

**Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in China  
For the 17<sup>th</sup> Session of the Universal Periodic Review - October 2013**

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1. This report is submitted by the Sexual Rights Initiative<sup>1</sup> and outlines the current situation for LGBT people in mainland China in relation to China's international obligations as well as its national laws, policies and practices. The goal of this submission is to encourage the new leadership in the Chinese government to take concrete steps to improve the environment for the LGBT populations in China.

### **Introduction**

2. There is no survey data in China for the total population of LGBT people. However, according to the conservative estimate that 3-4% of China's population is LGBT, about 41 to 69 million Chinese citizens could be LGBT. Due to the lack of laws and policies protecting their equal rights, as well as the deep-rooted prejudices and discriminations in China, LGBT people cannot fully enjoy their human rights as citizens.

### **Rights to Equal Protection Before the Law**

3. According to article 33 of the constitution of People's Republic of China (PRC), all people are equal before the law. And the State has responsibility to protect its citizens from stigma and discrimination.
4. We want to acknowledge three progressive steps the Chinese government has taken in order to decriminalize and de-stigmatize the LGBT population in China. In 1997, the new Criminal Law of People's Republic of China removed the crime of "hooliganism", which had been used to criminalize same-sex behaviors. In April of 2001, the "Chinese Classification and Diagnostic Criteria of Mental Disorders" (CCMD, 中国精神障碍分类与诊断标准) removed homosexuality from the list of mental disorder. And according to the official replies from the Ministry of Public Security in 2002 and 2008, people who have changed their sex through sex reassignment operations (SRO) in China or abroad, could change their sex on their legal identity documents, such as Chinese legal identity (*shenfenzheng*, 身份证) and passport.
5. However, there are still gaps that need further progressive actions from the government of China. Most importantly, there is currently no law or policy in China that ensures LGBT people enjoy equal rights as other citizens. LGBT individuals routinely encounter various forms of discrimination in their daily lives, such as in schools and at their workplaces (which interfere with their rights of education and their rights to work). Secondly, transgender is still listed in the list of mental disorders in the CCMD. And despite the above-mentioned legal reform, due to a lack of clear procedure and responsible sector under the government, it is difficult for transsexual people, who have had SRO, to change their sex on other important documents, such as diploma, academic qualification and occupation physician license.

### **Rights of Free Expression**

6. According to article 35 of the constitution of PRC, all citizens have rights of freedom of

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<sup>1</sup> The Sexual Rights Initiative is a coalition of organizations comprised of Action Canada for Population and Development (ACPD), Akahatá – Equipo de Trabajo en Sexualidades y Géneros, Coalition for African Lesbians, Creating Resources for Empowerment in Action (CREA; India), Egyptian Initiative for Personal Rights (EIPR) and Federation for Women and Family Planning (Poland).

expression.

7. In recent years, there are increasingly positive reports and news about LGBT people from official Chinese media, such as CCTV and China Daily. For example, in July 2011, CCTV openly criticized the Chinese actor and actress, Sun Haiying (孙海英) and his wife Lv Liping (吕丽萍) for their anti-gay speech on Chinese twitter (weibo, 微博), and called for respect by the public toward people of different sexuality. In January 2013, China Daily English edition released five reports, which covered the various topics LGBT people face in China<sup>2</sup>.
8. However, the current policies in China lag behind progress in society. According to the Chinese film censorship regulations, all LGBT-related information needs to be removed or revised in broadcasts, television and movies. In the Provisions on the Determination of Obscene and Pornographic Publications (关于认定淫秽及色情出版物的规定), released by the General Administration of Press and Publication of People's Republic of China (国家新闻出版署, 2006) in 2006, homosexuality is regarded as "abnormal sexual behaviors (性变态行为)" and pornography. Thus, LGBT content cannot be included freely in books, magazines and other publications.

### **Rights to Education**

9. According to article 28 of the Convention on the Rights of the Child (CRC), and article 3 of the Constitution of PRC, all children under 18 years old have rights to education. In addition, article 19 of the Constitution of PRC ensures that schools should provide "mentorship (生活指导), psychological support (心理健康辅导) and education of adolescents (青春期教育)" to students. And according to article 19.1 of the CRC, States Parties have the responsibility to "protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" through all measures.
10. However, due to the lack of practical implementation policies and mechanisms, LGBT children and young adults cannot fully enjoy these rights in China. Though the government of China requests schools should provide sex education, which is an important part of education of adolescence, to students, there is no consolidated curriculum throughout of China for comprehensive sexuality education. Although there are some sex education textbooks published in China, LGBT related information are often missing, outdated, or misleading.
11. In addition, a large number of LGBT students (or those perceived as such) have encountered and are encountering homophobic and trans-phobic bullying in schools without substantial support from schools officials and teachers prior, during and after being bullied. According to an online survey conducted by a Chinese LGBT organization in 2012<sup>3</sup>, among 421 students from middle and

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<sup>2</sup> These five reports can be found at following five links:

[http://www.chinadaily.com.cn/sunday/2013-01/06/content\\_16086604.htm](http://www.chinadaily.com.cn/sunday/2013-01/06/content_16086604.htm);

[http://www.chinadaily.com.cn/sunday/2013-01/06/content\\_16086603.htm](http://www.chinadaily.com.cn/sunday/2013-01/06/content_16086603.htm);

[http://www.chinadaily.com.cn/sunday/2013-01/06/content\\_16086606.htm](http://www.chinadaily.com.cn/sunday/2013-01/06/content_16086606.htm);

[http://www.chinadaily.com.cn/sunday/2013-01/06/content\\_16086607.htm](http://www.chinadaily.com.cn/sunday/2013-01/06/content_16086607.htm);

[http://www.chinadaily.com.cn/sunday/2013-01/06/content\\_16086605.htm](http://www.chinadaily.com.cn/sunday/2013-01/06/content_16086605.htm).

<sup>3</sup> Report of the Online Survey on Homophobia and Trans-phobia Bully at Educational Institutions, Aibai Culture & Education Center, November 2012, <http://www.aibai.com/booksview.php?id=19532>.

high schools, universities and vocational schools, 77% of the respondents encountered at least one of 17 types of homophobic and trans-phobic bullying in schools. 10% of them were victims from direct or indirect attacks. And 7.6% of the respondents were sexually harassed by their classmates and/or teachers. School bullying negatively impacted their academic performance as well as their psychological health. 3% of them dropped out of school. And after the bullying, only 33% of the respondents sought support from others, most of which was not adequate.

### **Rights to Work and Employment**

12. According to article 6 and article 2.2 of the International Covenant on Economic, Social and Culture Rights (ICESCR), state parties should recognize the right to work of everyone, and should guarantee that employment rights “will be exercised without discrimination of any kind...”According to the UN “Protect, Respect and Remedy” Framework for Business and Human Rights, the state parties has a duty to “protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication”.
13. In 1994 and 2007 respectively, the Chinese government released the Labor Law and the Labor Contract Law in order to protect workers’ labor rights and rights to work. It also gives special attention to protect rights of work for women, people with disabilities and ethnic groups. However, there are still policy and practice gaps that prevent LGBT workers from fully enjoying their right to work. An example is that, in the two laws, anti-discrimination against LGBT people or equal rights to work for LGBT people at the workplace are not included. And due to deep prejudice and discrimination, LGBT employees often face fear of being dismissed and/or harassment at the workplace, and as a result, cannot fully enjoy their rights to work.
14. According to an online survey conducted by a Chinese LGBT organization<sup>4</sup>, Out of 1634 LGBT employees, 92% of them choose not to come out fully at their workplace because they are afraid that it would influence their career development. 61% of the respondents reported that they have been discriminated and harassed including violence, sexual abuse and insults in the workplace. Some have been fired, many have faced isolation from their colleagues due to their sexual orientation and gender identities. 66% of the respondents reported that due to the non-tolerant environment at their workplace, their job performance suffered.
15. Since 2011, workplace diversity issue has emerged among other corporate social responsibilities (CSR) in China. Policies and practices intended to provide equal rights to LGBT employees and other employees, such as people with disabilities, have been introduced and encouraged in some multi-national corporations. However, it is only limited to a small number of corporations, and few are domestic companies in China.

### **Rights to Health**

16. According to article 12 of the ICESCR, the state parties should recognize and protect everyone’s right to health. The government of China has included rights to health for all through its constitution as well as its "National Human Rights Action Plan (2012-2015)". However, due to

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<sup>4</sup> Online Survey on LGBT People at Workplace in China, Aibai Culture & Education Center, 2013, <http://www.sojump.com/jq/2127139.aspx>.

specific needs of LGBT people, the current policy framework cannot fully guarantee the rights of health to all LGBTs.

#### ***HIV Prevention, Treatment, Care and Support for Gay Men***

17. On the 23<sup>rd</sup> World AIDS Day (1<sup>st</sup> December 2010), the Ministry of Health (MOH) of China announced for the first time in public that HIV transmission among men who have sex with men (MSM) increased rapidly in China, and governments at different levels should take effective measurements to stop the spread of HIV in China<sup>5</sup>. This announcement showed strong commitment from the government of China. However, in February, 2012, MOH organized a press release and affirmed that real name registration for HIV testing in Guangxi and other provinces are “effective measurement”<sup>6</sup> to HIV prevention and treatment. Most MSMs are gay men. Since gays are still deeply stigmatized and discriminated by the society, real name registration for HIV testing would substantially discourage the gay populations from HIV testing. It would further prevent them from accessing HIV treatment, care and support.

#### ***Hormone Use among Transgender People***

18. In China, there are a large number of transgender people, who want to change their sex characteristics by using hormones. According to the policy of medical insurance in China, if transgender people could get prescriptions from doctors, the hormone therapy would be covered by medical insurance. However, due to the shortage of informed medical professionals in China, most transgender people choose to use hormones without any prescription or doctor’s instruction. A transgender support group in China interviewed 43 transgender people in July 2012, among whom, 42 of them have been using hormones without any medical instructions and support. Many of them have had side effects, such as hair loss, hypertension, diabetes mellitus, liver and kidney damage resulting from overdose, or taking wrong types of hormones, as well as the absence of regular health check and medical surveillance.

#### ***Sex Reassignment Operations (SRO) among Transgender People***

19. In 2008, MOH requested all hospitals in China to stop SRO due to lack of medical standards. In 2009, MOH released the first ever Sex Change Operation Technical Management Standard (《变性手术技术管理规范（试行）》)<sup>7</sup>. The standard provides clear criteria of conditions that hospitals and doctors need to meet before they provide SRO to transgender individuals. However, it includes some requirements that stop transgender individuals from accessing to SRO. For example, since transgender people are regarded as mentally ill, the standard requests them to accept mental health therapy before they can be provided SRO. The standard also requires the transgender individual to have the desire for SRO for more than 5 years (internationally, it is usually one year) without any reversal. It also requires transgender individuals to get consent from their family members before SRO no matter what age they are. Last but not least, it also requires transgender individuals to have genital surgery before any secondary sexual characteristics change, which also contradicts international gender transition procedures.

#### **Rights to Marry and Establish Family**

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<sup>5</sup> Specific news could be found at: <http://aids.39.net/a/2010121/1556917.html>.

<sup>6</sup> Specific news could be found at: <http://politics.people.com.cn/GB/17060904.html>.

<sup>7</sup> Full Standard could be found at: <http://baike.baidu.com/view/3140460.htm>.

20. According to the Law of Marriage of PRC, marriage is only limited to a relationship between one man and one woman. Since same-sex marriage is not recognized legally in China, it is difficult for same-sex couples to enjoy a whole range of marriage benefits such as inherit properties from their partners and adopt children.
21. The needs for same-sex marriage have been expressed both by Chinese scholars and by the LGBT community. Since 2003, a researcher at the China Academy of Social Sciences, Dr. Li Yinhe (李银河), has been calling for the People's Congress and the Chinese People's Political Consultative Conference (NPC & CPPCC) to consider a same-sex marriage law. And on Valentine's Day 2012 and 2013, many same-sex couples went to the Ministry of Civil Affairs (MCA), and demanded their rights of marry, which attracted widespread media attention<sup>8</sup>.

#### **Political Environment for LGBT NGOs**

22. According to article 25 of the Constitution of the PRC, all citizens in China enjoy rights of freedom of association.
23. In recent years, the leaders of China have been promoting involvement and participation of civil society. For example, around the World AIDS Day in both 2011 and 2012, the Premier and Vice-Premier met with representatives from AIDS NGOs in China, and listened to their achievements as well as challenges. Several NGOs that works for MSM and gay communities were invited to attend the meeting. In January 2012, a recommendation was proposed to the NPC & CPPCC of Guangdong Province in order to promote the registration of PFLAG China under the MCA. It was the first time in China that the application for registration under the MCA for an LGBT organization was submitted.
24. However, there are still many obstacles and barriers for LGBT NGOs to fully participate in the political life within society. First of all, the dialogue between government and LGBT NGOs so far has been limited only to discussions of HIV prevention and treatment among the gay community. There is no opportunity for LGBT NGOs to advocate to have other needs addressed in order to promote equal rights for LGBT people in China. In addition, it is difficult for any NGOs to register under the MCA without a government affiliated organizations (挂靠单位). Thus all LGBT NGOs are currently running without legal status, which restricts them from accessing funding and other resources, and further prevents LGBT NGOs from developing professionally and provide better service to the community and the entire society.

#### **Recommendations**

25. To address the issues outlined above, we would like to propose the following recommendations to the government of China, and we are willing to work with the government to improve equal rights for LGBT people in China together with LGBT organizations in China.
  1. Establish anti-discrimination laws and regulations to ensure that LGBT individuals and other populations, such as people with disabilities and people living with HIV, enjoy equal rights at schools and in the workplace. Ensure legal assistance and psychological support are provided

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<sup>8</sup> If you want to know more about this news, please visit: <http://www.aibai.com/infoview.php?id=23056>.

to LGBT individuals, who have encountered stigma, discrimination and various types of bullying.

2. Establish laws and regulations that ensure fair and balanced reporting about LGBT issues communities and individuals in the media. Amend existing regulations so as to (1) reduce stigma against LGBT individuals and issues in Chinese media; and 2) remove broad content regulations censoring LGBT issues in the media and provide clear regulations that indicate that non-sexual LGBT content in media is permissible.
3. Develop consolidated curriculum throughout China about comprehensive sex education and ensure LGBT issues are included accurately and objectively.
4. Request corporations (both multi-national and domestic enterprises) to establish policies and regulations, that protect LGBT and other employees, such as people with disabilities and people living with HIV, from discrimination and other unfair treatment.
5. Re-consider real name registration for HIV testing and make sure the right to privacy for all who seek HIV testing is fully protected.
6. Remove transgender from the list of mental disorders in the CCMD.
7. Provide professional medical instructions and standards for hormone usage throughout China for people who want to change their sex characteristics through hormone usage.
8. Specify the government sector that is responsible for gender identity change in legal documents for transgender individuals. Amend the Sex Change Operation Technical Management Standard (《变性手术技术管理规范(试行)》) and ensure SROs are accessible for trans-sexual people. Transgender people should be included and consulted during the amendment process.
9. Approve same-sex marriage or domestic partnerships laws in China in order to protect the rights to marry and to found families for LGBT people.
10. Strengthen the dialogue between government and NGOs that work in a variety of areas, such as LGBT rights, environmental protections, people with disabilities and women's rights.
11. Establish policies or regulations for NGO registration under the MCA as non-profit organizations, which would also support government to better manage the social development programs in China.