

Joint Submission by 12 Hong Kong LGBTIQ+ Organisations

# The Situation of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Hong Kong

## For the List of Issues

Submitted to the Human Rights Committee in relation to the consideration of  
the fourth ICCPR periodic report submitted by Hong Kong, China

2020-04-30

This report is submitted by:

- Rainbow Action
- Les Corner Empowerment Association
- PrideLab
- Hong Kong Pride Parade
- Made in Gender
- Association for Transgender Rights
- Gay Harmony
- Beyond the Boundary-Knowing and Concerns Intersex
- GABRIELA Hong Kong
- Filguys- Gabriela HK Association
- Filipino Lesbian Organization
- Women Coalition of HKSAR

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### Executive summary

The Hong Kong Government refused to take **legislative steps** to protect the human rights of LGBTI people. LGBTI rights are often ignored by the HKSAR government, despite widespread public support. According to a 2018 study, nearly 70% of the Hong Kong public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation. However, the Hong Kong Government has made no progress on or plan for such legislation.

**Transgender persons** in Hong Kong need to submit evidences of the completion of gender reassignment surgery (GRS) for changing their legal gender on Identity Cards. The surgery must specifically include the removal of reproductive organs and genital reconstruction. Though an Inter-departmental Working Group was established in 2014 for the work of gender recognition, no more progress and no news has been released since 2017. The situation remains very unacceptable as there were no progress with regard to both the legislation and the GRS requirement for gender recognition.

**Intersex infants and children** in Hong Kong are subjected to unnecessary and irreversible medical procedures at their early age without their consent, only the agreement of parents is considered. Hong Kong Government still has no plan to set up measures making the consent of the intersex child be taken into consideration, and no measures are taken to guarantee that non-urgent and irreversible medical interventions shall be postponed until the intersex child is sufficiently mature to participate in decision-making process.

## 1. Non-discrimination against LGBTI persons

### - Art. 2 and 26

As early as 1999, different treaty bodies have recommended that HKSAR Government should consider enacting legislation to prohibit specifically the discrimination on grounds of sexual orientation and gender identity, including the Human Rights Committee (HRCtee) in its previous concluding observations (CCPR/C/CHN-HKG/CO/3, para. 23). There is still no progress, no plan and no time table for such enactment. The HKSAR Government still claimed that introduction of the legislation is “controversial,<sup>i</sup>” which recent studies have proven otherwise.

The Equal Opportunities Commission in Hong Kong (EOC) had commissioned a research called “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status,” the result of the study was released in 2016<sup>ii</sup>. One of the key findings showed that more than half of the respondents (55.7%) “somewhat/completely” agreed that overall, there should be legal protection against discrimination for people of different sexual orientation, gender identity and intersex status in Hong Kong. 7.3% remained neutral on the question, while only 34.8% “somewhat/completely” disagreed. In the field of employment, even more – nearly 60% of the respondents “somewhat/completely” agreed that there should be legal protection against discrimination.

In 2018, the Centre for Comparative and Public Law, University of Hong Kong published a report named “Support in Hong Kong for Same-sex Couples’ Rights Grew Over Four Years (2013-2017)”<sup>iii</sup>. The result showed that **69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation.**

The study commissioned by EOC also found that in an LGBTI focus group survey with 43 respondents, **all of them claimed that the discrimination experienced by LGBTI people was either common or very common.** 93% of them thought the city is not LGBTI-friendly. When being asked if they have experienced discrimination within the period of two years before the study, 88% of them had experienced discrimination out of which 44% of the respondents claimed they often/very often encountered discrimination. When the respondents were asked if they had ever encountered discrimination in their lifetime, the corresponding percentages elevated to 98% and 65% respectively.

Experiences of discrimination by LGBTI people is also analysed in the EOC study. The cases were categorized into four domains: employment, education, provision of goods and services, and disposal and management of premises. Over 80 self-reported cases on sexual orientation or gender identity discrimination were recorded in the study. That includes:

*Unfriendly attitudes in the workplace were reported by LGBT people, especially by lesbians who appeared with a more masculine appearance. One respondent reported that she was verbally disparaged by her employer who told her colleagues that she was “abnormal”, being neither male nor female, and that they should be*

*careful and stay away from her. The atmosphere at work turned sour and in the end the lesbian left the company.*

*Another case reported was the immediate dismissal from a job after an employer noted a transgender female's gender appearance. The transgender female visited the company's headquarters in her dress and was fired immediately after that. Without any evidence, she was accused of being a "potentially a sex offender".*

*LGBT students also reported facing unfriendly attitudes and verbal attacks from teachers. A lesbian student who appeared more masculine was described by the teacher as neither male nor female before the whole class, and as a result, other students also joined in to laugh and tease her.*

*Some Social service providers denied service to their clients, or gave poorer treatment in the course of service provision once their clients' sexual orientation was revealed. A gay substance user was denied services on the ground of his sexual orientation from a rehabilitation centre.*

*Some transgender people were denied hotel rental services because they were often perceived to be sex workers who would be likely to engage in illicit sexual activities. It was revealed that these cases happened with a number of room-renting venues, including five-star hotels of international chains.*

*There are more than 320,000 foreign domestic helpers (FDHs) in Hong Kong, some LGBT foreign domestic helpers reported cases of discrimination. FDHs generally avoided talking about their sexual orientation. But due to frequent contact in the residence, their sexual orientation might eventually be discovered by their employers. In one case, when an employer discovered that a lesbian FDH had an intimate girlfriend, her contract was immediately terminated.*

Currently, there is no regular formal platform for the HKSAR Government to communicate with the LGBTIQ+ community since 2015, after the closure of the Advisory Group on Eliminating Discrimination against Sexual Minorities.

#### **Suggested Questions for the List of Issues**

- In the light of the Committee's previous concluding observations (see CCPR/C/CHN-HKG/CO/3, para. 23), please indicate what steps have been taken to adopt comprehensive anti-discrimination legislation explicitly prohibiting discrimination on the basis of sexual orientation, gender identity, gender expression, and sex characteristics, inter alia, (a) addressing discrimination in the private sphere; (b) prohibiting all direct and indirect discrimination and multiple forms of discrimination; and (c) providing for effective remedies in judicial and administrative proceedings.
- Does Hong Kong, China have a concrete time frame for the plan for the legislation of the anti-discrimination law that prohibits discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics?

- Please provide information on any court cases concerning the rights of lesbian, gay, bisexual, transgender and intersex people.

## 2. Situation of LGBT activists

### 2A. Hate Speech, Harassment and Violence against LGBT activists

#### - Art. 19

There is no law in Hong Kong that protects lesbian, gay, bisexual, transgender and intersex people from hate speech and harassment based on sexual orientation, gender identity, gender expression and sex characteristics. When the anti-elab (anti-extradition law amendment bill) movement became intense from June 2019, the situation became worse. Some activists of the anti-elab movement are as well lesbian, gay, bisexual or transgender people. They are attacked by homophobic and transphobic messages, including sent by politicians and police officers, both on the Internet and in person.

*Sham Tsz-kit, Jimmy is the convener of the Civil Human Rights Front (CHRF) and an openly gay LGBTI+ activist. As the CHRF, having organized some of the important anti-elab rallies, including the march of 2 million participants on June 16, 2019 and other marches of over 1 million participants, Jimmy Sham was seen as one the icons of the anti-elab movement.*

*Opponents of anti-elab movement, pro-Beijing politicians and organizations have maliciously attacked Jimmy Sham using homophobic and transphobic messages. For instance, Dr. Ann Chiang Lai-wan, a Pro-Beijing Legislation Councillor, shared a homophobic video containing fake information on her official Facebook Page on June 30, 2019 defaming Jimmy's work at CHRF<sup>v</sup>.*

*In response to the homophobic attack, local LGBTI+ activist groups started a petition and submitted over 2,000 signatures to the Equal Opportunities Commission (EOC)<sup>v</sup>. As there is no law in Hong Kong to protect LGBTI+ people from hate speech and harassment, EOC cannot properly handle Dr. Ann Chiang's case except to vaguely agree that her post was inappropriate<sup>vi</sup>.*

*The office of the Rainbow of Hong Kong, an LGBTI+ group that Jimmy Sham worked with, was also attacked, where homophobic messages were pasted and painted on its landlord's door. Also, a street banner of a pro-democratic District Council candidate was vandalised and covered with fake magazine cover with Jimmy Sham's cross-dressed photos on it.*

*A local famous singer, Ho Wan See, Denis faced homophobic web-based violence by opponents of anti-elab movement because she is openly-lesbian and a supporter of the anti-elab movement.*

Sexual orientation and gender expression therefore became a weapon to attack LGBTI+ groups and pro-democratic movement.

Despite the fact that the situation of homophobic and transphobic hate speech and violence is worsening, The HKSAR Government did nothing to stop it. No one is prosecuted or warned, not to mention any remedies made to victims. There is no law enacted to protect LGBTI+ individuals, activists and organizations from harassment based on sexual orientation or gender identity.

#### **Suggested Questions for the List of Issues**

- Please indicate what steps have been taken to enact the comprehensive law protecting lesbian, gay, bisexual and transgender individuals, including human rights defenders and activists, from hate crimes, which includes harassment, hate speech and all forms of violence, imposed by private actors, politicians, civil servants and police officers, and in the media, on the Internet and in other circumstances.
- What specific measures has the government taken to ensure law enforcement officials, prosecutors and judges are capable to work with cases of homophobic and transphobic hate crimes, hate speech, harassment and violence?

### **2B. Violations of Right to Assembly - HK LGBT Pride Parade rally objected**

#### **- Art. 2, 21 and 26**

In November 2019, the annual Hong Kong LGBT pride parade rally was opposed by the Police for the first time. Like all previous event since 2008, the organizer of Hong Kong Pride Parade informed the police, months before the lawful lead time, that the 2019 event would include a start point assembly, a rally and an end point assembly. The police objected to the start point assembly and the rally, which is the main part of the pride parade, and only allowed the end point assembly is allowed<sup>vii</sup>.

The Police gave two reasons for objecting the rally: 1) there had been many lawful or unlawful public assembly and rally turned violent since June 2019; and 2) the Police, based on the outcome of recent public events, believed that some of the participants of the rally would deviate from the planned route. These two reasons are both not related to the event and the organizer of the HK Pride Parade rally. It is the obligation of the Police to facilitate assemblies and rallies, exercising the freedom to peaceful assembly. Objecting the HK Pride Parade rally had undoubtedly violated the right to assembly of LGBT individuals, activists and organizations.

The Police only issued the “Letter of No Objection” for the end point assembly 48 hours before the event. Given that Hong Kong Pride Parade is the most important local political event fighting for LGBT equality, such a short notice by the Police is practically hindered, instead of facilitating, the organization of the event and thus impeded the right of assembly.

#### **Suggested Questions for the List of Issues**

- What measure does the government take to guarantee the right to assembly of LGBT individuals, activists and organizations?

### 3. Gender Recognition of Transgender Persons

#### - Art. 2(1), 7, 17 and 26

The process for transgender people in Hong Kong to change their legal gender is governed by administrative regulations of the Immigration Department of the Security Bureau. Among others, evidences of the completion of gender reassignment surgery (GRS) is required for the purpose. The surgery must specifically include the removal of reproductive organs (sterilisation) and genital reconstruction<sup>viii</sup>. The Committee against Torture expressed concerns on this situation in its 2016 concluding observation, and recommended the government to removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilization(CAT/C/CHN-HKG/CO/5, para 28, 29).

In 2014 Hong Kong established an Inter-departmental Working Group on Gender Recognition (IWG)<sup>ix</sup> The work scope of the IWG is to 1) setup a gender recognition scheme; and 2) deal with issues arising as consequence of legal gender recognition. After 6 years from the establishment, the IWG only finished the consultation invitation part 1 in 2017. The consultation report is not announced yet, no more progress and no news has been released up to date. Hence there is no sign of starting the public consultation for part 2 in the near future. For transgender persons who seek for change of gender markers on official documents, the situation remains very unacceptable as there were no progress with regard to both the legislation and the GRS requirement for gender recognition.

As the current administrative regulations are fragmentary, the absence of clear legal definition and recognition of transgender persons has undermined the legal rights for transgender persons.

For example, if a post-surgery trans woman is raped by a man, it is unclear if the perpetrator would be charged by rape offence as the local Crimes Ordinance defines the crime as “A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”<sup>x</sup>

Also, the privacy and personal data of transgender persons are not being protected after they have changed their gender maker. A wide range of institutions, such as banks and financial services companies, can still access, record, and disclose their personal history of gender change as there is no law to regulate disclosure.

#### **Suggested Questions for the List of Issues**

- Please provide an update on the implementation of legislation concerning legal recognition of gender reassignment.

- Please also report on the progress made in bringing the legislation of gender recognition law in compliance with the Covenant, and if it requires sterilization or infertility as a precondition for recognising legal gender change.

#### **4. Discrimination against same-sex couples and Non-recognition of same-sex partnership or marriage**

##### **- Art.2(1), 23 and 26**

The Marriage Ordinance in Hong Kong defines marriage as a voluntary union for life of one man and one woman to the exclusion of all others. Same-sex couples are not recognized under the Marriage Ordinance, and there is no legislation to recognize the same-sex partnership in Hong Kong. Same-sex couple bounded by legal union overseas will not be granted partnership rights in Hong Kong.

The Equal Opportunities Commission last year commissioned law firm Allen & Overy to study the recognition and treatment of relationships under Hong Kong law<sup>xi</sup>. The report identified 21 areas of differential treatment between opposite-sex marriages and same-sex couples. Those areas of differential treatment are to be found in all aspects of daily life, including: anti-discrimination, immigration, crime, bankruptcy, inheritance, employment, housing, medical, public welfare, public health, public service and compensation.

There are several recent and ongoing cases before the Hong Kong Courts that have challenged or are challenging the lawfulness of different treatment between opposite-sex couples and same-sex couples.

*In July 2018, the Court of Final Appeal ruled that same-sex civil partner registered overseas of an eligible sponsor should be entitled for a dependant visa.*

*In June 2019, the Court of Final Appeal determined that same-sex spouse of a civil servant registered overseas should be entitled to medical and dental benefits, and all same-sex couple registered overseas should be entitled to joint assessment for taxation.*

In 2018 three more judicial review applications were filed to challenge different aspects of partnership rights that discriminate against same-sex couples, including the rights to jointly apply for public rental housing flat, recognition of same-sex marriages registered overseas and availability of registration that recognizes same-sex couple.

The Hong Kong Government refused to take any active measure to end the discrimination against same-sex couples in other areas that is not yet challenged by judicial review cases.

##### **Suggested Questions for the List of Issues**

- Please report on the steps taken towards legal recognition of same-sex couples

- Please provide an update on measures taken to prevent discrimination on the basis of sexual orientation, including any legislative developments concerning same-sex partnerships.
- Please provide information on any court cases concerning the rights, including same-sex partnership recognition, of lesbian, gay, bisexual, transgender and intersex people.

## **5. Involuntary surgeries on intersex infants and children**

### **- Art 7, 24**

Intersex infants and children in Hong Kong are subjected to unnecessary and irreversible genital correction surgeries and other medical procedures at their early age without their consent. Hong Kong Government reported that medical treatment of intersex infants only requires discussion between doctors and parents of the infants, and only the agreement of parents is considered<sup>xii</sup>. The Committee against Torture expressed concerns about this situation in the 2016 concluding observation, and recommended the government to guarantee impartial counselling services for all intersex children and their parents; that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent (CAT/C/CHN-HKG/CO/5, paras. 28, 29).

The Hong Kong Government still has no plan to set up measures or legislation making the consent of the intersex child be taken into consideration for any treatment, and no measures are taken to guarantee that non-urgent and irreversible medical interventions shall be postponed until the intersex child is sufficiently mature to participate in decision-making process and give full, free and informed consent.

When intersex adults find that they do not identify with the sex to which they have been assigned during their infancy, they are subjected to the same requirements as transgender people changing their legal gender on identification documents. This means these intersex adults will be forced to undergo full GRS, including sterilisation and genital reconstruction.

The Hong Kong Government publishes no statistics on intersex infants born. There are also no records for the number of genital correction surgeries and other medical treatments performed on infants and children. The only relevant statistic revealed by the government in 2015 is that the Hospital Authority conducts around 50 operations on patients under the age of 18 with Disorders of Sex Development (“DSD”) annually. They do not have any statistics on the number of children born with DSD<sup>xiii</sup>. The government also stated in 2016 that there was no statistics on the total number of intersex persons in Hong Kong<sup>xiv</sup>.

The lack of detailed statistic resulted in no policies or measures to address the human rights issues that intersex persons faced; thus no mechanism to redress for the physical and psychological suffering caused by unnecessary and irreversible genital correction surgeries and other medical treatment to some intersex persons without their informed consent.

### **Suggested Questions for the List of Issues**

- Please provide statistics on the number of intersex children, including the number of birth annually, and how many of them were subjected to irreversible medical treatment, including genital correction surgeries, before they were able to give fully informed and free consent, and the total number of intersex persons in Hong Kong.
- Please provide any action plans and updates on the measures taken to reform medical procedures on intersex infants so to guarantee that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and to give full, free and informed consent.

### **Background Information and Contact Details for the Organisations**

This submission is prepared by 3 organisations namely: Rainbow Action, Les Corner Empowerment Association and Pride Lab; then co-signed by 9 other Hong Kong LGBTIQ+ organisations.

#### **Rainbow Action**

Rainbow Action was founded on 10th December, 1999 (Human Rights Day). We specialize in non-violent direct actions and public speeches voicing out human rights violations and discrimination cases in Hong Kong. Issues we are concerned with include freedom of expression, unjust government ordinances and practices, discriminating policies, police harassment, quality of life issues amongst grass roots sexual minority communities.

#### **Les Corner Empowerment Association**

Les Corner Empowerment Association is established in 2015. We aim at promoting gender and sexual orientation equality in Hong Kong. Les Corner aims to promote an inclusive society for sexual minorities. Our works include public education to eliminate prejudice and discrimination and fight for the social benefits and resources for sexual minorities in need.

#### **PrideLab**

PrideLab was founded in Hong Kong as a registered society in May 2013. As a LGBT+ friendly organization, PrideLab states its goal is to influence the public with the value of equality via various art forms.

Co-sign Organisations:

- **Hong Kong Pride Parade:** The organiser of the annual Hong Kong Pride Parade since 2008
- **Made in Gender:** An association dedicated to gender-related cultural works and as well a passionate advocate of gender diversity.
- **Association for Transgender Rights:** An organisation for transgender equality in HK.
- **Gay Harmony:** A organisation for equality and gay community health care.

- **Beyond the Boundary-Knowing and Concerns Intersex:** The only organisation founded by intersex people in HK to concerned with, and strives for, the rights of intersex people.
- **GABRIELA Hong Kong:** The Hong Kong chapter of GABRIELA, the progressive alliance of more than 200 women's organizations that cut across sectors and regions, with chapters and support groups of Pinays and non-Pinays in various continents of the world.
- **Filguys- Gabriela HK Association:** A lesbian organization promotes rights and welfare of Filipino migrants and LGBT.
- **Filipino Lesbian Organization:** A Filipino lesbian organisation for the rights of migrants in HK.
- **Women Coalition of HKSAR:** A local women sexual minority group.

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## End notes

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- <sup>i</sup> Fourth Report of the HKSAR of the PRC in the light of the ICCPR (CCPR/C/CHN-HKG/4, para 200)
- <sup>ii</sup> <https://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Research/content.aspx?ItemID=13585>
- <sup>iii</sup> [https://www.law.hku.hk/ccpl/wp-content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20\(3%20July%20Final%20for%20Distribution\).pdf](https://www.law.hku.hk/ccpl/wp-content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20(3%20July%20Final%20for%20Distribution).pdf)
- <sup>iv</sup> <https://www.scmp.com/news/hong-kong/politics/article/3019426/hong-kong-lawmaker-ann-chiang-and-civil-human-rights-front>
- <sup>v</sup> <https://hk.news.appledaily.com/local/realtime/article/20190719/59841957>
- <sup>vi</sup> <https://www.eoc.org.hk/eoc/GraphicsFolder/ShowContent.aspx?ItemID=16150>
- <sup>vii</sup> Document: (7) in LM (10/2019) in HK 136/6
- <sup>viii</sup> Please see Q22: [https://www.immd.gov.hk/eng/faq/faq\\_hkic.html](https://www.immd.gov.hk/eng/faq/faq_hkic.html)
- <sup>ix</sup> <https://www.iwggr.gov.hk/>
- <sup>x</sup> [https://www.elegislation.gov.hk/hk/cap200!en@2012-08-02T00:00:00?xpid=ID\\_1438402823160\\_002](https://www.elegislation.gov.hk/hk/cap200!en@2012-08-02T00:00:00?xpid=ID_1438402823160_002)
- <sup>xi</sup> <https://www.eoc.org.hk/EOC/upload/ResearchReport/2019626142922933384.PDF>
- <sup>xii</sup> <https://www.info.gov.hk/gia/general/201603/02/P201603020530.htm>
- <sup>xiii</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fR1%2fHKG%2f22226&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fR1%2fHKG%2f22226&Lang=en)
- <sup>xiv</sup> <https://www.info.gov.hk/gia/general/201603/02/P201603020530.htm>