

**LGBT Joint Submission**  
to the  
**Committee on Economic, Social and  
Cultural Rights (CESCR)**  
for the implementation of the  
**International Covenant on Economic,  
Social and Cultural Rights (ICESCR)**  
**in the Hong Kong Special Administrative  
Region, China**

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## Background Information and Contact Details for the Organisations

### **Rainbow Action**

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

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

#### Contact Details:

Rainbow Action

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

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

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

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### **Association for Transgender Rights**

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

In the past 3 years, we provided shelter to 8 transgender people facing homelessness and rejection by existing social services. We also sheltered one transgender refugee who arrived in Hong Kong on 16<sup>th</sup> September, 2013.

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

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### **Introduction**

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

Issues raised in this document reflect the discrimination faced by Lesbian, Gay, Bisexual and Transgender (LGBT) people in HKSAR today.

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

## ARTICLE 1 & 2

Issue 1:

### **Lack of Discrimination Protection on Sexual Orientation and Gender Identity**

1. **We ask the Committee to pay particular attention to the pressing need to introduce legislation prohibiting discrimination on the grounds of sexual orientation and gender identity.**
2. In the Concluding Observations to Hong Kong, 2001 & 2005, the Committee on Economic, Social and Cultural Rights noted “...in particular its concern on ... [t]he failure of HKSAR to prohibit discrimination on the basis of sexual orientation,” and urged “HKSAR to prohibit discrimination on the basis of sexual orientation”.<sup>1</sup> Since then, however, discrimination against people based on their sexual orientation and gender identity (SOGI) has seriously increased.<sup>2</sup>
3. Lesbian, Gay, Bisexual and Transgender (LGBT) persons continue to face alarming levels of discrimination and harassment in society. There is no legislation that prohibits discrimination on sexual orientation or gender identity. The Government ignores calls from UN treaty bodies and numerous civil society groups. In its report, the HK government claiming that self-regulation<sup>3</sup> and education were preferable ways to address discriminatory attitudes in society. The high and increasing rate of serious discrimination against LGBT people is a warning sign that Government’s current methods have failed.
4. **We urge the Committee to make a concrete recommendation to the HK Government to immediately enact legislation prohibiting discrimination on the basis of sexual orientation and gender identity in the private sector immediately. We encourage the Committee to question the Government about the timeline to introduce this legislation.**

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<sup>1</sup> E/C.12/1/Add.58, 05/21/2001, Paragraph 15(c) & 31. Available at: <http://www.unhchr.ch/tbs/doc.nsf/0/1f67bd3f2a811fddc1256a4c002ed71a?Opendocument>  
E/C.12/1/Add.107, 13/5/2004, Paragraph 78(a). Available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.1.Add.107.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/E.C.12.1.Add.107.En?Opendocument)

<sup>2</sup> Please see Paragraph 13 for more details about the increase of SOGI discrimination in Hong Kong.

<sup>3</sup> Third Report of the HKSAR, China, under the ICESCR, Paragraph 2.14, 2.17 (Page 5&6) Available at: [http://www.cmab.gov.hk/en/issues/prc\\_3.htm](http://www.cmab.gov.hk/en/issues/prc_3.htm)

5. For your reference on this issue, the following are quotes from the Report of the United Nations High Commissioner for Human Rights “Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity” by Human Rights Council:<sup>4</sup>
  6. *The Committee on Economic, Social and Cultural Rights has affirmed the principle of non-discrimination on grounds of sexual orientation in general comments on the rights to work, water, social security and the highest attainable standard of health. In addition, in its general comment on discrimination, the Committee included both sexual orientation and gender identity as prohibited grounds of discrimination under the Covenant.*<sup>5</sup>
  7. *Governments and intergovernmental bodies have often overlooked violence and discrimination based on sexual orientation and gender identity...Further action is now needed.*<sup>6</sup>
  8. *The High Commissioner recommends that Member States:  
Enact comprehensive anti-discrimination legislation that includes discrimination on grounds of sexual orientation and gender identity among prohibited grounds and recognizes intersecting forms of discrimination; ensure that combating discrimination on grounds of sexual orientation and gender identity is included in the mandates of national human rights institutions.*<sup>7</sup>
9. The HK Government claimed in its ICESCR third report that setting up the Sexual Minorities Forum and the Gender Identity and Sexual Orientation Unit (GISOU) as services would combat discrimination<sup>8</sup>. However, the Forum and the GISOU are hardly functioning. The Forum ceased holding meetings after December 2010. While a system was set-up by GISOU to receive complaints, in the 9 years since it was established, the unit has never made a determination that a case is discrimination when the perpetrator has denied it.

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<sup>4</sup> A/HRC/19/41. [http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41\\_English.pdf](http://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf)

<sup>5</sup> A/HRC/19/41, Paragraph 17. Also see general comment no. 20 (E/C.12/GC/20), Paragraph 32.

<sup>6</sup> A/HRC/19/41, Paragraph 82.

<sup>7</sup> A/HRC/19/41, Paragraph 84(e).

<sup>8</sup> Third Report of the HKSAR, China, under the ICESCR, Paragraph 2.18, 2.19 (Page 6&7) Available at: [http://www.cmab.gov.hk/en/issues/prc\\_3.htm](http://www.cmab.gov.hk/en/issues/prc_3.htm)

10. In June, 2013, the Government set up the Advisory Group on Eliminating Discrimination against Sexual Minorities to “advise strategies and measures to tackle the problems identified with a view to eliminating discrimination”. Despite most members on the committee urging the government to provide a draft bill of the proposed ordinance for discussion, the government has ignored this advice and has refused even to provide a time for a draft bill to be presented to the Advisory Group. Therefore, members in the Advisory Group have no clear grounds on which to discuss, and negotiate in detail.
11. LGBT Organizations continue to receive Complaints of SOGI discrimination. In 2013, a government-registered private school demanded that their teachers and staff sign and submit a document called “Standards of Biblical Ethics and Integrity” which stated that “homosexuality, transvestitism, alternate gender identity” are “improper behavioral choices of individuals while working” with the school. It made clear that failure to comply would “carry consequences that may involve disciplinary action, employment termination”<sup>9</sup>. In the handling of this matter, the Education Bureau simply “reminded” the school to “follow the good practices set out in the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation”.<sup>10</sup>
12. On 10th December, 2008, Citybus (a private company) refused to rent a bus to the Hong Kong Pride Parade stating in an e-mail that, “[w]hile making commercial decision, considerations such as company image is included.” Responding to a complaint, GISOU, on 11th February, 2009, stated, “[b]ecause there is no sufficient information showing Citybus denied the application on the basis of sexual orientation, the unit cannot follow up this complaint.” As there is no SOGI discrimination protection, no follow up action can be pursued.
13. A study conducted by WCHK in 2010 found that 53% of LGBT participants had experienced discrimination. This was an increase from a previous study conducted in 2005 in which the percentage was 39%.<sup>11</sup> Research by the University of Hong Kong Public Opinion Programme found that 79% of the Hong Kong working population think that LGBT individuals face discrimination or negative treatment.<sup>12</sup>

<sup>9</sup> For original texts, please see the attachments: <http://www.SchoolDiscr.rainbowactionhk.org>

<sup>10</sup> Document by the Education Bureau HKSAR to Legislative Council Panel on Education <http://www.legco.gov.hk/yr13-14/english/panels/ed/papers/edcb4-386-2-e.pdf>

<sup>11</sup> Research result at: <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>

<sup>12</sup> Community Business commissioned The University of Hong Kong Public Opinion Programme to conduct a research study named *Hong Kong LGBT Climate Study 2011-12*. Page 15.

14. The high rate and seriousness of SOGI discrimination is a warning sign that the Government's current methods—self-regulation and education—have failed to “guarantee that the rights enunciated in the present Covenant will be exercised without discrimination” (Article 2 of the Covenant). HKSAR's failure to prohibit sexual orientation discrimination in the private sector breaches its obligations under article 2 of the Covenant.
15. The demand for sexual orientation discrimination (SOD) legislation has escalated in the past few years. Over 5,200 people marched on 9<sup>th</sup> November, 2013 in support of anti-discrimination legislation for LGBT people. Local research shows that the majority of Hong Kong people are now more supportive for non-discrimination or SOD legislation.<sup>13</sup> A Survey conducted by the Equal Opportunities Commission in 2012 found that 60% of the public supported SOD legislation.<sup>14</sup>
16. On 7<sup>th</sup> November, 2012, legislator the Hon Cyd HO Sau-lan offered a motion during debate in the Legislative Council (Legco) to urge “the Government to expeditiously launch public consultation on enacting legislation to safeguard equal opportunities for and the basic rights of people of different sexual orientations.”<sup>15</sup> Although the motion was defeated under the current voting mechanism in the Legco—31 legislators voted for the motion while 25 voted against it—the number of votes to support anti-discrimination was the highest ever.
17. In a 2012 interview Rev. Chan Moon Hung, a Catholic priest who is also a spokesperson for the Catholic Church in Hong Kong, indicated that the Catholic Church would not oppose SOD legislation in Hong Kong.<sup>16</sup>
18. **We urge the Committee to propose a concrete recommendation to the HKSAR to extend its prohibition of Sexual Orientation discrimination into the private sector immediately.**

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<sup>13</sup> [http://www.communitybusiness.org/images/cb/publications/2012/HK\\_LGBT\\_Climate\\_Study\\_2011\\_12\\_EN.pdf](http://www.communitybusiness.org/images/cb/publications/2012/HK_LGBT_Climate_Study_2011_12_EN.pdf)  
Legislative Councillor the Hon Cyd HO Sau-lan commissioned The University of Hong Kong Public Opinion Programme to conduct a research study in Nov, 2012. According to the research, 63.8% of people think that Hong Kong should have legislation to protect people of different sexual orientation.

<sup>14</sup> Report on Equal Opportunities Awareness Survey. Available at:  
<http://www.eoc.org.hk/eoc/upload/ResearchReport/2013191436554640807.pdf>

<sup>15</sup> [http://www.legco.gov.hk/yr12-13/english/counmtg/motion/m\\_papers/cm1107cb3-101-e.pdf](http://www.legco.gov.hk/yr12-13/english/counmtg/motion/m_papers/cm1107cb3-101-e.pdf)

<sup>16</sup> Apple Daily 27<sup>th</sup> November, 2012: <http://hk.apple.nextmedia.com/news/art/20121127/18081615>

Issue 2:

**Extending Protection to LGBT People in the Review of Discrimination Ordinances**

19. People with non-traditional gender expression continue to face serious discrimination—for example in employment, property rental, and access to services—and the current Sex Discrimination Ordinance does not offer protection from such forms of discrimination. Also, the Family Status Discrimination Ordinance protects only people in heterosexual families, and excludes people who carry the responsibility of care in same-sex families.
20. The EOC’s upcoming revision of the current Discrimination Ordinances offers an important opportunity to address this exclusion. **We urge the Committee to issue recommendations to the HKSAR Government to extend current discrimination protections to include gender expression and same-sex families.**

Issue 3:

**Reform of Discriminatory Crimes Ordinance Section 118**

21. In July, 2007, the Court of Final Appeal in Hong Kong ruled that Crimes Ordinance Section 118, which sets the age of consent between consenting male adults at 21, is unconstitutionally discriminatory against gay and bisexual men. The judgment equalised the age of consent, but—because it was not asked to consider the issue—left intact the disparate maximum penalties. Currently the law states that the maximum penalty for a man having sex with a female under the age of 16 years is 5 years imprisonment, while the maximum penalty for a man participating in “buggery” with an underage male is life imprisonment.
22. The HK Government said it will review punitive laws targeting gay and bisexual men, such as “gross indecency” but refuses to provide a timeline on modifying related discriminatory laws.
23. Quote from United Nations document “Discriminatory laws” by Human Rights Council:
  24. *In at least 14 countries, the legal age of consent differs for homosexual and heterosexual relationships, which treaty bodies have held to be discriminatory.*<sup>17</sup>

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<sup>17</sup> A/HRC/19/41, Paragraph 44.



25. *[C]riminalization increases social stigmatization and made people “more vulnerable to violence and human rights abuses”<sup>18</sup>*
26. *[T]he Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have urged States to reform such laws.<sup>19</sup>*
27. *The High Commissioner recommends that Member States:*  
*Repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct, and harmonize the age of consent for heterosexual and homosexual conduct; ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression.<sup>20</sup>*
28. **We urge the Government to reform the ordinance by equalising the age of consent and penalties for all sexual orientations. We encourage the Committee to ask the HK Government if it has a plan and a timeline for amending the current unconstitutional and discriminatory law.<sup>21</sup>**

Issue 4:

**Cruel, Inhuman or Degrading Treatment of Transgender People in Detention**

29. The HK Government claimed in its ICESCR third report that “correctional staff are reminded to pay attention to the sexual orientation and gender identities of the persons under the Correctional Services Department’s custody” and “the Customs and Excise Department follows statutory requirements and policies...in relation to equal opportunities.”<sup>22</sup> However, degrading treatment or even torture of transgender persons by enforcement officers continues to happen when they are detained or incarcerated.

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<sup>18</sup> A/HRC/19/41, Paragraph 42.

<sup>19</sup> A/HRC/19/41, Paragraph 14.

<sup>20</sup> A/HRC/19/41, Paragraph 84(d).

<sup>21</sup> A/HRC/19/41, Paragraph 14, 40-44, 84d

<sup>22</sup> Third Report of the HKSAR, China, under the ICESCR, Paragraph 2.21 (Page 7&8) Available at: [http://www.cmab.gov.hk/en/issues/prc\\_3.htm](http://www.cmab.gov.hk/en/issues/prc_3.htm)

30. Mistreatment of transgender detainees has been reported in Hong Kong since 2009. Some detainees were housed in a psychiatric centre since they were identified as “gender variants”. Male-to-female transgender detainees were incarcerated in male facilities and were forced to appear as male detainees. They were refused female underwear regardless of their breast implant and had their hair cut very short. They were even refused hormone treatment, which causes depression and suicidality. Such mistreatment denies their identity and dignity of these transgender persons, and constitutes cruel, inhuman and degrading treatment, possibly even torture.
31. The HK government claims that they inform transgender detainees about applying to arrange to keep their long hair when entering the institutions but that they had not received any such requests. Since we know of at least 4 transgender detainees who report that their hair was cut against their will upon entering the institutions, there is good reason to believe that the Government is failing to inform transgender detainees before their hair is cut and is not conducting itself behind closed doors as it professes to do in public.
32. On 16th September, 2013, a Columbian male-to-female transsexual woman was refused admission and detained by the Customs and Excise Department of HKSAR Government because of her sexual identity. She was seriously insulted and sexually assaulted. Without consent, her breasts and sexual organs were handled by male staff. Her request to be searched by a medical doctor instead was rejected. She was refused the use of a female toilet and only allowed to go to the male toilet.<sup>23</sup>
33. **We encourage the Committee to ask the government to account for its failure to establish regulations for treating transgender detainees and prisoners with humanity and respect.**

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<sup>23</sup> News report on the mistreatment by Customs and Excise Department: <http://vimeo.com/81917822>

## ARTICLE 10

## Issue 5:

**Lack of Support for LGBT Victims of Domestic Violence**

34. LGBT people continue to seek help from NGOs for abuse by their partners, parents or other family members. Despite the extension of the Domestic Violence Ordinance in 2010 to include cohabiting same-sex couples, the government has failed to reallocate resources accordingly. Notably, there is a lack of refuge shelters supportive of and welcoming to LGBT victims of Domestic Violence (DV). There is only one DV refuge centre for men and only 1 out of 5 DV refuge centres are friendly to lesbian or bisexual women, their occupation rate is often over 100%.
35. **We urge the government to amend existing policies, allocate more resources and provide training to its social service agencies for the purpose of protecting LGBT victims of domestic violence and take steps to ensure all refuge centres are friendly to sexual minorities.**

## Issue 6:

**No Homeless Shelter Facilities Suitable for Transgender People**

36. In Hong Kong, there is no homeless shelter suitable for transgender people. The Social Welfare Department has never provided training on transgender issues. When a Male-to-Female transgender woman, for example, becomes homeless due to discrimination or any reason other than domestic violence, she will be rejected by women's shelters if her identity card doesn't indicate she is female. She would be required to use a men's shelter where she would have to share a bedroom and bathroom with men. One shelter provides private rooms but refuses to accept homeless person who are not experiencing domestic violence. Many transgender women have been placed in the "male section" of this shelter and have complained about mistreatment. Rather than using a men's shelter, many transgender women become homeless. The same circumstances apply to Female-to-Male transgender men as well.
37. **We urge the Committee to ask the Hong Kong Government what steps they are taking to provide homeless shelters that are suitable for transgender people who are not experiencing domestic violence.**

## Issue 7:

**Freedom from Discrimination and Bullying in School**

38. A study conducted by WCHK in 2010 found that 31% of participants faced discrimination in school based on their sexual orientation.<sup>24</sup> We have received numerous reports from students who have experienced discrimination in their schools. Examples include: unfair punishment by teachers, teachers encouraging other students to isolate students of different sexual orientation, teachers abusing students with insulting terms 死基婆 (translate as “dead dyke” or “dead gay woman”). The situation is worse than just bullying by classmates since discrimination often starts with school officials and teachers in Hong Kong.
39. Quote from United Nations document “Discriminatory laws” by Human Rights Council:
40. *LGBT youth frequently experience violence and harassment, including bullying, in school from classmates and teachers. Confronting this kind of prejudice and intimidation requires concerted efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people.*<sup>25</sup>
41. *The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have expressed concern about homophobic discrimination in schools, and called for measures to counter homophobic and transphobic attitudes.*<sup>26</sup>
42. We urge the Government to introduce anti-discrimination legislation including protection in the area of education and to introduce a “Safe Schools” policy.
43. **We urge the HK Government to take active measures to ensure students of all sexual orientations and gender expression are protected equally and are free from discrimination and bullying in schools.**

<sup>24</sup> Research result at: <http://wchk.org/2012/tc/content.php?key=sodsurvey/survey-result.php>

<sup>25</sup> A/HRC/19/41, Paragraph 58.

<sup>26</sup> A/HRC/19/41, Paragraph 59.

## ARTICLE 12

## Issue 8:

**Equal Access and Treatment in the Public Health Care Services**

44. A study conducted by WCHK found that only 2.2% of respondents knew that lesbians have a higher risk of developing breast cancer and only 13.8% of respondents reported ever having had cervical cancer screening.<sup>27</sup> The low level of health care awareness among local lesbians and bisexual women may be related to the low level of awareness and sensitivity regarding sexual orientation in local public health care service. The HK Government lists “Woman Health” under “Family Health Service”<sup>28</sup> and lesbians are excluded from health promotions. There is at least one recorded case where a woman was refused cervical cancer screening service because she is a lesbian. The Government does not have any promotion for breast cancer prevention targeting lesbians and bisexual women.
45. In Hong Kong, there are many educational publications on Sexually Transmitted Infections. Some of them describe vaginal and penile gonorrhoea symptoms, but even in health guidelines targeting gay and bisexual men, no publication mentions rectal gonorrhoea symptoms. The health care system fails to promote awareness amongst gay and bisexual men of an increasingly serious infection.
46. Quoted from “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000)”
47. *The Committee interprets the right to health...as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as...access to health-related education and information, including on sexual and reproductive health.*<sup>29</sup>
48. *Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.*<sup>30</sup>
49. *[T]he Covenant proscribes any discrimination in access to health care...on the grounds of...sexual orientation...which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.*

<sup>27</sup> A cross-sectional Knowledge/Attitude/Practice study on health seeking behavior among lesbians/bisexuals in Hong Kong

<sup>28</sup> Family Health Service, Department of Health  
[http://www.fhs.gov.hk/english/main\\_ser/woman\\_health/woman\\_health.html](http://www.fhs.gov.hk/english/main_ser/woman_health/woman_health.html)

<sup>29</sup> E/C.12/2000/4, Paragraph 11.

<sup>30</sup> E/C.12/2000/4, Paragraph 12(b).

*The Committee stresses that many measures, such as...adoption, modification or abrogation of legislation or the dissemination of information.*<sup>31</sup>

50. **We urge the Committee to ask the Hong Kong Government how it will ensure equal access and treatment for people of different sexual orientations in public health care services, and to increase the awareness of sexual orientation sensitivity in the public health care services.**

Issue 9:

**Access of Transgender Persons to Sex-Reassignment Surgery**

51. From the 1980s until 2005, the Hong Kong Hospital Authority operated a Sex Clinic specifically for transgender people which offered comprehensive, integrated services including psychiatric evaluation, sex-reassignment surgery and legal support. Since the closure of the one-stop Sex Clinic in 2005, transgender persons with Gender Identity Disorder have had to go to general psychiatric clinics for consultation. There have been reports that practitioners at these clinics have told patients that they do not know how to do assessment for sex-reassignment surgery. The Hospital Authority (HA) said that it plans to reopen the Sex Clinic, a promise yet to be honoured.
52. The only surgeon who can perform sex reassignment surgery (SRS) in Hong Kong is retiring in about a year. There is great concern in the transgender community about the continuity of the availability of SRS services in Hong Kong, and the HA has not responded to inquiries on this issue including whether there is training being conducted for new surgeons.
53. Quoted from “Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 14 (2000)”
54. *The Committee recalls General Comment No. 3, paragraph 12, which states that even in times of severe resource constraints, the vulnerable members of society must be protected by the adoption of relatively low-cost targeted programmes.*<sup>32</sup>
55. **We urge the Committee to ask the Hong Kong Government what concrete steps they are taking to ensure the continued availability of sex-reassignment surgery (SRS) and to reopen the specialised Sex Clinic.**

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<sup>31</sup> E/C.12/2000/4, Paragraph 18.

<sup>32</sup> E/C.12/2000/4, Paragraph 18.

## Issue 10:

**Mandatory Sterilization Surgeries for Transgender Persons to Change Legal Documents**

56. Transgender persons who identify as and desire to be recognised as another sex are forced to undergo unnecessary surgery. They are unable to change their recorded sex on government-issued identity documents, unless they undergo highly invasive, genital and sterilization surgeries<sup>33</sup>. Such preconditions are particularly harsh for female-to-male transgender persons, who would have to undergo surgery for penis construction for legal recognition. Without such recognition, transgender persons encounter numerous difficulties in their daily lives and are especially vulnerable to discrimination and harassment, for example, when employment, travelling abroad<sup>34</sup> or when being detained or imprisoned. Furthermore, transgender persons cannot apply for a new birth certificate with their new gender.

57. Quote from United Nations document “Gender recognition and related issues” by Human Rights Council: <sup>35</sup>

58. *Regulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married.*

59. *The Human Rights Committee has expressed concern regarding lack of arrangements for granting legal recognition of transgender people’s identities. It has urged States to recognize the right of transgender persons to change their gender by permitting the issuance of new birth certificates and has noted with approval legislation facilitating legal recognition of a change of gender.*

60. **We urge the Government to enact gender recognition legislation that is comprehensive (extending beyond the right to marriage) and inclusive (removing prerequisites involving medical procedures) in recognising the preferred gender of transgender persons who identify as and desire to be accepted as another sex.**

<sup>33</sup> Website of the Immigration Department, 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)  
Q.22 (i) for sex change from female to male: removal of the uterus and ovaries; and construction of some form of penis; (ii) for sex change from male to female: removal of the penis and testes; and construction of the vagina.

<sup>34</sup> A/HRC/19/41, Paragraph 71.

<sup>35</sup> A/HRC/19/41, Paragraph 72 & 73.

## ARTICLE 15

Issue 11:

### **Prohibit Training by Hong Kong Government Promoting “Conversion Therapy”**

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

62. *Attempts to “cure” those who engage in same-sex conduct are not only inappropriate, but have the potential to cause significant psychological distress and increase stigmatization of these vulnerable groups.*<sup>36</sup>

63. The Social Welfare Department (SWD) of the HKSAR organised a workshop named “Talk on Giving Guidance to Same Sex Attracted Youth” for social workers from the department and associated NGOs on curing homosexuality on 17<sup>th</sup> June, 2011. Dr. Hong Kwai-wah, a registered psychiatrist notorious for his private practice of “conversion therapy” (i.e., attempting to change sexual orientation from homosexual to heterosexual), was invited by the Department to provide training the social workers in this workshop.<sup>37</sup> To this day, the SWD refuses to apologise to the community and refuses to promise that similar training will not be conducted by the department in the future.

64. In the children and sexual orientation session of the HK Government ICESCR third report, it stated that “The SWD also subvents NGOs to provide residential places attached to school for social development.”<sup>38</sup> Children may be harmed by the “conversion therapy” recommended by SWD.

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

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<sup>36</sup> A/HRC/14/20, Paragraph 23.

<sup>37</sup> For more information about the conversion therapy workshop organized by The Social Welfare Department (SWD) of the HKSAR: <http://wigayleaks.rainbowactionhk.org>

<sup>38</sup> Third Report of the HKSAR, China, under the ICESCR, Paragraph 2.20 (Page 7) Available at: [http://www.cmab.gov.hk/en/issues/prc\\_3.htm](http://www.cmab.gov.hk/en/issues/prc_3.htm)



Issue 12:

**Discriminatory Use of Obscenity Laws against Cultural Expression by Sexual Minorities**

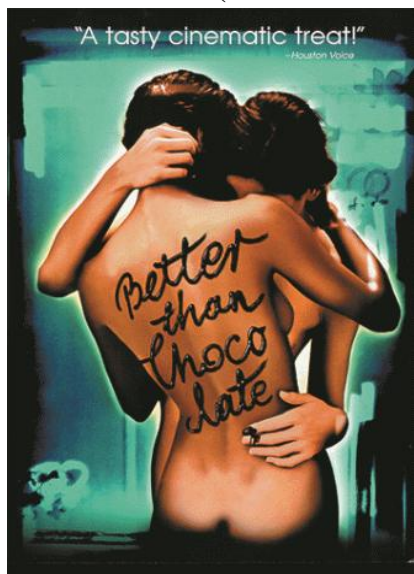
66. It is not true that Hong Kong has freedom of expression. Many magazines, movies and books from western countries for or about sexual minorities are considered obscene and are illegal to sell in Hong Kong. Examples of materials that have been found to be obscene or indecent include the poster for “Better than Chocolate” (a lesbian movie), Michelangelo’s “David,” and an article in the Student Press, Chinese University of Hong Kong.
67. The Hong Kong Government recently conducted its second round of public consultations for the “Review of the Control of Obscene and Indecent Articles Ordinance (COIAO)”. In the review document, the Government is recommending a significant increase in penalties while leaving the definitions of “obscene” and “indecent” to the personal “standards of morality” of the adjudicators in the Obscene Articles Tribunal<sup>39</sup>. This will further limit freedom of expression of sexual minorities<sup>40</sup>.
68. **We urge the Committee to ask the Hong Kong Government what measure they are taking to ensure the Control of Obscene and Indecent Articles Ordinance (COIAO) is not used to discriminate against the cultural expression of sexual minorities.**

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<sup>39</sup> *Review Control of Obscene and Indecent Articles Ordinance*, see <http://www.coiao.gov.hk/en/faq.htm>

<sup>40</sup> Restriction of freedom of expression of sexual minorities was one of the areas of concern in the Report of the UNHCHR on LGBT discrimination, A/HRC/19/41, Paragraph 62.

**Banned Poster (Lesbian Movie)**



**Not banned (Heterosexual Movie)**



**Not banned (Heterosexual Movie)**



**Not banned (Heterosexual Movie)**



**Not banned (Heterosexual Movie)**



**Not banned (Heterosexual Movie)**

