Joint Submission by 13 Hong Kong LGBTIQ+ Organisations

Economic, Social and Cultural Rights Situation for Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Hong Kong

For the

List of Issues

Submitted to the 68 Pre-Sessional Working Group on

Committee on Economic, Social and Cultural Rights on

08-12 Mar 2021

in relation to the consideration of the fourth ICESCR periodic report submitted by Hong Kong, China

This report is submitted by:

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

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# Executive summary

1. The Hong Kong Government refused to take **legislative steps** to protect the human rights of **LGBTI people**. LGBTI rights are often ignored by the HKSAR government, despite widespread public support. According to a 2018 study, nearly 70% of the Hong Kong public favoured the **anti-discrimination legislation** that protects people from being discriminated because of sexual orientation. However, the Hong Kong Government has made no progress on or plan for such legislation.
2. **Transgender persons** in Hong Kong need to submit evidences of the completion of gender affirmation surgery (GAS) in order to change their legal gender on Identity Cards. The surgery must specifically include the removal of reproductive organs and genital reconstruction. Though an Inter-departmental Working Group was established in 2014 for the work of gender recognition, no further progress and no news has been released since 2017. The situation remains very unacceptable as there has been a lack of progress with both the legislation and the GAS requirement for gender recognition.
3. **Intersex infants and children** in Hong Kong are subjected to unnecessary and irreversible medical procedures at their early age without their consent, with only the agreement of parents being considered. Hong Kong Government still has no plan to set up measures making the consent of the intersex child be taken into consideration, and no measures have been taken to guarantee that non-urgent and irreversible medical interventions shall be postponed until the intersex child is sufficiently mature to participate in decision-making process.

**SUGGESTED ISSUES**

# I. Non-discrimination against LGBTI persons - Art. 2, 6, 7, 11 and 13

1. As early as 1999, different treaty bodies have recommended that HKSAR Government should consider enacting comprehensive anti-discrimination legislation to prohibit specifically the discrimination on grounds of sexual orientation and gender identity, including the Committee on Economic, Social and Cultural Rights(CESCR) in its previous concluding observations (E/C.12/CHN/CO/2, para. 41). There is still no progress, no plan and no time table for such enactment. The HKSAR Government still claimed that "the society is deeply divided as to whether legislation should be introduced to prohibit discrimination on grounds of sexual orientation and gender identity,[[1]](#endnote-1)" without any statistical reference, while supportive results of recent studies have proven otherwise.
2. The Equal Opportunities Commission in Hong Kong (EOC) had commissioned a research called “Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status,” the result of the study was released in 2016[[2]](#endnote-2). One of the key findings showed that more than half of the respondents (55.7%) “somewhat/completely” agreed that overall, there should be legal protection against discrimination for people of different sexual orientation, gender identity and intersex status in Hong Kong. 7.3% remained neutral on the question, while only 34.8% “somewhat/completely” disagreed. In the field of employment, nearly 60% of the respondents “somewhat/completely” agreed that there should be legal protection against discrimination.
3. In 2018, the Centre for Comparative and Public Law, University of Hong Kong published a report named “Support in Hong Kong for Same-sex Couples’ Rights Grew Over Four Years (2013-2017)”[[3]](#endnote-3). The result showed that **69% of the public favoured the anti-discrimination legislation that protects people from being discriminated because of sexual orientation**.
4. The study commissioned by EOC also found that **all 43 respondents** of an LGBTI focus group survey **claimed that the discrimination experienced by LGBTI people was either common or very common**. 93% of them thought the city was not LGBTI-friendly. When being asked if they have experienced discrimination within the period of two years before the study, 88% of them responded that they had experienced discrimination, out of which 44% of the respondents claimed they often/very often encountered discrimination. When the respondents were asked if they had ever encountered discrimination in their lifetime, the corresponding percentages rose to 98% and 65% respectively.
5. Experiences of discrimination by LGBTI people were also analysed in the EOC study. The cases were categorized into four domains: employment, education, provision of goods and services, and disposal and management of premises. Over 80 self-reported cases on sexual orientation or gender identity discrimination were recorded in the study, with prevalent and widespread discrimination in workplace for both local people and***foreign domestic helpers***, social services, accommodations. Examples are provided as follows:

*Unfriendly attitudes in the workplace were reported by LGBT people, especially by lesbians who appeared with a more masculine appearance. One respondent reported that she was verbally disparaged by her employer who told her colleagues that she was “abnormal”, being neither male nor female, and that they should be careful and stay away from her. The atmosphere at work turned sour and in the end the lesbian left the company.*

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

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

*other students also joined in to laugh and tease her.*

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

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

*including five-star hotels of international chains.*

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

1. As of 2020, there has not been a regular formal platform for the HKSAR Government to communicate with the LGBTIQ+ community since the closure of the Advisory Group on Eliminating Discrimination against Sexual Minorities in 2015. The Advisory group has submitted a recommendation report to the Hong Kong Government in December 2015. Up until now, only less than half of the recommendations have been fulfilled[[4]](#endnote-4).
2. It is evident that the absence of comprehensive anti-discrimination legislation has resulted in the inadequate protection of LGBT persons, and the Hong Kong Government's execution of non-legislative measures regarding this issue remains inefficient.

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| **Suggested Questions for the List of Issues**   * In the light of the Committee’s previous concluding observations (see E/C.12/CHN/CO/2, para. 41), please indicate the steps that have been taken to adopt comprehensive anti-discrimination legislation in economic, social and cultural rights, explicitly prohibiting discrimination on the basis of sexual orientation, gender identity, gender expression, and sex characteristics, inter alia, (a) addressing discrimination in the private sphere; (b) prohibiting all direct and indirect discrimination and multiple forms of discrimination; (c) providing for effective remedies in judicial and administrative proceedings; and (d) including the protection of **foreign domestic helpers** and migrants workers, especially at their workplace. * Does Hong Kong, China have a concrete time frame for the plan for the legislation of the anti-discrimination law that prohibits discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics? * How does Government of Hong Kong to measure the effectiveness of the measures introduced to ensure that LGBTI persons are protected against discrimination in economic, social and cultural rights. |

# II. Housing Right of Same Sex Partner - Art. 11

1. In 2018, Nick Infinger, a 25-year-old gay man and a Hong Kong citizen, filed a judicial review to challenge against Hong Kong Government’s decision to deny his public housing application jointly with his same-sex partner married overseas, with the Hong Kong Housing Authority (HA) stating that same-sex couples were not eligible under its policy. Later in March 2020, the High Court ruled that it was unlawful and unconstitutional for HA’s Spousal Policy excluding same-sex couples married abroad from applying for public rental housing as an "ordinary family". Hong Kong Government then filed an appeal against the court's decision and the case is currently pending to be heard.
2. The aim of public rental housing policy is to address the housing needs of low-income families. Denying the application of same-sex partners violates their right of housing. This is discrimination of LGBTI persons as partners in the access to housing, since sexual orientation does not cause low-income families constituted by same-sex partners to have lesser need for housing than low-income families constituted by opposite-sex couples without children.
3. The Marriage Ordinance in Hong Kong defines marriage as the voluntary union for life of one man and one woman to the exclusion of all others. Same-sex partners are not recognized under the Marriage Ordinance, and there is no legislation to recognize the same-sex partnership in Hong Kong. Same-sex partners bounded by legal union overseas will not be granted partnership rights in Hong Kong.
4. The Equal Opportunities Commission last year commissioned law firm Allen & Overy to study the recognition and treatment of relationships under Hong Kong law[[5]](#endnote-5). The report identified 21 areas of differential treatment between opposite-sex marriages and same-sex couples. Those areas of differential treatment are to be found in all aspects of daily life, including: anti-discrimination, immigration, crime, bankruptcy, inheritance, employment, housing, medical, public welfare, public health, public service and compensation.
5. The Hong Kong Government's persistence to appeal court's decision that is in favour to same-sex partnership rights have delayed the LGBTI persons from their right of housing. Furthermore the government refused to take any active measure to end the discrimination against same-sex partners in other areas not yet challenged by judicial review cases.

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| **Suggested Questions for the List of Issues**   * Please report on the steps taken towards legal recognition of same-sex partners, including the housing right. * Please provide an update on measures taken to prevent discrimination on the basis of sexual orientation, including any legislative developments concerning same-sex partnerships. |

# III. Gender Recognition of Transgender Persons - Art. 12, 15 (1) (b)

1. The process for transgender people in Hong Kong to change their legal gender is governed by administrative regulations of the Immigration Department of the Security Bureau. Among others, evidence of the completion of gender affirmation surgery (GAS) is required for the purpose. The surgery must specifically include the removal of reproductive organs (sterilisation) and genital reconstruction[[6]](#endnote-6). The Committee against Torture has expressed concerns on this situation in its 2016 concluding observation, and recommended the government to removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilization(CAT/C/CHN-HKG/CO/5, para 28, 29).
2. In 2014 Hong Kong established an Inter-departmental Working Group on Gender Recognition (IWG)[[7]](#endnote-7) The work scope of the IWG is to 1) set up a gender recognition scheme; and 2) deal with issues arising as the consequences of legal gender recognition. After 6 years from the establishment, the IWG only finished the consultation invitation part 1 in 2017. The consultation report is yet to be announced. Neither progress nor news has been released up to date, hence there is no sign of starting the public consultation for part 2 in the near future. For transgender persons who seek for change of gender markers on official documents, the situation remains very unacceptable as there has been no progress with regard to both the legislation and the GAS requirement for gender recognition.

1. As the current administrative regulations are fragmentary, the absence of clear legal definition and recognition of transgender persons has undermined the legal rights for transgender persons. The absence of legal recognition of their gender identity is a barrier for the transgender persons to have effective access to work, education and health services
2. Hong Kong's public healthcare system provides medical service to all citizens, especially those with low-income. Gender Affirmation Surgery (GAS) and transgender hormone therapy (or previously known as hormone replacement therapy) are provided by Gender Identity Disorder (GID) Clinic of a local public hospital. This year transgender civil society organisations received a number of complaints and reports from the transgender community that the current waiting time for cases to undergo GAS is more than 5 years. The surgical team has ceased to take new GAS case referrals from the GID Clinic and is now concentrating to finish the current queue. It is further reported that the surgical team is waiting to be evaluated and likely to be restructured in 2024. Coincidentally there was also a recent report from the transgender community that new cases will have to wait for 18 years to have GAS. The long waiting time reflect that the resources for transgender health care are inadequate. Also, this triggered the fear in the transgender community that the transition-related health care services might face further cut-down.

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| **Suggested Questions for the List of Issues**   * Please report on the progress made in bringing the legislation of gender recognition law in compliance with the Covenant, and if it requires sterilization or infertility as a precondition for recognising legal gender change. * Please report on the plan to revise the gender recognition procedure in accordance with international human rights standards and best practice. * Please provide information about the steps taken to ensure sufficient financial and human resources to quality health care for transgender persons health care services, Gender Affirmation Surgery and transgender hormone therapy in particular, and to maintain the access of transition related health care to in the future. |

# IV. Involuntary surgeries on intersex infants and children - Art 15 (1) (b)

1. Intersex infants and children in Hong Kong are subjected to unnecessary and irreversible genital correction surgeries and other medical procedures at their early age without their consent. Hong Kong Government reported that medical treatment of intersex infants only requires discussion between doctors and parents of the infants, with only the agreement of parents is considered[[8]](#endnote-8). The Committee against Torture expressed concerns about this situation in the 2016 concluding observation, and recommended the government to guarantee impartial counselling services for all intersex children and their parents; that non-urgent, irreversible medical interventions are postponed until a child is sufficiently mature to participate in decision-making and give full, free and informed consent (CAT/C/CHN-HKG/CO/5, paras. 28, 29).
2. The Hong Kong Government still has no plan to set up measures or legislation making the consent of the intersex child be taken into consideration for any treatment; no measures are taken to guarantee that non-urgent and irreversible medical interventions shall be postponed until the intersex child is sufficiently mature to participate in decision-making process and give full, free and informed consent.
3. When intersex adults find that they do not identify with the sex to which they have been assigned during their infancy, they are subjected to the same requirements as transgender people changing their legal gender on identification documents. This means these intersex adults will be forced to undergo full GAS, including sterilisation and genital reconstruction.
4. The Hong Kong Government publishes no statistics on intersex infants born. There are also no records for the number of genital correction surgeries and other medical treatments performed on intersex infants and children. The only relevant statistic revealed by the government in 2015 is that the Hospital Authority conducts around 50 operations on patients under the age of 18 with Disorders of Sex Development (“DSD”) annually. They do not have any statistics on the number of children born with DSD[[9]](#endnote-9). The government also stated in 2016 that there were no statistics on the total number of intersex persons in Hong Kong[[10]](#endnote-10).
5. The lack of detailed statistic resulted in the lack of policies or measures addressing the human rights issues that intersex persons faced. Thus there is no mechanism to redress for the physical and psychological suffering caused by unnecessary and irreversible genital correction surgeries and other medical treatment to some intersex persons without their informed consent.

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

# V. Lack of Gender-Inclusive Facilities - Art 11, 12

1. Gender-inclusive facilities include public restrooms, bathrooms, fitting rooms in stores and changing rooms in sports facilities, etc. Transgender persons' accessibility to these facilities is critical for their accessibility of public places, workplace or participate in cultural activities and sports.
2. Transgender civil society organisations received a number of cases about transgender persons being denied entry to fitting rooms and changing rooms. Hong Kong Government does not have policy or measure to increase gender-inclusive facilities, in government premises or private-owned public facilities to ensure accessibility of transgender persons.

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| **Suggested Questions for the List of Issues**   * Please provide statistics on the number of gender-inclusive facilities, including public restrooms, bathrooms and changing rooms in government premises. * Please provide any action plans on the measures and policies to increase gender-inclusive facilities to ensure accessibility of transgender persons. |

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# Background Information and Contact Details for the Organisations

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

**Rainbow Action**

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

**Les Corner Empowerment Association**

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

**PrideLab**

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

Co-sign Organisations:

Hong Kong Pride Parade, Made in Gender, Association for Transgender Rights, Gay Harmony, Beyond the Boundary-Knowing and Concerns Intersex, Chinese Intersex Alliance, GABRIELA Hong Kong, Filguys- Gabriela HK Association, Filipino Lesbian Organization, Women Coalition of HKSAR

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3. PrideLab  
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1. Document: E/C.12/CHN-HKG/4 [↑](#endnote-ref-1)
2. <https://www.eoc.org.hk/EOC/GraphicsFolder/InforCenter/Research/content.aspx?ItemID=13585> [↑](#endnote-ref-2)
3. <https://www.law.hku.hk/ccpl/wp-content/uploads/2018/07/Change%20Over%20Time%20Paper%20English%20(3%20July%20Final%20for%20Distribution).pdf> [↑](#endnote-ref-3)
4. Progress of the recommendations report submitted by the Advisory Group on Eliminating Discrimination against Sexual Minorities on December, 2015:  
   a) preparing training resources for personnel in specific fields (only 2 out of 5 parts finished)

   - medical and healthcare professionals – finished

   - disciplined services – finished

   - social workers – no progress

   - human resources professionals – no progress

   - teachers – no progress

   (b) drawing up a charter on non-discrimination for voluntary adoption by employers; providers of goods, facilities and services; landlords/agents in charge of disposal and management of premises; and schools;

   - no progress

   (c) enhancing public education and publicity to promote the message of non-discrimination against sexual minorities;

   - campaign quiet down since 2016

   (d) reviewing and reinforcing relevant support services;

   - only half finished. The most important recommendation for the dedicated support services including shelters and community centres for sexual minorities is not finished

   (e) conducting a further study on the experience of legislative and non-legislative measures of other jurisdictions to map out the way forward

   - not finished [↑](#endnote-ref-4)
5. <https://www.eoc.org.hk/EOC/upload/ResearchReport/2019626142922933384.PDF> [↑](#endnote-ref-5)
6. Please see Q22: <https://www.immd.gov.hk/eng/faq/faq_hkic.html> [↑](#endnote-ref-6)
7. <https://www.iwggr.gov.hk/> [↑](#endnote-ref-7)
8. <https://www.info.gov.hk/gia/general/201603/02/P201603020530.htm> [↑](#endnote-ref-8)
9. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fRLI%2fHKG%2f22226&Lang=en> [↑](#endnote-ref-9)
10. <https://www.info.gov.hk/gia/general/201603/02/P201603020530.htm> [↑](#endnote-ref-10)