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Submission to Universal Periodic Review of China (4th Cycle) on Discrimination Based on Sexual Orientation, Gender Identity and Expression in China

Submitted by

**China Rainbow Observation
The Chinese Lala Association
Chinese Trans Voices
Human Rights in China**

***China Rainbow Observation** is an action group focusing on LGBTQ media representation in China. It believes giving the general public equal access to LGBTQ-related media content will help reduce social stigma and discrimination against LGBTQ people in China.*

***The Chinese Lala Association** is a group dedicated to building a united platform for Chinese Lala (LBT) to voice their concerns, connecting Lala (LBT) within China and abroad to promote the equality and rights of Chinese Lala (LBT).*

***Chinese Trans Voices** is a group of Chinese trans activists in China and abroad. It aims to raise trans voices, advocate for trans equality, and promote trans rights for Chinese trans people in China and abroad.*

***Human Rights in China (HRIC)** is a non-governmental organisation (NGO) founded in March 1989 by overseas Chinese students and scientists with a mission to support rights defenders and advance the institutional protection of international human rights in the People's Republic of China.*

Content

Section	Paragraph
Key Suggestions	1
Introduction	2-3
Discrimination in Education Sector	4-8

Discrimination in Workplaces	9-12
Under-recognised and under-protected Relationships	13-16
Chinese LGBTQ NGOs that lack recognition	17-21
HIV Prevalence and GBMSM Discrimination in China	22-24
Trans Rights and Challenges in China	25-30
Media Censorship and LGBTQ Visibility in China	31-34
Reproductive and Parental Rights of Lesbian and Bisexual Women	35-38
Conclusion	39-42

Key Suggestion

1. We suggest Member States make the following recommendations to China on the issue of discrimination based on sexual orientation and expression:
 - **Legal Reform and Protection:** Enhance legal protections for the LGBTQ community by amending existing laws to explicitly ban discrimination based on sexual orientation, gender identity, and expression (SOGIE), especially in areas like education, employment, and healthcare.
 - **Support for LGBTQ Organisations:** Foster a supportive environment for LGBTQ non-governmental organisations (NGOs) by simplifying the registration process, enabling these organisations to operate legally and provide necessary services to the LGBTQ community.
 - **Promotion of Sexual Health Education:** Prioritise sexual health education, particularly on HIV/AIDS prevention and treatment, to decrease infection rates among sexual minorities.
 - **Enhance LGBTQ Representation:** Reduce censorship and promote fair representation of LGBTQ individuals in the media to increase public acceptance and understanding of sexual minorities in China.

Introduction

2. China is host to a diverse and expanding LGBTQ community, with estimates indicating that between 40 to 70 million individuals in China identify as LGBTQ (Lesbian, Gay, Bisexual, Transgender, and Queer).ⁱ Despite repeated affirmations from the Chinese Government during previous cycles of the Universal Periodic Review (UPR) and other treaty body reviews that it has taken steps to protect LGBTQ rights and eliminate all forms of discrimination based on Sexual Orientation, Gender Identity, and Expression (SOGIE), LGBTQ individuals in China continue to face significant challenges in exercising their fundamental human rights.
3. At the legislative level, China's efforts to ensure that all its citizens can fully enjoy equal rights in their own country have notably lacked substantive progress. During the second cycle of the UPR review, China claimed to have fully implemented all three UPR recommendations (186.85, 186.89, 186.90) concerning these issues made in the preceding UPR. However, this claim contradicts the actual implementation within the country and the assertions made in its National Report.ⁱⁱ During the third cycle, the Chinese Government expressed and subsequently endorsed additional recommendations (28.83, 28.86, 28.87, 28.88, 28.89, 28.90) concerning SOGIE issues.ⁱⁱⁱ However, these recommendations have not been implemented domestically, and the existing regulatory framework does not explicitly prohibit discrimination based on sexual orientation or gender identity.

Discrimination in Education Sector

4. When addressing the issue of campus violence, educational authorities and schools at all levels in China frequently neglect the needs of sexual minorities. Due to factors related to SOGIE, the LGBTI community frequently becomes a vulnerable group on campus, facing a higher risk of violence and bullying.
5. Educators in schools perpetuate outdated gender stereotypes, such as the notion that 'men and women are fundamentally different,' thereby fostering a discriminatory and oppressive environment for sexual minorities. For instance, in 2021, China's Ministry of Education responded to a proposal regarding 'preventing feminisation of male adolescents,' which was submitted by a member of the National Committee of the Chinese People's Political Consultative Conference. The ministry stated its intention to 'reform physical education in schools to prioritise the cultivation of a 'masculine spirit' in students.'^{iv}
6. Due to the absence of guidelines and proper training from the education department, teachers' limited awareness of gender equality contributes to the diminished visibility of sexual minority students. A 2016 UNDP report on the living conditions of China's sexual minorities reveals that only about 5% of them openly disclose their sexual orientation and gender identity at school, while 40% report experiencing unfair treatment or discrimination due to their SOGIE. Among these sexual minorities, transgender students experience the most severe educational impacts, with dropout rates exceeding 20% and heightened exposure to discrimination at home, school, and the workplace.'^v
7. In recent years, there have been instances of multiple suicides among sexual minority students in China, with some incidents involving school teachers as perpetrators. In 2022, Gao Yan, a dance performance student at Shandong Art Institute, tragically took their own life. The limited media coverage surrounding this issue leaves room for multiple factors contributing to the student's suicide. However, some netizens claimed that his class teacher had verbally bullied Gao Yan due to his sexual orientation.'^{vi}
8. Some schools in China have expelled students for coming out, infringing upon their education rights. For example, in December 2019, a Beijing Economic and Trade Technical School student was forced to transfer after openly expressing his homosexuality and advocating against discrimination.'^{vii} As a preschool education major, the school believed that the student's future work in kindergartens could potentially impact children's physical and mental development.

Discrimination in Workplaces

9. In China, the absence of specific anti-discrimination laws protecting sexual minorities has led to prevalent employment discrimination against the LGBTQ community. This highlights an urgent need for clear legal provisions to safeguard their right to equal employment opportunities. Despite several provisions in Chinese law prohibiting employment discrimination (for example, China's Labor Law explicitly mentions the principle of "equal employment"),^{viii} Chinese laws and policies do not explicitly prohibit employment discrimination based on SIGIE.

10. According to the UNDP, research revealed that workplace discrimination against LGBTI individuals had reached a rate of 21%. Due to hostile work environments, a majority of sexual minorities opt not to disclose their identities. Among the survey respondents, 74.9% preferred not to disclose their sexual minority status, 19.7% chose partial disclosure, and only 5.4% opted for full disclosure.^{ix}
11. Only a small number of companies have created inclusive and gender-diverse work environments. Due to the public disclosure of their LGBTI identity, individuals often suffer employment discrimination and even humiliation. For example, in 2018, their school was for their homosexuality. In 2019, Wu Wei, who worked in a town government in Zhejiang Province, faced gossip and ostracisation from colleagues and superiors due to his homosexuality, leading him to attempt suicide, though he was saved.^x
12. Transgender individuals face significant barriers in seeking employment, particularly those who have undergone gender affirmation surgery but are unable to alter the gender stated on their educational certificates. For instance, since 2018, a transgender female student, with legal assistance, took nearly two years to successfully persuade the Liaoning Provincial Department of Education to alter her certificates to reflect her new name and gender.^{xi} This case highlights the absence of legal provisions to address these issues, leaving the employment rights of transgender individuals largely reliant on personal resolutions.

Under-recognised and under-protected Relationships

13. The Universal Declaration of Human Rights affirms the right to marriage for all individuals, regardless of sexual orientation, including LGBTQ individuals. In contrast, China's legal framework defines marriage exclusively as a union between a man and a woman, resulting in the marginalisation of LGBTQ individuals and same-sex partners.^{xii} As a result, same-sex couples are denied spousal rights, including social security, workplace benefits, and legal protection against discrimination regarding joint property, medical treatment, and child-rearing.
14. To establish familial structures, many LGBTQ individuals in China have turned to heterosexual marriage, adoption, or surrogacy. According to a 2020 survey conducted by Love Makes a Family, out of 9,955 respondents aged 18 and above, 76% reported cohabiting with a same-sex partner, and 5% were raising children with a same-sex partner. A study conducted by Diversified Family revealed that among sexual minority females, a considerable proportion either intended to have children or were already parents. However, the lack of social support discouraged those not planning to raise children.^{xiii}
15. The longing of LGBTQ individuals in China to form families was exemplified in 2015 when a lesbian couple held a public ceremony in China inspired by the US Supreme Court's legalisation of same-sex marriage.^{xiv} However, despite increasing calls for legal protection for same-sex couples, China's judicial system continues to uphold discriminatory positions.
16. A poignant case from 2019 in Shenyang Province involved an elderly lesbian couple who had lived together for over 50 years. When one partner became

mentally incapacitated, her partner couldn't legally become her guardian. Their co-owned properties and bank accounts were left unprotected, leading to legal battles among their relatives. The court recognised their lifelong partnership but determined that their relationship did not meet the criteria for protection under the Marriage Law.^{xv}

Chinese LGBTQ NGOs that lack legal recognition

17. In recent years, the legal and socio-economic environments for LGBTQ NGOs in China have been deteriorating. Numerous laws and policies have been issued or implemented to regulate the operations of domestic and international NGOs operating in mainland China. New government offices and mechanisms have been established to ensure these laws and policies' rigorous and effective enforcement. Consequently, there has been a significant decrease in the number of LGBTQ NGOs, projects, and activists in mainland China. Key challenges faced by LGBTQ NGOs operating in mainland China include:

Challenges with proper registration for LGBTQ NGOs

18. In 2016, two crucial laws were passed to regulate NGOs: the Charity Law, which focuses on domestic NGOs, and the Law on Administration of Activities of Overseas Non-governmental Organizations in Mainland China (ONGO Law), which applies to other NGOs (including those based in Hong Kong, Macau, and Taiwan).^{xvi} However, domestic Chinese LGBTQ NGOs, who were previously required to register as for-profit companies or operate without registration, continue to encounter legal obstacles in registering as charitable organisations. Since the implementation of the Charity Law in September 2016, no Chinese LGBTQ NGO has been able to obtain official registration. Some organisations can successfully register after omitting LGBTQ-related content from their applications. As a result, their registration licenses do not provide legal authorisation for organising activities related to LGBTQ issues. In 2019, several LGBTQ NGOs were denounced as criminal organisations and disbanded by the Government.^{xvii}
19. The ONGO Law took effect in January 2017, no overseas LGBTQ NGOs have been granted legal status to establish local representative offices or conduct temporary activities. Due to their inability to fulfil registration requirements, such as securing a Professional Supervisory Unit within the Chinese government system or public institutions, most overseas NGOs working on human rights issues were compelled to terminate their operations in mainland China.^{xviii} Successfully registered overseas NGOs that previously implemented LGBTQ-related projects have been compelled to abandon these projects in order to maintain their legal operations in the country.

Restrictive access to funding

20. Chinese LGBTQ NGOs face increasing obstacles in accessing funding from domestic or international sources, many of which stem directly from restrictive policies. The Chinese Government does not provide funding to support the development of LGBTQ NGOs. In practice, certain community-based NGOs that

focus on HIV prevention and AIDS care for gay, bisexual, and other men who have sex with men (GBMSM) are eligible to apply for and receive public funding. However, strict conditions and auditing procedures restrict the utilisation of the financing for LGBTQ-related matters.

21. As public fundraising regulations have tightened in China, LGBTQ NGOs have faced increasing obstacles in raising funds. Initially, these organizations managed to navigate these restrictions by collaborating with supportive foundations and internet platforms. However, by 2022, mounting pressure from authorities has left these organizations with practically no lawful means to publicly raise funds.

HIV Prevalence and GBMSM Discrimination in China

22. Gay, bisexual, and other men who have sex with men (GBMSM) in China are at higher risk of contracting HIV than other at-risk sub-population groups, such as heterosexual couples. In recent years, China has controlled the spread of HIV through other transmission routes whilst facing surging new HIV infections through condomless sex, especially among GBMSM.^{xixxx} Among all the available efficacious and cost-effective HIV prevention approaches, a key solution would be to increase the availability of Pre-Exposure Prophylaxis (PrEP). Studies show that HIV PrEP should be better promoted among MSM in China to reduce HIV transmissions.^{xxixxiixxiii} However, the public provision of PrEP in China is remarkably low. Until now, there has been no nationwide PrEP implementation project.^{xxiv} As a result, in 2020, only 5,337 people were reported to have initiated PrEP in China, a per capita rate of 0 users per 10,000 population. In comparison, those who have initiated PrEP and the per capita rate of use in the UK (18,154/2.7), Thailand (22,388/3.2) and the US (203,837/6.2) are much higher.^{xxv}
23. China has many people living with HIV/AIDS (PLWHA), many of whom are GBMSM. In recent years, newly diagnosed HIV/AIDS cases among younger and older GBMSM have risen at an alarming rate. As a result, the GBMSM community not only has a disproportionally heavy disease burden of HIV/AIDS but also experiences a higher degree of social discrimination. Even though policies protecting the equal rights of PLWHA, such as The Regulations on AIDS Prevention and Treatment, have existed since 2006, discrimination still prevails in Chinese society. It renders difficulties when PLWHA seek healthcare service, education, and employment. PLWHA have been continuously denied equal employment opportunities to work as public servants or serve in the military. In recent years, some worrying trends to infringe PLWHA's rights have emerged. For example, although the international scientific community has established that undetectable HIV viral load (successful treatment) equals untransmissible (U=U), China still criminalises PLWHA involved in commercial sex as they might be deemed as intentionally transmitting HIV/AIDS.^{xxvi} Furthermore, in 2020, the southwestern Yunnan province passed a local law criminalising PLWHA who do not disclose their HIV status to their partners.^{xxvii}
24. Chinese society generally holds negative views towards GBMSM, resulting in challenges for community-based NGOs advocating for sexual education and HIV/AIDS prevention among GBMSM. These organizations often struggle to register or secure government funding unless affiliated with governmental

institutions. Increased authority intervention and decreasing government funding pose sustainability challenges, limiting their operations and events.

Trans Rights and Challenges in China

25. It is estimated that about 4 million trans people live in China.^{xxviii} While Chinese trans individuals can change their gender marker in certain legal documents post-sex reassignment surgery, accessing such surgery and obtaining full legal gender recognition remains challenging. Additionally, in recent years, China has started limiting some trans rights, including access to hormone replacement therapy, self-expression in media, and protection from conversion therapy.
26. In 2022, China updated the management regulation of sex reassignment surgery,^{xxix} lowered the minimum age to 18, simplified mandatory operative procedures, and deleted some requirements.^{xxx} But this regulation still demands trans people inform their family members as a requirement, and in practice, most hospitals need trans people to have consent from their parents, which is very difficult for trans people to get.^{xxxi} A survey report showed that 35.5% of trans people in the survey want to receive gender-affirming healthcare, but only 3.8% had received the surgery.^{xxxii} Some trans people even risk their lives with dangerous self-surgery.^{xxxiii}
27. Mainland China doesn't allow trans people to change their gender marker without receiving the surgery,^{xxxiv} although Taiwan^{xxxv} and Hong Kong^{xxxvi} already recognised this right in 2021 and 2022, respectively. China also doesn't recognise the non-binary or third gender marker.^{xxxvii} Besides, it is very hard for trans people to change their gender marker in their degree certificates after they have had surgery.^{xxxviii}
28. In 2021, China started a special action of "beating the medicine girls" to ban the illegal online selling of hormone medicines that trans women need.^{xxxix} The police arrested some sellers and buyers and detained the medicines from both sides. In 2022, China released a new policy to ban all the online selling of such medicines.^{xl} Soon after the release of the policy, the news about the police investigating local pharmacy stores to ban the selling of such medicines became a hot topic on Weibo.^{xli} All these changes increase the barriers that trans people face in accessing hormone replacement therapy and force trans people to turn to black markets.^{xlii}
29. China issued a policy in 2021 to ban "Niang pao" or "sissy men" from appearing on TV and video streaming sites.^{xliii} Then, some non-binary and cross-dresser influencers found their videos got banned in Douyin, Xiaohongshu, and Bilibili.^{xliv} Some trans influencers found this has led to a rise in transphobic comments on social media and fear of losing their jobs.^{xlv} The most famous Chinese trans celebrity Jin Xing also got banned from popular reality shows.^{xlvi}
30. China doesn't consider any kind of conversion therapy illegal. A study of trans teenagers in China showed that almost one in five were forced into conversion therapies.^{xlvii} An 18 years old trans woman called Kecheng, and a 17 years old trans woman called Xiaodi, were both sent by their parents to educational organisations to receive conversion therapy.^{xlviii} In 2020, some volunteers helped

Kecheng to call the police but still could not get her out of the locked campus. Xiaodi tried to escape from the locked campus three times in 2019.

Media Censorship and LGBTQ Visibility in China

31. The Chinese Government severely restricts the participation of LGBTQ individuals in cultural life and their ability to benefit from social progress through extensive censorship of LGBTQ media content. China's media censorship regulations, such as the 2016 TV Content Production Rules^{xlix} and 2017 Content Review Rules for Online Audiovisual Programs,^l explicitly ban the use of the term "homosexuality," leading to widespread purging and deletion of LGBTQ references from social media platforms and mainstream media.
32. The 2014 report by the UNDP highlighted the significant role of media and technology, particularly social media, in facilitating networking, advocacy, and the promotion of the work of LGBTQ NGOs. However, the lack of transparency from the Government regarding the censorship of LGBTQ content has resulted in unpredictable crackdowns.^{li} For instance, in 2014, a documentary depicting parents learning to support their LGBTQ children was simultaneously removed from multiple video-sharing platforms.^{lii} Similarly, in 2019, Weibo, China's equivalent of Twitter, closed down discussion spaces dedicated to lesbian issues.^{liii}
33. Pervasive censorship in China has hindered advocacy efforts and public education on LGBTQ issues. In 2019, concerns were raised about mental health professionals' hesitance to collaborate due to increased censorship. An online educational platform even cancelled a lecture series on LGBTQ-affirming therapy following the introduction of stricter censorship rules in 2017.^{liv}
34. As per the UNDP report, sexual minorities in China have negligible visibility in traditional media forms like newspapers, magazines, radio, film, and television, contributing only 1.8% and 3.1%, respectively. The limited and often uncomprehensive representation in media impedes advocacy for equal rights and efforts to combat prejudice. Furthermore, censorship targeting the LGBTQ community discriminatively curbs public education on LGBTQ issues and stifles the free exchange of ideas within the community.

Reproductive and Parental Rights of Lesbian and Bisexual Women

35. In China, the legal definition of marriage is strictly heterosexual and monogamous. This narrow interpretation intertwines regulations on reproductive and parental rights, leaving the rights of lesbian and bisexual women inadequately safeguarded. As a result, their rights are sometimes infringed upon within the existing institutional framework.
36. Per the "Specifications for Human Assisted Reproductive Technology" published by the Chinese Ministry of Health in 2003, individuals pursuing assisted reproductive services must possess a marriage certificate or a foreign one.^{lv} Existing regulations in China prohibit healthcare providers from offering "human-assisted reproductive technology" to unmarried women, including those

identifying as lesbian and bisexual. This prevents them from accessing reproductive services like sperm banks and artificial reproductive methods.

37. Furthermore, unmarried women, including lesbian and bisexual women, are unable to access fertility preservation methods like egg freezing in China. In late 2019, Xu Zaozao, a single woman, filed a lawsuit against Beijing Capital Medical University Affiliated Obstetrics and Gynecology Hospital after being denied egg-freezing services, alleging a violation of her personal rights. Although the initial lawsuit was dismissed by the Beijing court, Xu lodged an appeal in August 2022, and the second trial took place on May 9, 2023.^{lvi} The verdict is still pending.
38. In China, the absence of legal recognition for same-sex marriage leaves the parental rights of lesbian couples in jeopardy. Notable cases include a September 2020 dispute in Xiamen where only the birth mother's custody rights were recognized, and an April 2020 case where Zhang Peiyi, a Chinese lesbian mother of two, lost access to her children after a disagreement with her former partner. Her partner took the children away, resulting in Zhang's inability to see them since then.^{lvii} The case is yet to be brought to trial.

Conclusion

39. This report has provided a comprehensive account of discrimination based on SOGIE in China. Despite repeated affirmations by the Chinese Government during previous cycles of the UPR and other treaty body reviews that steps have been taken to protect the rights of LGBTQ persons and eradicate all forms of discrimination based on SOGIE, individuals in China who identify as LGBTQ continue to face significant obstacles in the exercise of their fundamental human rights.
40. In response to these issues, we strongly call upon the international community and human rights organisations to continue their scrutiny of the rights situation of LGBTQ people in China and apply pressure on the Chinese Government to ensure respect for and protection of human rights. We encourage the LGBTQ community and NGOs in China to continue their advocacy efforts for the promotion of the rights and welfare of LGBTQ individuals.

(5300 words)

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