

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)**

September 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 1st 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).

Contact Details:

Women Coalition of HKSAR (WCHK)

Website: www.wchk.org

Email: email@wchk.org

Tel: +852 8103 0701

Contact person: Wylie Yeo

Address: Flat 5, 3/F, Bowring Commercial Centre

150-164 Woosung Street

Jordan, Kowloon, Hong Kong

Rainbow Action

Rainbow Action was founded on 10th December, 2000 (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).

Contact Details:

Rainbow Action

Website: www.rainbowactionhk.org

Email: rainbowactionhk@gmail.com

Tel: +852-9791-4641

Contact person: Noel Chen

Association for Transgender Rights

Association for Transgender Rights is an active self-help organization dedicated to the human rights and welfare of transgender people in Hong Kong. We also provide education services to the public on transgender issues and promote gender-inclusive initiatives such as constructing more unisex toilets.

In the past 3 years, we provided shelter to 8 transgender women facing homelessness and rejection by existing social services. We also sheltered one refugee, a transgender woman from Colombia, who arrived in Hong Kong on 16th September, 2013.

Advocating for the transgender community, we regularly address the Legislative Council of HKSAR, we also conduct meetings with various government departments including the Hospital Authority, Social Welfare Department, Constitutional and Mainland Affairs Bureau (CMAB) and Equal Opportunities Commission. Helping individual transgender people, we file complaints for discrimination cases.

Contact Details:

Association for Transgender Rights

Website: www.transgender.hk

Email: angel@rainbowhk.org

Tel: +852 6223 2021

Contact person: Poon Ngai Tin

Address: Room D, 7/F, National Court,

242 Nathan Road, Jordon, Kowloon, Hong Kong

Introduction

This submission has been prepared by our organisations to highlight the discriminatory laws and practices of the Hong Kong Special Administrative Region (HKSAR) Government that infringe upon 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 appplauds “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.¹

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

Please note this is an open document which is welcome to be shared with the public, and can be posted on the CEDAW website for public information purposes.

¹ Please see Paragraph 3 for more details about the increase of SOGI discrimination in Hong Kong.

(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 openly and lawfully discriminate on the basis of sexual orientation in practices such as hiring, renting premises or the provision of services.**
3. The high rate and seriousness of sexual orientation discrimination (SOD) is a clear sign that the Government's current methods for addressing SOD—self-regulation and education—have failed at prohibiting all discrimination against women, especially in the private sector. A study conducted by Women Coalition of HKSAR in 2010 found that 53% of LGBT participants had experienced discrimination. This was an increase from a previous study conducted in 2005 in which the percentage was 39%.² Research by the University of Hong Kong Public Opinion Programme found that 79% of the Hong Kong working population think that LGBT individuals face discrimination or negative treatment.³
4. LGBT Organizations continue to receive complaints of SOGI discrimination. In 2013, a government-registered private school demanded that their teachers and staff sign and endorse a document called “Standards of Biblical Ethics and Integrity” which stated that “homosexuality, transvestitism, alternate gender identity” are “improper behavioral choices of individuals while working” at the school. It made clear that failure to comply would “carry consequences that may involve disciplinary action, employment termination”.⁴ In the handling of this matter, the Education Bureau simply “reminded” the school to “follow the good practices set out in the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation”.⁵

² Research result at: <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>

³ Community Business commissioned The University of Hong Kong Public Opinion Programme to conduct a research study named *Hong Kong LGBT Climate Study 2011-12*. Page 15.
http://www.communitybusiness.org/images/cb/publications/2012/HK_LGBT_Climate_Study_2011_12_EN.pdf

⁴ For original texts, please see the attachments: <http://www.SchoolDiscr.rainbowactionhk.org>

⁵ Document by the Education Bureau HKSAR to Legislative Council Panel on Education

5. HKSAR's failure to prohibit sexual orientation discrimination in the private sector breaches its obligations under articles 1&2 of the Covenant.
6. The demand for Sexual Orientation Discrimination (SOD) legislation has escalated in the past few years. A crowd of over 5,200 people marched on 9th November, 2013 to support anti-discrimination legislation for LGBT people. Research from both the Equal Opportunities Commission⁶ and the University of Hong Kong⁷ shows that the majority (60%) of Hong Kong people are now supportive of SOD legislation.
7. On 7th November, 2012, legislator the Hon Cyd HO Sau-lan offered a motion during debate in the Legislative Council (Legco) 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.
8. In a 2012 interview Rev. Chan Moon Hung, a Catholic priest who is also a spokesperson for the Catholic Church in Hong Kong, indicated that the Catholic Church would not oppose SOD legislation in Hong Kong.⁸
9. **We urge the Committee to propose a concrete recommendation to the HKSAR Government to extend its prohibition of Sexual Orientation discrimination into the private sector immediately.**

<http://www.legco.gov.hk/yr13-14/english/panels/ed/papers/edcb4-386-2-e.pdf>

⁶ Report on Equal Opportunities Awareness Survey. Available at:

<http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

⁷ Legislative Councillor the Hon Cyd HO Sau-lan commissioned The University of Hong Kong Public Opinion Programme to conduct a research study in Nov, 2012. According to the research, 63.8% of people think that Hong Kong should have legislation to protect people of different sexual orientation.

⁸ Apple Daily 27th November, 2012: <http://hk.apple.nextmedia.com/news/art/20121127/18081615>

(B) Review of current Discrimination Ordinances

(B1) Lack of protection for Gender Expression

10. There is no protection for Gender Expression in the Discrimination Ordinances in Hong Kong. The Equal Opportunities Commission (EOC) is currently reviewing all of the anti-discrimination ordinances in Hong Kong and making recommendations to expand and strengthen the protections. We are disappointed that their recommendations do not include protection for Gender Expression

11. Women who have non-traditional 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 protecting ONLY heterosexual families in the Family Status Discrimination Ordinance

12. The current Family Status Discrimination Ordinance discriminates against Same-Sex Families. Women who are responsible for the care of a same-sex partner or that partner's relatives are not protected by the Discrimination Ordinance, unlike their heterosexual counterparts.

13. **With the advantageous timing of the EOC's review 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) 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)

14. 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.
15. 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’: these are left up to the personal “Standards of morality” of the Obscene Articles Tribunal **adjudicators**.⁹ We are 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.¹⁰
16. **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.**

⁹ Website of *Review Control of Obscene and Indecent Articles Ordinance*
<http://www.coiao.gov.hk/en/faq.htm>

¹⁰ Restriction of freedom of expression of sexual minorities was one of the areas of concern in the Report of the UNHCHR on LGBT discrimination, A/HRC/19/41, Paragraph 62.

(D) Lack of support for victims of Domestic Violence who are transgender or lesbian

17. The Domestic Violence Ordinance in Hong Kong was amended and went into force on 1st January, 2010. It extended protection coverage to same-sex cohabitating relationships and family relatives. Despite this extension we continue to hear from 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.
18. 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 transgender people from other service users at the shelter. Only 1 of 5 Domestic Violence shelters in Hong Kong has a clear, inclusive policy regarding sexual orientation and gender identity, but its occupation rate is over 100% for most of the time.
19. There are no structural measures implemented to address or reduce discrimination issues from within the government’s social service agencies themselves.
20. **We urge the government to amend existing policies, allocate more resources and provide training to its social service agencies for the purpose of protecting lesbians and transgender victims of domestic violence and take steps to ensure all refuge centres are friendly to sexual minorities.**

(E) No homeless shelter facilities suitable for transgender people

21. In Hong Kong, there is no homeless shelter suitable for transgender people. When a male-to-female transgender woman, for example, becomes homeless due to discrimination or any reason other than domestic violence, she will be rejected by women’s shelters if her identity card doesn’t indicate she is female. She would be required to use a men’s shelter where she would have to share a

bedroom and bathroom with men. TWGHs CEASE Crisis Centre provides private rooms but refuses to accept homeless persons who are not experiencing domestic violence. Many transgender women have been placed in the “male section” of this shelter and have complained about mistreatment. Rather than using a men’s shelter, many transgender women become homeless. The same circumstances apply to female-to-male transgender men as well.

22. **We urge the Committee to ask the Hong Kong Government what steps they are taking to provide homeless shelters that are suitable for transgender people who are not experiencing domestic violence.**

(F) Prohibit Hong Kong Government training promoting “Conversion Therapy”

23. Quote from “Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover”:

24. Attempts to “cure” those who engage in same-sex conduct are not only inappropriate, but have the potential to cause significant psychological distress and increase stigmatization of these vulnerable groups.¹¹

25. The Social Welfare Department (SWD) of the HKSAR organised a workshop named “Talk on Giving Guidance to Same Sex Attracted Youth” for social workers from the department and associated NGOs on curing homosexuality on 17th June, 2011. Dr. Hong Kwai-wah, a registered psychiatrist notorious for his private practice of “conversion therapy” (i.e., attempting to change sexual orientation from homosexual to heterosexual), was invited by the Department to provide training to the social workers in this workshop.¹² To this day, the SWD refuses to apologise to the community and refuses to promise that similar training will not be conducted by the department in the future.

26. **We urge the Committee to ask the Social Welfare Department why it refuses to adopt a policy which recognises that conversion therapy is harmful and inappropriate.**

¹¹ A/HRC/14/20, Paragraph 23.

¹² For more information about the conversion therapy workshop organized by The Social Welfare Department (SWD) of the HKSAR: <http://wigayleaks.rainbowactionhk.org>

ARTICLE 10. EQUALITY IN EDUCATION

(G) **Freedom from discrimination and bullying in school**

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

27. Research conducted by WCHK in 2010 showed that 31% of participants faced discrimination in school based on their sexual orientation.¹³ We have received several reports from students who experienced discrimination in their schools. Examples 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) (translate as “dead dyke” or “dead gay woman”). The situation is worse than just bullying by classmates since discrimination often starts with school officials and teachers in Hong Kong.
28. Quote from United Nations document “Discriminatory laws” by Human Rights Council:
 29. *LGBT youth frequently experience violence and harassment, including bullying, in school from classmates and teachers. Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people.*¹⁴
30. We urge the Government to introduce anti-discrimination legislation including protection in the area of education and to introduce a "Safe Schools" policy.
31. **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.**

¹³ Research result at: <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>

¹⁴ A/HRC/19/41, Paragraph 58.

ARTICLE 12. EQUALITY IN ACCESS TO HEALTH FACILITIES

(H) Equal access and treatment in public health care services

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

32. A study conducted by WCHK among local lesbians and bisexual women found that only 2.2% of respondents knew that lesbians have a higher risk of developing breast cancer and only 13.8% reported ever having had cervical cancer screening.¹⁵ The low level of health care awareness among these women may be related to the low level of awareness and sensitivity regarding sexual orientation in the local public health care service. The HK Government lists “Woman Health” under “Family Health Service”¹⁶ and lesbians are excluded from health promotions. There is at least one recorded case where a woman was refused 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.
33. **We urge the Committee to ask the Hong Kong Government how it will ensure equal access and treatment in public health care services for people of different sexual orientations, and increase awareness within the public health care services of the specific health needs of women with different sexual orientations.**

(I) Access for transgender persons to receive sex-reassignment surgery

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

34. 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. There have been 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, a promise yet to be honoured.

¹⁵ A cross-sectional Knowledge/Attitude/Practice study on health seeking behavior among lesbians/bisexuals in Hong Kong

¹⁶ Family Health Service, Department of Health
http://www.fhs.gov.hk/english/main_ser/woman_health/woman_health.html

35. 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.
36. **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.**

(J) Mandatory sterilization surgeries for transgender persons to change legal documents

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

37. Transgender persons who identify as and desire to be recognised as another sex are forced to undergo unnecessary surgery. They are unable to change their recorded sex on government-issued identity documents, unless they undergo highly invasive, genital and sterilization surgeries.¹⁷ Such preconditions are particularly harsh for female-to-male transgender persons, who would have to undergo surgery for penis construction for legal recognition. Without such recognition, transgender persons encounter numerous difficulties in their daily lives and are especially vulnerable to discrimination and harassment, for example, when employment, travelling abroad¹⁸ or when being detained or imprisoned. Furthermore, transgender persons cannot apply for a new birth certificate with their new gender.

¹⁷ Website of the Immigration Department, Retrieved from http://www.gov.hk/en/residents/immigration/idcard/hkic/faq_hkic.htm
Q.22 (i) for sex change from female to male: removal of the uterus and ovaries; and construction of some form of penis; (ii) for sex change from male to female: removal of the penis and testes; and construction of the vagina.

¹⁸ A/HRC/19/41, Paragraph 71.

38. Quote from United Nations document “Gender recognition and related issues” by Human Rights Council: ¹⁹
39. *Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.*
40. *The Human Rights Committee has expressed concern regarding lack of arrangements for granting legal recognition of transgender people’s identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.*
41. **We urge the Government to enact gender recognition legislation that is comprehensive (extending beyond the right to marriage) and inclusive (removing prerequisites involving medical procedures) in recognising the preferred gender of transgender persons who identify as and desire to be accepted as another sex.**

¹⁹ A/HRC/19/41, Paragraph 72 & 73.

ARTICLE 15. EQUALITY IN LEGAL AND CIVIL MATTERS

(K) Cruel, inhuman or degrading treatment of transgender people in detention

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

42. **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.**
43. 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 (which can cause depression and suicidality) and to female underwear although they already had breast implant surgery. This treatment is humiliating and degrading to transgender detainees and a major violation of their Human Rights.
44. 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 transgender detainees 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 the humanity, respect and dignity, deserving of all people.
45. On 16th September 2013, a Colombian male-to-female transgender woman was passing through Hong Kong immigration. Immigration officers placed her in 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.

46. 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.”²⁰
47. 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.
48. **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.**

²⁰ News report on the mistreatment by Customs and Excise Department: <http://vimeo.com/81917822>