



Civil society engagement with UN human rights mechanisms on sexual orientation, gender identity and expression, and sex characteristics (SOGIESC)

CHINA

ABOUT THE COUNTRY BRIEF

This country brief charts efforts by lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ) activists to raise issues related to sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) within UN human rights mechanisms. This brief is based on a review of engagements with various mechanisms, including a desk review of civil society submissions and national-level discussions and individual interviews with activists and stakeholders. The discussions took place over the first half of 2016, with additional data gathered on review cycles. **The objective is to provide baseline information for LGBTIQ activists to help maximize their engagement with UN human rights mechanisms.**

UNIVERSAL PERIODIC REVIEW

1ST CYCLE (2009)

During China's review under the first UPR cycle, an anonymous group of activists submitted information in coalition with Sexual Rights Initiatives, looking at issues affecting men who have sex with men (MSM) and sex workers in the context of HIV and AIDS. Describing the legal context, the submission reported that "homosexuality has been regarded as unnatural and illegal sexual behaviour" and that "homosexuality is severely forbidden in order to prevent HIV". They recommended that "efforts should be made to de-criminalize drug user, sex worker, homosexuality as well as ethnic minorities, to overcome their marginalized status, and could better benefit from government policies on HIV/AIDS."¹ This was also reflected in the official summary of stakeholder information, which noted that "there is no law or policy about same-sex sexual harassment and sexual violence".²

There were no references to or recommendations on SOGIESC issues during the Working Group review, and no recommendations on SOGIESC were made.³

2ND CYCLE (2014)

Sexual Rights Initiative prepared a stakeholder submission focused on LGBT people in the context of various issues. They reported for instance that "there is no consolidated curriculum throughout of China for comprehensive sexuality education" and that "although there are some sex education textbooks published in China, LGBT related information are often missing, outdated, or misleading." They also reported that, in terms of public health, "due to specific needs of LGBT people, the current policy framework cannot fully guarantee the rights of health to all LGBTs." In terms of access to "sex reassignment operations" (SROs), the report noted various problematic criteria stipulated by the Ministry of Health, including requirement to "accept mental health therapy" (on the assumption that transgender people are mentally ill) and "to get consent from their family members before SRO no matter what age they are." And on political engagement, they reported that "the dialogue between government and LGBT NGOs so far has been limited only to discussions of HIV prevention and treatment among the gay community" and that "there is no opportunity for LGBT NGOs to advocate to have other needs addressed in order to promote equal rights for LGBT people in China."⁴

In addition, Rainbow Action and the Women Coalition of HKSAR submitted information on the human rights situation of LGBT persons in Hong Kong. They reported, for example, that the Sexual Minorities Forum and the Gender Identity and Sexual Orientation Unit (GISOU) which were supposedly instituted by the government to address SOGIESC issues "are hardly functioning", and that "the Forum ceased holding public meetings, its main source of communication with sexual minorities, in December 2010." Based on their work, they also cautioned that "the high rate and seriousness of sexual orientation discrimination (SOD) is a warning sign that the Government's current methods for addressing SOD, i.e. self-regulation and education, have failed to take the necessary steps to remedy the situation". They also reported that "the government refuses to consult with the LGBT community about SO [sexual orientation] training programs and refuses to guarantee that it will not hold programs about conversion therapy for changing sexual orientation from homosexuality to heterosexuality in the future."⁵

The summary of stakeholder information records the recommendations made by submissions. These include recommendations for "the establishment of anti-discrimination laws and regulations" and the "approval of same-sex marriage or domestic partnership laws". Also included is a recommendation

1 Sexual Rights Initiative, 2009. Report on China: 4th Round of the Universal Periodic Review. Retrieved from: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/SRI_CHN_UPR_S4_2009_SexualRightsInitiative_JOINT.pdf.

2 UN Office of the High Commissioner for Human Rights, 2009. Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1: People's Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR)), A/HRC/WG.6/4/CHN/3.

3 UN Human Rights Council, 2009. Report of the Working Group on the Universal Periodic Review: China, A/HRC/11/25.

4 The Sexual Rights Initiative, 2013. Stakeholder Submission on Lesbian, Gay, Bisexual and Transgender (LGBT) Rights in China For the 17th Session of the Universal Periodic Review. Retrieved from https://www.upr-info.org/sites/default/files/document/china/session17_-_october_2013/js16_upr17_chn_e_main.pdf.

5 Rainbow Action & Women Coalition of HKSAR, 2013. LGBT Joint Submission To the United Nations Human Rights Committee for the Universal Periodic Review of the People's Republic of China Hong Kong Special Administrative Region (HKSAR). Retrieved from: <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=42&file=EnglishTranslation>.

for “strengthened dialogue between government and NGOs that work on LGBT rights, environmental protections, people with disabilities and women’s rights.”⁶

In the Working Group review, the administration of Hong Kong, China reported that “it will continue to enhance the protection of the rights of persons with disabilities, women and children, and provide support to individual groups, such as people with an ethnic minority background or a different sexual orientation.”⁷

The following UPR recommendations related to SOGIESC were accepted by China:

Ireland

Establish anti-discrimination laws and regulations to ensure that lesbian, gay, bisexual and transgender persons enjoy equal treatment, including at schools and in the workplace.

Netherlands

Include a prohibition of discrimination of any kind, including discrimination based on sexual orientation and gender identity, ethnicity, religion and infection with HIV, in labour and employment law in line with international standards.

Engagement during the second cycle review was somewhat impromptu. One local organization had started to prepare a submission, but had not consulted broadly with CSOs. Following the submission deadline, an international LGBTI organization requested input on the advocacy process and so groups in China responded with key recommendations on SOGIESC issues. Activists in country used personal connections to reach out to the Permanent Mission of the Republic of Ireland to the UN in Geneva, which made a recommendation on anti-discrimination laws.

6 UN Office of the High Commissioner for Human Rights, 2013. Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21: People’s Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) (MSAR)), A/HRC/WG.6/17/CHN/3.

7 United Nations, Human Rights Council, Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), A/HRC/25/5.

TREATY MONITORING BODIES

CHINA HAS RATIFIED⁹ THE FOLLOWING INTERNATIONAL HUMAN RIGHTS TREATIES:

- 01 International Covenant on Economic, Social and Cultural Rights
- 02 Convention on the Elimination of All Forms of Discrimination against Women
- 03 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 04 Convention on the Rights of the Child (with Optional Protocols 1 & 2)
- 05 Convention on the Rights of Persons with Disabilities
- 06 International Convention on the Elimination of All Forms of Racial Discrimination

During the last review of China by CEDAW, coalitions from both Mainland China and Hong Kong submitted information on SOGIE issues affecting lesbian, bisexual, transgender and intersex (LBTI) women.

The report on Mainland China focused on four key issues, namely: laws and policies, including official definitions of discrimination, social conventions and stereotypes, healthcare, and violence against women based on sexual orientation and gender roles. For example, they reported that “to date, Chinese laws and policies lack a clear definition of discrimination against women” and that because of this, “when inevitably confronted with discrimination, the lack of legal remedies makes it nearly impossible to effectively advocate for their rights or escape repeated victimization.” They also noted that “NGOs seeking to represent women in sexual and gender minorities are currently unable to officially register as nonprofit organizations” and that organization tackling these issues “are frequently forced by the government to shut down, relocate, or otherwise interrupt the provision of services, adversely impacting the relationship of these groups with the communities they seek to serve.” Among others, they recommended that the government “pass national laws and policies that clearly define sex- and gender-based discrimination and contain specific provisions prohibiting discrimination on the grounds of sexual orientation, gender identity, and gender expression”, and that the government “Remove the systematic obstacles preventing transwomen from receiving medical attention”.¹⁰

⁹ UN Office of the High Commissioner for Human Rights, n.d. Status of Ratification. Retrieved from <http://indicators.ohchr.org/>.

¹⁰ China LBT Rights Initiative, 2014. Shadow Report: Implementation of the Convention to Eliminate All Forms of Discrimination against Women in the PRC. Retrieved from: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18361_E.pdf.

The key issues raised in the shadow reports focusing on Hong Kong includes: anti-discrimination legislation on the grounds of SOGIE and intersex status; gender recognition legislation; sex reassignment surgeries; enforced sterilization of transgender persons as a prerequisite for gender recognition; recognition of families; freedom of cultural expression; support for lesbian and transgender victims of domestic violence; homeless shelters for transgender persons; prohibition of “conversion therapy”; discrimination in health services and schools; and treatment of transgender persons in detention.^{11,12}

In its Concluding Observations on Hong Kong, China, CEDAW expressed concern “about reports that lesbian, transsexual and transgender women and girls in Hong Kong, China, are subjected to discrimination and abuse, particularly in the context of employment, education and access to health-care services.” The Committee urged Hong Kong, China to “intensify its efforts to combat discrimination against lesbian, transsexual and transgender women in employment, education and in their access to health-care services.”¹³

With regards to process, a CEDAW documentation training workshop was held with organizations to build capacity in gathering cases and information through focus groups and interviews. Gathering data had been a challenge as the lack of human rights education in the country meant that grassroots partners were not able to easily identify human rights violations. Drafters of the shadow reports were unsure of the legitimacy of cases that had not been officially published, and sought assistance from scholars and legal experts in preparation of the reports.

The coalition decided to be visible in its advocacy, to pave way for future engagement with the government. In addition, coalition representatives attended the session to engage in conversations with Committee members and government delegates. The government was seen as more accessible for dialogue in Geneva than at home, and it was important that the coalition was seen by the government as led by national rather than international groups. Association with international groups was a challenge, as they could be more confrontational with the government than was strategic for domestic organizations.

The Concluding Observations were welcomed as a tool to demand accountability from the government, and to push for legislation on issues relating to SOGIE. In addition, they could be used to show those opposed to recognition of rights relating to SOGIE that this is a legal, and not a moral issue.

A report on the issue of “conversion therapy” was included in a broader human rights submission by the Network of Chinese Human Rights Defenders to the CAT in 2015. The submission reported that “there are many documented cases of “gay conversion therapy” treatment for gays, lesbians, and bisexuals, intended to “cure” the “disease” of these individuals’ “abnormal” sexual and gender “preferences” or orientation.” Noting allegations of “conversion therapy” services being offered to government institutions, they reported that “the only response from these government agencies is that investigating this matter was “not under this office’s authority.””¹⁴

The Committee expressed concern about such practices and recommended the State to:

(a) Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called “conversion therapy”, and other forced, involuntary or otherwise coercive or abusive treatments against them;

(b) Ensure that health professionals and public officials receive training on respecting the human rights of lesbian, gay, bisexual, transgender and intersex persons, including their rights to autonomy and physical and psychological integrity; and

11 2014. Joint submission from LBT NGOs to the 59th session of the CEDAW Committee on the implementation of CEDAW in Hong Kong. Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18419_E.pdf.

12 Women Coalition of HKSAR, Rainbow Action, and Association for Transgender Rights, 2014. LGBT Joint Submission to the Committee on the Elimination of Discrimination Against Women With Regard to the Examination of the Hong Kong Special Administrative Region (HKSAR) of the People’s Republic of China in light of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Retrieved from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CHN/INT_CEDAW_NGO_CHN_18374_E.pdf.

13 UN Committee on the Elimination of All Forms of Discrimination Against Women, 2014. Concluding observations on the combined seventh and eighth periodic reports of China, CEDAW/C/CHN/CO/7-8.

14 Chinese Human Rights Defenders, 2015. Specific Information on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_NGO_CHN_19726_E.pdf.

(c) Undertake investigations of instances of forced, involuntary or otherwise coercive or abusive treatments of lesbian, gay, bisexual, transgender and intersex persons and ensure adequate redress and compensation in such cases.¹⁵

In advocating with the Committee in Geneva, CSOs worked with international organizations focused on SOGIESC issues, which were seen as less controversial than international generalist human rights organizations. They received additional support from the Office of the High Commissioner for Human Rights (OHCHR). Advocacy was done anonymously as the CAT was a very sensitive area for the government, with many recommendations on black jails and torture, and CSOs worried that engagement with the Committee might put the entire SOGIESC movement at risk.

However, perhaps as a result of the focus on many more sensitive issues, SOGIESC was comparatively seen as less contentious. The government's response was received fairly positively, with the government delegation responding that "homosexuality was not viewed as a mental disease that needed compulsive treatment" and that "lesbian, gay, bisexual, transgender and intersex persons faced some challenges in terms of social acceptance, employment, health and family life."¹⁶ CSOs tried to get SOGIESC-friendly media to pick up the story, and shared it on community media. Otherwise, follow-up was seen as a challenge, and prohibition of forced conversion therapy remains a key advocacy goal.

SPECIAL PROCEDURES

Participants in the discussions indicated limited engagement with the UN Special Procedures mechanisms, and regretted the lack of a dedicated mechanism on SOGIESC issues.

OTHER POSITIONS AT THE UNITED NATIONS

China voted against the inclusion of references to sexual orientation and gender identity in resolutions on extrajudicial executions at the General Assembly in 2010, 2012, and 2014.^{17,18,19}

In June 2016, the UN Human Rights Council approved a resolution establishing a new special procedure called the "Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity" (IESOGI), whose mandate is to assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination. China voted against the resolution.²⁰

In November 2016, the African regional group filed a resolution in the UN General Assembly that sought to block the work of the IESOGI. When a counter-resolution was filed to amend the earlier resolution by deleting the postponement of the IESOGI's functions, the China voted "No."²¹ China once again voted against the IESOGI in another attempt to halt the mandate in December 2016.²²

15 UN Committee against Torture, 2016. Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5.

16 United Nations Office at Geneva, 18 November 2015. Committee against Torture Considers Report of China. Retrieved from [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/6C0E4D1C7942AA44C1257F0100570083?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/6C0E4D1C7942AA44C1257F0100570083?OpenDocument).

17 UN General Assembly, 2010. 65th Session, 71st Plenary Meeting, A/65/PV.71.

18 UN General Assembly, 2012. "Amendment to draft resolution A/C.3/67/L.36" as contained in document L.68 (list of votes). Retrieved from http://www.un.org/en/ga/third/67/docs/voting_sheets/l68.pdf.

19 UN General Assembly, 2014. Amendment to draft resolution A/C.3/69/L.47/Rev.1, A/C.3/69/L.64. Retrieved from http://www.un.org/en/ga/third/69/docs/voting_sheets/L64.L47Rev1.pdf.

20 UN Human Rights Council, 2016. Resolution 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/32/L.2/Rev.1.

21 UN General Assembly, 2016. Amendment to draft resolution A/C.3/71/L.46, A/C.3/71/L.52. Retrieved from: https://www.un.org/en/ga/third/71/docs/voting_sheets/L.52.pdf.

22 APCOM, 21 December 2016. Another Victory of the UN Rejecting Another Effort to Suspend the Mandate of Independent Expert on Sexual Orientation and Gender Identity. Retrieved from <https://apcom.org/2016/12/21/lgbtiq-regional-organizations-asia-pacific-welcome-decision-ungas-5th-committee-meeting-safeguard-mandate-independent-expert-sexual-orientation-gender-identity/>

OUTCOMES

Key outcomes of international advocacy identified by members of civil society organizations included capacity strengthening, relationship building and an increasingly positive government position on SOGIE issues. Participants in discussions indicated that they learned much through the process of engaging with the international human rights mechanisms, from participating in training workshops, to documenting information, writing shadow reports and meeting with delegations and experts in Geneva. The process created an opportunity to strengthen the national, regional and international networks on SOGIE issues, and to engage in dialogue with the government. Statements, references and recommendations made at or by the international human rights mechanisms were seen as useful tools to support national level advocacy.

Civil society organizations working on SOGIESC issues had originally debated whether to politicize the issues by engaging with international human rights groups and mechanisms. Previously activists in the country had seen SOGIESC as a health issue rather than a human rights issue, but as annual LGBT Forums began to affirm a human rights approach, so did the movement.

Engaging with the UPR was seen as very political and sensitive during this time, due to the case of a Chinese human rights defender who had died following detention. International organizations made a strong link between the victim's international human rights advocacy and her detention and subsequent death.²³ As a result, activists found it hard to assess the risk of international human rights advocacy, and so were hesitant to engage, especially considering some activists had gone into exile following international advocacy efforts.

An increase in positive responses to SOGIESC issues at the UN level took civil society groups by surprise and encouraged them to do further international human rights advocacy work on SOGIESC. However, security remained an ongoing concern, and backlash always a risk. As a result, activists have sometimes engaged anonymously in this work.

Nevertheless, participants of discussions were encouraged by China's acceptance of two recommendations on SOGIESC issues, which indicated that the issues were not controversial for the government, and could be considered "safe rights", as opposed to broader civil and political rights issues. Participants were also pleased to see China's vote on SOGIESC issues at the UN change from voting against the issues to abstaining, and the government had given positive indications of its position on the issues raised in CAT and CEDAW.

STRATEGIES

Participants in the discussions shared insights into various strategies around documentation, lobbying, and follow-up:

DOCUMENTATION

Participants indicated that collecting cases and data on human rights relating to SOGIESC, and collating reports and submissions remained a challenge. Suggested issues for focus in the third cycle review included employment discrimination (on the basis of gender, disability and SOGIE) and bullying in schools. It was expected that there would be coalition efforts, pending available resources and assessment of security concerns. There were also proposals to approach academic human rights institutions in China for assistance in documentation and report writing.

LOBBYING

China will be under review again at the end of 2018, with stakeholder submissions to the process due in March 2018.²⁴ Participants indicated the intention to be prepared, organized and structured in

23 See for example, <https://www.hrw.org/news/2015/09/14/china-government-should-account-activists-detention-death> and <http://www.ishr.ch/news/china-ensure-independent-investigation-death-cao-shunli>.

24 See Calendar of reviews for the 3rd cycle (2017-2021): <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

advocacy efforts around the third cycle, to build awareness and motivation within the community on how the UPR can be useful and why it is important to engage. The intention for the third cycle was also to include information particular to the various subgroups and identities under the SOGIESC umbrella.

FOLLOW-UP

The recommendations accepted by China under the 2nd cycle UPR were seen as an important foundation for follow up on implementation. Participants intended to undertake UPR focused capacity building, particularly on report writing and lobbying. There was also an intention to engage the UN system on discriminatory textbooks in the education system, to support local advocacy on this matter.

CHALLENGES

THE FOLLOWING CHALLENGES WERE IDENTIFIED IN ENGAGING WITH THE UN HUMAN RIGHTS MECHANISMS:

Language affected access to the mechanisms, including access to information, international human rights law, submission of reports, and lobbying

Full understanding of the various treaties, mechanisms and how to engage them

Lack of data, statistics and documentation on SOGIESC human rights issues

Formulating well-researched, strategic, implementable and realistic recommendations

Working intersectionally with other human rights groups that were not always supportive of SOGIE issues

Government hostility to human rights as a concept, shrinking civil society space, censorship, police harassment, reprisals and security concerns

Understanding how to engage in follow-up and implementation of international engagement and recommendations



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ASEAN SOGIE Caucus (ASC) is a regional organization of human rights defenders from various countries in Southeast Asia. ASC advocates for the promotion, protection and fulfilment of the rights of all persons regardless of their sexual orientation, gender identity and expression, and sex characteristics (SOGIESC). The organization aims to support capacities of local activists to engage with domestic and international human rights mechanisms. The organization envisions a SOGIESC-inclusive Southeast Asian community, and advocates for the human rights of all persons regardless of SOGIESC to be respected, protected, promoted, and fulfilled.

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