

BEING LGBT IN ASIA: CHINA COUNTRY REPORT

A Participatory Review and Analysis of
the Legal and Social Environment for
Lesbian, Gay, Bisexual and Transgender (LGBT)
Persons and Civil Society



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This report documents the presentations and discussions from the three-day China National Lesbian, Gay, Bisexual and Transgender (LGBT) Community Dialogue, held 16–18 August 2013 with Day 1 in the United Nations (UN) compound in Beijing and Days 2 and 3 at a local hotel, as well from the November 2013 China-Asia Transgender Community Roundtable also held in Beijing. Additional information was collected from interviews with a variety of community participants and a desk review of published literature. Please note that due to constant and rapid changes in LGBT community development in China, there may have been recent developments that have not have been included in this report at the time of publication.

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ACRONYMS

| | |
|-----------|---|
| AIDS | Acquired Immune Deficiency Syndrome |
| CCM | Country Coordinating Mechanism |
| CCMD | Chinese Classification of Mental Disorders |
| CDC | Centre for Disease Control |
| CSRES | Civil Service Recruitment Examinations Standard |
| CSO | Civil Society Organization |
| CBO | Community Based Organization |
| FtM / MtF | Female-to-Male (transgender person) / Male-to-Female (transgender person) |
| HIV | Human Immunodeficiency Virus |
| HRT | Hormone Replacement Therapy |
| LGBT | Lesbian, Gay, Bisexual, and Transgender |
| MoCA | Ministry of Civil Affairs |
| MoH | Ministry of Health |
| MoPS | Ministry of Public Security |
| MoJ | Ministry of Justice |
| MSM | Men Who Have Sex with Men |
| MB | Money Boy |
| NPC | National People's Congress |
| NCAIDS | National AIDS Programme |
| NGO | Non-Governmental Organization |
| NHFPC | National Health and Family Planning Commission |
| OSF | Open Society Foundation |
| PLHIV | People Living with HIV |
| SOGI | Sexual Orientation and Gender Identity |
| SRS | Sex Reassignment Surgery |
| UNDP | United Nations Development Programme |
| UNAIDS | The Joint United National Programme on HIV/AIDS |
| UPR | Universal Period Review |
| USAID | United States Agency for International Development |

EXECUTIVE SUMMARY



Beijing IDAHOT (International Day against Homophobia and Transphobia) campaign at the Temple of Heaven

BACKGROUND

This report documents the presentations and discussions from the China National Lesbian, Gay, Bisexual and Transgender (LGBT) Community Dialogue (16–18 August 2013, Beijing), the Asia-China Transgender Community Roundtable (11 November 2013, Beijing), as well as additional desk research.

The China LGBT Community Dialogue brought together participants from all over Mainland China (not including Hong Kong, Macau or Taiwan). Approximately 60 people participated in Day 1 of the Dialogue from 40 institutions and organizations, representing the full range of China's LGBT community alongside representatives of the central government, the court system, universities, legal experts and legal-aid organizations and a broad range of civil society organizations. Over 140 participants took part in the next two days of Dialogue from a larger number of NGOs and CBOs from all over China. Ten transgender participants from across China and five transgender community experts from Hong Kong SAR, India, Nepal, the Philippines and Thailand too part in the China-Asia Transgender Community Roundtable. The Dialogue and Roundtable were jointly convened by the United Nations Development Programme (UNDP) and the United States Agency for International Development (USAID).

The Dialogue generated a comprehensive overview of the social, cultural and legal environment where Chinese LGBT people live and LGBT NGOs operate and included in-depth discussions on LGBT rights in China in the areas of: health, education, family, media, community development, employment and the law.

This report is a product of a broader initiative entitled 'Being LGBT in Asia: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society.' Launched on International Human Rights Day, 10 December 2012, 'Being LGBT in Asia' is a first-of-its-kind Asia-wide learning effort undertaken with Asian grassroots LGBT organizations and community leaders alongside UNDP and USAID. With a focus on eight participating countries – Cambodia, China, Indonesia, Mongolia, Nepal, the Philippines, Thailand and Viet Nam – the effort examines LGBT lived experiences from a development and rights perspective.

'Being LGBT in Asia' has a number of objectives. It encourages networking between LGBT people across the region, building a knowledge baseline and developing an understanding of the capacity of LGBT organizations to engage in policy dialogue and community mobilization. Through this work, 'Being LGBT in Asia' promotes understanding of the inherent human rights of LGBT people and the stigma and discrimination they face. It also outlines practical steps toward LGBT-inclusive development work for UNDP and the UN system, USAID and the US Government and other development partners through this report and other social and multimedia products. Finally, this initiative documents and highlights the views generated by LGBT participants at national community dialogues, linking stakeholders who are working to enhance LGBT human rights across Asia.

FINDINGS

This report provides an overview of LGBT rights in China as broadly related to law, policy, social and cultural attitudes, and more specifically to employment, education, health, family, media and technology, and community development. It identifies regional differences in LGBT acceptance and community development as well as important organizations working for the protection of LGBT rights.

Laws:

In the history of China homosexuality was never directly criminalized. From 1979 to 1997, an anti-hooliganism law criminalized male homosexuality in relation to sexual assault (forced anal sex with a minor). This law was often used to persecute or intimidate gay men in Mainland China. The law was finally abolished in 1997. It is worth noting that the anti-hooliganism law was never applied to female homosexuality. This is partly due to the fact that in China's traditional patriarchal society, sex without a male partner was not considered an actual sexual act (phallocentrism). Thus while lesbianism was never actively criminalized in China, this led to the almost complete invisibility of lesbians and bisexual women. Existing anti-discrimination laws are focused on a narrow definition of gender that includes women but excludes LBT people (e.g. lesbians, bisexual women, and transwomen). Same-sex marriage is not legally recognized in China. LGBT individuals have been victims of violence, extortion, and rape. But they are often afraid or ashamed to report such crimes to law enforcement officials due to the fear of ridicule and discrimination. Same-sex rape is not an offense punishable by law. The civil rights of LGBT people are not protected in a variety of areas, including adoption by same-sex couples, inheritance, joint property rights, cohabitation, and compensation in the case of divorce. Censorship laws explicitly ban homosexual content in any form in movies and television. This prevents a broader public discourse on LGBT people as well as sexual and gender identity.

Policies:

While there is no specific policy on LGBT people there have been a handful of positive policy changes related to sexual orientation and gender identity, mostly with regards to public health. In 2001, the Chinese Society of Psychiatry commissioned a working group to study the psychology of gays and lesbians, and research findings ultimately led to the removal of homosexuality and bisexuality from the official list of mental disorders in the

Chinese Classification of Medical Disorders 3rd Edition (CCMD-3).¹ In 2012, the National Health and Family Planning Commission (former Ministry of Health) changed the national blood donation policy from banning all “homosexual” donors to only “men who have sex with men.”² Due to the AIDS epidemic, over the last 15 years the Chinese Centre for Disease Control (CDC) and the National AIDS Programme (NCAIDS) have successfully lobbied for public health policies focused on men who have sex with men; however, broader sexual and reproductive health policies for LBT people remain weak, especially for transgender people. The National Health and Family Planning Commission’s Sex Change Operation Technical Management Standard³ requires transgender individuals to be diagnosed as mentally ill by medical workers, prove the desire for a sex change for more than five years, and get consent from their family members before sex reassignment surgery is allowed. Finally, although it is possible to change their gender on identity documentations after they have completed sex reassignment surgery, transgender people encounter difficulties in retroactively changing their gender on previously obtained educational certificates. Finally, legal registration of LGBT civil society organizations remains extremely difficult, especially at the Provincial level. This is the primary bottleneck for the development of the LGBT community.

Employment:

Workplace discrimination based on sexual orientation and gender identity is common and is not prohibited by any law or national regulation. As such, LGBT individuals, particularly transgender people, suffer discrimination in the workplace or find challenges securing a job. Many choose not to be open about their sexual orientation or gender identity. A survey of 2161 LGB Chinese people conducted in 2013 showed that 47.62 percent chose to remain completely secretive about their sexual orientation in the workplace.⁴ A number of organizations⁵ have begun working with the private sector on LGBT-friendly employment and human resources (HR) policies but this type of work is still in its infancy in China.

Education:

Bullying of LGBT students and discrimination in educational settings is an issue of serious concern in China, especially in rural and less developed areas. According to a survey conducted by Aibai Culture and Education Center in 2012, 77 percent respondents have encountered bullying on basis of sexual orientation or gender identity with a further 59 percent reporting negative consequences on their school performance as a result of bullying.⁶ The Chinese educational curriculum lacks information on sexual orientation and gender identity, because overall sexuality is considered a sensitive issue. Where sex education is available, the teachings always focus on standard hetero-normative frameworks, or often promote sexual abstinence, sometimes teaching the pathologization of homosexuality.

Health:

Health is a particular area of concern for LGBT people in China. A growing AIDS epidemic disproportionately affects gay men, other men who have sex with men (MSM), and transgender people. Gay men and transgender people living with or affected by HIV experience double stigma and discrimination for both their sexual

1 Wan, Yanhai. *Chinese Homosexuals Move Toward Normalcy*. (中国同性恋走向正常) Aizhixing Research Institute, 2001.

2 *Ministry of Health Removes Ban on Lesbians from Donating Blood*. Netease news, available in Chinese at <http://news.163.com/12/0709/23/860QBJ920001124J.html>, 9 July 2012.

3 *Sex Change Operations and Technology Management Standards*. Health Office of Medical Affairs No. [2009]185. Available in Chinese at <http://baike.baidu.com/view/3140460.htm>

4 *Online Survey Report on the Work Environment for China’s LGBT Community*. Aibai Culture and Education Center, May 2013. See http://www.aibai.com/ebook/library/ebook_aibai/download/2013/8/16/online_survey_report_on_the_work_environment_for_chinas_lgbt_community_en.pdf

5 Including Community Business, Am Cham Shanghai, Pink Dot and the Beijing LGBT Centre.

6 *Report of the Online Survey on Homophobic and Transphobic Bully at Education Institutions*. Aibai Culture and Education Center, May 2012. Available at [http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully\(1\).pdf](http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully(1).pdf)

orientation/gender identity and their HIV status. They experience discrimination within the health care system, the civil service (which still forbids people living with HIV to work for the State Civil Service System), and within the LGBT community itself. Other important health concerns include a rapid growth in sexually transmitted infections, and weak access to sexual and reproductive health as well as mental health services. The report highlights how the health issues of lesbian and bisexual women are often overlooked and require more focused attention. Health services targeted at transgender people are particularly weak, with safe hormone replacement therapy and sex reassignment surgery remaining costly and difficult to access within the official health care system. Access to psychological and mental health is a major issue, considering the immense pressures of discrimination, stigma, social ostracism and internalized homophobia still present in China. With depression and suicidal tendencies not uncommon in the LGBT community, research and attention to the mental health of LGBT people is necessary. This is heightened in those LGBT people who are living with HIV and who face double stigma. Finally, ten years after homosexuality was taken off the list of mental diseases in the 3rd Edition of the CCMD, many mental health workers, policy makers and educators are still unaware or unwilling to comply with this decision. These two factors contribute to a situation where many mental health practitioners, often pushed by the families of LGBT people, recommend or impose 'corrective treatment' on LGBT people, sometimes involving involuntary committal to psychiatric hospital wards.

Family:

As the central component of social life, the family unit is extremely important in China. Traditional family structures involve heterosexual marriage, childbearing, and a dominant parental role with little independence for children even after they have reached their adult age. However, rapid changes in society are affecting traditional family structures. Younger generations are gaining more room and say in their personal lives, even though this hasn't necessarily led to more self-determination in the area of sexual orientation and gender identity. Traditional Confucian notions, such as filial piety⁷, are still prevalent. Transgender individuals face the greatest challenges in their relationship with families, more so than gays and lesbians, because it is harder for one to hide gender expression than it is to hide sexual orientation, and Chinese culture puts more emphasis on gender norms than it does on sexual relationships. As same-sex marriage is not legal, many gay and lesbian individuals decide to enter "cooperation marriages" (known as Xing Shi Hun Yin in Chinese, or "marriage under cover") with each other. The lack of rights protection for same-sex couples, including adoption of children or custody of children in cases of termination of previous heterosexual marriages, remains an issue to be addressed. Judicial sensitization is especially needed to prevent unfair court rulings. Partly due to the One Child Policy, implemented since 1979, the younger generations face an increased pressure to bear children and to continue the family line. Under this policy, most families in urban areas of China are allowed to have only one child, who then is more likely to become the focus of parents' investment, discipline and expectation compared to children growing up with siblings. Combined with elements in traditional Chinese culture that exceptionally value family honour, offspring rearing and filial piety, this policy often brings to the only child in the family tremendous pressure in all aspects of social life. This kind of pressure may typically include: excellence in school, success in career, entering into a traditional heterosexual marriage, and the continuation of the family line. This pressure is especially burdensome for gay men as the male heirs of their families. Because of this, many still choose to hide their sexual orientation and enter into a heterosexual marriage, resulting in the suffering of their wives (known in Chinese as Tong Qi, "wife of a gay man").

⁷ In Confucian philosophy, "filial piety" is the virtue of respect for one's parents and ancestors. The term can also be applied to "general obedience" and means to be good to one's parents, to take care of one's parents and to bring a good name to one's family and ancestors.

Social and cultural attitudes:

Social and cultural attitudes towards homosexuality are changing gradually from traditional Confucian teachings and patriarchal restrictions to more tolerant ones. Historically, Chinese society and culture did not show strong objections against homosexuality. Chinese written history contains evidence of male same-sex desire and relationships dating back to as early as 650 BC. While there are few records of women's same-sex desire, historian Ying Shao recorded relationships between women that resembled husband and wife in the 2nd century AD.⁸ Buddhism and Daoism, the two most influential religions in Chinese history do not explicitly condemn homosexuality but generally do not encourage desire in any form. Overall, Chinese society and culture put more emphasis on sexual roles rather than on sexual orientation.⁹ Still, public opinion regarding non-traditional sexual orientation and gender identity remains predominantly negative today. A 2012 opinion poll of 1502 residents in Beijing, Shanghai, and Guangzhou showed that only 31 percent of participants accept gays and lesbians, and only 27 percent of survey participants indicated that there should be legal protections for sexual minorities.¹⁰ Given the relatively higher quality of education in these three cities as well as their metropolitan nature, numbers in support of LGBT rights are likely to be even lower in other regions of China. In 2013, a survey of 3491 Chinese people from cities throughout the country displayed similar results, with 68.5 percent of participants indicating that they could not accept homosexuality.¹¹ Discrimination towards and disapproval from family, relatives and acquaintances of LGBT people remain common as the latter are deemed to have deviated from traditional heteronormative family values.

Regional differences:

Without protective national laws or a national political discourse on LGBT issues, there exist stark regional differences in China in the development of LGBT communities, as well as in the levels of social acceptance towards LGBT people. Large cities and regional urban hubs show the greatest development of LGBT communities and organizations, as well as more tolerant social environments. This acceptance diminishes with the size of the city, leading to higher degrees of isolation of LGBT individuals in more remote rural areas. Data on LGBT organizations and communities in rural areas and in the western parts of China (such as in the provinces or autonomous regions of Tibet, Qinghai, Gansu, Xinjiang) is lacking. In addition to being considerably less developed than the eastern parts of the country, most of these provinces or autonomous regions are home to the majority of China's ethnic and religious minorities. It is clear that challenges faced by LGBT people of ethnic or religious minorities may be different and in some cases greater compared to LGBT people in the rest of the country. That said, certain parts of Buddhist and Islamic teaching can be interpreted to favour sexual and gender non-conforming people. LGBT community development in these regions is almost nonexistent, with only a few websites and online groups and only two grassroots organizations focusing on HIV and sexual health for gay men. In general, the challenges faced by LGBT people in Tibet, Xinjiang, and other western provinces or autonomous regions are compounded by the complexities of religion, ethnic minority relations, poverty, rural cultural attitudes, and broader socio-economic disparities.

Governmental engagement:

To date national and local governments have been largely silent on sexual orientation and gender identity related issues, taking a "not encouraging, not discouraging, not promoting" attitude. Currently no government department or specific Ministry sees itself responsible for LGBT issues and this prevents a broader conversation

8 Hirsch, Bret. *Passions of the Cut Sleeve*. University of California Press, 1990.

9 A.L. De Silva. *Homosexuality and Theravada Buddhism*. See <http://www.buddhanet.net/homosexu.htm>

10 *Survey for Homosexuality Acceptance: Beijing, Shanghai, Guangzhou Citizens' Acceptance of Homosexuality*. Available in Chinese at http://news.shangdu.com/401/20121102/13_5727705.shtml, 2 Nov 2012.

11 *Shanghai University of Communications Survey Indicates Traditional Ethics and Values Remain Common*. Available in Chinese at http://xmwb.xinmin.cn/html/2013-12/25/content_10_5.htm, 25 Dec 2013.

within state organs. However, various government departments have shown interest in learning more about LGBT issues. In the near future, a number of state organs could potentially be engaged in LGBT issues at the national level, including the National People's Congress (NPC) Standing Committee, the Chinese People's Political Consultative Conference (CPPCC), the Central Political and Legal Affairs Commission of the Communist Party of China, the Legislative Affairs Commission of the National People's Congress, the Supreme People's Court, the Legislative Affairs Office of the State Council, the Ministry of Civil Affairs, the Ministry of Education, the Ministry of Public Security, the Ministry of Justice, the Ministry of Human Resources and Social Security as well as the National Health and Family Planning Commission. Branches of the above state organs are also recommended to be engaged at the provincial level, along with government-sponsored organizations such as the All China Women's Federation, the All China Federation of Trade Unions and the Communist Youth League.

Media and technology:

Media and technology, especially social media, is playing an important role in allowing the LGBT community to network, advocate and promote the work of many non-governmental organizations (NGOs) and community-based organizations (CBOs). The Internet, particularly micro-blogs, is used to raise issues in the public sphere. However, there is a need for further training for LGBT organizations and individuals to become more media and technology savvy in advocating for LGBT equal rights. Broader public discourse of LGBT people and identities, as represented in mainstream media coverage, is still inadequate, often stigmatizing and based on common stereotypes. This is made worse by the fact that censorship laws ban homosexual content in any form in movies and television. This often has a negative impact on art and art exhibitions involving homosexual content as well as the publishing of books on LGBT topics). This leads to LGBT films, publications, and even websites facing unpredictable censorship and/or server disruptions. There is a lack of clarity from the government about censorship of LGBT content and crackdowns happen at unexpected times. However, in the last few years a number of LGBT-related publications have been produced, some as academic studies on the LGBT community and others as civil society publications focused on raising awareness around a number of issues (such as discrimination and how to do outreach on university campuses). There are also a growing number of LGBT NGOs that are dedicated to the development of educational materials aiming at the general public, which are widely distributed through networks of local LGBT groups across the country.

Community development:

There is little documentation or evidence about organized gay and lesbian life in the 1980s or before. In the mid-to late 1990s, organized social gatherings explicitly for lesbian and gay people began at both private residences and in commercial venues. Police raids and harassment were common for venues that attracted too much attention. With the development and expansion of the Internet in the early 2000s, gays, lesbians, and to a lesser extent bisexual and transgender people, began to form online forums to discuss experiences and connect with each other. As international HIV-related funding began to enter China in the early 2000s, MSM-focused funding led to groups starting to come to existence throughout the country. The majority of these groups did not involve programming for women or transgender people; because of this, the lesbian and transgender movements developed somewhat independently and more recently. Only in the early 2000s did Beijing see the development of lesbian women's groups. By 2010, the number of civil society organizations (CSOs) had increased dramatically, and many began positioning themselves "outward" to work with educators, psychologists, journalists, and non-LGBT community members, e.g. the general public. More recently, the International Day Against Homophobia and Transphobia has become an annual call to action for groups throughout the country to educate about LGBT anti-discrimination. Some groups also began engaging parents of gays and lesbians, straight allies, and building coalitions with other social movements, for instance, the women's movement. Over the last few years some diplomatic missions in China, foreign foundations, and other sources have begun funding some CSO

initiatives, and the work of these groups has expanded in scale. However, these groups are often disconnected and work in isolation, without strong partnerships with other CSOs and/or academic institutions, government agencies, or private sector companies. Overall, lesbian and gay community organizations are generally much more developed. Transgender and bisexual organizing has been much less visible, although it is becoming more active at least online. Unfortunately, tensions and conflicts are common within the LGBT community due to lack of communication, mutual discrimination as well as the unbalanced distribution of resources.

RECOMMENDATIONS FOR FURTHER ACTION



China National LGBT Community Dialogue, August 2013

The main purpose of these recommendations is to facilitate a dialogue between the LGBT community and the Chinese government, the private sector, academia and health providers to enable the community to better participate in the economic, social and cultural development of China.

The first set of recommendations is meant specifically for the Chinese government. This is followed by recommendations for LGBT community organizations. The five areas are: community development, education, health, family and employment, and media and technology.

1. Recommendations for the Government

- 1.1. Create a more enabling environment for LGBT CSOs:** Facilitate easier legal registration of LGBT community groups and the registration of social organizations on HIV prevention by enhancing the coordination between the Ministries of Civil Affairs, the Ministry of Finance, and the National Health and Family Planning Commission. International organizations could provide examples from other countries and technical support as needed.
- 1.2. Improve gender-sensitive legislation:** Amend current laws or adopt new laws and regulations in an LGBT inclusive manner and pay more attention to issues related to sexual orientation and gender identity (SOGI). Establish connections between the LGBT community and legal experts, deputies and

representatives from key offices such as the Legislative Affairs Commission of the National People's Congress and the Legislative Affairs Office of the State Council.

1.3. *Raise awareness:* Educate civil servants and judges to improve their knowledge of SOGI and LGBT issues at both local and central levels, including the Central Party School, the China Academy of Governance and other leading national administrative training centers with a focus on anti-discrimination.

1.4. *Inclusive development of LGBT culture and expression:* Lift the blanket censorship of films, literature and arts with same-sex plots or subjects. Stop the online filtering and monitoring of words like "homosexuality". Encourage objective and less discriminatory or stigmatizing media coverage.

1.5. *Protect LGBT rights through legislation and policy in a variety of areas:*

1.5.1. Introduce or revise existing anti-discrimination and anti-domestic violence legislations, making them LGBT-inclusive.

1.5.2. Establish regulations to protect partner rights such as joint property, hospital visits, adoption, and inheritance for same-sex couples, making them equal to married heterosexual couples.

1.5.3. Allow gender to be changed on education certificates when a transgender person's gender change is already recognized by other identity documents.

1.5.4. Reform the "Civil Service Recruitment Examination Standard" to allow HIV positive LGBT people to work in the civil service and public enterprises.

1.6. *Cooperate with LGBT community organizations, for example:*

1.6.1. Completely fill the financial gap created by the departure of the Global Fund to Fight AIDS, Tuberculosis and Malaria to support the prevention of HIV among gay men and other key populations.

1.6.2. Use the experience of HIV training to provide anti-discrimination and SOGI trainings to government workers and national officials through Party schools, administration academies and other training centers.

1.6.3. Reduce restrictions on sex and gender education, and include LGBT experts and community groups in the development of new sexual and gender diversity curricula.

1.6.4. Identify specific government departments or state actors to be made responsible for outreach and sensitization around LGBT issues. Use the experience from the national response to HIV to set-up an intergovernmental coordination mechanism on LGBT issues.

2. *Recommendations for the LGBT Community*

2.1. *Community Development*

2.1.1 *Community Cooperation:* More influential and established organizations are encouraged to reach out to those more underprivileged and marginalized groups as equal partners and peer mentors, in order to:

- Establish community networks and mechanisms for regular dialogues
- Share resources
- Provide technical support
- Promote cross-disciplinary work

- Include the experience and needs of the latter in national strategy formation and organizational decision-making of the former

2.1.2 *Strengthen Research*: Establish a coordination mechanism for academic institutions to do research on LGBT issues. The mechanism will:

- Examine issues such as sexual violence, HIV, transnational advocacy, societal change and social movements and the sexual rights of citizens
- Carry out community-based research, especially on requests from the community and in community-approved frameworks, to generate new data on a variety of issues such as violence, discrimination and cultural attitudes.
- Support the production of high-quality academic reports using both quantitative and qualitative methods to lay the foundation for community actions as well as policymaking and law reform
- Publish results through channels such as mainstream media, mail groups, journals, and academic conferences

2.1.3 *Support underdeveloped groups*: The Dialogue encouraged the establishment of more community organizations working with:

- College students to establish LGBT student bodies
- Transgender and bisexual people
- LGBT people from smaller cities, rural areas and western parts of China to form support groups

2.1.4 *Enhance training and technical capacity*: The Dialogue recommended training for LGBT groups including:

- In areas of SOGI, anti-discrimination, gender equality, organizational management, grassroots advocacy and policy advocacy
- Build professionalism in legal, health and media professions
- Understand and leverage international human rights processes related to sexual and gender minorities
- Establish mechanisms to attract high quality personnel and avoid loss of talent

2.2 Education

2.2.1 Identify existing textbooks and teaching materials containing erroneous information on SOGI issues and propose corrections to the relevant authorities

2.2.2 Integrate perspectives of sexual and gender diversity into new educational materials

2.2.3 Encourage and support student bodies, either LGBT or general ones, to carry out LGBT-inclusive sexual and gender education

2.2.4 Facilitate dialogue with the Ministry of Education to address concerns of transgender people, such as the gender change on education certificates and gender neutral facilities in educational settings

2.2.5 Work with teachers, educational institutions and educational authorities to stop school bullying on grounds of SOGI and create support groups for the victims of bullying

2.3 Health

2.3.1 Facilitate dialogue and collaboration with the related government departments to establish mechanisms for improving the broader health of LGBT persons. For now, it is suggested to

strengthen existing mechanisms that enable NGOs to discuss HIV issues, replenish the financial gap left by the departure of the Global Fund and engage in dialogue on other health issues

2.3.2 Support LGBT health-related policy and advocacy work at both local and national levels

2.3.3 Encourage LGBT individuals to have regular health checks, including receiving treatment for sexually transmitted infections

2.3.4 Survey and document the health needs of transgender people and lesbians, and develop recommendations and advocacy work accordingly

2.3.5 Examine and research existing mental health policies relating to the psychological well-being of LGBT people and document and advocate against practices such as conversion therapy

2.4 Family and Employment

2.4.1 Continue to change public opinion towards sexual and gender minorities through grassroots advocacy to foster an LGBT-friendly social environment

2.4.2 Establish connections among families and friends, such as through organizations like the Gay-Straight Alliance and Parents, Families and Friends of Lesbians and Gays (PFLAG) to strengthen social support for LGBT people

2.4.3 Continue to advocate for policymaking and law reform that protects partnerships and partner rights regardless of the gender of the individuals in the partnership

2.4.4 Develop a directory of LGBT-friendly companies in China, and host roundtables to explore ways of promoting equal employment opportunities for LGBT people and LGBT friendly HR policies

2.4.5 Examine existing employment policies relating to LGBT people in China and conduct comparative studies in other relevant regional or national contexts (i.e. the Global South)

2.4.6 Document workplace discrimination faced by LGBT employees and establish a corresponding action plan and engage the private sector in this work

2.5 Media and Technology

2.5.1 Raise awareness of professionals in the media industry on SOGI issues in order to reduce discrimination and stereotype of the community and train journalists to report more fairly on LGBT issues

2.5.2 Develop advocacy tools, cultural products and strategies applicable to new media platforms, such as micro-blogging, with the aim of promoting networking, disseminating information and tackling discrimination

2.5.3 Conduct research on the existing censorship policies on LGBT themed audiovisual products and propose changes to these policies

2.5.4 Work with mainstream publishers to release more publications related to sexual and gender minorities



INTRODUCTION

Lesbian, gay, bisexual and transgender (LGBT) people all over the world continue to face challenges. Examples include a lack of employment opportunities, and prejudice when accessing health care, housing and education. In other instances, “corrective rapes” are committed against lesbians, while the killing of members of the LGBT community continues in different countries despite increasing calls for equality and freedom from all forms of discriminations and oppression. Transgender Europe reported in 2012 that 1083 transgender people became victims of homicide from 2008 to 2012.

In 2011, the UN Human Rights Council (HRC) adopted resolution 17/19, which paved the way for the United Nations Office of the High Commissioner for Human Rights (OHCHR) to issue the first UN report on human rights and sexual orientation and gender identity (SOGI). In the report, evidence of the discrimination faced by people because of their sexual orientation or gender identity was presented including inequities in employment, access to health treatment, care, and support (TCS) and education, as well as criminalization, physical violence and murder (OHCHR, 2011). High Commissioner Navi Pillay challenged UN member states to help write a new chapter in UN history by ending the discrimination faced by LGBT people.

This call was echoed in a speech delivered in December 2011 by former US Secretary of State Hillary Clinton on LGBT rights on International Human Rights Day. As Clinton emphasized, LGBT people are an “invisible minority” who are arrested, beaten, terrorized and even executed. Many “are treated with contempt and violence by their fellow citizens while authorities empowered to protect them look the other way or, too often, even join in the abuse”. In 2009, for instance, a bill was introduced in Uganda that called for life in prison for homosexual offences. After much delay, sadly, in December 2013 the Uganda Anti-Homosexuality Act 2014 was passed by parliament and signed into law by the President in February 2014. Same-sex relations and marriage can be penalized by life imprisonment; even the ‘promotion’ of homosexuality is punishable by jail.

Meanwhile, in June 2013, a law was passed in Russia with a clause banning “the propagandizing of non-traditional sexual relations among minors”; with prescribed fines for providing information about homosexuality to people under 18 ranging from 4000 rubles (US\$121) for an individual to 1 million for organizations (BBC, 2013). To date, 83 countries and territories still criminalize LGBT behaviour; seven countries have a death penalty for same-sex relations; fewer than 50 countries punish anti-gay discrimination in full or in part; and only 19 countries ban discrimination based on gender identity.

On 6 December 2011, US President Barack Obama issued a Memorandum on International Initiatives to Advance the Human Rights of LGBT Persons. This memorandum directed all agencies engaged abroad to ensure that US diplomacy and foreign assistance promote and protect the human rights of LGBT persons.

On 7 March 2012, UN Secretary-General Ban Ki-moon delivered a message during a Human Rights Council meeting on violence and discrimination based on SOGI. He noted the pattern of violence and discrimination directed at people just because they are LGBT. He said, “This is a monumental tragedy for those affected – and a stain on our collective conscience. It is also a violation of international law.” More importantly, the Secretary-General stressed that “the time has come” to take action.



LGBT HISTORY AND ADVOCACY IN CHINA

Chinese written history contains evidence of male same-sex desire and relationships dating back to as early as 650 BC. In China’s traditional paternalistic society, sex without a male partner was not considered an actual sexual act; hence, there are few records of women’s same-sex desire, though historian Ying Shao recorded relationships between women that resembled husband and wife in the 2nd century AD.¹² Despite these references, sexuality in China was marked by the obligation and responsibility to reproduce. During the Imperial Ages, castration was considered a punishment and was required for working as a civil servant in the Imperial court. The rationale was that castrated civil servants would not pose a threat to the emperor or try to seize power, because eunuchs were incapable of having children. Some of the earliest teachings of Chinese philosophers degraded those who, regardless of sexual orientation, chose not to have children and pass on the family name. In this way, sexuality in China has been intimately tied with reproduction and family responsibility for thousands of years.

Homosexual behaviour in pre-1949 Chinese society was not demonized per se, so long as family responsibilities were being met. Buddhism, Daoism, and other indigenous religions are largely silent in regard to same-sex desires, even if both religions bolster traditional concepts of family structure and responsibility as well as freedom from any desires, including sexual desires. However, with the establishment of the People’s Republic of China, homosexuality became politicized, leading to tougher political and legal crackdowns. These became increasingly brutal during the Cultural Revolution from 1966 until 1976. After economic reform and opening up of the Chinese economy and society in the 1980s, the concept of “homosexuality” in its modern form became known to the Chinese public, but in this historical context many misunderstood homosexuality as an import from the West, denying the long histories of same-sex desire, cross-dressing and gender diversity native to China.

12 Hinsch, Bret. *Passions of the Cut Sleeve*. University of California Press, 1990.

Prior to the 1990s, the political risks were too large to organize public gatherings for gays and lesbians; because of this, there is little evidence about organized gay and lesbian life in the 1980s or before. In the mid- to late 1990s, organized social gatherings explicitly for lesbian and gay people began at both private residences and in commercial venues. Police raids and harassment were common for venues that attracted too much attention. With the development and expansion of the Internet in the early 2000s, gays, lesbians, and to a lesser extent bisexual and transgender communities, began to form online forums to discuss experiences and connect with each other. As global health and HIV-related funding began to enter China in the early 2000s, MSM-focused funding led to groups starting to come to existence throughout the country. The majority of these groups did not involve programming for women or transgender men; because of this, the lesbian and transgender movements developed somewhat independently and more recently than many of the gay men's and MSM organizations.

In the mid 2000s Beijing saw the development of lesbian women's groups that were focused on cultural promotion, social and mental wellbeing, and education for sexual minority women. In the following three to four years, more LGB groups developed in Guangzhou, Shanghai, and other major metropolitan cities; these groups were concerned with producing media, news, and culture that reflected the lived experiences of gays and lesbians. At the same time, some organizations, such as Chinese Lala Alliance, Aibai, and others, began to take on a capacity building and mentoring role for new groups throughout the country, fostering the development of new initiatives in less resourced regions. By 2010, the number of civil society organizations (CSOs) had increased dramatically, and many began positioning themselves "outward" to work with educators, psychologists, journalists, and non-LGBT community members. More recently, the International Day Against Homophobia and Transphobia has become an annual call to action for groups throughout the country to educate about LGBT anti-discrimination. Some groups also began engaging parents of gays and lesbians, straight allies, and building coalitions with other social movements. Diplomatic missions in China, foreign foundations, and other sources began funding some CSO initiatives, and the work of these groups expanded in scale drastically.

Nowadays in just about every major city there is some semblance of an organized group, often volunteer-led, that promotes the rights of LGBT people through community education and/or peer health support. However, these groups are often disconnected and work in isolation, without strong partnerships with other CSOs and/or academic institutions, government agencies, or private sector companies. Overall, lesbian and gay community organizations are generally much more developed. Transgender and bisexual organizing has been much less visible, although it is becoming more active. The bisexual community is mainly found online while offline activities are sporadic. Bisexuals face prejudice, sometimes being suspected of adultery from heterosexual people (as related to homophobia) and from homosexual people (who may not trust them as reliable same-sex partners). To date there is not one formally established transgender organization in Mainland China. While some groups have started working with transgender sex workers from an HIV or sexual health perspective, the transgender community remains mainly online in chat groups and forums and requires more support in creating structured and organized community-based organizations.



THE CHINA NATIONAL LGBT COMMUNITY DIALOGUE AND REPORT

The China LGBT Community Dialogue was hosted by UNDP on 16–18 August 2013 in Beijing. The Dialogue brought together participants from 40 institutions and organizations representing the full range of Mainland China’s LGBT community alongside representatives of the central government, the court system, universities, legal experts and legal-aid organizations and a broad range of civil society organizations. The China LGBT Community Dialogue involved participants from all over Mainland China and included in-depth discussions on LGBT rights in China in the areas of: health, education, family, media, community development, employment and the law.

The three-day consultation was organized by UNDP in partnership with the Beijing Gender and Health Institute and divided into two parts. The meeting on 16 August took place in the UN compound and was attended by approximately 60 people, including government representatives from the Supreme People’s Court and the Family Planning Association, key leaders of LGBT non-governmental organizations from across the country, representatives of marginalized groups, UN agencies, lawyers, academic researchers and media workers, and agencies that work on the intersecting areas of LGBT and women/disability rights. A focused effort was made to include a considerable number of representatives from distant, rural and often under-represented provinces or autonomous regions such as Tibet, as well as people living with HIV, ethnic minorities, and people with disabilities. The dialogue generated a comprehensive overview of the social, cultural and legal environment where Chinese LGBT people live and LGBT NGOs operate.

The dialogue continued into the weekend (17–18 Aug) at a local hotel where the focus was on dialogue within the LGBT community and including a much larger number of LGBT organizations. These two days of community dialogue included a larger number of NGOs and CBOs from all over China, with over 140 participants taking part. The focus of the discussions ranged from discrimination within the LGBT community, to supporting voices of transgender and bisexual groups, the different needs of LGBT people living with HIV, and how to understand and leverage international human rights processes for the LGBT community. The Community Dialogue helped to generate the Recommendations for Further Actions in this report. Please refer to the Executive Summary above for these recommendations in detail.

Transgender people were underrepresented at the China National Dialogue. To remedy this, UNDP China hosted the first *China-Asia Transgender Community Roundtable* in Beijing on 10 November 2013, bringing together 10 transgender participants from across China and five transgender community experts from Hong Kong SAR, India, Nepal, the Philippines and Thailand. During the roundtable transgender participants discussed the impact of Chinese law on transgender people¹³ and the stigma and discrimination faced by the community. Most importantly, they were able to exchange successful regional experiences on community mobilization, advocacy and law reform and identify priorities for the transgender community in China.

This report encompasses the findings of the two consultations held in Beijing in 2013. A brief history of LGBT community and advocacy in China is followed by a more specific analysis of LGBT

13 While national law allows transgender people to change their gender on ID cards and household registrations, the procedures are difficult and only accessible to those who have gone through full sex reassignment surgery. In addition, gender change is not allowed on many official documents, such as university degrees and other education certificates. This creates obstacles for transgender people in accessing employment and pursuing higher education.

human rights as related to laws, policies, social and cultural attitudes, regional differences and finally a list of important stake holders to engage in the protection of LGBT rights in China. The report then looks at the protection of LGBT rights within the categories of employment, education, health, family, media and technology, and community development. Specific case studies that illustrate the issues are included. The final section examines the capacity of Chinese LGBT organizations. It is important to note that while the concept of LGBT covers the majority of sexual and gender minorities, it still does not cover the full range of sexual and gender non-conforming people. However, in line with common terminology, this report uses the term LGBT to represent all sexual and gender minorities.



BEING LGBT IN ASIA

'Being LGBT in Asia: A Participatory Review and Analysis of the Legal and Social Environment for LGBT Persons and Civil Society', a collaboration between UNDP and USAID's regional office in Bangkok, seeks to understand, map and analyse the situation of LGBT rights in communities and countries by producing an analysis and review of the situation of the LGBT community and their human rights in specific countries in Asia. The initiative comes in the midst of human rights challenges faced by LGBT people worldwide, but increasing international engagement with the UN Secretary-General, UNDP Administrator, UN High Commissioner for Human Rights, as well as a number of international heads of State expressing concerns about protecting the rights of LGBT people.

By developing important new knowledge and connections, 'Being LGBT in Asia' seeks to improve the networking of LGBT organizations in South, East, and Southeast Asia and to inform policy and programming in the development context through a participatory process that emphasizes innovative approaches, including the use of videos, the internet, and social media platforms. The initiative aims to achieve two-way learning, establish a baseline vis-à-vis legal and human rights issues, and empower LGBT participants. It will also help to create multimedia and social media tools and resources, encourage youth leaders to engage and support LGBT civil society, and to improve the capacity of the US Government and the UN family to work with LGBT civil society organizations across Asia.

An important objective of 'Being LGBT in Asia' is bringing together emerging communities of practice among individuals and organizations working on LGBT issues throughout the region, in the eight focus countries in particular, including development partners, governments, LGBT civil society organizations, and faith-based organizations. By investing in and developing a network of creative interactions among agencies and grassroots development partners, stakeholders will be better positioned in the future to realize LGBT-inclusive development approaches and programming. In each country, the national community dialogue is the first key activity of the initiative.



OVERVIEW OF LGBT RIGHTS IN CHINA



China National LGBT Community Dialogue, August 2013

This section provides an overview of LGBT rights issues in China as related to laws, policies, social and cultural attitudes and regional differences. It also includes a summary of important national stakeholders that should be engaged in the protection of LGBT rights.



INTERNATIONAL NORMS AND NATIONAL LAWS

As a member of the United Nations, China is signatory to various international covenants promoting human rights. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (UNCRC), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention

Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the Convention on the Rights of Persons with Disabilities.¹⁴ China is signatory to the International Covenant on Civil and Political Rights (ICCPR) but has not ratified it. The respect and preservation of the human rights of all persons is also stated in the 1982 Chinese Constitution (Article 8 section 33).¹⁵ However, policies and regulations that are established to protect rights of vulnerable groups, do not include or mention LGBT people, and do not necessarily translate into practical protection against discrimination on the basis of sexual orientation and gender identity (SOGI).

Historically, there have been three major goals in the push for LGBT legal rights: decriminalization, anti-discrimination legislation, and legal recognition and protection for same-sex partnerships.¹⁶ In 1997, the National People's Congress revised a criminal law and removed "hooliganism," an ambiguous crime that was often used to harass gay men and transgender women. It should be noted that the abolishment of the anti-hooliganism law is often deemed as a milestone for the LGBT movement in China, and interpreted as significant as the ruling that made the anti-sodomy law unconstitutional (*Lawrence v. Texas*) and the position it occupies in the history of the LGBT movement in the USA.¹⁷ However, homosexuality as such has never been illegal in the People's Republic of China. The anti-hooligan law (article 160, chapter 6) was meant to punish specific same-sex behavior (forced anal-sex with minors). Therefore, the abolishment of this law should not be necessarily considered as a victory of LGBT movement.¹⁸

Anti-discrimination regulations exist in a variety of forms, including in the Constitution, laws on the protection of women, laws on the protection of the disabled, laws on the protection of minors and of seniors, and laws on employment, etc., but none of them explicitly defines sexual orientation and gender identity as a specific basis of discrimination.¹⁹ There is still a long way to go in terms of legal recognition and protection of same-sex partnerships, as the Chinese Marriage Law defines marriage to be the union only between a man and a woman. Some scholars' repeated appeals, such as those by Professor Yinhe Li, a researcher of the Chinese Academy of Social Sciences, for legalizing same-sex marriage have yet to receive a formal response from the National People's Congress. According to Wei Liu, China's leading public interest lawyer, criminal and civil affairs laws that commonly affect LGBT people include:

1 *Criminal affairs related to LGBT people*

- 1.1 Lack of proper legal protections leads to the majority of discrimination cases to go unreported and unnoticed. This relates especially to cases of extortion and violence towards members of the LGBT community (especially transgender sex workers) and between intimate sexual partners, as well as from public authorities, such as the security department. Victims of violence and extortion often do not report these cases to the police for fear of being further victimized.

14 United Nations Treaty Collection. See <https://treaties.un.org>

15 See Constitution of the People's Republic of China. Retrieved from <http://english.people.com.cn/constitution/constitution.html>

16 Participant (Xiaofei Guo, from the China University of Political Science and Law) shared his viewpoint during the National Dialogue.

17 Hildebrandt, Timothy, *Development and Division: the effect of transnational linkages and local politics on LGBT activism in China*, Journal of Contemporary China, 2012

18 Guo, Xiaofei, *Has China ever criminalized homosexuality?* 2012, retrieved from [http://www.sex-study.org/news.php?isweb=2&sort=76&id=1128&classid=](http://www.sex-study.org/news.php?isweb=2&sort=76&id=1128&classid;)

and *Homosexuality in China*, 2013, retrieved from <http://www.stopdv-china.org/detail.aspx?id=302501>

19 See Anti-Discrimination Laws Resource website <http://www.fanqishi.com/china.asp>

1.2 Same-sex rape is also a problem because the law clearly defines rape as an act committed against a woman. Rape of a man does not constitute a crime, unless it has caused considerable physical injury to the victim, in which case it could be sued as crime of wilful and malicious injury.

2 Civil rights related to LGBT people

2.1 Rights regarding property and inheritance are not protected during or after cohabitation. Same-sex couples have no legal status under the law. As a result, several rights such as those to share property between partners, inheritance rights and the right to raise children jointly, as well as obligations towards each other, are not protected or enacted by law.

2.2 Existing laws do not allow for joint adoption of children by same-sex couples. The probability of adoption through legal channels is very remote, as adoption can only be pursued as a single parent.

2.3 Monetary compensation does not cover LGBT individuals who have entered heterosexual marriage.²⁰ Even when there is evidence of homosexual cohabitation, the law and judicial decisions in these cases usually rule in favour of heterosexual partners in the marriage. The Beijing Intermediate Court published recommendations that in such marriages where gay men or lesbians hide their sexual orientation and remain married to their straight partners, this should be considered grounds for divorce.²¹ This unfairly penalizes gay men and lesbians who may have been forced to enter heterosexual marriages due to family pressure.



The law and transgender people:

While national law allows transgender people to change their gender on ID cards and household registrations, the procedures are difficult and only accessible to those who have gone through full sex-reassignment surgery (SRS). In addition, gender change is not allowed on many official documents, such as university degrees and other education certificates. This creates obstacles for transgender people in accessing employment and pursuing higher education.



POLICIES

The government's stance on LGBT people in general is ambivalent. Both central and provincial governments have thus far been largely silent on sexual orientation and gender identity related social issues, taking a "not encouraging, not discouraging, not promoting" attitude²². Additionally,

20 The Marriage Law (article 46) states that "under any of the following circumstances that lead to divorce, the innocent party is entitled to claim damage: a. bigamy; b. having a spouse cohabit with the opposite sex; c. perpetrators of domestic violence; d. maltreatment or abandonment of family members." Retrieved from http://news.xinhuanet.com/legal/2003-01/21/content_700622.htm But these conditions only apply to heterosexual marriage. Cohabiting LGBT couples are not recognized and protected.

21 *Court proposals for the withdrawal of marriage for homosexuals*. The Beijing News, available in Chinese at <http://www.bjnews.com.cn/news/2013/01/11/243869.html>, 11 Jan 2013.

22 Mountford, Tom. *China: The Legal Position and Status of Lesbian, Gay, Bisexual and Transgender People in the People's Republic of China*. Retrieved from: <http://iglhr.org/content/china-legal-position-and-status-lesbian-gay-bisexual-and-transgender-people-people%E2%80%99s>, 2009.

the Chinese legal framework has different levels, which gives different legal authorities to laws (first level), administrative regulations (second level), the decrees of government departments (third level), and opinions/suggestions by government departments (fourth/fifth levels). Although government policies are lower than the law in terms of legal authority, they are sometimes legally binding and need to be observed, especially when the relevant government department oversees the implementation of a policy. Broadly, however, a gender perspective is often absent in state decision-making processes, and when occasionally policy-making is gender-sensitive, it is restricted to the binary and hetero-normative gender structure consisting of only male and female, which does not address concerns of sexual and gender minorities.

LGBT-related policies are largely limited to public health matters. However, the public health sector does not recognize gay populations based on their sexual orientation; instead, it categorizes them as men who have sex with men (MSM) on the basis of sexual behaviour. While all sexually active gay men are MSM, not all MSM identify as gay. Gay men and other men who have sex with men are disproportionately affected by the HIV epidemic. In China, public health policy is focused on HIV (and MSM are considered by the National Health and Family Planning Commission as a key population affected by HIV), and concerns with sexual minorities are also mainly focused on MSM. While transgender people are considered a key population in many Asian countries, there has not been much attention on them in China.

In some ways, however, the HIV epidemic has brought sexual minorities, in particular gay men, to the attention of public policymakers and HIV organizations have provided a safe space for gay men to organize and mobilize. With the help of the government and international assistance (such as through the Global Fund to Fight AIDS, Tuberculosis and Malaria), the participation from MSM communities in making policies on HIV related regulations, monitoring decision-making process, and implementing HIV prevention strategies has drastically increased. For instance, many grassroots organizations have played an important role in using resources meant for the LGBT community from the Country Coordinating Mechanism (CCM) of the Global Fund to reach their intended beneficiaries. Unfortunately, other key populations such as lesbian, bisexuals and transgender people have not been brought to the attention of policy makers in China, and the visibility of MSM and gay men overshadows other sexual and gender minorities.

At the same time, discrimination related to HIV will have an affect on those gay men and MSM who are HIV positive. Some businesses follow the “Civil Service Recruitment Examination Standard” which requires employees to get tested for HIV and leads to the dismissal of those found to be HIV positive.

As for policies specifically involving transgender people, in 2008, the Bureau of Public Security issued approval for household registration (known as Hu Kou in Chinese) after sex-reassignment surgery.²³ Hu Kou registration refers to a household registration record that officially identifies a person and the person’s residence in the area. This move meant that transgender individuals could re-register with a different gender after SRS, signifying the official recognition of transgender people (although to re-register, they have to go back to the place where they were born and

23 Hukou Registration refers to “a record in the system of household registration required by law in the People’s Republic of China (mainland China). The system itself is more properly called ‘hujū’, and has origins in ancient China. A household registration record officially identifies a person as a resident of an area and includes identifying information such as name, parents, spouse, and date of birth. A hukou can also refer to a family register in many contexts since the household registration record is issued per family, and usually includes the births, deaths, marriages, divorces, and moves, of all members in the family.” See http://en.wikipedia.org/wiki/Hukou_system

where their name in the household was originally registered).²⁴ In 2009, the NHFPC released the Specifications for the Management of Sex-change Technology (Trial). However, it only specified technological requirements with regard to SRS and not specific guidelines about the protection of transgender rights.²⁵ No specific responsibility has been assigned to a government sector to support transgender individuals who have gone through SRS to change their gender on important documents relating to school, health or occupation. This still leaves most transgender people facing problems related to education and employment. For example, their degrees and diplomas are often obtained before transition and are not recognized in job applications after SRS.²⁶



Asia-China Transgender Community Roundtable, November 2013

Participants in the Transgender Roundtable expressed the need to train health professionals on transgender issues, in particular relating to medical procedures and post-surgery care. However, improving their knowledge on SOGI issues would play a crucial role in dispelling myths and challenging stereotypes among health care providers. Addressing the discrimination that transgender persons experience in health facilities is as important as developing proper medical procedures. Right now, medical professionals are often not willing to help transgender people access needed health care/medical resources, and in cases that they do agree to help, they usually require very strict conditions as stated in the MoH policy regarding SRS. This typical pathology-based model should be replaced by a trans-health model highlighting spectrum of bodies and genders, harm reduction and advocacy, informed consent, peer expertise, self-determination and non-disordered gender complexity.

Most importantly, legal registration of LGBT organizations remains extremely difficult, and this is the primary bottleneck for the development of the LGBT community. In early 2014, an activist from Changsha, the provincial capital of Hunan, attempted to register an LGBT non-profit organization

24 Ministry of Public Security on issues related to gender change after sex change operation

25 Demanding threshold is set by this MoH policy for transgender people who wish to undergo SRS, such as consent from family and public security department, age above 20, unmarried status, diagnosis of transsexualism lasting for no less than 5 years, real life experience as the chosen gender for no less than 2 years, psychotherapy for no less than 1 year and proved to be a failure, and foreseeable sexual orientation after sex change tested by psychologist to be heterosexual. See <http://news.sohu.com/20090616/n264560430.shtml>

26 *Online Survey Report on the Work Environment for China's LGBT Community*. Aibai Culture and Education Center, May 2013. See http://www.aibai.com/ebook/library/ebook_aibai/download/2013/8/16/online_survey_report_on_the_work_environment_for_chinas_lgbt_community_en.pdf

with the local Civil Affairs Bureau. The government bureau responded that homosexuality is at odds with traditional Chinese culture and denied the application. This activist and a network of other activists are currently applying for official information disclosure as to the specific legal rationale for the application denial.²⁷



CULTURAL AND SOCIAL ATTITUDES

Homosexuality and same-sex relationships often come into conflict with Chinese cultural traditions and so face disapproval from society. Confucianism does not explicitly express negativity towards homosexuality, but instead condemns the inability of same-sex couples to procreate. According to Confucianism, there are three forms of unfilial conduct, of which the worst is to have no descendants (known in Chinese as “Bu Xiao You San, Wu Hou Wei Da”). As described before, Buddhism, Daoism, and other indigenous religions are largely silent in regard to same-sex desires.

While LGBT people in China face stigma and discrimination in China, this does not tend to lead to hate-based violence. In China, stigma and discrimination are expressed in seemingly mild but pervasive ways, such as in close surveillance of activities or behaviour, and the rigorous disapproval of non-conforming sexual or gender practices from one’s parents, relatives, friends, colleagues and acquaintances.

Homosexuality in China has traditionally been considered a sexual hobby or addiction that is not associated with one’s inherent identity. Tolerance was shown towards people who were not explicitly open about their sexual orientation, so long as they acted according to the generally accepted gender norms of society and accomplished their duties of heterosexual marriage and procreation. In specific periods of history (such as the Ming and Qing dynasty), it was even fashionable for higher social classes to have homosexual relationships.²⁸ However, those who were openly homosexual faced the danger of ostracism and even persecution. Chinese society’s mild reactions to homosexual behaviour could partially be attributed to the lack of a strong religious belief in the majority of population. China’s indigenous schools of thoughts such as Buddhism and Taoism do not condemn homosexuality in principle and impose no penalties on homosexual behaviour. However, Christianity has spread in China in recent years, particularly through missionary work aimed at university students and other young people by foreign Christian conservative churches; with this, viewing homosexuality as a sin is on the rise.

Overall, public opinion regarding sexual orientation and gender identity remains predominantly negative today. A 2012 opinion poll of 1502 residents in Beijing, Shanghai, and Guangzhou showed that only 31 percent of participants accept gays and lesbians, and only 27 percent of survey participants indicated that there should be legal protections for sexual minorities.²⁹ Given the relatively higher quality of education in these three cities as well as their metropolitan nature, numbers in support of LGBT rights may be even lower in other regions of China. In 2013 a survey of 3491 Chinese people from cities throughout the country displayed similar results, with 68.5 percent of participants indicating that they could not accept homosexuality.³⁰

27 *China’s Xiang Xiaohan: First gay man to sue the government*. BBC News, <http://www.bbc.com/news/world-asia-china-26631161>, 27 Mar 2014.

28 Zhang, Jie, *Homosexuality in Ancient Cities in China*, China Sexuality Science, Issue 07, 2007. (张杰, 古代城市中的同性恋, 中国性科学 2007年07期)

29 *Survey for Homosexuality Acceptance: Beijing, Shanghai, Guangzhou Citizens’ Acceptance of Homosexuality*. Available in Chinese at http://news.shangdu.com/401/20121102/13_5727705.shtml, 2 Nov 2012.

30 *Shanghai University of Communications Survey Indicates Traditional Ethics and Values Remain Common*. Available in Chinese at

In addition to these public opinion polls, LGBT CSOs and some Universities have conducted preliminary surveys that expose serious concerns about pervasive institutional and structural discrimination. In 2009, Common Language conducted a survey of 900 lesbian and bisexual women about family violence, and 48.2 percent of survey participants reported violence and abuse from parents and relatives including involuntary committal to psychiatric wards, while 42.2 percent reported intimate partner violence with same-sex partners.³¹ Central Southern University in Changsha recently released a report that surveyed 418 gay men about dating violence.³² The report indicates that 32.8 percent of men experienced abuse, and among these, 83.9 percent of men never told anyone about the incidents. Both studies also highlight how many LGB victims of violence or discrimination cannot have access to justice and social services, such as legal aid or counselling. In May 2012 Aibai and Associated Gay/Les Campus released a survey showing that among 421 LGBT student survey participants, 77 percent had experienced at least one form of bullying.³³ The Rainbow Media Awards media-monitoring project found that among 931 media reports about the LGBT community in 2012, 50 percent portrayed the LGBT community negatively. Among these negative reports, 17 percent associated homosexuality with crime and/or with spreading HIV. Finally, in early 2013 Aibai conducted a survey of 2161 LGB Chinese people showed that 47.62 percent chose to remain completely secretive about their sexual orientation in the workplace.³⁴ While these studies are not completely representative of the entire Chinese LGBT community, they touch upon some of the major issues faced by LGBT people in China.

To date, transgender people face the greatest challenges. Transgender people in China, especially members of the male-to-female (MtF) subgroup, are more likely to take up jobs as sex workers, entertainers and performers due to the socioeconomic challenges and discrimination they face. However, following the public appearance of some famous transsexual artists, particularly on mainstream television, the social understanding of transsexual³⁵ experiences has increased in China. The female-to-male (FtM) community is less visible compared to its MtF counterpart. In fact, FtM transgender people are less likely to be involved in show business and are under increased pressure to stay in the closet even after transition. Partly due to the invisibility of the FtM community in China, some female-bodied gender nonconforming people struggle and have inadequate access to transgender-specific psychological and medical resources. For the moment, they identify as masculine lesbian women but actually live with considerable gender dysphoria and find themselves struggling to fit in the prevalent lesbian gender roles of butch/femme (“T/P” or “tomboy/tomboy’s wife” as put precisely in Chinese),

Finally, intersex people remain the most misunderstood and marginalized sexual and gender minority in China. Information and research on intersexuality is even less available than it is for other LGBT groups. However, while the visibility of intersex people is improving, their public image

http://xmwb.xinmin.cn/html/2013-12/25/content_10_5.htm, 25 Dec 2013.

31 *Summary Report: Domestic Violence against Lesbian and Bisexual Women in China*. Common Language, 2009

32 Yu, Y. and Liu, K. Q. *Dating Violence among Gay Men in China*. Available for pay at <http://jiv.sagepub.com/content/28/12/2491.refs> 20 Mar 2013.

33 *Report of the Online Survey on Homophobic and Transphobic Bully at Education Institutions*. Aibai Culture and Education Center, May 2012. Available at [http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully\(1\).pdf](http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully(1).pdf)

34 *Online Survey Report on the Work Environment for China’s LGBT Community*. Aibai Culture and Education Center, May 2013. See http://www.aibai.com/ebook/library/ebook_aibai/download/2013/8/16/online_survey_report_on_the_work_environment_for_chinas_lgbt_community_en.pdf

35 The term “transsexual” rather than “transgender” was used here and only here throughout all this report, because in China the public perception of transgender phenomenon is still limited to the transsexual part of the story, as in Chinese language such people are referred to as “Bian Xing Ren” – persons who underwent sex change; the more inclusive definition of “transgender” – “Kua Xing Bie”, meaning persons who transgress gender boundaries – is primarily only used by activists and not yet accepted by the general public.

remains negative. Reports about intersex infants and children in the media are still commonly linked to family shame and the need to perform gender normative surgeries. These reports often use a sensational tone, while they reflecting on the gender normative ideology that ultimately causes their suffering. Moreover, as the parents retain ultimate rights on the determination of their children sex, the voice of intersex children is rarely heard. In the very rare cases in which intersex individuals were not forced into surgery (usually in remote and poor areas where health care resources are scarce and family economic conditions are inadequate), they require specific health care and psychological services that are difficult to access while dealing with heightened discrimination from family, medical workers and broader society.



REGIONAL DIFFERENCES WITHIN CHINA

In China, like in elsewhere of the world, the LGBT community is characterized by diversity. While the respective experiences of lesbian, gay, bisexual and transgender subgroups may be distinct from each other, the connotations of being LGBT in different regions of the country also vary to a great extent. Although generally the prevalence of hetero-normativity explains much of the discrimination and injustice suffered by sexual and gender minority people in China, the stark imbalance in socio-economic development, cultural and custom difference, as well as the inconsistency between national laws and policies with local laws and policies, (taking account of the vast regional/provincial difference of the nation), contribute to large regional differences in LGBT issues. Age, educational background, occupational status and income, as well as residency in a larger or smaller city, or in the west or east of China are all factors that impact the favorable public acceptance of homosexuality.

The development of the LGBT community and organizations is relatively mature in major cities, especially regional hubs, such as Beijing, Shanghai, Guangzhou and Chengdu. In these locations, there are more opportunities for LGBT individuals to have active social interaction, engage in a variety of activities, and have easier ways of contacting each other. Such locations also witness a more tolerant social environment, more organizational resources and less risk involved in public advocacy.

Nowadays, a few LGBT organizations exist also in second and third-tier cities³⁶ but they are of a smaller scale. However, the fewer number of openly LGBT organizations and a lack of social tolerance in these cities, still mean that the exposure of one's sexual orientation could bring about severe consequences including discrimination, ostracism and persecution from one's families and social networks. As a result, in such places LGBT activities are primarily limited to the Internet, where anonymity is ensured.

There is still no systematic data on LGBT organizations and communities in rural areas and in the western parts of China (such as in the provinces or autonomous regions of Tibet, Qinghai, Gansu, Xinjiang). In addition to being considerably less developed than the eastern parts of the country, most of these provinces are home to the majority of China's ethnic and religious minorities. While more data and research is needed on these areas, it is clear that challenges faced by LGBT

³⁶ There is no universal definition as to what a first, second, and third tier city is. The Rightsite criteria include population, economic input, economic growth, geography, transportation, historical and cultural significance. See research conducted by Rightsite, *Defining China's Second and Third Tier Cities: An attempt at setting standards for what qualifies as a second or third tier city in China*. Michael Cole, 2009; Retrieved from <http://rightsite.asia/en/article/defining-chinas-second-and-third-tier-cities>

people of ethnic or religious minorities may be different and in some cases greater compared to LGBT people in the rest of the country. It is also clear that LGBT community development in these regions is almost nonexistent, with only a few websites and online groups and only two grassroots organizations, all focusing on HIV and sexual health for gay men. To date, however, lesbian, bisexual and transgender people have had almost no or very limited visibility in these regions.

Basic information is available on the autonomous regions of Tibet and Xinjiang and the national dialogue included participants from both provinces. Mahayana Buddhism and Sunni Islam are the primary religions respectively in Tibet and Xinjiang. Both provinces are the only areas in China with a majority of the population being part of an ethnic or religious minority and these places are known to have a higher rate of the population who are religious compared to other provinces. In this context, religion plays a role in social attitudes towards homosexuality. Participants at the national dialogue stated that LGBT organizing in Xinjiang can be harder than in other parts of the country because homosexuality is also seen as going against religious and ancient traditions. Generally speaking, in China both religions condemn sexual behaviour between two persons of the same sex (oftentimes referring to two males) in either their scriptures or in statements by religious leaders. As a result, non-heterosexual people living within religious communities face extra challenges as their religion disapproves or even punishes their sexual practices and identity.

However, one should also note that it is not accurate to say that religious teachings only present a hindrance to local LGBT people, nor it is accurate to say that religion is the main factor to blame when looking at the discrimination and violence faced by LGBT people in these regions of China. In fact, certain parts of Buddhist and Islamic teaching can be interpreted to favour sexual and gender non-conforming people (e.g. some gods/goddesses in Buddhism are gender bending or gender fluid; senior Buddhist leaders in Tibet have spoken in favour of LGBT rights and recognition; and the concept in Islamic law known as “ijtihad” encourages Muslims to think independently and address new problems in accordance with basic Islamic principles and spirit). Overall, however, challenges faced by LGBT people in Tibet and Xinjiang, as well as other western provinces or autonomous regions, are also compounded by the complexities of ethnic minority relations, poverty, rural cultural attitudes and broader socio-economic inequalities. More research on the issues faced by LGBT people in the autonomous regions of Tibet, Xinjiang, Ningxia, Guangxi and Inner Mongolia is needed and would help to paint a more complete picture of LGBT issues in mainland China.

With the process of urbanization and the increase of population mobility, the visibility of LGBT people among rural-to-urban migrant workers has begun to rise. However, there is hardly any research on the sexuality of these migrant workers. It is generally understood that migrating to cities is economically more rewarding than staying in the countryside, and it also provides migrants with a more tolerant environment compared to rural society which is characterized by the homogeneity of population, the lack of anonymity and the dominance of traditional ethics. On the other hand, it is also notable that in comparison with native city dwellers, most migrant workers are poorer in terms of income and have less access to housing and public services such as health care. Their mobility from rural to urban areas does not necessarily set them free from their existing social ties to families, relatives and fellow villagers who in China are the main source of rigorous disapproval of one’s non-conforming sexual or gender practices. In light of this, discrimination, violence and rights violations suffered by LGBT migrant workers are worthy of concern and need further research.



IMPORTANT STATE ORGANS FOR THE PROTECTION OF LGBT RIGHTS

To date only a very limited number of government agencies have been involved in work to support the LGBT community. These include the research departments of the Supreme People's Court, the Sociology Department at the Central Party School, and some governmental agencies from the National Health and Family Planning Commission at the provincial level. Under the current Chinese political structure, a few governmental departments should be involved in LGBT issues in the future. In terms of the legal system at the national level, important organizations include the Central Political Committee, the National People's Congress (NPC) Standing Committee, the Legislative Affairs Commission of the National People's Congress, the Legislative Affairs Office of the State Council, the Supreme People's Court, the Ministry of Public Security, the Ministry of Justice and other legislation, law enforcement and judicial organs.³⁷ Specific government-sponsored civil society organizations could also be involved in specific areas of LGBT rights protection. For example, the All China Women's Federation and the Communist Youth League could play a role in sexual and gender minority women and youth, while the All China Disabled Persons' Federation could empower disabled LGBT persons. The All China Federation of Trade Unions, along with the Ministry of Human Resources and Social Security could tackle the discrimination issues for LGBT people in work place.

³⁷ There are a variety of initiatives these above-mentioned governmental departments could potentially take. For instance, NPC Standing Committee is suggested to consider accepting proposals submitted from LGBT community, e.g. the proposal of legalize gay marriage. The ministry of Public security is suggested to work closely with transgender community to create easier access to gender change on personal documents. The State Supreme People's Court is suggested to provide training to judges on LGBT related issues.



PROTECTION OF LGBT RIGHTS IN CHINA



IDAHOT (International Day against Homophobia and Transphobia) Brown Bag Lunch at UNDP China Office, May 2014

The following section provides an overview of the protection of the rights of LGBT people in six areas: employment; education; health; family; media and technology; and community development.



EMPLOYMENT

China's Labor Law and Employment Law lack anti-discrimination regulations pertaining to sexual orientation and gender identity (SOGI). Article 12 of the Labor Law only specifies that there should not be discrimination in business entities based on the factors of ethnicity, gender (applicable only

to the male-female binary in this context) and religion. Therefore, discrimination on the grounds of sexual orientation or gender identity is not prohibited by law.

Currently, there is a lack of clarity on laws regarding homosexuality and treatment of homosexuals varies in different legal entities, government and business organizations (such as trade unions, companies and corporations). Some departments, units and organizations take no action if they find out their employees are LGBT; some apply penalties such as salary reductions, disadvantageous reallocation and prolonged probation; while others terminate employment and even expel LGBT members from Communist Party membership.³⁸ For many LGBT people, however, discrimination starts before they are employed. It is easier for gender-conforming LGBT individuals to find employment than gender non-conforming counterparts. This is especially true for transgender people.

As most sex reassignment surgeries are conducted after transgender people have left school, their education and degree certificates often document a gender different from what they now identify (as described in the 'education' section below). This may lead to the disclosure of their sex change in the workplace, resulting in discrimination or even dismissal. Partly because of the difficulty in finding other employment options, a considerable number of MtF transgender people in China are involved in sex work. A majority of them at some point end up in police custody and are often charged with prostitution.³⁹ They are some of the most marginalized population in contemporary Chinese society, living with the double stigma of being both sex worker and transgender. The harsh criminalization of prostitution in China leaves transgender sex workers especially vulnerable to many other types of discrimination, violence and also to HIV transmission. In fact, for fear of arrest or being discriminated against, they are often unwilling or unable to access HIV prevention and treatment services. Finally, with the HIV epidemic in China mostly concentrated in sexual and gender minorities, many gay and transgender people living with HIV still face institutional discrimination. In fact, some businesses follow the "Civil Service Recruitment Examination Standard" which requires employees to be tested for HIV and leads to the dismissal of those found to be HIV positive.

In 2010, multinational companies such as Google, Cisco, Apple, Credit Suisse, Deutsche Bank, and Facebook began to give employment benefits to LGBT employees; however, indigenous companies have not adopted similar measures. In 2013, Aibai initiated the *Chinese Enterprise LGBT Employee Internet survey*. The survey provides some baseline knowledge about LGBT workplace issues and found that in Chinese owned enterprises most LGBT employees do not disclose their identities. 47.62 percent of the respondents choose to remain completely secretive about their sexual orientation or gender identity in the workplace. 45.63 percent choose to be open but only to close friends and some of their colleagues. Those who choose to be completely open only accounted for 6.29 percent and only 0.46 percent decided to be open with their superiors. This suggests that a diverse corporate culture that includes sexual and gender diversity needs to be encouraged with senior managers to be made aware of how individual differences can contribute to economic and business success. A corporate culture encouraging and promoting diversity could encourage and motivate LGBT employees. This in turn would increase productivity and be good for the bottom line of companies.⁴⁰

38 Li, Yinhe, *Legal Status of Homosexuals in China*. Available in Chinese at <http://www.cssm.org.cn/view.php?id=29414>, 2009

39 Wan Yanhai, Hu Ran, Guo Ran, Linda Arnade, "prostitution is illegal in China." *Discrimination against People living with HIV/AIDS in China. Equal Earth Review* (4), 2009.

40 *Online Survey Report on the Work Environment for China's LGBT Community*. Aibai Culture and Education Center, May 2013.

CASE
STUDY
#1**THE JOURNEY OF A TRANSGENDER SEX WORKER**

After graduating from secondary school, Xiaoyun went to work in a business. Because he could not wear his preferred women's clothes, he wore gender-neutral clothes. The manager in the company talked to him several times about his clothing and asked him to dress "normally". But he did not make any changes to his attire. Finally, he was dismissed in 2005. After leaving the enterprise, he became a sex worker. Later, he grew his hair long, met some other transgender people, and continued to provide sexual services.

In 2008, he was considering undergoing breast augmentation surgery. This required a written documentation to show his consent, which also required his family's signature. Despite these cumbersome procedures, he completed them with the help of his colleagues and sisters. By the end of 2011, Xiaoyun had decided to undergo surgery and remove his male genitalia. In mainland China, such surgery requires numerous approvals: the consent of the family; a certificate of mental health issued by a professional mental health agency to ensure the individual has wanted sex change for more than 5 years; and related certificates issued by the Public Security Bureau, such as proof of no criminal records.

Ultimately, her surgery was very successful. Her parents strongly disagreed with acknowledging her sex change in her household registration and identification documents. Xiaoyun also considered changing jobs, but when she tried to find a new job, she found it difficult as her new colleagues always looked down upon her with surprise or sympathy and stigmatized her. She still works as a sex worker even though she prefers other forms of employment. Her problems with legal documents and gender identification remain as a result of her parents' disapproval.

**EDUCATION**

This section analyses LGBT issues in education by focusing on the general lack of education about sex and gender, the stigma towards LGBT people in sex education, and the current status of LGBT community in schools and universities.

Outdated and Inadequate Sex and Gender Education

Sex education in China is still weak and often is not part of the mainstream Chinese educational curriculum. When carried out, sex education lacks information about sexual minorities, not only because of the government's policy of "not encouraging, not discouraging, not promoting", but also because sexuality is still a sensitive issue.⁴¹ Where it exists, sex education places an emphasis on abstinence and premarital chastity and rarely on sexual diversity or even sexual health. However, sex education is indispensable for many reasons: better physical, emotional, mental and social wellbeing in relation to sexuality, as well as the prevention of HIV and other sexually transmitted infections (STIs) as well as better protection of the minor and the youth against sex crimes.

This past year, some education and public health institutes as well as family planning divisions are beginning to implement sex education among teenagers and college students in some pilot areas. For example, the project "Outline of Sexual Health Education in Primary and Middle Schools in Beijing City" began carrying out pilots in 30 middle schools and 18 primary schools from 2011.

See http://www.aibai.com/ebook/library/ebook_aibai/download/2013/8/16/online_survey_report_on_the_work_environment_for_chinas_lgbt_community_en.pdf

41 Mountford, Tom. *China: The Legal Position and Status of Lesbian, Gay, Bisexual and Transgender People in the People's Republic of China*. Retrieved from: <http://iglhr.org/content/china-legal-position-and-status-lesbian-gay-bisexual-and-transgender-people-people%E2%80%99s>, 2009.

In the same year, the Sichuan Province Education Bureau conducted in Chengdu the “Regional Promotion of Children and Adolescents’ Health Education”. This was a series of activities integrating adolescent sexual health education into the school curriculum of the fifth and sixth grades of primary school and middle school. A number of donor organizations have provided long-term support for the Renmin University Sociology Research Institute and other research organizations, and NGOs such as Marie Stopes International have promoted research and the implementation of sex education across China.

In 2008, the Ministry of Education provided an “Outline of Health Education in Primary and Secondary Schools” for the planning of personal health and sex education curriculum. It is a biology-based education approach, supplemented by some mental health advice. Perspectives such as gender diversity and gender equality are absent. Sometime the literature is hostile to sexual and gender diversity. For instance, the textbook on sex education for parents (titled “Adolescence: A must-read”), jointly released by the Education Department of Zhejiang Province and the Hangzhou Education and Scientific Research Institute, defines homosexuality as a form of deviance. Overall, however, the lack of general sex and gender education is not conducive to increasing knowledge around LGBT issues and therefore reducing discrimination against sexual and gender minority people. In the long run, it is also harmful for general sexual and reproductive health and rights. Scholar Fang Gang calls for sex education to be in line with international standards and gender education integrated into sex education.⁴² He believes that sex education should not be based on gender binary and gender stereotypes; it should rather be based on gender diversity and gender equality with emphasis put on sexual and gender minorities.

Bullying of LGBT Students

Within educational institutions, it is important to challenge the widespread discrimination and inequality that hinder the personal development of LGBT students. Aibai Cultural Education Centre found in its 2012 survey⁴³ that a large number of students suffered various forms of bullying from teachers and classmates as a result of their sexual orientation and gender identity. These incidents have a negative impact on the victims in terms of academic performance, school attendance and even lead to depression or other mental health issues, such as self-mutilation, substance abuse and suicidal tendencies. However, bullying on the basis of sexual orientation and gender identity is often not reported by mainstream media and is not of high concern to school authorities. The lack of support and care for these victims necessitates immediate action.

LGBT Research and Organizing

Academic attention and research on LGBT issues in domestic universities has gradually increased, and some academics have made an effort in popularizing LGBT topics among university students, such as the Fudan University’s 2004–2005 courses on homosexuality, which were well received by students. However, due to lack of funds and particularly due to administrative pressures, it is often nearly impossible to organize classes related to sexual and gender minorities. In many domestic universities, however, students have begun to organize LGBT-themed or LGBT-inclusive groups and events. Most of these groups and events remain underground or semi-underground,

42 Fang, Gang, *Reflections on the introduction of sex education in schools sex education*. China Sexuality Science, 2007.

43 *Report of the Online Survey on Homophobic and Transphobic Bully at Education Institutions*. Aibai Culture and Education Center, May 2012. Available at [http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully\(1\).pdf](http://www.aibai.cn/ebook/library/ebook_aibai/download/2012/11/8/Report%20of%20the%20Online%20Survey%20on%20Homophobia%20and%20Trans-phobia%20Bully(1).pdf)

mostly because school authorities are highly alert about student organizing in general and often object to LGBT related organizations in particular. A few LGBT CSOs have been working to support LGBT friendly professors and LGBT student groups in order to bring SOGI education and LGBT advocacy to college campuses. In many cases these activities are carried out under the banner of HIV prevention or promotion of mental health. However, the activities described above are only possible in universities and colleges. Attempts to bring SOGI education and LGBT advocacy to domestic middle schools have also been made by some CSOs such as Common Language, but they were met with much stronger resistance from school authorities at this level.

CASE
STUDY
#2

THE CAMPAIGN “REVEAL THE HOMOPHOBIC TEXTBOOK AROUND YOU”

Since September 2012, the Danlan network has carried out the public campaign, “Reveal the homophobic textbook around you.” Over seven months, individuals did online research to identify, reveal and take pictures of recently published or issued textbooks that contain homophobic or inaccurate information about homosexuality. A total of 13 homophobic materials were collected⁴⁴.

Based on the materials discovered, the Danlan charity, Parents, Families and Friends of Lesbians and Gays (PFLAG-China), the Beijing Gender Health Education Institute, the Beijing LGBT Center and more than a dozen other agencies jointly signed “An open letter to the educational publishing houses, universities and educators”, citing repeated statements of the UN Secretary-General and the relevant provisions of international conventions that make it clear that homosexuality is neither a mental illness nor sexual perversion and homophobic thinking and teaching should be abandoned. Thus, materials containing homophobic content should be removed or revised to prevent the spread of discrimination and incorrect information. Psychologist Li Li, one of the editors of *Psychology of Adolescence*, recognized that her book is outdated and stated that from the perspective of psychology, homosexuality should not be deemed as abnormal.

– From Danlan network, *Danlan 5.17 series of activities: “Reveal the homophobic textbook around you”*



HEALTH

The right to health is the foundation of life. Physical and mental health is the prerequisite to lead a productive and fulfilling life. The Chinese LGBT community is faced with a variety of health issues, especially the higher prevalence of HIV for gay men and transgender people. The rapid rise of HIV infections among men who have sex with men and transgender people has seriously affected the physical and mental health of these populations and is one of the most serious challenges for China’s HIV prevention and control efforts. In addition to HIV, issues that are gaining more attention from public health policymakers and the community are the spread of sexually transmitted infections, Hepatitis B and C, and other infectious diseases; reproductive health issues of lesbians; and hormone replacement therapy options for transgender people. There is also increasing attention to the mental health of LGBT people. The pressure of social discrimination and the failure to accept one’s sexual orientation as a result of internalized homophobia are two common causes of depression and mental illness in the Chinese LGBT community.

44 Including Life Education published by the People’s Education Publishing House, Mental Health Education published by the Guangdong Higher Education Press, College Reproductive and Health Education published by the Nanjing Forestry University Press, Counselors published by the Ethnic Publishing House, and other materials or science books.

HIV

The “2011 Estimates for the HIV/AIDS Epidemic in China” issued by the MoH in conjunction with the Joint United National Programme on HIV/AIDS (UNAIDS) and the World Health Organization (WHO) estimates that by the end of 2011 there were 780,000 people living with HIV in China. At the time the estimates stated that of the 780,000 people living with HIV in 2011, 17.4 percent had been infected through homosexual transmission. However, new data released at the end of 2012 showed a rapid increase in the percentage of new infections arising from homosexual transmission, from 2.5 percent in 2006 to 29.4 percent at the end of 2012, clearly overtaking injecting drug use as the main source of new infections in China. This shows a disturbing increase in infections among MSM. According to 2011 National Sentinel Surveillance (NSS) data, HIV prevalence among MSM was 6.3 percent⁴⁵, which is significantly higher than in the general population. An academic cross-sectional study of over 47,000 MSM in large cities (a much larger sample than in the NSS) between 2008 and 2009 found a slightly lower prevalence of 4.9 percent.⁴⁶; however, Chongqing, Kunming, Chengdu and Guiyang had prevalence rates of more than 10 per cent with up to a 20 per cent infection rate in some other cities. This indicates a severe epidemic. Unprotected sex without a condom remains the most common means of HIV infection in male-to-male sexual transmission.

Worryingly, the 2011 NSS reports that within the past year only half of MSM had received an HIV test and knew their results.⁴⁷ A study conducted 2010–11 in Yunnan, which has the third-highest HIV prevalence among MSM, found that 44.1 percent of the respondents had been tested in the past 12 months and had received their results (51.4% had gotten tested).⁴⁸ The fact that half of the population is not accessing testing services is particularly worrying considering the high prevalence of HIV within this group. In fact, as an already stigmatized population, MSM face the risk of double stigma and social ostracism if found HIV positive. This may act as a strong psychological deterrent to getting tested. Additionally, due to the stigma on MSM and the social pressures to fulfil filial duties also through traditional marriage and family life, it is very common for Chinese MSM to be married, or otherwise be ‘female partnering’. This increases the potential for HIV to spread from the MSM subgroup to the general population. A recent study found that 68 percent of MSM who knew they were HIV positive continued to have unprotected sex with women.⁴⁹ In Yunnan in 2010–11, 62 percent of MSM always used a condom in sex with other men, but only 36 percent did so in heterosexual sex.

Gay men infected with HIV suffer double discrimination. Within the community of people living with HIV (PLHIV), MSM are often marginalized by those who believe that people infected through mother-to-child transmission or by blood transfusions are worthy of more sympathy and compassion. At the same time, gay men with HIV face widespread stigma and discrimination from the general public and even from within the LGBT community and from the State. Article 18 of the “Civil Service Recruitment Examination Standard (CSRES, Trial)” still allows the civil service to decline employment on the basis of someone’s HIV status.

45 State Council AIDS Working Committee Office (SCAWCO), 2012, *Global AIDS Progress Report: China*. Beijing, Ministry of Health of the People’s Republic of China

46 Wu et al., 2013, ‘HIV and Syphilis Prevalence Among Men Who Have Sex With Men: A Cross-Sectional Survey of 61 Cities in China’, *Clinical Infectious Diseases*, 57, pp. 298-309

47 State Council AIDS Working Committee Office (SCAWCO), 2012, *Global AIDS Progress Report: China*. Beijing, Ministry of Health of the People’s Republic of China

48 Chow et al., 2013, ‘HIV Disease Burden and Related Risk Behaviours Among Men Who Have Sex with Men in Yuxi Prefecture, Yunnan Province, China: 2010-2011’, *AIDS Behavior*, 17, pp.2387–2394

49 He et al 2012 as cited in *Ibid.*

HIV-related stigma and discrimination in the health care and education sectors remain very high. Medical professionals and personnel even in specialized hospitals have in some instances shown bias against PLHIV when it has been assumed or discovered that they were infected through same-sex activity. In 2013, the *Chengdu Fellow's Love PLHIV Group* worked together with local AIDS clinics to conduct anti-discrimination training for medical staff. Medical facilities now work closely with LGBT communities to understand their needs, and after receiving anti-discrimination training, medical staff now treats LGBT patients in a respectful manner.⁵⁰

Stigma and discrimination against PLHIV is also prevalent within the Chinese LGBT community. Many within the community believe that “infectors” (the term used for people living with HIV) must proactively request the use of condoms, and that “infectors have an obligation to inform sexual partners of their HIV status”. Most worryingly, many in the community believe that the attention paid to HIV over the years has increased the social stigma against LGBT and that MSM or gay men living with HIV are responsible for this.

CASE
STUDY
#3

HIV-RELATED STIGMA WITHIN THE LGBT COMMUNITY

In November 2012, Li Hu, an official from Tianjin, posted on Weibo (the popular Chinese micro blog similar to Twitter), that an HIV-positive person was forced to modify his medical records after being refused treatment at the Tianjin Cancer Hospital. This was done in order to avoid pre-operative blood tests and therefore be accepted for lung cancer surgery. The person involved, Xiaofeng (a pseudonym), was an HIV-positive gay man in Tianjin.

The outbreak of public discussions triggered by this blog led to reports in the mainstream media, such as CCTV, as well as an expression of concern from Premier Li Keqiang. As public opinion fomented, Xiaofeng met almost universal condemnation by the mainstream media and the general public for his actions.

Some PLHIV and organizations in China tried to support Xiaofeng and highlight the structural stigma and discrimination that led him to his actions. However, the majority of LGBT people and LGBT organizations chose to keep silent, with some even joining in the general condemnation. LGBT people and organizations could have used the case as an opportunity to raise awareness of the problems and lack of human rights faced by LGBT people in the medical sphere, as well as the discrimination faced by PLHIV. Gay people living with HIV are still gay men. The difficulty encountered by Xiaofeng is likely to be encountered by others in the gay community. The challenges that HIV-positive gay men face in health care settings reflect similar challenges faced by LGBT people in any aspects of their lives.

Other LGBT Health Needs

Gay men and other MSM are also at higher risk of sexually transmitted infections such as syphilis, genital warts, and Hepatitis B and C. Just like with PLHIV, people with STIs in China suffer from stigma and are fearful of being labelled as immoral. Many are unwilling to disclose their conditions because of discrimination or fears for their privacy; this often leads them to consult traditional healers or even “quacks” and thus delay treatment and waste their money.

The response to HIV has dominated discussions around LGBT health issues for decades. Lesbians’ health issues have long been neglected because they are not a “most-at-risk population” for HIV. However, in recent years more attention has led to some small victories in the area of lesbian

50 Internal documents from Chengdu Fellow's Love PLWHA Group

health. In 2012, the MoH lifted the ban on blood donation for lesbians.⁵¹ Additionally, domestic organizations have started to pay more attention to sexual and reproductive health problems of lesbian populations. In April 2013, the Beijing Lesbian Center (formerly known as Beijing Lala Salon; “lala” is the Chinese word for a woman who loves women) with the support of Beijing Disease Control and Prevention Center launched the “Beijing Area Lesbian Health Project” which supported the gynaecological examination of 300 lesbian women to better understand the group health situation from an epidemiological point of view.⁵²

An issue specific to transgender people is hormone replacement therapy (HRT). Transgender people in Mainland China who choose to use HRT have little access to safe and reliable hormone medicines. Many of them purchase hormones from unqualified black market vendors and take the medicine with neither physical check-ups in advance nor professional medical oversight on medicine type and dosage. Hence, they often suffer considerable side effects from the wrong use of hormones. More attention should be paid to the safety and availability of hormone replacement therapy, both by the larger LGBT community and by health care professionals.



IDAHOT Brown Bag Lunch at UNDP China Office, May 2014

Mental Health

A survey of 1000 gay men and lesbians in China by mental health experts in the 1990s found that 40.5 per cent had attempted suicide; another small sample survey in 2002 found that 33 per cent of gay and lesbians unsuccessfully attempted suicide. A large sample survey conducted annually from 1998 to 2001 on gay men in China found that nearly 60 per cent of them felt hurt because of their sexual orientation, and this seriously affected their life and work. About 60 per cent felt very lonely, the same percentage felt very depressed, 30–35 per cent strongly considered suicide, and another 9–13 per cent have experienced suicidal thoughts. The leading cause of their psychological health problems included: the inability to understand and accept themselves, broken romantic same-sex relationships, the pressure to be married with people of the opposite sex or to maintain a heterosexual marriage, and the pressure of social discrimination. A more general mental health

51 Regulations on blood donor health inspections, (2011), Ministry of Health. Available in Chinese at <http://www.moh.gov.cn/wsb/pzcyj/201207/55330.shtml>

52 The Beijing Lesbian Center is still waiting for the release of the report and its findings.

survey of 200 gay men found that among them, 45.5 per cent had anxiety symptoms and 57.5 per cent had symptoms of depression.⁵³

While continuing to pathologize transsexualism, the “*Chinese Classification of Mental Disorders (CCMD), Third Edition*”, published in 2001, confirmed that homosexuality and bisexuality should no longer be considered mental disorders. However, this edition of CCMD still retained the Chinese Society of Psychiatry’s concept of “self- incongruous homosexuality” as a treatable mental disorder. This refers to gay and lesbian individuals who do not accept their sexual orientation and have internal conflicts between their sexual orientation and social norms. However, ten years after homosexuality was taken off the list of mental diseases in the 3rd Edition of the CCMD, many mental health workers, policy makers and educators are still unaware or unwilling to comply with this decision. These two factors contribute to a situation where many mental health practitioners, often pushed by the families of LGBT people, recommend or impose ‘corrective treatment’ on LGBT people, sometimes involving involuntary committal to psychiatric hospital wards.

According to a recent survey⁵⁴ of more than 800 LGBT people conducted by Beijing LGBT Center, 52 percent of respondents had heard about sexual orientation corrective treatment, and 9 percent of the respondents had considered receiving such treatment due to family or social pressure, relationship failure and internalized homophobia. Among the 18 respondents who had received corrective treatment, 5 reported no change in their sexual orientation, 4 reported a strengthened homosexual orientation, 3 reported a disturbed self-acceptance, 2 reported an aggravated self-loathing, 2 reported experience of agony and 1 reported increased depression. 75.37 percent of the respondents had been exposed to corrective treatment via the Internet. In fact, many psychological clinics use the Internet to advertise corrective treatment and reach out to potential clients. Recently there a gay man sued the famous Chinese search engine www.baidu.com for posting an advertisement for a psychological consulting centre promoting corrective treatment.⁵⁵

Finally, not enough attention is being paid to the mental health of transgender people, bisexuals, and other sexual and gender minorities and there is a complete lack of data on the mental health of these populations. In particular, the level of psychological changes and pressures experienced by transgender people who have gone through SRS, including changes in their social networks and social support system, are of great concern.

CASE
STUDY
#4

FORCED MENTAL HEALTH TREATMENT IN CHANGCHUN

In November 2012, Li Hu, an official from Tianjin, posted on Weibo (the popular Chinese micro blog similar to Twitter), Ann (pseudonym) is an 18-year-old high school girl living in Changchun City. She is in a committed relationship with her female lover, Yuxuan. In August 2012, both families discovered about their relationship, and they were beaten and insulted by their respective parents. The families demanded they no longer see each other. Ann threatened to commit suicide and refused to eat until days later she needed to be hospitalized. One afternoon Ann escaped from the hospital, too afraid to go back home or to school, she called the police and went to the Women’s Federation for help.

A week later, Ann’s mother took her for psychological counseling at the Sixth Hospital of Changchun City, where she was regarded as a mental health patient and was admitted and forced to receive hospital treatment. Ann escaped again and met some pro bono lawyers that Yuxuan had invited from Dalian. Ann hoped the lawyers would protect her. One of the

53 Zhang, Beichuan etc. *Sexual Health Education*, 2008.

54 *Chinese LGBT Mental Health Survey Report*, Beijing LGBT Center, May 2014

55 See this report at <http://china.caixin.com/2014-05-15/100677721.html>

lawyers decided to submit Ann to a forensic psychiatric assessment to counter the claims of psychological counseling and her parents. However, the day before her forensic test, the police received a report from Ann's parents, which said Ann had a mental illness, and as her guardians, they required the police to bring her home. The police decided to oblige. Since then, Ann has not been allowed to leave her parents' house or have any contact with the outside world. Some local organizations have tried to contact Ann's parents but failed.

– From the Caixin network



FAMILY AFFAIRS

Aspects of ancient Confucian theory together with the old feudal patriarchal system are evident in the Chinese family structure of today. Confucian ideas of *Filial Piety* focused mostly on the respect for one's parents and ancestors. Over the centuries, this has been applied to 'general obedience' and to the need of being good to one's parents, taking care of one's parents and to bring a good name to one's family. On the other hand, characteristics of the old patriarchal system included control of finances by the patriarch, the system of forced or arranged marriages, a strictly hierarchical system within the family structure and a strict set of rules for the younger generations. Most Chinese young people would say that children have no independence and very little say in family life.

To this day, the family is the most important component of the social support system in China. However, with contemporary China undergoing rapid economic and social transformation, the traditional family structure is also experiencing profound changes. With the implementation of strong family planning policies⁵⁶ and increasing openness to the outside world, traditional family functions of support and nurturing are gradually being borne by broader society.⁵⁷ A great influx of Western ideas has exposed the general public to Western concepts of family, especially the concept of self-independence, with more and more young people beginning to abandon dependence on family and parents, both psychologically and monetarily. Transformations in areas such as education, employment, urbanization, housing, transportation and communication are also contributing to huge changes in the traditional family structure.

With the emergence of more personal independence for the younger generations, parents are faced with the question of whether to respect their children's personal life choices, including the decision of coming out as LGBT. Coming out to parents has long been the main topic of discussion among LGBT community members in China, which manifests the crucial role family and parental acceptance plays in the lived experience of Chinese LGBT people. In 2008, China's first homosexual friends and relatives association, Parents, Families and Friends of Lesbians and Gays (PFLAG-China), was set up in Guangzhou on the initiative of a gay man's mother, Wu Youjian. Since its establishment, the association has made great effort to improve the social environment for LGBT people and their families. The organization has now expanded to 12 cities in China and has become of the most active and well-resourced LGBT NGOs.

56 Family Planning Policies refers to the 'One Child Policy' but also to more recently published "policies that advocate delayed marriage and delayed child bearing, fewer and healthier births; and advocating one child for one couple. Some rural couples with agriculture labour demands are allowed to give birth to a second child a few years after the birth of the first child." From <http://www.china-un.ch/eng/bjzl/t176938.htm>

57 Hu, Liang. *From traditional to the modern: Analysis of the characteristics and causes of changes in China's family structure*, 2003.

While the changes noted above are expanding the ways LGBT people live, traditional notions are still prevalent. General filial piety, the importance of having children as an act of filial piety, the superiority of men over women, and the emphasis on the continuation of “family line” are still the main reasons for family and societal pressures on LGBT people, especially in rural areas. These are the main reasons that drive many LGBT people to ultimately enter into a heterosexual or a ‘fake’ marriage while continuing their homosexual life underground. This pressure is especially burdensome for gay men as the male heirs of their families. Because of this, many still choose to hide their sexual orientation and enter into a heterosexual marriage, resulting in the suffering of their wives (known in Chinese as Tong Qi, ‘wife of a gay man’ – described more in Case Study 6).

In the short term, unfortunately, it is difficult to completely dispel traditional, restrictive, patriarchal family structures that interfere with the personal development of LGBT people, even when they include violence.

CASE
STUDY
#5

DOMESTIC VIOLENCE EXPERIENCED BY LESBIANS

Domestic violence suffered by lesbians is an issue of concern. From 2007 to 2009, Tongyu (Common Language) carried out the first research on domestic violence experienced by lesbians and bisexual women in China. The study found that about half of the lesbians surveyed suffered violence from their parents, relatives or same-sex partners. Nearly half of those surveyed (42.2%) suffered violence from their same-sex partners while 48.2 percent suffered violence on account of their parents and relatives. Most worryingly, about 70 percent of respondents experienced some form of mental abuse. Out of the limited samples of lesbians that also have or used to have heterosexual partners, the rate of exposure to violence was 25 percent higher than their heterosexual counterparts.

Additionally, only 55 percent of lesbian and bisexual women who experienced domestic violence seek help. This is in contrast with the heterosexual female victims of domestic violence, where 84 percent of them sought help. The main people that lesbians seek help from when confronted by domestic violence are personal friends and the lesbian community; they prefer not to appeal to official institutions such as the Women’s Federations or the police due to the fear of exposing their identity and the lack of sexual orientation and gender identity (SOGI) training of these departments.

– *From Legal Daily, China’s first survey on lesbian domestic violence*

Right to Marriage

Currently there is no legal recognition or protection of same-sex partnerships in China. Li Yinhe, a senior professor at the Chinese Academy of Social Sciences has repeatedly submitted detailed proposals for the legalization of same-sex marriage to the China People’s Political Consultative Conference (CPPCC) National Committee in 2003, 2005, and 2006. In February 2013, hundreds of parents of LGBT people sent a letter to the National People’s Congress (NPC), urging for the revision of the Marriage Law to guarantee marriage rights for same-sex couples. The absence of any law recognizing same-sex couples means that there is no protection for basic partner rights such as joint property, inheritance, tax and mortgage benefits, or joint adoption (more in the section below).

In order to satisfy families and avoid social pressure, many LGBT people choose to form “cooperation marriages” where a gay man and a lesbian woman marry each other in order to appear properly married while maintaining separate same-sex relationships on the side. As these

relationships often lack affection or emotional connection, they are often treated as business transactions. This leads to financial disputes being common among gay men and lesbians who form “cooperation marriages”. While many such marriages include a wedding banquet and social celebrations but often are not officially registered with the Department of Civil Affairs, when these disputes arise there are no legal ways to address them.

CASE
STUDY
#6

WOMEN MARRIED TO GAY MEN: STORIES FROM CHINA

Meng Jun graduated from Guizhou Normal University. In 2008, she became acquainted with Cao Kai (pseudonym) who worked in Guiyang. She fell in love at first sight and they got married three months later. During their relationship Cao Kai was always a perfect gentleman. He treated Meng Jun with kindness but never displayed any sexual interests. While originally thinking this was based on his respect for her, Meng Jun did not expect this lack of interest to continue after marriage. After repeated questioning, Cao Kai finally came out with the truth that he was gay.

Meng Jun could not accept this fact. She did not know how to explain this to her friends and family in the event of a divorce. After two years she finally told her mother. For her future happiness, her mother urged her to divorce. However, she still suffered emotionally and couldn't disassociate herself from the past and was then diagnosed with a mental disorder. In July 2010, Meng Jun jumped from the seventh floor of her sister's home on Ningbo road, ending her life. She was 29 years old.

- From *Guizhou City Daily: Discovered after marriage, the husband is actually gay* [edited version]

“When we tried to reflect on what was happening, what else could we do but to merely accept and sigh? Tong Qi (the gay man's wife) is only an identity label given along with a marriage. In marriage, it means forbearance and suffering day after day. However, the gay husbands are also a vulnerable group. Tong Qi is only the victim of gay men escaping from their families and social pressure. As someone said, “In order to free Tong Qi, we must first free the gay man's body and mind.” To free the gay man's body and mind, everyone needs to be involved. For homosexuality, perhaps we should neither be surprised [that it exists] nor should it be a taboo, let alone stigmatized and discriminated against. Of course, this does not mean one has to support, encourage or even emulate it. It just means respect for others' civil liberties and ethics, for a different kind of life. It is just to reduce one pair of hands that suffocate the Tong Qi.”

- Excerpt from the afterword of *Yahoo Family Talk: The pathos of Tong Qi and who is to blame?*

Adoption and Custody Rights

As stated above, China's Marriage Law only recognizes heterosexual marriages and families, and does not accept the legitimacy of same-sex families. LGBT people in an acknowledged same-sex relationship are not permitted to adopt children by law.⁵⁸ LGBT people can only adopt children as single parents on the condition that they do not disclose their sexual orientation.

However, adoption in practice is difficult. According to the principle of the Chinese national law on adoption, adopting parents shall not violate social morality. This provision enforces the idea that LGBT people can't be qualified parents and stigmatizes the LGBT community, often depriving even LGBT single parents of adoption rights. Because of this law, foreign same-sex couples are also forbidden from adopting children in China.

58 See China Center for Children's Welfare and Adoption <http://cccwa.mca.gov.cn/> and *Can Same-sex Couples Adopt Children?* Available in Chinese at <http://www.tongyulala.org/newsview.php?id=1566>

Another related issue is the custody of children in case of divorce where one of the partners has come out as gay. Divorce on the grounds of homosexuality and rights of the homosexual partner regarding custody of children are often contentious and sensitive. According to Liu Wei, a well-known public interest lawyer, legal training for the LGBT community is necessary to raise awareness of their rights in single parent adoptions and to help them navigate the complex and long process that adoption often entails.



MEDIA AND TECHNOLOGY

In the last few decades media and technology in China has undergone a profound transformation. Besides the incredible expansion of newspapers, radios and TVs, new forms of media such as social networking have sprung up extremely rapidly.⁵⁹ These new technologies will inevitably have an influence on many social movements, including the Chinese LGBT community.

Censorship

In March 2008, the State Administration of Radio, Film and Television (SARFT, now called the National Press and Publication Administration) issued a notice on “*SARFT reiterated film censorship standards*”. Article 3 states that “*obscene pornography and the vulgar inclusion of content or a plot that shows licentious behaviour, rape, prostitution, sexual behaviour, sexual perversion, homosexuality, masturbation, sex organs; and the inclusion of dirty and vulgar words, songs, background music, sound effects and other*” should be cut or modified”. However, in 2010, the SARFT promulgated the decision “*On Abolishing Some Radio and Television Department Regulations and Regulatory Documents*”, including the abolition of the 2008-released film censorship standards, and stated, “There are new regulations”. So far, however, new standards regarding the review of LGBT or homosexuality-themed movies and media products have not been released. The SARFT ban means that currently, all homosexual films that are independently produced without official permission (and are not officially censored) cannot be aired in cinemas. More and more voices, including the famous filmmaker Cui Zien from the Beijing Film Academy, have begun to call for the abolition of media censorship in this area.

In the rare occasions when homosexuality is discussed in the mainstream media, stigmatization and negative language and connotations remain the norm. The Rainbow Media Awards media-monitoring project found that among 931 media reports about the LGBT community in 2012, 50 percent portrayed the LGBT community negatively. Among these negative reports, 17 percent associated homosexuality with crime and/or the spread of HIV.^{60,61,62} The official mainstream media such as China Central Television (CCTV), however, has an enormous reach and audience in China. The possibility of promoting anti-discrimination messages in the official mainstream media would make a great difference in the education of the general population.

Increasing LGBT Exposure in the Media

Over the last two decades the HIV epidemic among the gay community has received substantial coverage in the mainstream media. Partly because of HIV-related advocacy and prevention

59 *The Media, Democratic Transition and Social Movement*. An interview with Professor Zhao Dingxin of the University of Chicago, 2012
 60 *Property Theft after Meeting with Online Gay Friends*. See http://news.china.com.cn/2013-03/01/content_28097346.htm
 61 *Homosexual Prostitution Advertisement and Photo on Websites*. See <http://news.163.com/09/0319/05/540BACJL00011229.html>
 62 *Belongings Robbed after Meeting Friends on Homosexual Websites*. Beijing Times, see http://epaper.jinghua.cn/html/2013-10/11/content_31325.htm

campaigns, gay men tend to be the most visible and are often seen as representative of sexual minorities. While some argue this has created a space to discuss some LGBT-related issues, this has come to the expense of other sexual and gender minorities, which are very rarely covered in the mainstream media.

However, LGBT-friendly media, mostly magazines and radios, are becoming more common. In particular, the popularity of the Internet and the use of new social media have helped the LGBT community attract public attention and influence public opinion like never before. New media platforms such as SINA Weibo (A “micro blog”, the Chinese version of Twitter) and Baidu (the Chinese version of Google) have become an important tool for raising public awareness regarding SOGI and LGBT people, for promoting the work of LGBT organizations and for creating a safe space for LGBT to meet, discuss and communicate with each other. However, it is important to note that even online the operation of LGBT community websites and social networks is often unstable as a result of official censorship, which often lead to server disruptions or shut down of certain websites.

Additionally, a number of LGBT organizations have started to produce LGBT-related research and publications. Most are awareness raising materials aimed at the general public, as an alternative or additional source of information to the very a few officially published academic books. In order to be allowed official publication, LGBT related works usually have to be associated with public health matters such as the prevention of HIV. Unfortunately, written works looking at sexual and gender minorities from a political or cultural perspective are repeatedly declined by official publishers. Still, LGBT-related academic publications have increased dramatically since the 1990s. Scholars such as Pan Suiming from Renmin University and Li Yinhe from the Chinese Academy of Social Sciences made important contributions to this new wave of research on sexual minorities.

The Need for Media Training

Developing a common public relations strategy with clear messages for the media should be a central focus of the LGBT movement moving forward. Support in formulating, implementing and evaluating effective media strategies along with developing general communication skills would help Chinese LGBT organizations and the broader community in the promotion and protection of LGBT rights.

In fact, many organizations are unaware of how to use media resources better. Most importantly, there is a lack of understanding and experience in how to use the media for anti-discrimination advocacy and public relations work. Finally, there is a lack of understanding among LGBT advocates on how to use and monitor the media to identify problems and how to address them strategically, building allies in the media. More recently, Chinese LGBT organizations have tried to improve this situation. For instance, the Rainbow Media Awards, organized by the Beijing Gender Health Education Institute, provides media training for LGBT organizations as well as annual selection and praise for LGBT-friendly media reports.

CASE STUDY #7

CHINESE FILM INDUSTRY REQUESTS THE DISCLOSURE OF CENSORSHIP PROVISIONS

On 17 May 2013, the International Day Against Homophobia and Transphobia, independent filmmaker Fan Popo, wearing a T-shirt emblazoned with the slogan “We want to watch gay movies”, went to the National Press and Publication Administration (NPPA) with the hope of understanding existing film censorship, especially the relevant regulations on gay

themed movies. He asked for a disclosure of the new movie censorship standards. He said that film censorship restricts the freedom of expression on one hand, and hinders the film culture from developing on the other hand.

Because of the current censorship standards, LGBT-themed movies usually cannot be publicly released through official channels. They can only be released through independent cultural movie and video platforms, such as in the bars, on the Internet and in universities. The box office performance of such films is basically guaranteed to be poor because of their limited release. This leaves most independent film directors and producers facing serious financial difficulties. Some directors are forced to run small businesses and websites to raise funds for their films. Independent films, as a platform through which the public can understand the LGBT community, are very important. The purpose of Fan Popo's action was to advocate for more transparency of the censorship system and make a call for the cancellation of censorship.

– Source: *Voice of America, Lu Yang [Edited]*

Follow-up: On 28 May 2013, Fan Popo received a phone call from NPPA staff, and was told that the requested information has been publicly released on the Internet. According to the information provided by the staff, Fan Popo found “The notice of State Administration of Radio, Film and Television (SARFT, now called the National Press and Publication Administration) on the improvement and perfection of the record of film scripts (outline) and the censorship of films” issued in February 2010 on the SARFT website. However, this notice only regulates the procedure of the recording of film scripts and the censorship of films. It does not mention the relevant provisions on the censorship of content of the film.

– Provided by Fan Popo



COMMUNITY DEVELOPMENT

There is little evidence about organized gay and lesbian life in China in the 1980s or before. In the mid- to late 1990s, organized social gatherings explicitly for lesbian and gay people began at both private residences and in commercial venues. Police raids and harassment were common for venues that attracted too much attention. With the development and expansion of the Internet in the early 2000s, gays, lesbians, and to a lesser extent bisexual and transgender people, began to form online forums to discuss experiences and connect with each other.

As international HIV-related funding began to enter China in the early 2000s, MSM-focused funding led to groups starting to come to existence throughout the country⁶³. The majority of these groups, however, did not involve programming for women or transgender people; because of this, the lesbian and transgender movements developed somewhat independently and only more recently. Only in the early 2000s did Beijing see the development of lesbian women's groups. By 2010, the number of civil society organizations (CSOs) had increased dramatically, and many began positioning themselves “outward” to work with educators, psychologists, journalists, and non-LGBT community members.

More recently, the International Day Against Homophobia and Transphobia has become an annual call to action for groups throughout the country to educate about LGBT anti-discrimination. Some groups also began engaging parents of gays and lesbians, straight allies, and building coalitions with other social movements. Over the last few years some diplomatic missions in China, foreign foundations, and other sources have begun funding some CSO initiatives, and the work of these

63 Mostly thanks to funding from international donors such as the Global Fund on AIDS, TB and Malaria, USAIDS and USCDC, DFID, CIDA and AusAID.

groups has expanded in scale. However, these groups are often disconnected and work in isolation, without strong partnerships with other CSOs and/or academic institutions, government agencies, or private sector companies. Overall, lesbian and gay community organizations are generally much more developed. Transgender and bisexual organizing has been much less visible, although it is becoming more active at least online. Unfortunately, tensions and conflicts are common within the LGBT community due to lack of communication, mutual discrimination and the unbalanced distribution of resources.

How LGBT Individuals Socialize

Most large and medium-sized cities in China have organized groups for activities for gay men (“gay”) and lesbian (“lala”). Campus activities organized by LGBT university students are becoming more common. Gay men often meet each other through sexual encounters in public venues such as public toilets, parks and gay bathhouses, and other times through the sex trade. In recent years, large and medium-sized cities have opened high-end gay bathhouses targeting older gay men with a higher income and social class. In 2011, the Chengdu Tongle Health Counselling Service Center surveyed how gay men meet each other in the capital of Sichuan Province, Chengdu: about 55 percent met through groups or networks, interpersonal relationships made up 20 percent and 25 percent met in various locations, including bathhouses (40%), bars (35%), outdoors (15%), money boys (male sex workers who serve male clients) and in clubs (10%).⁶⁴ However, the growth of Internet websites and LGBT-friendly social media has become an increasingly important way of communication and socialization for the LGBT community.

Compared to gay men, lesbians are less likely to meet their partners through sexual encounters. Instead, many of them prefer to seek relationships in their social network, at bars and in matchmaking events organized by community groups. Transgender individuals often meet through their occupations as actors, performing in gay or lesbian bars, and in mainstream venues for entertainment. There are also online forums and QQ groups (QQ is an online chat software popular in China) for transgender people to exchange information on HRT and SRS as well as to discuss topics of common interest such as how to dress in order to pass as the gender they identify with in their daily lives.

Community Diversity

The Chinese LGBT community is extremely diverse and made up of people from all socio-economic, cultural, religious and ethnic backgrounds. Generally, the development of lesbian and gay communities is relatively mature, though lesbian organizing remains weaker when compared to its gay counterpart. Self-organized transgender groups have started to become more vocal and engaged in activism, though their scale and influence is much smaller. Bisexual organizing happens mostly online.

Unfortunately, discrimination exists within different subgroups of the LGBT community and remains persistent. This is primarily demonstrated in forms of avoiding each other, verbal abuse and humiliation. Discriminations can be on basis of gender identity or gender expression; on basis of sexual preference and sexual interests or behavior; on basis of regional origins, economic and social status, educational background, marital status, and more. Because in the development of

64 A Report from Chengdu City on MSM subgroups and sexual health needs & behavior assessment (internal document). Chengdu Tongle Health Counselling Service Center, 2011.

Chinese LGBT movement some subgroups have obtained more resources and attention than others (e.g. gay men more than lesbians), this has created inequality within the community that if not properly addressed will adversely affect the long-term development of Chinese LGBT movement.

Community Needs

Ideally, LGBT community organizations should be focused on meeting the diverse needs of the community. However, as part of the negative legacy of the HIV epidemic, many LGBT groups in China, particularly those of gay men, have often been set up to obtain HIV-related international and domestic funding. This has resulted in the neglect of other urgent needs of LGBT community, such as self-empowerment of community members, awareness-raising among the general public, LGBT culture development and broader advocacy. In the early 2000s, with the spread of HIV in China and the flow of international funds into China, gay groups began to apply for HIV-related resources. This led to the creation of many of the current LGBT community organizations in China. The focus then was on the health care and health rights of gay men, while gay culture and non-health related rights received little attention. With an increased concern for LGBT political and social rights and with the drying up of international HIV prevention funds in China, some organizations began to change their priorities to non-health rights advocacy (even though the challenge of HIV to gay men's health did not decrease).

To a larger extent, community needs must be met through community services. A comprehensive understanding of the community and its needs is required for the sustainable development of LGBT groups. Another key would be to persuade the government to purchase services offered by LGBT NGOs. At present, LGBT NGOs cannot raise funds for their work publicly in China as it is not allowed by the law. Fundraising has become the primary bottleneck for LGBT community development. Funding sources for LGBT CSOs vary according to its source: government which mostly provides HIV funding, international funding which focuses on areas such as women, gender equality and civil society development, and community which raises funds from personal donation and community fundraising events such as parties. Government funding mostly goes to gay men's organizations but does not address rights issues and now is gradually diminishing. International funding is acquired by organizations that are more established, capable and with a global vision and network; but also creates challenges since it makes the organization more suspicious in the eyes of the government and sometimes generates criticism from within the community. Community fundraising should play a bigger role for LGBT organizing and mobilization.

CASE STUDY #8

A GAY CULTURAL FESTIVAL IN NORTHEASTERN CHINA

Shenyang Consultation Center for AIDS and Health Services is an organization dedicated to AIDS prevention in the LGBT community. Since June 2011, it has been both concerned with LGBT health and with building an LGBT cultural platform and brand. Through cooperation with 16 gay grassroots organizations in Northeast China, it has organized the Northeast Gay Culture Festival three times. The Festival was one of China's first LGBT activities that were planned and initiated independently by grassroots organizations and with a wide range of cooperation and influence, both across provinces and reaching down to villages. The cultural festival focused mainly on rights and advocacy for gay men, transgender people, sex workers and PLHIV, and provided these vulnerable groups with lots of support and help to cultivate an LGBT-affirmative environment. In 2013, the Third Northeast Gay Culture Festival Organizing Committee cooperated with other organizations from Shanghai, Guangzhou, and Beijing to hold more than 30 activities. Some of the activities included: Dalian Gay Pride Hiking, a cross-dressing beauty contest, the Northeast Gay Relatives Talkfest, lesbians' rainbow wedding, a rainbow flag passing across the Northeast China, and gay rainbow cycling.



CAPACITY OF LGBT ORGANIZATIONS IN CHINA

There are LGBT community groups in most provinces of China. According to participants of the National Dialogue, at least one community organization could be found in most of the provincial capital cities. However, there is no comprehensive data on the number, size, type and location of community groups in China.



LEGAL STATUS

Chinese LGBT community groups face the same legal registration constraints common to other NGOs in China; however, these are heightened by the stigma and ignorance surrounding LGBT issues. At present, grassroots organizations have two registration modes: civil registration and business registration. Meeting the requirement for civil registration is very difficult. In early 2014, an activist from Changsha, provincial capital of Hunan in central China, attempted to register an LGBT non-profit organization with the local Civil Affairs Bureau. The government bureau responded that homosexuality is at odds with traditional Chinese culture and denied the application. This activist and a network of other activists are currently applying for official information disclosure as to the specific legal rationale for the application denial.⁶⁵

Most registered LGBT NGOs apply for business registration (i.e. they register as a private company), which entails higher costs and full taxation. However, due to various restrictions, registered community groups are the minority and the majority continue to operate in a legal grey area. This is due to the fact that NGOs in China need a governmental agency to provide supervision and

⁶⁵ *China's Xiang Xiaohan: First gay man to sue the government.* BBC News, <http://www.bbc.com/news/world-asia-china-26631161>, 27 Mar 2014.

guidance. However, the majority of government agencies are not able or willing to take upon extra work and responsibilities. In 2012, Chinese Premier Li Keqiang called for the improvement of tax policies for corporations and organizations working in the field of HIV prevention, which hopefully will make registration easier, at least for groups working in the area of HIV.



HUMAN RESOURCES

Organizations such as NGOs and other types of civil society organizations (CSOs) are a relatively new concept in China. A lack of human resources both in terms of talent and knowledge is a common problem, especially for LGBT community groups. LGBT groups often recruit volunteers in the absence of professionals and sufficient funding to pay employees, which potentially weakens the sustainability of their work. Fortunately, domestic colleges and universities have undergraduate and postgraduate students majoring in programmes such as social work, sociology, anthropology, psychology, medicine, history, international relations and foreign languages that are starting to provide new and better trained human resources for LGBT organizations. The main challenge remains the ability of LGBT NGOs to attract high-level professional candidates when offering very low wages with uncertain career paths, and the possible stigma and discrimination that often comes with taking up these types of jobs.

While many volunteer training programmes exist, on the whole these training modules are insufficient to match the need of many professional LGBT organizations and there is a lack of systematic, scientific, sustainable and high-quality training programmes in Chinese LGBT civil society.

CASE
STUDY
#9

LALA CAMPS

In 2007, the first conference on Chinese LBT (or “lala” in Chinese) activists’ leadership development, the historic “Lala Camp” took place in Zhuhai, China. Held by six organizations from Beijing, Hong Kong, Taiwan and the US, the three-day intensive workshop gathered about 100 Chinese LBT individuals from various cities throughout China and around the world. Over half of the participants had never heard of the LGBT movement before the event. The oldest participant was over 50 years old, while the youngest was only 16.

Lala Camp aims to empower Chinese LBT community builders through leadership development and skills sharing, while building bridges between LBT communities from different Chinese-speaking regions. In 2008, Lala Camp took the form of five regional camps hosted by local organizations in the cities of Beijing, Anshan, Chengdu, Kunming and Shanghai. A total of 150 people from 35 cities participated. After the regional camps, representatives of local LBT organizations held a summit in Shanghai and founded the Chinese Lala Alliance (CLA), an umbrella organization for lesbian, bisexual women and transgender organizations and individuals across Mainland China, Hong Kong, Taiwan and beyond.

Since then, CLA has held 13 Lala Camps in 12 different cities. While some of the camps focus on community development, others emphasize youth empowerment, violence against LBT people, and public advocacy. In addition to the concerns of the LBT community, other social issues such as the development of civil society, feminism, labour rights and class issues have become an integral part of the discussions at Lala Camps.

In order to cater to the drastic differences in organizational capacity and cultural context among LBT groups, CLA has separated Lala camps into two types: sub-regional camps and cross-regional camps. The smaller sub-regional camps serve to inspire the birth of new organizations and to explore local concerns; the larger cross-regional camps, on the other hand, are the site for strategic planning and vision building. To date, over 500 LBT community leaders from Chinese-speaking

regions have participated in Lala camps, and over 20 new LBT organizations have been established in Mainland China, as a direct result of Lala camps. Today, the Chinese Lala alliance continues to support and sustain the individuals and groups that are a part of the network. It has fostered a series of advocacy projects and collaborations through the years.



COMMUNICATION AND COORDINATION

Communication skills are an essential element in the capacity-building of community organizations and a missing link in the development of the Chinese LGBT community. Seldom does the LGBT community work together with CSOs dedicated to other social issues, and collaborations with academia, media, and government entities are very rare. Internal competition for resources, misunderstanding and dispute, and power imbalances are abundant. Thus, communication and coordination mechanisms such as the Chinese Lala Alliance, which was established in 2008 to provide a platform for groups of lesbians and bisexual women across mainland China with those from Hong Kong, Macau and overseas, should be encouraged. International exchanges such as participation in conferences of regional or global LGBT organizations (e.g. International Lesbian, Gay, Bisexual, Trans and Intersex Association, ILGA) and participation in the China Emerging Leadership Program coordinated by the Los Angeles Gay and Lesbian Center and Aibai Culture and Education Center should also be enhanced. Finally, as many international stakeholders such as foreign foundations, diplomatic missions, international non-government organizations (INGOs) and the UN are starting to support LGBT work in China, there is a need for better coordination of these efforts to avoid duplication and highlight the key gaps in supporting the LGBT community.

CASE
STUDY
#10

HOW CAP+ FACILITATES COOPERATION BETWEEN CBOS AND THE GOVERNMENT

In November 2006, the China Alliance of People Living with HIV (CAP+) was established. From the initial 24 member organizations, it had evolved by 2010 into a 109-member umbrella organization. CAP+ operates with a Secretariat and a network coordination mechanism to provide information and technical support to members, responding to demands of members and carrying out specific activities to service target populations. In addition, the Secretariat initiates and promotes advocacy activities that members can select to voluntarily support and participate in. Since the end of 2011, the establishment of new networks including a regional network, a youth network and a female liaison group has led to a new stage of development for the organization.

Members of CAP+ (Meng Lin and Li Hu) have been elected to the China Global Fund CCM as representatives of the government and affected communities. As a result, advances include allocating funds to CBOs, community participation and increased discussion and advocacy on issues such as operations for PLHIV, anti-discrimination in employment, and access to HIV/AIDS treatment. Their success has attracted widespread positive attention at home and abroad.



FUNDRAISING CHALLENGES

Over the last ten years the Global Fund, the Gates Foundation and other international and bilateral donor agencies played a pivotal role in China's HIV prevention and treatment, spending hundreds of millions of dollars on HIV programmes, including civil society led interventions. In so doing, they indirectly played a positive role in the development of gay and MSM community groups. However, as China's economy grew and its international reputation as an upper middle income country was established, international donors and funding mechanisms have withdrawn from China

in the last 18 to 24 months. These groups are now facing enormous challenges in maintaining daily operations. Nowadays in terms of domestic funding, the main source of funding for social organizations is the government. However, LGBT community groups are restricted by their lack of legal status, as well as the government's belief that LGBT NGOs are illegitimate or "sensitive" groups and general unwillingness to allow their registration. Most government officials handling LGBT NGO registration have no knowledge about LGBT or (SOGI). One way to address these challenges is to create opportunities of raising awareness among government officials and civil servants. The government has started to purchase public services⁶⁶ from NGOs, which is good news for civil society development, but it may also increase the difficulty for advocacy groups to obtain economic support (as they do not provide services). The lack of domestic funding resources has led to other fundraising strategies by LGBT NGOs in China, including seeking international funding for areas other than HIV and raising funds from within the community, the merits and drawbacks of which have already been discussed in the section of "Community Development".

Positively, however, a number of international stakeholders, including foreign foundations, embassies, INGOs and some UN Agencies in China have started to support the LGBT community and some organizations. However, as most donor agencies left China, these funds are relatively small and unpredictable and definitely not enough to sustain the growth of the LGBT community across China. Better coordination and communication amongst these new donors as well as between the recipient organizations is essential. In the long run, the rapid growth in domestic philanthropy in China may provide some answers for certain organizations in the LGBT community. As awareness of LGBT issues increases, private philanthropists may be more inclined to support LGBT advocacy and service delivery organizations. To pave the way, however, more progress needs to be made in LGBT organizations' legalization and professionalization.

66 Governmental purchase of public services can be understood as: "to perform its responsibility of serving [the] public, [the] government pays various kinds of social service agencies through government finance for [the] purchase of whole or part of public service[s] ... supplied by contract [in] ways and whose type and character [are] defined by government." Ren Qin, Study on the Responsibilities of Chinese Government for Purchasing Public Service. Available in English at http://www.hwr-berlin.de/fileadmin/downloads_internet/aktuelles/neuigkeiten/5th_German_Sino_Conference_Study_on_the_Responsibility_of_Chinese_Government_for_Purchasing_Public_Service.pdf



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