

SHADOW REPORT

Joint submission from LGBT NGOs to the
52nd session of the Committee on
Economic, Social and Cultural Rights on the
implementation of ICESCR in Hong Kong



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Executive summary

Sexual and gender minorities in Hong Kong, including lesbian, gay, bisexual and transgender (LGBT) persons, as well as those who do not wish to identify with such categories or consider themselves "queer", continue to face serious difficulties in all areas of social, economic and cultural life. Despite the civilized façade of Hong Kong, these minorities have remained largely invisible at least until recent years, and there is no formal sex and gender education to remove the societal prejudice against them.

Such prejudice prevents them from enjoying equally and without discrimination economic, social and cultural rights (Art. 2(2)), including the right to work and to do so under just and favorable conditions (Arts. 6 and 7), the right to highest attainable standard of health (Art. 12), and the right to education (Art. 13).

The lack of recognition for same-sex relationships also leaves same-sex couples out from the protection accorded to the family (Art. 10), which results in them being indirectly discriminated in accessing family benefits under social security (Art. 9).

The denial of recognition for transsexual persons leave them vulnerable to discrimination and health hazards (Art. 2(2)), and their opportunities for gender recognition in official documents come along only with brutal and harsh forced sterilization and coercive medicine (Art. 12).

The Committee on Economic, Social and Cultural Rights has recognized that a person's sexual orientation and gender identity should not constitute obstacles to the realization of her or his Covenant rights¹. In this report, priority issues facing 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 and gender expression, and (2) to enact gender recognition legislation that is comprehensive and inclusive in recognizing the experienced 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.

¹ CESCR General Comment No. 20, E/C.12/GC/20 (July 2, 2009), para. 32

Key terms

Gender expression	Characteristics in personality, appearance, and behavior that in a given culture and historical period are designated as masculine or feminine ² . Expressions of gender may take the form of dress, speech and mannerisms.
Gender identity	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth ³ .
LGBT	Abbreviation for lesbian, gay, bisexual, and transgender persons.
Sexual orientation	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 ⁴ .
Transgender persons	Individuals whose gender identity and/or gender expression differs from social norms related to their gender of birth ⁵ . This is a diverse group of individuals who cross or transcend culturally-defined categories of gender ⁶ , including genderqueer, transsexual persons and some cross-dressers.
Transsexual persons	Individuals who identify as, and desire to live and be accepted as, a member of another sex ⁷ . 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.
Trans men	People who were assigned female sex at birth but identify and live as men.
Trans women	People who were assigned male sex at birth but identify and live as women.

² 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.

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

⁴ Ibid., Fourth Preamble

⁵ WPATH (2011) *Standards of Care (V7)*.

⁶ Ibid.

⁷ World Health Organization, *10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10)*, F64.0 (Transsexualism).

Art. 2(2): Non-discrimination in the realization of Covenant rights

1. In response to the List of Issues on introducing legislation prohibiting discrimination on the ground of sexual orientation and gender identity, the Government failed to legislate to protect the rights of sexual and gender minorities from discrimination⁸. This issue was raised in the Concluding Observations by the Committee both in 2001⁹ and 2005¹⁰, yet the Government continues to overlook the human rights suffering of this group of minorities.
2. Sexual and gender minorities 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 schools¹¹.
3. The impact of discrimination on the lives of sexual and gender minorities is profound. In a case in 2013 that received wide media attention, a gender non-conforming young lesbian committed suicide, and the last words she said were: "I feel sad about being discriminated"¹².
4. Please refer to the later sections, particularly the paragraphs below Arts. 6 and 7 (Right to work; Just and favorable conditions of work) and Art. 13 (Education), for the extent and impact of discrimination on the respective rights of LGBT individuals.

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

5. 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 bodies¹³ for such legislation by maintaining that public education and administrative means were the best ways of addressing discrimination¹⁴. 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 race¹⁵.
6. Although the protection of equality and non-discrimination under the Basic Law has been expanded by the courts to include "sexual orientation"¹⁶, the Basic Law and the Hong Kong Bill of Rights only bind government practices and does not offer any legal remedy to victims of discrimination that takes place in the private sphere.

⁸ E/C.12/WG/CHN/Q/2 (June 13, 2013) List of issues in relation to the second periodic report of China (E/C.12/CHN/2) including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHN-MAC/2), adopted by the pre-session working group at its fifty-first session (21-24 May 2013)

⁹ E/C.12/1/Add.58, para. 31

¹⁰ E/C.12/1/Add.107, para. 78(a)

¹¹ 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>.

¹² 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>.

¹³ CCPR/C/79/Add.117, para. 15; CCPR-C-CHN-HKG-CO-3, para. 23; E/C.12/1/Add.58, paras. 15 & 31; E/C.12/1/Add.107, para. 78; CRC/C/CHN/CO/2, para. 33.

¹⁴ E/C.12/CHN-HKG/3, para. 5

¹⁵ Sex Discrimination Ordinance, Family Status Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance.

¹⁶ *Leung TC William Roy v Secretary for Justice* [2005] HKCFI 713, confirmed in *Secretary for Justice v Yau Yuk Lung Zigo* [2007] HKCFA 50.

7. The Government introduced a non-binding *Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation*¹⁷ in 1998. The *Code of Practice*, which makes no reference to gender identity or issues concerning trans people, was drafted expressly in terms of "encouragement" and "recommendations". The effectiveness of the *Code of Practice* is dubious, and LGBT persons still suffer from discrimination in employment settings, as demonstrated in the paragraphs below under Arts. 6 and 7 (Right to work; Just and favorable conditions of work).
8. In June 2013, the Government set up an Advisory Group on Eliminating Discrimination against Sexual Minorities (Advisory Group) to replace the Sexual Minorities Forum. Membership to the Advisory Group is by invitation only and includes those with a documented history of opposing sexual and gender minorities. In March 2014, the Advisory Group has announced to carry out a study "gather information about whether sexual minorities are discriminated against in Hong Kong"¹⁸.
9. The Advisory Group was set up in replaced of the discontinued Sexual Minorities Forum (SMF) after over 20 members withdrew en masse complaining its ineffectiveness¹⁹. The Sexual Minorities Forum (SMF), established in 2004 prior to the last round of review cycle, which have received welcome in the 2005 Concluding Observations of the ICESCR²⁰, was ineffective as it failed its purposes as a communication channel between sexual minorities and the government.
10. While some transgender persons may be diagnosed with Gender Identity Disorder and may thus 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, as well as exposes them to additional stigma and prejudice.

VIOLENCE, HARASSMENT AND DISCRIMINATION AGAINST LESBIAN MIGRANT WOMEN

11. Discrimination against sexual and gender minorities has a particular impact among migrant workers 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 women²¹. According to a coordinator at the Indonesian Migrant Workers Union, up to 20% of Indonesian females working in Hong Kong are lesbian²². Given the various restrictive regulatory conditions to which they are subject, such as the "live-in requirement"²³ and the "two-week rule"²⁴, employers have particular power to

¹⁷ *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

¹⁸ Information Services Department (Mar. 3, 2014), *Recruitment of participants for study on discrimination experienced by sexual minorities in Hong Kong*. Retrieved from <http://www.info.gov.hk/gia/general/201403/03/P201402280680.htm>

¹⁹ Lam, L (Mar. 10, 2013), *Gay rights campaigners give up on forum flop*, South China Morning Post. Retrieved from <http://www.scmp.com/news/hong-kong/article/1187298/gay-rights-campaigners-give-forum-flop>

²⁰ E/C.12/1/Add.107, para. 73

²¹ 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>.

²² 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/>.

²³ 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.

²⁴ 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.

compel migrant domestic workers to conform with heterosexual standards even beyond the workplace. For example, some employers require female domestic workers to refrain from masculine attire or appearance due to unfounded fears of "bad influence" over children²⁵.

12. 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 repatriated to the Philippines²⁶.
13. Trans persons 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 assumed to be sex workers and thus exposed to additional societal stigma. 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 hindered²⁷.

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

14. A survey in 2009 had revealed a dangerous prevalence of partner violence in same-sex relationships²⁸. Violence against LGBT persons 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 LGBT persons suffering from family violence can partly be attributed to rampant discrimination against them in society.
15. 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 victims²⁹. An absolute majority of LGBT victims has never sought assistance from the police, the Social Welfare Department, or NGOs. Many of those who have sought help have suffered from discrimination or insults from the police or from mainstream NGOs, many of which are religious in nature³⁰.

²⁵ 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>.

²⁶ Ibid.

²⁷ 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.

²⁸ Mak, W. W. S. & Women Coalition of HKSAR. (2009), *Study on Same-Sex Intimate Partner Violence in Hong Kong* (in Chinese). Retrieved from <http://wchk.org/2012/tc/content.php?key=dvo2008/dvo2008.php>

²⁹ Ibid.

³⁰ Choi, C. (Nov. 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>

16. Key Recommendation 1:

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

RECOGNITION OF THE IDENTITY OF TRANSEXUAL PERSONS

17. Transsexual persons are individuals who identify as, and desire to live and be accepted as, a member of another sex³¹. 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 wish to have surgery and hormonal treatment to make their body as congruent as possible with their experienced gender. However, not all transsexual persons experience such discomfort or wish to undergo such medical treatments. The side effects of hormonal treatment and the potential complications of sex reassignment surgeries (SRS)³² are also well-documented³³.
18. The lack of recognition of the appropriate gender of transsexual persons seriously hinder their enjoyment of social, economic and cultural rights. To the extent that any such recognition is given, it is conditional on the trans persons undergoing unnecessary, risky, irreversible and highly invasive genital and sterilization surgeries known as "sex reassignment surgeries" (SRS).
19. The refusal to recognize a transgender person's appropriate gender often occur in settings that are humiliating and oppressive to them. 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. Without a government-issued identity card that shows their gender properly, transsexual persons have serious difficulties in daily affairs, from seeking employment to accessing healthcare³⁴.

» ACTUAL CASE

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

³¹ World Health Organization, *10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10)*, F64.0.

³² Many activists prefer the term "gender reassignment surgeries" to "sex reassignment surgeries", but the latter is adopted here since it is generally used by the Hong Kong Government and the judiciary. In the report (A/HRC/19/41) compiled by the Special Rapporteur on Torture, such surgeries were referred to as "genital-normalizing surgeries".

³³ WPATH (2011), *Standards of Care (V7)*.

³⁴ See an actual case (Sally's case) under Art 6 & 7 (Rights to Work; Just and Favorable Conditions of Work).

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 HKIC that leaves her open to prejudice, she recently slipped into a deep depression about her situation, attempting suicide twice in one week.

20. **We ask the Committee to urge the Government to ensure that transgender persons are treated with respect and dignity, and that the appropriate gender identity for transsexual persons is recognized in both government functions and in the private sphere without being coerced into undergoing medical surgeries.** For more details and the key recommendation on gender recognition (Key Recommendation 2), please refer to the passages below under Art. 12 (Right to highest attainable standard of health) under the paragraphs on “forced sterilization, coercive medicine and gender recognition of transsexual persons”

Art. 6: Right to work; Art 7: Just and favorable conditions of work

WIDESPREAD DISCRIMINATION SUFFERED BY LGBT PERSONS IN THE WORKPLACE

21. 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 ideation³⁵. 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 employees had to conceal their sexual orientation or gender identity at work³⁶.
22. The aforementioned *Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation* is demonstrably toothless, and it does not cover gender identity and gender expression. In a case that received widespread media attention, a school in Hong Kong required its teachers to sign a “Morality Contract”, in which it was stated that any teacher who is found to have a same-sex relationship or is transgender will be subject to disciplinary actions including dismissal³⁷. Since there is no anti-discrimination law on the basis of sexual orientation or gender identity, there is no redress for victims of discrimination in such a case.
23. The situation is particularly serious for transgender persons. In the same 2012 Community Business survey, 1 in 4 persons describe themselves as “unaccepting” towards transgender

³⁵ 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.

³⁶ 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. 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”).

³⁷ Parry, S. (Mar. 7, 2014), *Ruffling feathers*. China Daily. Retrieved from http://www.chinadaily.com.cn/hkedition/2014-03/07/content_17328972.htm. Yiu, D. (Jan 24, 2014). *Hong Kong Christian school threatens to fire gay and transgender staff*. Gay Star News. Retrieved from <http://www.gaystarnews.com/article/hong-kong-christian-school-threatens-fire-gay-and-transgender-staff240114>

persons. An analysis of the 2012 survey results³⁸ concerning transgender persons reveals a 15% unemployment rate, compared with around 3-4% for the general population³⁹. Of those transgender persons who were employed, 45% had an income lower than HK\$10,000/month (≈US\$1,282 or €941/month) and only 5% had an income higher than HK\$30,000/month (≈US\$3,846 or €2,824/month); in comparison, the percentages were 35% and 15% respectively for the general working population⁴⁰.

24. The 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 persons find it difficult to get jobs, retain employment and access opportunities for career advancement (Recall Sally's case under Art. 2(2)).

Art. 9: Right to social security

SAME-SEX DE FACTO FAMILIES UNABLE TO ACCESS SOCIAL SECURITY EQUALLY

25. 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 couple counterparts.
26. Non-elderly same-sex partners who apply for public housing, even for those who are in a committed relationship, would have to be placed under the category of "Non-elderly One-person applicants" rather than that of "Family" in the allocation of public housing. There is an annual quota for the former category which is not applicable to the latter category. The target set by the Government for "Average Waiting Time" of applicants, which is currently three years, also does not cover "Non-elderly One-person applicants". As a result, same-sex partners are indirectly discriminated against in the public housing policy.

Art. 10: Protection and assistance accorded to the family

27. Hong Kong does not recognize same-sex relationships. The only exception is that under the Domestic and Cohabitation Violence Ordinance, a person in a same-sex cohabitation relationship is entitled to apply for a restraining order against his or her abusive same-sex partner. Other than this, there is no legal recognition of the existence of same-sex families, not to mention protection or assistance.
28. 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 making medical decisions for their spouse, hospital visitation, inheritance, immigration for the purpose of family reunion, criminal liabilities etc.

³⁸ Analysis conducted by Joanne Leung, Chairperson of the Transgender Resources Center, with information from the authors of the survey.

³⁹ Census and Statistics Department (2012), *The Movement of the Unemployment Rate in 2012*. Retrieved from <http://www.statistics.gov.hk/pub/B71305FC2013XXXXB0100.pdf>.

⁴⁰ 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.

29. A Hong Kong partner in a same-sex relationship also cannot petition for their foreign spouse to be granted a dependent/spouse visa in the same way heterosexual couples can.
30. 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 in, Hong Kong for up to 6 months⁴¹. 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, they do 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.
31. 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.
- 32. We reiterate our call to the Hong Kong Government to immediately enact an anti-discrimination legislation as stated in Key Recommendation 1. We also call for the Hong Kong Government to update administrative policies to allow same-sex couples who have formalized their relationships overseas the same rights as their heterosexual counterparts. We would also welcome the Hong Kong Government to implement a mechanism to recognize domestic same-sex couples and accord them with the rights of different-sex couples to the greatest extent possible.**

Art. 12: Right to highest attainable standard physical and mental health

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

33. As described above, transsexual persons are individuals who identify as, and desire to live and be accepted as, a member of another sex⁴². 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 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

⁴¹ Ip, C (July 11, 2011), *Visitor visa accommodates gay couples*. South China Morning Post. <http://www.scmp.com/article/973061/visitor-visa-accommodates-gay-couples>

⁴² World Health Organization, *10th revision of the International Statistical Classification of Diseases and Related Health Problems (ICD-10)*, F64.0.

medical treatments. The side effects of hormonal treatment and the potential complications of sex reassignment surgeries (SRS) are also well-documented⁴³.

34. Transsexual persons are currently unable to obtain legal recognition of their experienced gender, including a change of their recorded sex in government-issued identification documents (the HKID card and passport), unless they undergo unnecessary, irreversible, risky and highly invasive genital and sterilization surgeries⁴⁴. As recognized by the Court of Final Appeal -- Hong Kong's highest court, such preconditions are especially harsh for female-to-male transsexuals (trans men)⁴⁵, who are required to remove their uteruses and ovaries and to construct some form of a penis.
35. 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, getting a job⁴⁶, opening a bank account⁴⁷, to going to the hospital⁴⁸. The frequent use of the HKID card reminds them of their sex by birth, reinforces their gender dysphoria, worsens their emotional well-being, and creates risky situations that lead to depression and suicidal attempts. Such pressures mean that legal gender recognition is often a paramount concern for transsexual persons in Hong Kong. The imposition of surgical preconditions to the legal recognition of transsexual persons' genders undermines free consent and constitutes coercive medicine, if not forced sterilization.
36. 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 High Commissioner for Human Rights' report to the UN Office of Human Rights Council in 2011 made the same recommendation⁴⁹, as did the UN Special Rapporteur on Torture in 2013⁵⁰. *The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, in particular Principle #3, also stated the same. The World Professional Association for Transgender Health (WPATH) has also recognized the positive health effects of legal recognition for transsexual persons⁵¹, and called for removal of medical barriers in gender recognition⁵². In a letter to the Hong Kong Government, WPATH again suggested that medical procedures are unnecessary for gender recognition and made the same recommendations.
37. The Committee on Economic, Social, Cultural Rights noted that the right to health includes "the

⁴³ WPATH (2011), *Standards of Care* (V7).

⁴⁴ Q.21, GovHK: Frequently Asked Questions - Hong Kong Identity Card. Retrieved from 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

⁴⁵ *W v Registrar of Marriages* [2013] HKCFA 39, para 135. Judgment available at <http://www.hklii.hk/eng/hk/cases/hkcfa/2013/39.html>.

⁴⁶ 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>.

⁴⁷ 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>.

⁴⁸ 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>.

⁴⁹ A/HRC/19/41, paras 71-73, 84(h).

⁵⁰ A/HRC/22/53, paras 78 and 88.

⁵¹ WPATH, *Standards of Care* (Seventh edition, 2011); Statement on Medical Necessity (June 17, 2008).

⁵² WPATH, Statement on Medical Necessity (June 17, 2008); Identity Recognition Statement (June 16, 2010)

right to control one's health and body, including sexual and reproductive freedom", and "the right to be free from interference"⁵³. The compulsory surgical and sterilization requirements falls foul of the acceptability standard in being insensitive to the needs of transgender minorities. They undermine the bodily integrity and autonomy of transgender persons, violate the State's obligation to respect their right to health, i.e. to refrain from interfering directly or indirectly with their enjoyment of their right to highest attainable standard of physical and mental health.

38. The CEDAW Committee also 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 rectified⁵⁴. In its Concluding Observations for Netherlands in 2010, the CEDAW Committee expressed concern at the compulsory sterilization for transgender women and supported the Netherlands to revise the relevant law⁵⁵.
39. In the landmark case of *W v Registrar of Marriages*⁵⁶, the Court of Final Appeal (CFA) ruled that it was unconstitutional to deny a trans woman who had undergone full SRS her right to marry a man. The CFA refused to draw a line for transsexual persons' gender recognition on the point of completion of full SRS, for various reasons including that it would have an "undesirable coercive effect"⁵⁷. The CFA also noted that there are other areas of law where gender recognition issues would arise, and expressed that a comprehensive gender recognition law would be "beneficial"⁵⁸. It referred to the United Kingdom's Gender Recognition Act 2004 as a "compelling model" for such legislation⁵⁹.
40. On January 7, 2014, the Legislative Council Security Panel held a meeting on the Government's action in regard to the *W* case. Lawmaker Ray Chan raised a non-binding motion urging the Government to expeditiously enact a gender recognition ordinance, but was defeated⁶⁰.
41. As a somewhat delayed and reluctant response to legislative and judicial calls, the Government has set up a high-level interdepartmental working group (IWG) in January 2014 to "study" gender recognition issues, still without an imperative to pursue legislation. However, the IWG does not include any person with expertise in transgender issues, or indeed members of the transsexual community themselves. Nor is there any indication that such communities will be consulted in the IWG's deliberations.
42. On February 26, 2014, the Government proposed to amend the definitions of "man" and "woman" in the marriage laws such that "a person who has undergone full SRS is treated as the sex to which the person is reassigned after completion of the surgery"⁶¹. However, this move is against the Court of Final Appeal's suggestion that drawing a bright line for transsexuals' gender recognition is undesirable and coercive. The Government admitted that the judgment would be given full effect even without any statutory amendment. The proposed amendment is

⁵³ CESCR General Comment No. 14, para 8.

⁵⁴ CEDAW/C/GC/19, para 22; CEDAW/C/GC/21, para 22; CEDAW/C/GC/24, para 22.

⁵⁵ CEDAW/C/NLD/CO/5, paras 46-47.

⁵⁶ [2013] HKCFA 39.

⁵⁷ *Ibid.*, paras. 136-137.

⁵⁸ *Ibid.*, paras. 141-146.

⁵⁹ *Ibid.*, para. 138.

⁶⁰ Hong Kong Legislative Council, Hansards (Jan. 7, 2014). Retrieved from <http://www.legco.gov.hk/yr13-14/english/panels/se/papers/se0107cb2-588-9-e.pdf>

⁶¹ Hong Kong Legislative Council, Legislative Council Briefs (Feb. 26, 2014). Retrieved from http://www.legco.gov.hk/yr13-14/english/bills/brief/b201402282_brf.pdf

unnecessary and is a blatant attempt to write into the law the sterilization requirement that was originally contained in administrative guidelines only. This would make it much more difficult to remove forced sterilization requirements in the future.

43. Key Recommendation 2:

The rights to non-discrimination, work, health, education and other economic, social and cultural rights of transsexual persons cannot be protected under the current regime without being coerced into undertaking risky, irreversible and highly invasive genital and sterilization surgeries. **We ask the Committee to 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 recognizing the experienced gender of transsexual persons, who permanently identify as and desire to live and be accepted as a member of their experienced gender.**

Art. 13: Right to education

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

44. Discrimination and bullying on the grounds of sexual orientation and gender expression continue to be commonplace in schools in Hong Kong, as is the situation worldwide⁶².
45. The Boys' & Girls' Clubs Association of Hong Kong, in a 2009 study of LGBT secondary 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 LGBT students were referred to "reparative therapy" by the teachers or social workers. The impacts of such discrimination, bullying and mistreatment on LGBT students are profound, including 22% of students who said they felt they had been discriminated reported having suicidal thoughts⁶³.
46. 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"⁶⁴. Not once were terms such as "sexual orientation", "gender identity" or "lesbian, gay, bisexual or transgender" included in this non-binding package.

⁶² A/HRC/19/41, paras. 58-60, 77, 84(g).

⁶³ 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

⁶⁴ Statement from the then Secretary for Education to the Legislative Council (Jan. 27, 2010). Retrieved from <http://www.info.gov.hk/gia/general/201001/27/P201001270197.htm>

- 47. 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 LGBT 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. 15: Right to enjoy culture life and benefit from scientific progress

LACK OF SEX AND GENDER EDUCATION

48. 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. When faced with issues of homophobic and transphobic biases or bullying, teachers often just tell affected students to conform to heterosexual norms. Such general ignorance greatly hinders the promotion of the objectives of ICESCR.

ILL-INFORMED EDUCATION AND TRAINING ON SEXUAL AND GENDER MINORITIES

49. A news program in 2010⁶⁵ 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 LGBT students who often struggle with their sexual orientation and/or gender identity, and to reinforce prejudicial views towards LGBT students.
50. **We invite the Committee to encourage the Government to incorporate the values of human rights, equality and respect for diversity into the formal curriculum of schools. We also invite the Committee to encourage the Government to promote public education and provide sensitivity training to teachers in issues of gender and sexuality, and to ensure that such education and training are done in a way that accords with modern and scientific understanding of gender and sexuality, so as to tackle abuse and prejudice against sexual and gender minorities within the education system.**

⁶⁵ Lincoln, C (Dec. 27, 2010), *Pearl Report*. TVB Pearl

Conclusion

51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. We appeal to the Committee to take a strong position to encourage the Hong Kong Government to work proactively, so as to ensure sexual and gender minorities can enjoy human rights and access to equal opportunities as enshrined by the ICESCR.

List of signatories

This report represents 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:

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 1st 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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