

LGBT Joint Submission

To the United Nations Human Rights Committee

for the Universal Periodic Review
of the People's Republic of China
Hong Kong
Special Administrative Region
(HKSAR)

scheduled to be held in October 2013

4 March, 2013

Background Information and Contact Details for the Organization

Rainbow Action

Rainbow Action was founded on 10th December, 1999 (Human Rights Day) and is a registered organization in Hong Kong. Rainbow Action is one of the most active local activist groups fighting for human rights for sexual minorities in Hong Kong. We specialize in non-violent direct actions and public speeches voicing out 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, discriminating policies, police harassment and quality of life issues amongst grass roots sexual minority communities etc.

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

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Women Coalition of HKSAR (WCHK)

Women Coalition of HKSAR (WCHK) - a Provocative organization is dedicated to broaden the frontier for sexual movements and defend the human rights of sexual minorities. WCHK was established on 1st July 2003 and is a registered organization in the HKSAR. We do our work using a wide range of social movement tactics depending on the issue or message we want to deliver. We do research, hold press conferences, provide feature stories, direct actions, publications and public education talks and presentations.

WCHK is a female sexual minority group which aims to participate and contribute its efforts towards the 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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Introduction

Regarding **non-discrimination and equality (Articles 2, 3 and 26 of the ICCPR and Article 2, paragraph 2; Article 7(c) of the ICESCR) in Hong Kong**, this LGBT joint submission has been prepared by Rainbow Action and the Women Coalition of HKSAR. We entreat the Committee to make stronger more assertive concrete arguments and suggestions in its Suggestions and Recommendations to the HKSAR Government to implement administrative measures and provide legal protection against discrimination on the grounds of **sexual orientation** and **gender identity**.

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1. Concrete recommendations on sexual orientation discrimination (Article 2, paragraph 2; Article 26 and Article 2, paragraph 2 of the ICCPR; Article 7(c) of the ICESCR)

1.1 The demand for sexual orientation discrimination (SOD) legislation has escalated in the past few years. A crowd of over 4,000 people marched on 10th November, 2012 to support workplace equality and protection for LGBT (Lesbian, Gay, Bisexual and Transgender) people. Local research shows that the majority of Hong Kong people, are now more supportive for non-discrimination or SOD legislation.¹ The Equal Opportunities Commission publicly supports the need for legislative protection to ensure the necessary safeguards for LGBT individuals' safety, dignity and human rights. Legislator the Hon Cyd HO Sau-lan moved a motion debate in the Legislative Council (Legco) on 7th November 2012 to urge "the Government to expeditiously launch public consultation on enacting legislation to safeguard equal opportunities for the basic rights of people with different sexual orientations." Although the motion was defeated under the current voting mechanism in the Legco, 31 legislators voted for the motion while 25 voted against it, the number of votes to support anti-discrimination was the highest ever. Three Executive Council Non-Official Members openly support SOD legislation, including Convener Mr. LAM Woon-kwong, Ms Anna WU Hung-yuk and Mrs Regina IP LAU Suk-ye. No one from the Executive Council or any government official has openly spoken against SOD legislation. An interview with a Catholic priest, a spokesperson for the Catholic Church in Hong Kong appeared in a press article² in which he indicated that the Catholic Church would not oppose SOD legislation in Hong Kong.

1.2 LGBT individuals still face severe discrimination. A research study in 2012 showed that over 50% of LGBT participants faced discrimination, compared with 39%³ in 2005. Another research study concerned with employment equality showed that 78% of the Hong Kong working population thinks that LGBT individuals face discrimination or negative treatment⁴.

¹ 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. Another result of the research showed that 75.8% people think that people of different sexual orientations face discrimination.

² Apple Daily 27th November, 2012: <http://hk.apple.nextmedia.com/news/art/20121127/18081615>

³ Women Coalition of HKSAR conducted a research study named *Research on Discrimination Situation of Hong Kong Sexual Minority Women (2010)* during Oct. to Dec. 2009, 53% of interviewees faced discrimination against their sexual orientation. The top three areas for the most severe discrimination were Education (31%), Provision of goods, facilities or services (26%) and Employment (20%).

⁴ Community Business commissioned The University of Hong Kong Public Opinion Programme to conduct a research study named *Hong Kong LGBT Climate Study 2011-12*. According to the research, a majority (60% - 85%) of the Hong Kong working population find various employment practices that discriminate against those who are or appear to be LGBT 'never acceptable'. 78% of the Hong Kong working population think that LGBT individuals face discrimination or negative treatment.

- 1.3 The government reported in its ICESCR third report that they promote equal opportunities on the grounds of sexual orientation through public education and publicity measures, and by having set-up the Sexual Minorities Forum and the Gender Identity and Sexual Orientation Unit (GISOU) which is not a statutory body. However, the Forum and the GISOU are hardly functioning. The Forum ceased holding public meetings, its main source of communication with sexual minorities, in December 2010. The GISOU setup a system for receiving discrimination complaints on the basis of sexual orientation. For the 7+ years since its establishment in 2005, the unit has openly admitted that they have never made a determination that a case is discrimination when the person/party being accused has denied it.
- 1.4 Cases include on 10th December, 2008, Citybus refused to rent a bus to the Hong Kong Pride Parade stating in the e-mail, “While making commercial decision, considerations such as company image is included.” Citybus has a history of renting buses to a wide range of organizations and political parties. In 2006, Mr. Chun-wai Li successfully rented a bus from Citybus representing the Alliance for Universal Pensions; but when Mr. Li represented the HK Pride Parade, the application was denied. Handling the complaint, GISOU responded on 11th February, 2009 stating, “Because there is no sufficient information showing Citybus denied the application on the basis of sexual orientation, the unit cannot follow up this complaint.”
- 1.5 On 10th January, 2009, Pastor Patrick Wing-Chi SO, spoke at the public hearing in the Legislative Council stating, “We are against same sex cohabitants being protected under a Domestic Violence Ordinance, [because] this implies same sex cohabitants equals the family, and this will bring more violence, gigolos, sex slaves, AIDS and HIV.”
- 1.6 In an evangelist meeting in March, 2012, Pastor Enoch Lam described homosexuality as a sin. He compared homosexuals with killers, robbers, cancer, and drug and gambling addictions.
- 1.7 The high rate and seriousness of sexual orientation discrimination (SOD) is a warning sign that the Government's current methods for addressing SOD, i.e. self-regulation and education, have failed to take the necessary steps (article 2 of the Covenant) to remedy the situation, and has not made any effective progress in combatting discrimination, especially in the private sector. HKSAR's failure to prohibit SOD, sexual orientation discrimination in the private sector breaches its obligations under article 2 of the Covenant. **We urge the Committee to propose a concrete recommendation to the HKSAR Government to extend its prohibition of Sexual Orientation Discrimination into the private sector immediately.**
- 2. The HKSAR government refuses to reform legislation of the age of consent (Article 17, paragraph 1; Article 24, paragraph 1 of the ICCPR)**
- 2.1 Through a Judicial Review in July 2007, the Court of Final Appeal in Hong Kong ruled Crimes Ordinance Section 118, which sets the age of consent between consenting male adults at 21, is unconstitutionally discriminatory against gay men. The judgment set the age of consent for homosexual sex and heterosexual sex to be equal, i.e. age of 16. Consequently, the HKSAR government is obliged to reform the ordinance, but the government refuses to do so. Police still actively place charges against men having sex with men who are above 16 but below 21. Currently the law states that the maximum penalty for a man having sex with a girl under the age of 16 years is 5 years imprisonment, while the maximum penalty for a man participating in buggery with another man under 21 years of age, is life imprisonment.
- 2.2 We urge the government to reform the ordinance for the age of consent and penalties, thereby equalizing the age of consent and penalties for all sexual orientations. We encourage the Committee to ask the government if they have a plan and a timeline for amending the current unconstitutional and discriminative law.
- 3. Obscene and Indecent Articles Ordinance limiting the freedom of expression of sexual minority issues (Article 19, paragraphs 1-3 of the ICCPR)**

- 3.1 The government has recently conducted the second round of public consultations for the review of the Obscene and Indecent Articles Ordinance. In the document, the government is recommending a significant rise in penalties while refusing to provide any definition for “Obscene and Indecent”. The current classification system is conducted by anonymous adjudicators described by the government as ordinary residents “close to social norms”. Because sexual minorities are not represented amongst the adjudicators and because there is a prevalence of discrimination towards sexual minorities, articles concerning different sexual orientation issues face a much higher risk of being classified as obscene or indecent, and the publishers of these kinds of articles will face prosecution. We are concerned with further limitations being placed on the Freedom of Expression for sexual minorities, and the written and visual material available to them. Higher penalties will further deter publishers from making such material available on the market.
- 3.2 We encourage the Committee to question the government’s plan to introduce any measures to ensure materials directed towards different sexual orientations will enjoy equitable freedom.

4. Implementation of the newly reformed domestic violence legislation (Article 26 of the ICCPR)

- 4.1 We have welcomed the government’s reform to the domestic violence legislation extending protection to cohabitating same sex partners (year 2010). However, the government has not provided adequate and appropriate training to police officers and frontline social workers. Because there is a lack of knowledge and sensitivity by frontline social workers and police, we received over 30 gay, lesbian and transgender people who had experienced being rejected and discriminated against by social service agencies and shelters when they faced domestic violence. Some of them ended up homeless. (There is only one shelter that accepts men or transgender persons and it is often full.)
- 4.2 On the 17th June, 2011 the government organized a workshop for social workers about curing homosexuality with conversion therapy in their young clients and claimed it as a section of sexual orientation (SO) sensitivity training. The government refuses to consult with the LGBT community about SO training programs and refuses to guarantee that it will not hold programs about conversion therapy for changing sexual orientation from homosexuality to heterosexuality in the future.
- 4.3 While the government’s reform to the domestic violence law extended to protect same sex partners, the government has refused to provide extra funding for training social workers and focusing on same sex cohabitation partners to raise awareness combating domestic violence. We encourage the committee to urge the HKSAR government to actively improve the implementation of the newly amended domestic violence legislation with funding and training of its representatives. We would also ask the Committee to question the government’s plan to improve the implementation of domestic violence legislation to suit the needs of the LGBT community.

5. Torture of Transgender people in detention (Article 10, paragraph 1 of the ICCPR; A/HRC/19/41 paragraphs 11, 12 & 34)

- 5.1 Cases of transgender detainees being tortured have been reported since 2009. Some detainees were housed in a psychiatric centre since they were identified as gender variants, while Male-to-Female transgender detainees were inflicted with degrading treatment. Incarcerated as males they were forced to have their hair cut short to appear as male detainees, they were refused access to hormone replacement treatments and female underwear although they already had breast implant surgery. This treatment is a humiliation and degradation to transgender detainees and a major infringement on their Human Rights. The HK government claims that they inform transgender detainees about applying to arrange to keep their long hair when entering the institutions but they had not received any cases asking for these arrangements. Since at least 4 transgender detainees have had their hair cut upon entering the institutions without the opportunity to apply to keep their hair long, we have a strong suspicion that the Government is failing to inform transgenders before their hair is cut and is not conducting itself behind closed doors as it professes to do. It therefore fails to uphold the Covenant to treat transgender people with humanity, respect and dignity, deserving of all people. We encourage the Committee to ask the government to account for its failure to set up regulations for treating transgender prisoners with humanity and respect.