination based on sexual orientation or

gender identity was a key factor in the respective decisions by the court and the arbitration committee.

13. According to a directive issued by the Guangdong Province Public Security Bureau, post-operative transsexuals are allowed to update their gender identity on household registration and identity cards.²³ However, they may face difficulties when updating their gender identity on academic records or other documents.²⁴ Such inconsistency among identification documents may cause challenges for LGBTQ individuals in finding employment.²⁵ Furthermore, there are no signals from the government that these policies will be implemented nationally.

Discrimination in Schools and Universities

14. Homophobia and discrimination in educational institutions remain widespread in China, with gender-nonconforming students routinely subjected to bullying. According to a 2015 survey published by the Chinese Journal of Clinical Psychology, 40.7% of gender-nonconforming students were bullied, nearly 35% were verbally threatened, and almost all of them experienced some degree of depression afterwards.²⁶ Of the respondents in the 2016 UNDP survey, 40% of LGBT individuals said they had experienced discrimination at schools.²⁷
15. The measures taken by school authorities to suppress the growing visibility of LGBT students on campuses, along with the lack of awareness about gender diversity, contribute to this problem. Many colleges refused to allow students to register LGBT student associations on campus, thus preventing them from openly recruiting members, accessing facilities and resources, and conducting activities.²⁸ Schools often restrict activities or events that promote gender diversity, and even repress signs of public LGBTQ presence on campus.²⁹ Among other forms of harassment against LGBTQ students, university officials in Guangdong Province in 2016 threatened to refuse to give a woman her diploma after she proposed to by her girlfriend on campus and photos of them were posted online.³⁰

Biased Textbooks Promote Discrimination

16. Biased materials used in higher education course curricula exacerbate discrimination against LGBTQ individuals. Despite the 2001 removal of homosexuality and bisexuality from the classification of mental disorders, many textbooks continue to teach the opposite. According to a study we conducted in 2014, 40% of books used for psychology or mental health classes in colleges still referred to homosexuality as a form of sexual perversion. We also found that 50% of the materials included introductions to “conversion therapy.” Such textbooks were published as recently as 2013, and contained discriminatory and outdated information, including referring to homosexuals as the source for HIV/AIDS.
17. The lack of strong, enforceable anti-discrimination laws has contributed to the failure of China’s judicial system to protect the rights of LGBT individuals. In March 2017, the Beijing Municipal Higher People’s Court rejected an appeal by a lesbian college student who had lost a lawsuit over the ongoing use of discriminatory educational texts. She had

sued the Ministry of Education, alleging the Ministry had failed to recall textbooks used for professional examinations and college curricula that still label homosexuality as a mental disorder and provided information on “conversion therapy.”³¹ A lawsuit filed in 2007 against a publisher for producing such textbooks is still pending, as no court has held a hearing. A local campaign, waged against China Renmin University Press, was successful, but only after a letter-writing campaign by the same student who lost the above court case.³² In another case, a student filed a suit against Jinan University Press under consumer rights regulations—not on the basis of discrimination—arguing that textbooks don’t meet “quality requirements set out by Chinese law,” and thus violate rights. Two hearing dates have been cancelled in this case, which still has not been litigated.³³

¹ In response to recommendations 186.85 (Portugal) and 89 (Ireland), the government replied: “China’s Constitution clearly stipulates that all citizens are equal before the law. China prohibits all possible discriminations via enacting specific laws. China’s Law on Regional National Autonomy, Law on the Protection of Rights and Interests of Women, Law on the Protection of Rights and Interests of Elderly, Law on the Protection of Minors, Law on the Protection of Rights and Interests of Disabled Persons, Law on the Promotion of Employment and other laws clearly prohibit discriminations based on ethnicity, religion, gender, age, disability and other aspects.” In response to 90 (Netherlands), the government said, “The Labour Law of China stipulates that workers shall not be discriminated on grounds of ethnicity, race, sex and religious beliefs. The Law on the Promotion of Employment of China contains systematic stipulations against employment discriminations.” UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review, China, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review,” A/HRC/25/5/Add.1, 2014.

² United Nations Development Programme (UNDP) China, “Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity, and Gender Expression,” May 16, 2016, p. 27, http://www.cn.undp.org/content/china/en/home/library/democratic_governance/being-lgbt-in-china.html.

³ *BBC Chinese*, “China’s First Same-Sex Marriage Case Ruled Against Gay Couple” (中国首例同性婚姻维权案判同性恋者败诉), April 13, 2016, http://www.bbc.com/zhongwen/simp/china/2016/04/160413_china_same-sex_marriage_case.

⁴ UNDP China, “Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity, and Gender Expression,” May 16, 2016, pp. 25, 28.

⁵ The September 2015 second draft of the Anti-Domestic Violence Law opened up the definition from the initial draft to cover “family members,” which was viewed as ambiguous enough to cover same-sex couples. However, authorities specifically mentioned in a press conference after the law’s passage that it does not cover homosexual couples. China Law Translate, “What’s new in the new Domestic Violence Law draft?,” September 16, 2016, <http://chinalawtranslate.com/major-changes-in-the-domestic-violence-law/?lang=en>.

⁶ *China Daily*, “Anti-Domestic Violence ‘Persons Living Together’ Provision does not Cover Homosexuals” (反家暴法中“共同生活人”不包括同性恋), December 27, 2015, http://www.chinadaily.com.cn/micro-reading/china/2015-12-27/content_14436421.html.

⁷ Beijing Yuanzhong Gender Development Center, Beijing Weiping Women’s Organization, Beijing Tongyu, and Guangzhou New Media Feminism “An Investigative Report on Anti-Domestic Violence Law Implementation” (《反家庭暴力法》实施情况调研报告), March 15, 2017, <https://zhuanlan.zhihu.com/p/25781138>; Xie Wenting, “Gay people seek protection under China’s first domestic violence law,” *Global Times*, January 15, 2016, <http://www.globaltimes.cn/content/963684.shtml>.

⁸ CHRD and Coalition of NGOs, “Information Submission to the UN Committee Against Torture for Consideration in List of Issues, February 2015,” <https://www.nchr.org/2015/02/chrd-information-submission-to-the-un-committee-against-torture-for-the-review-of-the-fifth-periodic-report-of-china-february-2015/>.

⁹ Committee against Torture, Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5, February 2016, paras. 55-56.

¹⁰ Gerry Shih, “Man wins lawsuit in China over forced gay conversion therapy,” *Associated Press*, July 4, 2017, <https://apnews.com/4d9d955cfbfd401b93f28ef4e9ffa5f8>.

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- ¹¹ Meng Fanyong (孟繁勇), “Involuntarily Committed for 19 Days at a Psychiatric Hospital, Reason was Sexual Preference Disorder” (他被精神病医院强制治疗 19 天 理由是: 性偏好障碍), *Henan Business*, June 15, 2016, http://newspaper.dahe.cn/hnsb/html/2016-06/15/content_41104.htm.
- ¹² Chinese Classification of Medical Disorders kept a category of “ego-dystonic homosexual” (article 62.31) to describe people who have difficulties accepting their homosexuality or bisexuality. China’s classification deviates from international standard, such that “ego-dystonic homosexual” is not found in World Health Organization’s International Statistical Classification of Diseases and Related Health Problems (ICD-10). Chinese Classification of Medical Disorders (CCMD-3), “Homosexuality, Bisexuality” (同性恋 双性恋), <http://www.psychcn.com/counseling/zxjn/200612/2580826650.shtml>.
- ¹³ CHR and Coalition of NGOs, “Information Submission to the UN Committee Against Torture for Consideration in List of Issues, February 2015.
- ¹⁴ The proposal was submitted by National People’s Congress (NPC) delegates after initial consultation started in 2008, and has since been approved for further drafting and consultation with relevant departments. No calls for consultation with civil society have been made. Luo Jingwen (罗静雯), “NPC Deputy Sun Xiaomei: Speed Up Adoption of ‘Employment Anti-Discrimination Law’ To Ensure Equal Employment for Everyone” (人大代表孙晓梅: 抓紧制定《反就业歧视法》 确保每个人平等就业), *Chongqing Daily*, March 16, 2016, http://cq.cqnews.net/html/2016-03/16/content_36531225.htm; Employment Anti-Discrimination Law of the People’s Republic of China (Proposal Draft by Experts) (中华人民共和国反就业歧视法 (专家建议稿)), 2016 draft (uploaded by CHR), <https://www.nchr.org/wp-content/uploads/2016/11/Employment-Anti-Discrimination-Law-of-the-People%E2%80%99s-Republic-of-China-Proposal-Draft-by-Experts2016.pdf>.
- ¹⁵ Asia Catalyst, Beijing Zuoyou, and Shanghai SCMC Center, “‘My Life is Too Dark To See The Light’: A Survey of the Living Conditions of Transgender Female Sex Workers in Beijing and Shanghai,” January 2015, p. 14, <http://asiacatalyst.org/wp-content/uploads/2014/09/Asia-Catalyst-TG-SW-Report.pdf>.
- ¹⁶ Out & Equal, “Only Five Percent of LGBTI Employees in China Feel Comfortable Coming Out at Work,” October 16, 2017, <http://outandequal.org/only-five-percent-of-lgbti-employees-in-china-feel-comfortable-coming-out-at-work/>.
- ¹⁷ Labor Law of the People’s Republic of China, 1995, http://www.china.org.cn/living_in_china/abc/2009-07/15/content_18140508.htm; Law on Promotion of Employment of the People’s Republic of China, 2008, http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471590.htm.
- ¹⁸ NGOcn, “China’s First Workplace Discrimination Against Homosexuality Lawsuit Filed” (全国首例同性恋职场歧视案今起诉), November 27, 2014, <http://www.ngocn.net/news/360566.html>.
- ¹⁹ The victim lost both the first-instance trial and appeal in 2015. The judge stated that it was unclear if the termination of his job was due to his homosexuality or damages to the company’s image caused by a video that was posted online, which revealed his sexual orientation. The judge’s reasoning reflected sexual orientation had in fact played a role, but the verdict was ruled against the victim. Pan Bo (潘播), “Man Fired After Coming Out of the Closet, Lost Lawsuit Against Company for Employment Discrimination” (男子出柜后被解雇 告公司就业歧视败诉), *Guangzhou Daily*, April 23, 2015, <http://news.sina.com.cn/s/2015-04-23/053931749820.shtml>.
- ²⁰ Vanessa Piao, “Chinese Panel Rules Against Plaintiff in Transgender Job Discrimination Case,” *The New York Times*, May 10, 2016, <http://www.nytimes.com/2016/05/11/world/asia/china-transgender-job-discrimination.html>.
- ²¹ Ibid.
- ²² Vanessa Piao, “Transgender Man Was Unfairly Fired, but Bias Not Proved, Chinese Court Says,” *New York Times*, January 2, 2017, <https://www.nytimes.com/2017/01/02/world/asia/china-transgender-lawsuit.html>.
- ²³ Guangdong PSB promulgated a directive in 2008 on updating one’s sex after sex reassignment surgery. Guangdong Public Security Bureau, “Citizens After Sex-Reassignment Surgery Changing Gender Identity in One’s Hukou Registration” (公民手术变性后变更户口登记性别项目), August 22, 2011, http://zwgk.gd.gov.cn/006940140/201108/t20110822_267369.html.
- ²⁴ Xu Ye, “Research on China’s Transsexual Group: Discrimination and Ignorance Even Among LGBT Group” (中国跨性别群体调查: LGBT 群体内也有歧视和无知), *IFeng*, January 7, 2015, http://news.ifeng.com/a/20150107/42878387_0.shtml.
- ²⁵ The Ministry of Education has issued no directive or rules regarding how post-operative transsexuals can update their gender identity on school diplomas, hence, many schools refuse to change the identity for students. In some cases, the inconsistencies have caused distrust between employer and job candidate.
- ²⁶ Wei Chong-zheng and Liu Wen-li, “The Association between School Bullying and Mental Health of Sexual Minority Students,” *Chinese Journal of Clinical Psychology*, No. 4, Vol. 23, 2015.
- ²⁷ UNDP China, “Being LGBTI in China: A National Survey on Social Attitudes towards Sexual Orientation, Gender Identity, and Gender Expression,” May 16, 2016, p. 27.

²⁸ According to interviews conducted with the groups, they were not allowed to register on campus and currently there are no known open LGBT group allowed to register like other student groups.

²⁹ Prominent activist Ai Xiaoming was able to register a LGBT group at Guangzhou's Sun Yat-sen University when she was still teaching at the school in 2006 because university authorities did not fully understand what LGBT stood for. University authorities then blocked the group from registering the following year, after the group began receiving media attention, and the university was under pressure to close it. NGOcn, "Story of Sun Yat-sen University's Rainbow Club: University Is Not So Free and Inclusive" (中大彩虹社的故事: 中大并没有那么自由包容), July 9, 2014, <http://www.ngocn.net/news/90658.html>; In 2016, another school in Guangzhou pressured facilities and stores on campus not to provide space for an exhibition on homosexuality. WeChat User Sisyphus-stone, "An Exhibition Without People: The Most Authentic Artwork of Exhibition 'Named'" (一场没有人的展览 | 被取消是"命名"展最真实的作品), September 19, 2016, http://mp.weixin.qq.com/s?__biz=MzIwMjM4MTIxNA==&mid=2247483701&idx=1&sn=8f4392b3db1c94c084eb2c6fdb26288&chksm=96dec3c4a1a94ad29044166bc0a06dc9c13bdcf9b1036d324b06bada5a85a8e8291ed37099a7&scene=1&srcid=09198vt4EG0dwIKTBZwa0dYi#wechat_redirect.

³⁰ Police and university officials also searched the woman's home, an official from the university's Communist Party Committee repeatedly harassed the two students, and state censors blocked a feminist group's online social media account that posted the story. Wang Xiaoyu, "Heterosexual Proposal at Graduation Is Blessed, But Homosexual Proposal Gets Denied Diploma?" (异性恋毕业求婚得校长祝福, 同性恋毕业求婚不给毕业?), *China Digital Times*, June 28, 2016, <http://chinadigitaltimes.net/chinese/2016/06/%E5%BC%82%E6%80%A7%E6%81%8B%E6%AF%95%E4%B8%9A%E6%B1%82%E5%A9%9A%E5%BE%97%E6%A0%A1%E9%95%BF%E7%A5%9D%E7%A6%8F%EF%BC%8C%E5%90%8C%E6%80%A7%E6%81%8B%E6%AF%95%E4%B8%9A%E6%B1%82%E5%A9%9A%E4%B8%8D%E7%BB%99/>.

³¹ Caixin, "Teaching Stigma About Homosexuals University Student Loses Appeal Against Ministry of Education" (教材疑污名化同性恋 大学女生告教育部二审败诉), March 6, 2017, <http://china.caixin.com/2017-03-06/101062813.html>; Natalie Thomas, "Chinese gay activist challenges homosexuality 'disorder' textbooks," *Reuters*, September 12, 2016, <http://in.reuters.com/article/us-china-rights-textbook-idINKCN111174>.

³² Qian Jinghua, "China's Homophobic Textbooks Turn Over a New Leaf," *Sixth Tone*, April 24, 2017, <http://www.sixthtone.com/news/1000050/chinas-homophobic-textbooks-turn-over-a-new-leaf>.

³³ Katherine Tai, "Suing the homophobia out of China's textbooks," *Sup China*, January 23, 2018, <https://supchina.com/2018/01/23/suing-the-homophobia-out-of-chinas-textbooks/>.