

# SHADOW REPORT

Joint submission from LBT NGOs to  
the 59th session of the CEDAW Committee  
on the implementation of CEDAW in Hong Kong

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This report was adapted from the previous  
submission prepared for the CEDAW pre-  
session working group. Changes have been  
made to reflect the most updated situation.

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Hong Kong, September 2014  
A network of LGBTI organizations

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## Executive Summary

Women in sexual and gender minorities, including lesbians, bisexual women, and transgender and intersex persons, continue to face serious difficulties in all areas of life. Despite the civilized façade of Hong Kong, these minorities have remained largely invisible at least until recent years, and there is still a vacuum of knowledge on issues of sex roles, gender and sexuality among the public (Art. 3). Violence, discrimination, harassment and prejudice against women in sexual and gender minorities continues to hamper their full development and enjoyment of rights (Arts. 2 and 3), including those of employment (Art. 10), education (Art. 11), equality before the law (Art. 15) and marriage and family (Art. 16). The denial of full recognition is another major issue especially for the transsexual community (Art. 3), for whom such opportunities as do exist for document changes come along with brutal and harsh forced sterilization and coercive medicine (Art. 12).

The CEDAW Committee has noted that discrimination against women based on sex and gender is inextricably linked with other factors such as sexual orientation and gender identity.<sup>1</sup> Such intersecting forms of discrimination, as well as their compound negative effects on women in Hong Kong, should be recognized. Such intersectionality also means different experiences and forms of discrimination faced by women in sexual and gender minorities, and as such warrants specific concern from the CEDAW Committee.

In this report, priority issues facing women in sexual and gender minorities are presented. In particular, the two Key Recommendations for the Hong Kong Government contained in this report are: (1) to enact anti-discrimination legislation on the grounds of sexual orientation, gender identity, gender expression and intersex status, and (2) to enact gender recognition legislation that is comprehensive and inclusive in recognizing the preferred gender of transsexual persons. Both Key Recommendations are highly feasible and have received strong or even widespread support in Hong Kong, despite the Government's reluctance to introduce these life-saving measures.

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<sup>1</sup> CEDAW/C/GC/28, para 18.

## Key Terms

<b>Gender expression</b>	Characteristics in personality, appearance, and behavior that in a given culture and historical period are designated as masculine or feminine. <sup>2</sup> Expressions of gender may take the form of dress, speech and mannerisms.
<b>Gender identity</b>	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth. <sup>3</sup>
<b>LBTI</b>	Abbreviation for lesbians, bisexual women, transgender and intersex persons.
<b>Intersex status</b>	People born with (or who develop naturally in puberty) chromosomes, genitals, hormones and/or gonads that do not fit typical definitions of male or female. <sup>4</sup>
<b>Sexual orientation</b>	Each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. <sup>5</sup>
<b>Transgender persons</b>	Individuals whose gender identity and/or gender expression differs from social norms related to their gender of birth. <sup>6</sup> This is a diverse group of individuals who cross or transcend culturally defined categories of gender, <sup>7</sup> including genderqueer, transsexual persons and some cross-dressers.
<b>Transsexual persons</b>	Individuals who identify as, and desire to live and be accepted as, a member of another sex. <sup>8</sup> The permanent nature of their identity with another sex defines this subset of transgender people. They may or may not have a sense of discomfort with their anatomic sex or a wish to undergo surgery or hormonal treatment to make their body as congruent as possible with their preferred sex.
<b>Trans men</b>	People who were assigned female sex at birth but identify and live as men.
<b>Trans women</b>	People who were assigned male sex at birth but identify and live as women.

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<sup>2</sup> World Professional Association for Transgender Health (WPATH) (2011), *Standards of Care for the Health of Transgender, Transsexual, and Gender Non-conforming People (Version 7)*. Retrieved from [http://www.wpath.org/uploaded\\_files/140/files/IJT%20SOC,%20V7.pdf](http://www.wpath.org/uploaded_files/140/files/IJT%20SOC,%20V7.pdf).

<sup>3</sup> Fifth Preamble to *The Yogyakarta Principles - Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity* (2007).

<sup>4</sup> Organization for Intersex International United States of America (OI-USA), *What is intersex and how common is it?* <http://oi-usa.org/category/faqs/>

<sup>5</sup> Fourth Preamble to *The Yogyakarta Principles*(2007).

<sup>6</sup> WPATH (2011) *Standards of Care (V7)*.

<sup>7</sup> WPATH (2011) *Standards of Care (V7)*.

<sup>8</sup> World Health Organization, International Classification of Diseases (ICD-10), F64.0 (Transsexualism).

## Defining Women in Sexual and Gender Minorities

“Sex” refers to the biological differences among the spectrum between “women” and “men”, while “gender” refers to the social and cultural meaning for these biological differences including socially constructed identities, attributes and roles.<sup>9</sup> In a heterosexist society such as Hong Kong, women of a sexual orientation, gender identity or gender expression that do not conform to heterosexual norms are sometimes referred to as **sexual or gender non-conforming women**, or as adopted in this report, as **“women in sexual and gender minorities”**. They include women who identify as lesbian, bisexual, transgender and/or intersex (LBTI), as well as those who do not identify with such categories.

**In particular, the definition of “women” should also include those who were assigned the male sex at birth but who identify and live as women (trans women), regardless of whether they have undergone any surgery or medical procedures.** A number of international human rights bodies, legal, and health authorities have called for the recognition of the preferred gender of transsexual persons regardless of the medical procedures they have undergone.<sup>10</sup> **We recommend that the Committee takes the same view, and to propound such a view through appropriate means including a General Recommendation.**

## Art. 2: Eliminating discrimination against women by legislation or other means

1. Women in sexual and gender minorities, including lesbians, bisexual women and transgender and intersex persons (LBTI), continue to face alarming levels of discrimination and harassment in society. A 2010 survey reported that 53% of the lesbian and bisexual women who responded had experienced discrimination or harassment, 31% of whom had such experiences in schools.<sup>11</sup>
2. The impact of discrimination on the lives of women in sexual and gender minorities is profound. In a case in 2013 that received wide media attention, a gender non-conforming lesbian basketball coach cum student committed suicide due to the discrimination she faced in society.<sup>12</sup> Please refer to the paragraphs below on Art. 10 (Education), Art. 11 (Employment), and Art. 12 (Health) for the impact of discrimination on the respective rights of LGBTI women.

### VIOLENCE, HARASSMENT AND DISCRIMINATION AGAINST LESBIAN MIGRANT WOMEN

3. Discrimination against sexual and gender minorities has a particular impact among migrant women in Hong Kong. For example, out of the around 320,000 migrant domestic workers in Hong Kong, about half are Indonesians and nearly all are women<sup>13</sup>. According to a coordinator at the Indonesian Migrant Workers Union, up to 20% of Indonesian females working in Hong Kong are lesbian<sup>14</sup>. The reasons behind the prevalence of lesbianism among Indonesian domestic workers

<sup>9</sup> CEDAW/C/GC/28, para 5.

<sup>10</sup> See para. 33 below.

<sup>11</sup> Women Coalition of HKSAR (2010) “Discrimination against Women on the Grounds of Sexual Orientation in Hong Kong” Survey (in Chinese). Retrieved from <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>.

<sup>12</sup> 李子平 & 詹家志 (Feb 19, 2013). *Former basketball coach depressed from discrimination; commits suicide* (in Chinese). Apple Daily. Retrieved from <http://hk.apple.nextmedia.com/news/art/20130219/18169893>.

<sup>13</sup> Amnesty International (2013). *Exploited for Profit, Failed by Governments - Indonesian Domestic Workers Trafficked to Hong Kong*. Retrieved from <http://www.amnesty.org/en/library/info/ASA17/041/2013/en>.

<sup>14</sup> Fenn, A. (Oct 19, 2010). *Indonesian Maids in Hong Kong Blur the Borders*. Jakarta Globe. Retrieved from <http://www.thejakartaglobe.com/archive/indonesian-maids-in-hong-kong-blur-the-borders/>.

have been academically substantiated.<sup>15</sup> Given the various regulatory conditions to which they are subject, such as the live-in requirement<sup>16</sup> and the "two-week rule",<sup>17</sup> employers have particular power to compel migrant domestic workers to conform with heterosexual standards even beyond the workplace. For example, some employers require domestic workers to refrain from masculine attire or appearance due to unfounded fears of "bad influence" over children.<sup>18</sup>

4. Society's discriminatory attitudes and even homophobic violence also affect lesbian migrant domestic workers. In one reported case, a lesbian Filipina domestic worker was first insulted by a passer-by, and then physically attacked by the same man, who "beat her and tore off her clothes". The police arrested both the man and the lesbian domestic worker, and the latter was soon dismissed from her job and deported back to the Philippines.<sup>19</sup>
5. Trans women in racial minorities are also particularly vulnerable, suffering from intersecting gender, racial and transphobic prejudice. For example, trans women in some racial minorities, such as Thai and Filipina trans women, have often been associated with societal stigma against sex workers. Such prejudice occurs even among law enforcement officers, and as such, when they suffer from sexual harassment or violence, their access to police assistance can be hindered.<sup>20</sup>

#### INTERPLAY OF DISCRIMINATION WITH FAMILY VIOLENCE SUFFERED BY WOMEN IN SEXUAL AND GENDER MINORITIES

6. Surveys have revealed a dangerous prevalence of partner violence in same-sex relationships.<sup>21</sup> Violence against LGBTI women can also come from parents or other family members who do not accept the victim's sexual orientation and/or gender identity. In various ways, the plight of LGBTI women suffering from family violence can partly be attributed to rampant discrimination against them in society.
7. One unique form of psychological abuse is to threaten to expose a victim's sexual orientation and/or gender identity to her employers or family members, which could be life-changing or even threatening to LGBT victims.<sup>22</sup> An absolute majority of LGBT victims has never sought assistance from the police, the Social Welfare Department, or NGOs; and many of those who have sought help have suffered from discrimination or insults from the police or from mainstream NGOs, many

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<sup>15</sup> Sim, A. (2010). Lesbianism among Indonesian Women Migrants in Hong Kong. In Ching, Y. (Ed.), *As Normal as Possible: Negotiating Sexuality and Gender in Mainland China and Hong Kong* (pp. 37-50). Hong Kong: Hong Kong University Press.

<sup>16</sup> The "live-in requirement" requires migrant domestic workers to live in the same premise of the employer. This only applies to migrant domestic workers but not other migrants.

<sup>17</sup> The "two-week rule" requires the migrant domestic workers to leave Hong Kong within two weeks of their contract being terminated. This only applies to migrant domestic workers but not other migrants.

<sup>18</sup> Tam, A. (Jan 17, 2012). *Girl-on-girl Power*. Time Out Hong Kong. Retrieved from <http://www.timeout.com.hk/gay-lesber.html>.

<sup>19</sup> Tam, A. (Jan 17, 2012). *Girl-on-girl Power*. Time Out Hong Kong. Retrieved from <http://www.timeout.com.hk/gay-lesbian/features/48226/girl-on-girl-power.html>

<sup>20</sup> Interview with Dr. Brenda Alegre from the Faculty of Education at the University of Hong Kong. As an example of such cases, Dr. Alegre had personally been threatened and stalked by a man who expressed interest in her but later realized that she was a trans woman. She did not call the police for assistance.

<sup>21</sup> Mak, W. W. S. & Women Coalition of HKSAR. (2009). *Study on Same-Sex Intimate Partner Violence in Hong Kong*. Retrieved from <http://wchk.org/2012/tc/content.php?key=dvo2008/dvo2008.php>

<sup>22</sup> Mak, W. W. S. & Women Coalition of HKSAR. (2009). *Study on Same-Sex Intimate Partner Violence in Hong Kong*. Retrieved from <http://wchk.org/2012/tc/content.php?key=dvo2008/dvo2008.php>

of which are religious in nature.<sup>23</sup>

#### LACK OF ANTI-DISCRIMINATION LEGISLATION TO PROTECT WOMEN IN SEXUAL AND GENDER MINORITIES

8. There is no legislation that prohibits discrimination on the grounds of sexual orientation or gender identity in the private sector. Successive governments have avoided calls from the civil society and from UN treaty-based bodies<sup>24</sup> for such legislation by maintaining that public education and administrative means were the best ways of addressing discrimination.<sup>25</sup> As the surveys and discussion in this report show, however, such an approach is highly inadequate, and the government's views are also contradicted by its enactment of legislation combating discrimination on other grounds including sex, family status, disability and race.<sup>26</sup>
9. Although the protection of equality and non-discrimination under the Basic Law has been expanded by the courts to include "sexual orientation",<sup>27</sup> the Basic Law only binds government practices and does not offer any legal remedy to victims of discrimination that takes place in the private sphere.
10. While some transgender persons identified as Gender Dysphoria (previously referred to as Gender Identity Disorder) may be able to seek redress for discrimination under the Disability Discrimination Ordinance, such a regime excludes much of the transgender community who do not suffer from any illnesses or "disabilities". To condition access to justice on entry into the psychiatric system also infringes upon the human rights of transgender persons, exposing them to unnecessary stigma and prejudice.
11. The Hong Kong Government introduced a non-binding Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation<sup>28</sup> in 1998. The Code was drafted expressly in terms of "encouragement" and "recommendations". The effectiveness of the Code is dubious, and LGBTI individuals are still suffer from discrimination in employment settings, as demonstrated in the paragraphs below under Art. 11 (Employment).

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<sup>23</sup> Choi, C. (November 17, 2013). *City offers little help for domestic abuse victims in LGBT community*. South China Morning Post. Retrieved from <http://www.scmp.com/news/hong-kong/article/1358109/city-offers-little-help-domestic-abuse-victims-lgbt-community>

<sup>24</sup> Para. 15 Concluding Observations of CCPR 1997, CCPR/C/79/Add.117; Para. 23 Concluding Observations of CCPR 2013, CCPR-C-CHN-HKG-CO-3; Para. 15 & 31 Concluding Observations of CESCR 2001, E/C.12/1/Add.58; Para. 78 Concluding Observations of CESCR 2005, E/C.12/1/Add.107; Para. 33 Concluding Observations of CRC, CRC/C/CHN/CO/2

<sup>25</sup> Statement from the Secretary for Constitutional Mainland Affairs to Legislative Council (May 30, 2012). Retrieved from <http://www.info.gov.hk/gia/general/201205/30/P201205300283.htm>

<sup>26</sup> Sex Discrimination Ordinance, Family Status Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance.

<sup>27</sup> *Leung TC William Roy v Secretary for Justice* [2005] HKCFI 713, confirmed in *Secretary for Justice v Yau Yuk Lung Zigo* [2007] HKCFA 50.

<sup>28</sup> *Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation*. Retrieved from [http://www.cmab.gov.hk/en/issues/code\\_of\\_practice.htm](http://www.cmab.gov.hk/en/issues/code_of_practice.htm)

## 12. Key Recommendation 1:

**We recommend the Hong Kong Government to immediately enact legislation prohibiting discrimination on the basis of sexual orientation, gender identity, gender expression and intersex status, to take necessary steps to end prejudice towards and social stigmatization of women in sexual and gender minorities, and to send a clear message that it does not tolerate any form of harassment, discrimination and violence against such women.**

### Art. 3: Recognition, development and advancement of women

13. Rampant discrimination in society against women in sexual and gender minorities continue to hamper their full development, as well as their enjoyment of rights, for example in education (Art. 10), employment (Art. 11), as well as equality before the law and marriage and family (Arts. 15 and 16). In addition, the non-recognition of the identity of trans women causes numerous human rights violations.

#### RECOGNITION OF THE IDENTITY OF TRANS WOMEN

14. The Hong Kong Government has failed to enact legislative or administrative reforms to ensure that trans women enjoy the same rights as other women, including the right to be recognized as women in law. To the extent that any such recognition is given, it is conditional on the trans woman undergoing highly invasive and irreversible genital and sterilization surgeries known as "sex reassignment surgeries" (SRS).
15. Many trans women are thus treated as men, often in settings that are humiliating and oppressive to them, and sometimes even trans women who have undergone full SRS are still denied their female identity. For example, transsexual women are housed in male psychiatric wards when they need inpatient psychiatric care, and are housed in male facilities and searched by male guards when they are detained or imprisoned.
16. In one case, a trans woman who had not undergone SRS had been rejected for years by her family and friends on grounds of her gender identity. She had not been able to find employment as her government-issued identity card shows her as a "male" and thus leaves her vulnerable to prejudice.<sup>29</sup> After slipping into deep depression, she attempted suicide twice in a week, only to find herself committed to a male psychiatric ward, surrounded by male inmates and staff. Deeply distressed, this experience has only caused further damage to her health.<sup>30</sup>
17. **We ask the Committee to urge the Hong Kong Government to ensure that trans women are treated with respect and dignity, and that their identity as women is recognized in both government functions and in the private sphere.** For more details and the key recommendation on gender recognition for trans women (Key Recommendation 2), please refer

<sup>29</sup> All Hong Kong residents are required by law to register for a government-issued identity card, and the police and immigration officers could require anyone to produce the identity card anytime. It is used widely in hospitals, employment, accessing goods or services, and in many other daily settings.

<sup>30</sup> Case recorded by Dr. Sam Winter, Director of Transgender ASIA

to the passages below under the heading of Art. 12 (Forced sterilization, coercive medicine and gender recognition of trans women).

## **Art. 5: Sex roles and stereotyping**

18. Due to stereotypical sex roles in a heterosexist society, sexual and gender non-conforming women continue to face discrimination, harassment and even violence in Hong Kong. While women of non-conforming gender expression face discrimination on that ground alone, non-feminine gender expression of a woman is often used as an excuse for discrimination on the basis of imputed homosexuality. There is a general lack of appreciation in society for sexual and gender diversity.

### LACK OF SEX AND GENDER EDUCATION

19. There is no curriculum that allows students to learn about, or teachers to systematically teach, the values and importance of human rights, equality, and the respect for diversity. Issues of gender and sexuality remain taboo in schools or in society, and teachers often tell students to conform to heterosexual norms rather than actively tackling homophobic and transphobic biases or bullying. Such general ignorance greatly hinders the promotion of the objectives of CEDAW.

### ILL-INFORMED EDUCATION AND TRAINING ON SEXUAL AND GENDER MINORITIES

20. A news program in 2010<sup>31</sup> reported that the Catholic Medical Association of the Roman Catholic Church circulated a booklet to a major group of schools in Hong Kong. The booklet presented outdated and discredited psychoanalytic and psychological theories developed by anti-gay campaigners in the U.S. and gave what appeared to be authoritative statements which were unwarranted by fact. When the Education Bureau was approached for comment as to why such religiously-inspired and unscientific literature was being used in Hong Kong schools, the Bureau replied that the booklet "offered an alternative view" to students. Such ill-informed materials have the potential to harm, confuse and misguide LGBTI students who often struggle with their sexual orientation and/or gender identity, and to reinforce prejudicial views towards LGBTI students.

- 21. We urge the Committee to encourage the Hong Kong Government to incorporate the values of human rights, equality and respect for diversity into the formal curriculum of schools, and to promote public education and provide sensitivity training to teachers in issues of sex roles, gender and sexuality, so as to tackle ALL forms of prejudice in society against women.**

## **Art. 10: Education**

### VIOLENCE, DISCRIMINATION AND BULLYING AGAINST YOUNG WOMEN IN SEXUAL MINORITIES IN SCHOOLS

22. Discrimination and bullying on the grounds of sexual orientation and gender expression continue

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<sup>31</sup> Lincoln, C (Dec 27, 2010). *Pearl Report*. TVB Pearl

to be commonplace in schools in Hong Kong, as is the situation worldwide.<sup>32</sup>

23. The Boys and Girls' Club Association of Hong Kong, in a 2009 study of sexual minority high school students, found that over 50% of the students surveyed had experienced various degrees of negative treatment, including rejection, bullying and even physical violence after revealing their sexual orientation to other students; close to 90% of the students said they had not revealed their sexual orientation to the teachers because the students felt the teachers would not be able to offer support regarding sexual orientation learned of it, and feared that the teachers would discriminate against them, etc. Of the remaining students who told their teachers about their sexual orientation, a staggering 60% was told to gender conform and 53% received warnings or disciplinary action because of their sexual orientation. There was even reported testimony indicating that these LBT students were referred to "reparative therapy" by the teachers or social workers. The impacts of such discrimination, bullying and mistreatment on LBT students are profound, including 22% of students who said they felt they had been discriminated reported having suicidal thoughts.<sup>33</sup>
24. Teachers and school administrators lack any meaningful support, guidelines or sensitivity training when faced with students in sexual and gender minorities and who are struggling to come to terms with their sexual orientation and/or gender identity. In 2009, the Education Bureau developed a resource package "to enhance teachers' awareness about school bullying".<sup>34</sup> Not once were terms such as "sexual orientation", "gender identity" or "lesbian, bisexual, transgender and/or intersex" included in this non-binding package.
- 25. We reiterate the importance of Key Recommendation 1 on the need for an anti-discrimination law. We also urge the Government to develop guidelines for schools to eliminate discrimination against LGBTI staff and students, provide resources and training to teachers to tackle homophobic and transphobic bullying in schools, as well as to provide sensitivity training to teachers and school officials in the sexual and gender diversity of students.**

## Art. 11: Employment

26. A 2010 study found that around one-third of lesbian, gay and bisexual respondents had experienced discrimination or harassment in their workplaces, and there is a significant association between such experiences and internalized homophobia, which in turn is related to such forms of distress as depression, anxiety and suicidal ideation.<sup>35</sup> A 2012 survey commissioned by Community Business, also found that 70% of the general working population felt that LGBT individuals faced discrimination in the workplace, and a majority of LGBT

<sup>32</sup> UN Human Rights Council (November 17, 2011), *Report of the United Nations Office of the High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, paras 58-60, 77, 84(g).

<sup>33</sup> The Boys and Girls' Club Association of Hong Kong (2009), *Sexual Minority Students in Secondary Schools* (in Chinese). Retrieved from [http://www.newtouch.net/files/ref\\_report/ref\\_report\\_08a.doc](http://www.newtouch.net/files/ref_report/ref_report_08a.doc)

<sup>34</sup> Statement from the then Secretary for Education to the Legislative Council (2010 January 27) . Retrieved from <http://www.info.gov.hk/gia/general/201001/27/P201001270197.htm>

<sup>35</sup> Lau, H. & Stotzer, R. L. (2010). Employment Discrimination based on Sexual Orientation: A Hong Kong Study. *Employment Responsibilities and Rights Journal*, 23(1), 17-35.

employees had to conceal their sexual orientation or gender identity at work.<sup>36</sup>

27. The situation is even worse for transgender persons. In the same 2012 Community Business survey, 1 in 4 persons describe themselves as “unaccepting” towards transgender persons. An analysis of the 2012 survey results<sup>37</sup> concerning transgender persons reveals a 15% unemployment rate, compared with around 3-4% for the general population<sup>38</sup>. Of those transgender persons who were employed, 45% had an income lower than HK\$10,000/month (≈ US\$1,282 or €941) and only 5% had an income higher than HK\$30,000/month (≈ US\$3,846 or €2,824); in comparison, the percentages were 35% and 15% respectively for the general working population.<sup>39</sup>

28. The Hong Kong Government’s failure to enact legislative or administrative measures for gender recognition further exacerbates the situation for transsexual persons, who live as members of a sex that is often inconsistent with what is shown on their identity documents. Without gender-affirmative identity documents, transsexual women find it difficult to get jobs, retain employment and access opportunities for career advancement.

#### » REAL LIFE ILLUSTRATION

Sally is a young Hong Kong Chinese woman. She is bright, attractive, likeable - and transsexual. Born with a male anatomy, she has identified as female for as long as she can remember. She is gender dysphoric -- deeply unhappy about being regarded by others as male, and about having a male body. Puberty was a really difficult time for her. She remembers trying to pray away the changes she daily saw in the mirror.

Sally has taken hormones for some years. She looks no different from other attractive young Chinese women. You would not know she is transsexual. Poor in general health, she has not undergone the invasive genital surgery. She is, as we say, “pre-op”.

Rejected for years by family and friends on the grounds of her transsexualism, unable to get a job because of a male identity card that leaves her open to prejudice, she recently slipped into a deep depression about her situation, attempting suicide twice in one week.

## Art. 12: Healthcare

### FORCED STERILIZATION, COERCIVE MEDICINE, AND GENDER RECOGNITION OF TRANSSEXUAL PERSONS

29. Transsexual persons are individuals who identify as, and desire to live and be accepted as, a member of another sex.<sup>40</sup> The permanent nature of their identification with another sex defines this subset of transgender people. Many transsexual persons have a sense of discomfort with, or inappropriateness of, their own anatomic sex, and may wish to have surgery and hormonal treatment to make their body as congruent as possible with their preferred sex. However, not all transsexual persons experience such discomfort or wish to undergo such medical treatments.

<sup>36</sup> Chung, R. (2012) *Hong Kong LGBT Climate Study 2011-12*. Retrieved from [http://hkupop.hku.hk/english/report/LGBT2011\\_12/content/resources/eng\\_presentation.pdf](http://hkupop.hku.hk/english/report/LGBT2011_12/content/resources/eng_presentation.pdf). 78% of the Hong Kong working population think that LGBT individuals face discrimination or negative treatment. For the focus survey on LGBT employees, a majority was not open about their sexual orientation or gender identity at work (for example, 60% were “not open” with their “colleagues in general”).

<sup>37</sup> Analysis conducted by Joanne Leung, Chairperson of the Transgender Resources Center, with information from the authors of the survey.

<sup>38</sup> Census and Statistics Department (2012). *The Movement of the Unemployment Rate in 2012*. Retrieved from <http://www.statistics.gov.hk/pub/B71305FC2013XXXXB0100.pdf>.

<sup>39</sup> Census and Statistics Department (2011). *Thematic Report: Household Income Distribution in Hong Kong*. Retrieved from <http://www.census2011.gov.hk/pdf/household-income.pdf>. See Table 2.2 at p. 18.

<sup>40</sup> World Health Organisation, International Classification of Diseases (ICD-10), F64.0.

The side effects of hormonal treatment and the potential complications of sex reassignment surgeries (SRS) are also well-documented.<sup>41</sup>

30. Transsexual persons are currently unable to obtain legal recognition of their preferred gender, including a change of their recorded sex in government-issued identification documents, unless they undergo highly invasive genital and sterilization surgeries.<sup>42</sup> As recognized by Hong Kong Court of Final Appeal, such preconditions are especially harsh for female-to-male transsexuals (trans men),<sup>43</sup> who are required to remove their uteruses and ovaries and to construct some form of a penis.
31. The absence of legal recognition is a key pillar in supporting and sustaining stigma towards transsexual persons, prompting discrimination and humiliation in their daily lives: from going to public washrooms to getting a job,<sup>44</sup> opening a bank account<sup>45</sup> to going to the hospital.<sup>46</sup> The imposition of surgical preconditions to the legal recognition of transsexual persons' genders undermines free consent and constitutes coercive medicine, if not forced sterilization.
32. International human rights provisions, legal and health authorities have called for the removal of medical preconditions, including SRS, sterilization or hormonal therapy, to transsexual persons' legal gender recognition. The UN Office of the High Commissioner for Human Rights' report to the UN Office of Human Rights Council in 2011 made the same recommendation,<sup>47</sup> as did the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, in particular Principle #3. The World Professional Association for Transgender Health (WPATH) has also recognized the positive health effects of legal recognition for transsexual persons,<sup>48</sup> and called for removal of medical barriers in gender recognition.<sup>49</sup>
33. The CEDAW Committee reiterated for numerous times that any form of coercive medicine, including forced sterilization, violates women's rights to informed consent and dignity and must be rectified.<sup>50</sup>
34. In the landmark case of *W v Registrar of Marriages*,<sup>51</sup> the Court of Final Appeal in Hong Kong ruled that it was unconstitutional to deny a trans woman who had undergone full SRS her right to marry a man. The Court refused to draw a line for transsexual persons' gender recognition on the

<sup>41</sup> WPATH (2011) *Standards of Care (V7)*.

<sup>42</sup> Q.21, GovHK: Frequently Asked Questions - Hong Kong Identity Card. Retrieved from [http://www.gov.hk/en/residents/immigration/idcard/hkic/faq\\_hkic.htm](http://www.gov.hk/en/residents/immigration/idcard/hkic/faq_hkic.htm) accessed on December 30, 2013. (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

<sup>43</sup> *W v Registrar of Marriages* [2013] HKCFA 39, para 135. Judgment available at <http://www.hklii.hk/eng/hk/cases/hkcfa/2013/39.html>.

<sup>44</sup> Winter, S. (December 6, 2013) '*Legalised violence' against transsexuals must stop*. South China Morning Post. Retrieved from <http://www.scmp.com/comment/insight-opinion/article/1374633/legalised-violence-against-transsexuals-must-stop>.

<sup>45</sup> Winter, S. (May 17, 2013) *New laws needed to protect the rights of all Hong Kong's transsexuals*. South China Morning Post. Retrieved from <http://www.scmp.com/comment/insight-opinion/article/1239095/new-laws-needed-protect-rights-all-hong-kongs-transsexuals>.

<sup>46</sup> Wei, L. (April 19, 2013) *Transgender patient 'humiliated' by nurse*. South China Morning Post. Retrieved from <http://www.scmp.com/news/hong-kong/article/1217713/transgender-patient-humiliated-nurse>.

<sup>47</sup> UN Human Rights Council (November 17, 2011), *Report of the United Nations Office of the High Commissioner for Human Rights on Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, A/HRC/19/41, paras 71-73, 84(h).

<sup>48</sup> WPATH, *Standards of Care* (Seventh edition, 2011); Statement on Medical Necessity (June 17, 2008).

<sup>49</sup> WPATH, Statement on Medical Necessity (June 17, 2008); Identity Recognition Statement (June 16, 2010)

<sup>50</sup> CEDAW/C/GC/19, para 22; CEDAW/C/GC/21, para 22; CEDAW/C/GC/24, para 22.

<sup>51</sup> [2013] HKCFA 39.

point of completion of full SRS, for various reasons including that it would have an "undesirable coercive effect".<sup>52</sup> The Court also noted that there are other areas of law where gender recognition issues would arise, and expressed that comprehensive and inclusive gender recognition legislation would be "beneficial"<sup>53</sup>. It referred to the United Kingdom's Gender Recognition Act 2004 as a "compelling model" for such legislation.<sup>54</sup>

35. The Government has set up an interdepartmental working group on gender recognition (IWG) to "study" gender recognition issues.
36. Meanwhile, however, in response to the judgment of W, the Government has introduced an amendment bill to the marriage law in February 2014, which, if passed, would officially codify mandatory SRS as a precondition for transsexual individuals who would like to marry. This goes against every recommendation issued by leading human rights bodies, professional, health, medical and legal authorities. At the time when this submission is finalized, the bill has entered the final stage of the legislative process and debates of the bill will resume as soon as the new legislative year opens in October 2014.

**37. Key Recommendation 2:**

**We recommend the Hong Kong Government to enact gender recognition legislation that is comprehensive (extending beyond the right to marriage) and inclusive (removing prerequisites involving medical procedures) in recognizing the preferred gender of transsexual persons, who permanently identify as and desire to live and be accepted as a member of their preferred sex.**

## **Arts 15: Equality before the Law**

38. Hong Kong does not recognize same-sex relationships. Those who have formalized their same-sex relationships overseas lack of the rights conferred by official recognition of marriage/partnerships enjoyed by their different-sex couples counterparts, these rights include but are not limited to, the rights to public housing benefit as a married couple, joint taxation, access to medical decisions made on behalf of the incapacitated spouse, hospital visitation, inheritance, immigration for the purpose of family reunion, criminal liabilities etc.

## **Art 16: Marriage and Family**

39. A Hong Kong partner in a same-sex relationship cannot petition for her foreign wife to be granted a dependent/ spouse visa in the same way heterosexual couples can.
40. Since 2011, at the discretion of the Director of Immigration, he or she may grant a foreign spouse of an expatriate a prolonged visitor visa (PVV), which permits the holder to visit, but not to reside

<sup>52</sup> [2013] HKCFA 39, para 136-137.

<sup>53</sup> [2013] HKCFA 39, para 141-146.

<sup>54</sup> [2013] HKCFA 39, para 138.

in, Hong Kong for up to 6 months<sup>55</sup>. This is in no way comparable to a dependent visa holder in a heterosexual relationship, where the dependent visa holder is considered a resident, with which come with rights such as public healthcare, employment and eligibility to apply for permanent residency after seven years of living ordinarily in Hong Kong. As a PVV holder is considered a visitor, she does not enjoy any of those rights. A PVV holder is also required to leave Hong Kong before the visa expires (ie. 6 months), placing unnecessary and heavy financial burdens upon same-sex couples that are not experienced by heterosexual couples. Same-sex couples who cannot afford such expensive undertakings, especially when the same-sex foreign spouse is not entitled to employment under this type of visitor visa, may be forced to live separately.

41. Same-sex marriage has been legalized by over a dozen countries in the last decade. Some of these countries offer registration at their overseas consular posts to formalize the relationship of same-sex couples. This is applicable when one, or both members, of the couple are nationals of the respective country. Many of these countries, as a matter of courtesy, request permission from the Hong Kong government before such service is provided. However, such permission has been systematically denied by the Hong Kong Government. A Hong Kong resident, who is also a national of a country that has legalized same-sex marriage, or wishes to marry a person of such a country, will not have access to such service at the respective consular post in Hong Kong.

**42. We reiterate our call to the Hong Kong Government to immediately enact an anti-discrimination legislation as stated in Key Recommendation 1, and to update administrative policies by allowing same-sex couples who have formalized their relationships overseas the same rights as their heterosexual counterparts.**

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<sup>55</sup> Ip, C (2011, July 11) *Visitor visa accommodates gay couples*. South China Morning Post. <http://www.scmp.com/article/973061/visitor-visa-accommodates-gay-couples>

## Conclusion

43. In the early 1990s, the Hong Kong Government adopted its position utilizing education rather than legislation when dealing with those facing sexual orientation discrimination. Almost two decades of education have failed to stem out discrimination on the grounds of sexual orientation, gender identity and gender expression, as seen in the numerous studies and research cited in this report.
44. The Government has consistently maintained that such an anti-discrimination law lacked societal consensus and public support. Yet, the Government refuses continuously to recognize that minority human rights should not be subjected to majority veto.
45. It is encouraging, however, to see that public support for a sexual orientation anti-discrimination law has been slowly raising, several studies carried out in 2012 and 2013 by the University of Hong Kong and the Equal Opportunities Commission have indicated that over 60% of the Hong Kong now favors such legislation. Coupled with the high profile coming out of public figures including celebrities and politicians, positive news and media coverage in recent years are slowly shifting the tide.
46. It is equally encouraging that there is increasing awareness of transgender persons in society following the landmark court case in 2013. However, they continue to face serious discrimination as described above. A particular issue for gender recognition arises when it comes to a particular group of transgender persons, namely transsexual persons, for whom the lack of gender-affirmative identity documents seriously hinders their entitlement to full recognition and rights. Legislative and judicial calls for gender recognition legislation are welcome and should be followed.
47. Human rights should not be subjected to tides of public opinion that could waver anytime. It is imperative that human rights advocates heed on the period of heightened awareness of sexual and gender minorities in Hong Kong, and do the most to advance the rights of the vulnerable.
48. We appeal to the Committee to take a strong position to encourage the Hong Kong Government to work proactively, so as to ensure ALL women, including those in sexual and gender minorities, can enjoy human rights and access to equal opportunities as enshrined by CEDAW.

## List of signatories

This report represents and a broad range of Hong Kong's non-governmental organizations working on various issues pertaining to lesbian, bisexual women and transgender persons. Here is a brief introduction of these organizations:

### **Nu Tong Xue She**

Founded in 2005, Nu Tong Xue She (NTXS) is an LGBT group that aims to raise public awareness on issues of sexuality, to facilitate self-empowerment of marginalized communities, to encourage multi-leveled dialogue in society around taboo subjects, and to advocate for greater equality between peoples of different genders and sexuality.

### **Pink Alliance**

The Pink Alliance (aka Tongzhi Community Joint Meeting or TCJM) is an umbrella network representing 16 LGBT and LGBT-friendly advocacy and cultural organizations in Hong Kong. The Pink Alliance carries out research and campaigns on issues of key importance concerning the LGBT community.

### **Queer Sisters**

Queer Sisters was established in January 1995. It is a queer women/female/human rights organization, and we consist of a group of women who are pursuing a world that is more open, inclusive and humane. Our aim is to promote sexual and gender diversity and to raise women's awareness of our sexual rights.

### **Queer Straight Alliance**

Queer Straight Alliance (QSA) is a student organization that celebrates sexual and gender diversity. Registered as a society in 2008, QSA provides a safe social platform and conducts various workshops and career activities for LGBT university students and allies both on and off campus. QSA also participates in the advocacy of LGBT rights in Hong Kong.

### **Transgender ASIA Research Centre**

The Centre seeks to bring together psychologists, sociologists, anthropologists, as well as medical and legal experts who share a desire to better understand the phenomenon of transgenderism, as well as the circumstances in which transpeople (transgendered people) live, in Asia.

### **Transgender Resources Center**

Transgender Resources Center was founded on July 2008. The aim of the organization is to provide educational resources for the public regarding transgender issues, and to provide resources for transgender people when seeking accurate information. The main goal of the organization is to advocate for the rights of transgender people in the society.

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