

LGBT Joint Submission  
to the  
**Committee on the Elimination of Discrimination  
against Women**

## **List of Issues**

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)**

20<sup>th</sup> January 2014

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## Background Information and Contact Details for the Organisations

### **Women Coalition of HKSAR (WCHK)**

Women Coalition of HKSAR (WCHK) - a proactive organisation dedicated to broadening the frontiers for sexual movements and defending the human rights of sexual minorities. WCHK was established on 1<sup>st</sup> July 2003 and is a registered organisation in Hong Kong. We do our work using a wide range of social movement tactics depending on the issue or message we want to deliver. We do research, hold press conferences, provide feature stories, direct actions, publications and public education talks and presentations.

WCHK is a female sexual minority group which focuses its efforts on the welfare of local sexual minorities, including Lesbian, Bisexual, Queer and transgender people. We defend the human rights of sexual minorities facing discrimination in civil, political, economic, social and cultural contexts due to their sexual orientation and/or gender identity. We are a member of International Lesbian and Gay Association - ILGA (International), Civil Human Rights Front (Hong Kong), and the Chinese Lala Alliance Advisory Board (Greater China).

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### **Rainbow Action**

Rainbow Action was founded on 10<sup>th</sup> December, 1999 (Human Rights Day) and is a registered organisation in Hong Kong. Rainbow Action is one of the most active local groups fighting for human rights for sexual minorities in Hong Kong. We specialise in non-violent direct actions and public speeches to draw attention to human rights violations and discrimination cases in Hong Kong. Our actions often receive worldwide news media coverage. Issues we are concerned with include freedom of expression, unjust Government ordinances and practices, discriminatory policies, police harassment, and quality of life issues amongst grass roots sexual minority communities.

We are a member of Pride Parade Hong Kong, International Day Against Homophobia and Transphobia, and Civil Human Rights Front (Hong Kong).

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## **Introduction**

This list of issues has been prepared by our organisations to highlight the discriminatory laws and practices of the Hong Kong Special Administrative Region (HKSAR) Government that are opposed to the rights and freedoms of individuals based on their sexual orientation and gender identity. We compiled this submission after consultations with stakeholders, including individuals and representatives from relevant associations.

The Concluding Observations of the UN Human Rights Committee in 2006 appreciates “the initiatives undertaken to promote non-discrimination on the grounds of sexual orientation” by the Hong Kong Government. However, since the last examination by the Committee, discrimination against people based on their sexual orientation and gender identity (SOGI) has seriously increased.

The list of issues raised in this submission reflects the discrimination faced by Lesbian, Bisexual and Transgender (LBT) women in HKSAR today.

### ARTICLE 1. DEFINING DISCRIMINATION

### ARTICLE 2. OBLIGATIONS OF STATE PARTIES

#### **(A) Passage of Sexual Orientation Discrimination Ordinance for Hong Kong**

- 1. We ask the Committee to pay particular attention to this issue in preparation for HKSAR’s examination under the CEDAW. We would encourage the Committee to question the Government about the timeline for introducing legislation against sexual orientation discrimination.**
- 2. In Hong Kong private companies, employers, and landlords can lawfully discriminate against people based on their sexual orientation, in practices such as hiring, renting premises and the provision of services.**
3. The high rate and seriousness of sexual orientation discrimination (SOD) is a warning sign that the Government's current methods for addressing SOD--self-regulation and education--has failed at prohibiting all discrimination against women, especially in the private sector. A research study conducted by Women Coalition of HKSAR in 2010 found that over 50% of LGBT participants had experienced discrimination. Research by the University of Hong Kong Public Opinion Programme found that 78% of the Hong Kong working population think that LGBT individuals face discrimination or negative treatment.

4. HKSAR's failure to prohibit sexual orientation discrimination in the private sector breaches its obligations under articles 1&2 of the Covenant.
5. The demand for Sexual Orientation Discrimination (SOD) legislation has escalated in the past few years. A crowd of over 5,200 people marched on 9<sup>th</sup> November, 2013 to support anti-discrimination for LGBT people. Research results from both the Equal Opportunities Commission and the University of Hong Kong show that the majority (60%) of Hong Kong people are now more supportive for SOD legislation. Legislator the Hon Cyd HO Sau-lan moved a motion debate in the Legislative Council (Legco) on 7th November 2012 to urge "the Government to expeditiously launch public consultation on enacting legislation to safeguard equal opportunities for the basic rights of people with different sexual orientations." Although the motion was defeated under the current voting mechanism in the Legco, 31 legislators voted for the motion while 25 voted against it, the number of votes to support anti-discrimination was the highest ever.
6. **We urge the Committee to propose a concrete recommendation to the HKSAR to extend its prohibition of Sexual Orientation discrimination into the private sector immediately.**

**(B) Review of current Discrimination Ordinances**

**(B1) Lack of Protection for Gender Expression**

7. There is no Protection for Gender Expression in the Discrimination Ordinances in Hong Kong. As the Sex Discrimination Ordinance has been enforced for over 17 years, the Equal Opportunities Commission (EOC) is currently reviewing the current ordinances. We are disappointed that protections for Gender Expression have been omitted.
8. Women in non-feminine gender expression continue to face serious discrimination in Hong Kong, especially in situations around hiring, job security, benefits, promotion, property rental and the provision of services.

**(B2) A Policy of Heterosexuals ONLY Protection in the Family Status Discrimination Ordinance**

9. The current Family Status Discrimination Ordinance discriminates against Same Sex Families. Women who carry the responsibility for the care of a Same Sex family member or her affinity are not protected by the Discrimination Ordinance, as is their heterosexual counterpart.
  
10. **With the advantageous timing of the EOC’s revision of the current Discrimination Ordinances, we urge the Committee to issue concrete recommendations to the HKSAR Government to extend its Protections for gender expression and same sex families.**

ARTICLE 5. STEREOTYPING AND PREJUDICES

**(C) The use of the Control of Obscene and Indecent Articles Ordinance (COIAO) to discriminate against cultural expression by Lesbians and sexual minorities**

(Article 5 and A/HRC/19/41, paragraph 62)

11. It is NOT true that Hong Kong has freedom of expression. For example, many magazines, movies and books from western countries for or about sexual minorities are considered obscene and are illegal to sell in Hong Kong. Other examples of materials that have been found to be obscene or indecent include the poster for “Better than Chocolate” (a lesbian movie), and an article about women’s sexuality in the Student Press, Chinese University of Hong Kong.
  
12. The Hong Kong Government has recently finished its second round of public consultations for the review of the COIAO. In the review document, the Government is recommending a significant increase in penalties while refusing to provide any definition of ‘obscene’ and ‘indecent’, it’s up to personal “Standards of morality” of Obscene Articles Tribunal **adjudicators**.<sup>1</sup> We are

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<sup>1</sup> Website of *Review Control of Obscene and Indecent Articles Ordinance*  
<http://www.coiao.gov.hk/en/faq.htm>

greatly concerned that this will impose further limitations on the freedom of expression especially regarding information about sexual minorities and cultural expressions from Lesbians and sexual minorities.

13. **We urge the Committee to ask the Hong Kong Government what measure they are taking to ensure the Control of Obscene and Indecent Articles Ordinance (COIAO) is not used to discriminate against the cultural expression of Lesbians and sexual minorities.**

**(D) Lack of Support for Victims of Domestic Violence who are Transgender or Lesbian**

14. The Domestic Violence Ordinance in Hong Kong was amended and enforced on 1<sup>st</sup> January, 2010. It extended protection coverage to same sex cohabitation relationships and family relatives. Despite this extension we have continued to receive Lesbians and Transgender people seeking help for being abused by their partners, parents or other family members. For over 4 years, the Hong Kong Government has NOT created a new policy and has NOT extended social support resources accordingly.
15. There are no shelters suitable in Hong Kong for Transgender victims of domestic violence. Many Transgender women who have taken shelter at TWGHs CEASE Crisis Centre have complained about mistreatment such as being put into the “male section”. The Centre also has no procedure or measures for handling discrimination against Transgenders from other service users at the shelter. Only 1 out of 5 Domestic Violence refuge centres are friendly to Lesbians and their occupation rate is over 100% for most of the time.
16. There are no structural measures implemented to address or reduce discrimination issues from within the government’s social service agencies themselves. There has never been any training regarding Transgender issues within the Social Welfare Department itself.

## ARTICLE 10. EQUALITY IN EDUCATION

### **(E) Freedom from discrimination and bullying in school**

(A/HRC/19/41, paragraph 58, 59)

17. A research study in 2010 conducted by WCHK showed that 31% of participants faced discrimination in school based on their sexual orientation. We have received several reports from students who experienced discrimination in their schools. The cases included: unfair punishment by teachers, teachers encouraging other students to isolate students of different sexual orientation, teachers abusing students with insulting terms (死基婆). The situation is worse than just bullying by classmates, discrimination often starts with school officials and teachers in Hong Kong.
18. We urge the Government to introduce anti-discrimination legislation including protection in the area of education and to introduce a "Safe Schools" policy.
19. **We urge the Committee to ask the Hong Kong Government what measures they are taking to ensure that students of all Sexual Orientations and Gender Expression are protected equally and are free from discrimination and bullying in school.**

## ARTICLE 12. EQUALITY IN ACCESS TO HEALTH FACILITIES

### **(F) Equal access and treatment in public health care service**

(A/HRC/19/41, paragraph 17; E/C.12/2000/4 paragraph 11, 12 & 18)

20. In a study conducted by WCHK (A cross-sectional Knowledge/Attitude/Practice study on health seeking behaviour among lesbians/bisexuals in Hong Kong) only 2.2% of respondents knew that lesbians have a higher risk of developing breast cancer and only 13.8% of respondents had cervical cancer screening experience. The health care awareness among local lesbians and bisexual women is low. We think that this is related to the low level of awareness and sensitivity regarding sexual orientation in local public health care service.

21. According to the Department of Health, the “Woman Health” sector is under “Family Health Service”<sup>2</sup>, which means heterosexual families only, thereby excluding lesbians. WCHK received a report of a woman who was denied cervical cancer screening service because she is a lesbian. The Government does not have any promotion for breast cancer prevention targeting lesbians and bisexual women. We urge the Government to increase the awareness of sexual orientation sensitivity in the public health care service.

22. **We urge the Committee to ask the Hong Kong Government how it will ensure equal access and treatment to people of different sexual orientations in public health care services.**

**(G) Access of transgender persons to sex-reassignment surgery**

(A/HRC/19/41, paragraph 17; E/C.12/2000/4 paragraph 12 & 18)

23. From the 1980s until 2005, the Hong Kong Hospital Authority operated a Sex Clinic specifically for transgender people which offered comprehensive, integrated services including psychiatric evaluation, sex-reassignment surgery and legal support. Since the closure of the clinic in 2005, transgender people and people with Gender Identity Disorder have had to go to general psychiatric clinics for consultation. We have received several reports that practitioners at these clinics have told patients that they do not know how to do assessment for sex-reassignment surgery. The Hospital Authority has said that it plans to reopen the specialised Sex Clinic but it has not yet done so.

24. Currently there is only one surgeon who performs sex-reassignment surgery (SRS) in Hong Kong and there is no training in SRS available to other doctors. There is great concern among members of the transgender community that when this surgeon retires that there will be no one able to perform SRS in Hong Kong. We have asked the Hospital Authority if they have any plan regarding the continuity of SRS in Hong Kong but have received no response.

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<sup>2</sup> Family Health Service, Department of Health  
[http://www.fhs.gov.hk/english/main\\_ser/woman\\_health/woman\\_health.html](http://www.fhs.gov.hk/english/main_ser/woman_health/woman_health.html)

25. **We urge the Committee to ask the Hong Kong Government what concrete steps they are taking to ensure the continued availability of sex-reassignment surgery (SRS) in Hong Kong and to reopen the specialised Sex Clinic.**

**(H) Transgender Persons are Forced to Undergo Unnecessary Surgery**

(A/HRC/19/41, paragraph 71-73)

26. In Hong Kong, Transgender Persons are unable to obtain legal recognition of their preferred gender, including the change of their recorded sex and first name on State-issued identity documents unless they undergo sterilization surgery as a condition for recognition.
27. This is particularly harsh for Female-to-Male Transgender Persons, who without undergoing surgery for penis construction are unable to obtain legal recognition of their preferred gender in Hong Kong.
28. In Hong Kong, Transgender Persons are unable to obtain issuance of new birth certificate reflecting their new gender.
29. **We ask the Committee to question the Government about the timeline for introducing legislation to facilitate the legal recognition for a change of gender.**

ARTICLE 15. EQUALITY IN LEGAL AND CIVIL MATTERS

**(I) Degrading Torture of Transgender people in detention**

(A/HRC/19/41 paragraphs 11, 12 & 34)

30. **The Hong Kong Government does not have any policy or measures for preventing Degrading Treatment and Torture of Transgender people by Enforcement Officers when they are Detained or Incarcerated.**

31. Cases of transgender detainees being tortured have been reported since 2009. Some detainees were housed in a psychiatric centre since they were identified as gender variants, while Male-to-Female transgender detainees were inflicted with degrading treatment. Incarcerated as males they were forced to have their hair cut short to appear as male detainees, they were refused access to hormone replacement treatments and female underwear although they already had breast implant surgery. This treatment is a humiliation and degradation to transgender detainees and a major infringement on their Human Rights. The HK government claims that they inform transgender detainees about applying to arrange to keep their long hair when entering the institutions but they had not received any cases asking for these arrangements. Since at least 4 transgender detainees have had their hair cut upon entering the institutions without the opportunity to apply to keep their hair long, we have a strong suspicion that the Government is failing to inform transgenders before their hair is cut and is not conducting itself behind closed doors as it professes to do. It therefore fails to uphold the Covenant to treat transgender people with humanity, respect and dignity, deserving of all people.
32. On 16<sup>th</sup> September 2013, a Colombian Male-to-Female Transgender woman was passing through Hong Kong immigration. Immigration officers put her into the detention room, laughing at her and treating her as a criminal. The Transgender person's request for being searched by a medical doctor was rejected, and without consent and with the Transgender person objecting, a male officer who was not a medical doctor, sexually assaulted her by squeezing her breasts and touching her penis.
33. In a written reply to The Pulse by Radio Television Hong Kong (RTHK), The Customs and Excise Department acknowledged that a male officer did conduct a body search on her for "Customs Clearance". The document stated "As indicated in the passenger's passport, the sex of the passenger was a male. In accordance with Customs' standing instructions, a person may be searched only by a Customs member who is of the same sex." (News report in Part 2 of The Pulse by RTHK <http://vimeo.com/81917822>)

34. Immigration officials would not allow her to go to a women's toilet stating to her, "You should go to the restroom of the gender on your passport, not the one you want". When she asked what crime she had done and pointed out that she was being treated with discrimination, an officer answered her, "Yes we are discriminating you." to shut her up. After being detained for 14 hours and not being allowed to go to the toilet, she eventually urinated in her clothing.
  
35. **We encourage the Committee to ask the government to account for its failure to set up regulations for treating transgender detainees and prisoners with humanity and respect.**