

Statement calling on the introduction of legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong

It is now more than one year since the publication of the *Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity (SOGI) and Intersex Status* on 26 January 2016. The Study was commissioned by the Equal Opportunities Commission and conducted by the Gender Research Centre (GRC) of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong (CUHK).¹

The Study findings indicated that there is evidence of widespread discrimination against Lesbian, Gay, Bisexual, and Transgender and Intersex (LGBTI) people in all aspects of their public life in Hong Kong and evidence that there is now significant and majority public support for the introduction of LGBTI legislation; provided comparative analysis from other jurisdictions of how the legislation could be constructed; and recommended that the Government commence consultation on introducing LGBTI anti-discrimination legislation.

Today also marks the publication of the report from the second international conference on LGBTI rights organised by the European Union Office (EU) Office to Hong Kong and Macao, the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong, the German Consulate, and with the support of the EOC.² The conference examined the relationship between LGBTI rights to non-discrimination, and the right to freedom of religion. International experts from Asia and the European Union highlighted that legal, policy and social solutions can be found to reconciling those rights.

The parties to this statement therefore call on the Government to ensure the equal opportunities of LGBTI people in Hong Kong, by committing to starting public consultation and introducing legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status as soon as possible.

It is now 25 years since the decriminalization of consensual same-sex sexual activity in Hong Kong in 1991. Yet, there is still no comprehensive anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status in Hong Kong.

¹ Equal Opportunities Commission, <http://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

² "LGBTI rights and freedom of religion in Hong Kong and the European Union", 28 November 2016. https://eeas.europa.eu/delegations/hong-kong/21655/report-second-international-conference-lgbti-equality-lgbti-rights-and-freedom-religion-hong_en

As the United Nations has stated, the right to equality and non-discrimination of all groups in society is a fundamental human right, including for LGBTI people.³

The United Nations has also recommended that all Member States introduce comprehensive anti-discrimination legislation covering sexual orientation, gender identity and intersex status,⁴ and it has repeatedly recommended to the Hong Kong Government to introduce LGBT anti-discrimination legislation.⁵

Therefore, the discussion needs to move from the question of whether or not there should be legislation on the grounds of sexual orientation, gender identity and intersex status, to that of how such legislation should be designed and implemented.

Equal Opportunities Commission



Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong



³ Human Rights Council, seventeenth session, 14 July 2011, A/HRC/RES/17/19I and Discrimination and violence against individuals based on their sexual orientation and gender identity, Human Rights Council, UN High Commissioner for Human Rights, 4 May 2015, A/HRC/29/23.

⁴ Report of the United Nations High Commissioner for Human Rights, 17 November 2011, A/HRC/19/41, http://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/a.hrc.19.41_english.pdf; and Discrimination and violence against individuals based on their sexual orientation and gender identity, Human Rights Council, UN High Commissioner for Human Rights, 4 May 2015, A/HRC/29/23, paragraph 79(c).

⁵ For example, UN Human Rights Committee, CCPR/C/CHN-HKG/CO/3 paragraph 23, dated 29 April 2013. http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf

Background

On 26 January 2016 the *Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity (SOGI) and Intersex Status*, commissioned by the Equal Opportunities Commission (EOC) and conducted by the Gender Research Centre (GRC) of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong (CUHK), was published.

The Study revealed that discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people is a common occurrence in Hong Kong. Importantly, the Study also found that public opinion has visibly shifted in favour of legislation against discrimination on the grounds of sexual orientation, gender identity, and intersex status. Over half (55.7%) of the telephone survey respondents agreed with legislation – nearly double the comparable figure from a decade ago. Notably, the vast majority (91.8%) of youth considered anti-discrimination legislation necessary, while nearly half (48.9%) of those with religious views also concurred.

The Study also provided a comparative legal analysis of the LGBTI anti-discrimination legislation in seven jurisdictions, a number of which have similar legal systems to Hong Kong: Australia, the United Kingdom, Canada, New Zealand, the Netherlands, Taiwan and Macau.

There have also been two recent international conferences held on advancing LGBTI rights in Hong Kong. The first was held on 28-29 August 2014, and co-organised by the EOC, European Union Office (EU) Office to Hong Kong and Macao, the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at CUHK.⁶ The second was held on 28 November 2016, and organised by the European Union Office (EU) Office to Hong Kong and Macao, the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at CUHK, the German Consulate, and with the support of the EOC. The second conference focused on the specific issue of the relationship between LGBTI peoples' rights to non-discrimination and freedom of religion and how those rights can be reconciled. Both conferences compared the situation in Hong Kong with other jurisdictions in the European Union in terms of what lessons can be learned to advance the issues in Hong Kong.

⁶ "Working Together for an Inclusive Society : LGBTI Rights in Comparative Perspective", 28-29 August 2014. The symposium report is available on the EOC website: http://www.eoc.org.hk/eoc/otherproject/lgbti/materials/report_2.pdf

The following organisations have indicated that they support the statement

(1) Business sector

(a) Financial institutions and organisations

ABN AMRO Bank N.V.

AIG Insurance Hong Kong Limited

Asia Securities Industry & Financial Markets Association (ASIFMA)

Bank of America Merrill Lynch

Barclays

Blackrock Inc

BNY Mellon

Commonwealth Bank of Australia, Hong Kong Branch

Credit Suisse

Goldman Sachs

Hong Kong LGBT Interbank Forum

J.P. Morgan

Morgan Stanley

Societe Generale

State Street

(b) Other business sector

AmCham (American Chamber of Commerce in Hong Kong)

Edelman Public Relations Worldwide (HK) Ltd

Google

Lane Crawford Joyce Group

LUSH Asia Limited

PLUG Magazine

PVH Corp

(2) Consulates

Australian Consulate-General, Hong Kong

(3) Law firms and legal organisations

Clifford Chance

Davis Polk

Freshfields Bruckhaus Deringer

Herbert Smith Freehills

Hogan Lovells

Hong Kong Gay and Lesbian Attorneys Network (HKGALA) (香港同志律師協會)

Hong Kong International Arbitration Centre

Linklaters

Morley Chow Seto

Oldham Li & Nie

Paul Hastings

Progressive Lawyers Group (法政匯思)

Ropes & Gray

Skadden, Arps, Slate, Meagher & Flom

Vidler and Co

(4) Non-Government Organisations

Action Q (大專同志行動)

AIDS Concern

Amnesty International Hong Kong

Association for Transgender Rights (跨性別權益會)

Association of World Citizens Hong Kong China (世界公民協會中國香港)

Big Love Alliance

Community Business

Concern.IS (藩籬以外 – 認識和關愛雙性人)

Equality Caucus (平權法案工作室)

Fruits in Suits

Gathering Point (匯聚)

Gay Harmony (大同)

GDotTV (G點電視)

Human Rights Watch

Les Corner Empowerment Association (女角平權協作組)

Les Peches

Nutong Xueshe (女同學社)

Out & Vote (同志公民)

Out in HK

Out Leadership

Pink Alliance

Pink Season

PrideLab

Primaco Productions

QUEER SISTERS (姊妹同志)

Queer Straight Alliance

Rainbow Action (彩虹行動)

Rainbow of Hong Kong (香港彩虹)

Sex and Gender Concern Group, CUHK (中大性/別關注組)

Transgender Resource Centre

Women Coalition of HKSAR (香港女同盟會)

5. Religious groups

Covenant of the Rainbow: Towards a Truly Inclusive Church (彩虹之約-共建同志教會行動)

Hong Kong Christian Institute

Queer Theology Academy

Samma-kammanta

6. University Academics (personal capacity)

Mr Hong-Cheng Maurice Chang

Adjunctive lecturer at National Taiwan University of Science and Technology (國立臺灣科技大學兼任講師)

Dr Sam Winter, B.Sc., P.G.D.E., M.Ed., Ph.D,

Team leader, Sexology,

Associate Professor, School of Public Health, Faculty of Health Sciences,

Curtin University