

Civil Society Organisation Submissions for
The 45th Session of the Universal Periodic Review
China – Hong Kong SAR

Submitted by

The LGBTQ Equality Alliance of Hong Kong
(Acronym: EAHK)

for the 4th Cycle of the UPR on China

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The LGBTQ Equality Alliance of Hong Kong (EAHK) is an organization established by individuals who identify as LGBTQ. Our main focus is to monitor and document the state of LGBTQ rights in Hong Kong. We specifically gather cases of discrimination and advocate for LGBTQ rights.

Our goal is to actively engage with various United Nations mechanisms and participate in the review of international human rights treaties to ensure the recognition and protection of LGBTQ rights in Hong Kong.

As a newly formed organization in 2023, EAHK's goal is to contribute to a society that respects and safeguards the rights of all individuals, regardless of their sexual orientation, gender identity, gender expression, or sex characteristics.

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Summary

1. There is an urgent need for **an anti-discrimination law** in Hong Kong based on sexual orientation, gender identity, gender expression, and sex characteristics. Despite recommendations made in previous Universal Periodic Review (UPR) cycles and by various UN human rights institutions, the Hong Kong government has made no progress in enacting such legislation. Recent surveys indicate significant public support for anti-discrimination laws. Discrimination against LGBTQ+ individuals remains a serious issue, with notable examples of discrimination cases across various sectors. The situation is exacerbated by the lack of planning and progress in implementing anti-discrimination laws and providing LGBTQ+ inclusion training.
2. Transgender individuals face particular challenges, as there is no clear **legal gender recognition** or procedure for changing gender markers. Although the recent ruling by the Court of Final Appeal addressed the rights of transgender men, no subsequent action has been taken.
3. Same-sex couples experience discrimination, with limited rights granted only in specific areas. Court rulings granting equal rights have been appealed by the government, resulting in delayed implementation. This piecemeal approach to addressing same-sex partnership rights has created a lengthy and challenging journey for same-sex couples. Unfortunately, equal rights for same-sex couples cannot be guaranteed due to the lack of **legal recognition for same-sex unions**.

Recommendations

4. **We strongly urge the Hong Kong government to promptly enact comprehensive anti-discrimination legislation, establish a gender recognition law for transgender individuals, and provide equal rights for same-sex couples.**

I. Urge for Anti-discrimination Act on grounds of sexual orientation, gender identity, gender expression, and sex characteristic

Theme:

A41 Constitutional and legislative framework

B31 Equality & non-discrimination

5. In the 2nd and 3rd cycles of the Universal Periodic Review (UPR) and various UN human rights institutions, recommendations were made to establish legislation combating discrimination based on sexual orientation and gender identity in all public and private sectors. Despite China's support for these recommendations in the previous two UPR cycles, Hong Kong SAR has failed to make any progress in enacting anti-discrimination laws, that means these recommendations **are not implemented yet**.
6. A recent survey¹ conducted by universities has shown that public support for sexual orientation anti-discrimination legislation reached a new high of 71% in 2023, compared to 58% in 2013 and 69% in 2017. The research team collected data through telephone surveys of Hong Kong residents in 2013, 2017, and 2023 to track changes in public opinion. Additionally, the percentage of respondents who disagreed with the legislation dropped from 21% in 2013 to 6% in 2023. This survey result contradicts the claim made by the Hong Kong government that there are deeply divided views in society regarding the legislation. While societal values should not justify the lack of legislation, it is evident that there is significant public support for addressing sexual orientation discrimination through legislation.
7. Despite the consistently high percentage of support for the law, the Equal Opportunities Commission (EOC) has failed to fulfil its promise to push forward the legislation proposal. In 2016, the EOC commissioned a research² with the finding that support the establishment of anti-discrimination law on the grounds of sexual orientation, gender identity and intersex Status. Thus, former EOC chairperson Alfred Chan publicly expressed support for the legislation³, , and current chairperson Ricky claimed in 2019 that he is committed to tackling discrimination against LGBTQ people⁴. In 2021, Chu stated that the EOC had begun developing a proposal for legislation to protect LGBTQ people from discrimination and aimed to discuss the proposal with stakeholders by the end of 2021.⁵ . However, the EOC has repeatedly failed to fulfil its promises. In June 2023, Chu mentioned that processing the aforementioned proposal was challenging, leading the EOC to explore an alternative proposal to protect LGBTQ people from discrimination based on sexual orientation, gender identity, and sexual characteristics using the existing anti-discrimination law⁶, which is supposed to be Sex Discrimination Ordinance⁷. However, no specific timeline has been provided. As a result, the EOC's promises remain unfulfilled, and no progress has been made for over 7 years.
8. Verbal or physical violence and discrimination against LGBTQ people remain severe in Hong Kong. A research⁸ conducted in 2021 on transgender people in Hong Kong revealed that 51.1% of respondents reported experiencing discrimination in their workplaces, schools, businesses, or when accessing premises. Furthermore, 62% of the respondents disclosed encountering various forms of victimization, including verbal or physical assault, unwanted sexual contact, and threats or blackmail aimed at disclosing their gender identity. Another study⁹ conducted in 2022 found that nearly

half of the interviewed Hong Kong residents aged 18 to 40 reported experiencing, witnessing, or hearing about discriminatory behaviour targeting the LGBTQ+ community.

9. The following are notable examples of discrimination cases against LGBTQ people in Hong Kong:
 - i. In June 2023, several pro-Beijing and family value groups organized protests calling for the cancellation of the upcoming Gay Games Hong Kong, scheduled to take place in November 2023. These groups labelled the Gay Games as "indecent" and "obscene," and claimed that the event is both a threat to national security and traditional values. They expressed concerns that the event could trigger a "colour revolution" in Hong Kong. Chief Executive John Lee and Secretary for Security Chris Tang, and other top officials from the Hong Kong government, and as well as at least eight lawmakers stopped by the protest to receive petition letters from the groups.¹⁰
 - ii. In February 2023, a Hong Kong LGBTQ sports group displayed a rainbow flag by hanging it on a railing near the route to show support for LGBTQ runners participating in the Hong Kong Marathon. Unfortunately, police officers forced the group to remove the rainbow flag, claiming that displaying it without permission was against the law. The group noticed that other flags along the running route faced no similar action from the police, highlighting the presence of discrimination against LGBTQ people in this incident.
 - iii. A youth community centre refused to allow a young trans man to participate in a men's basketball game and publicly disclosed his transgender identity without his consent by referring to him as a "girl" through the centre's loudspeaker system. This incident resulted in the trans man feeling insulted and experiencing discrimination. He reported the incident to the EOC, but the commission stated that due to the absence of a dedicated law addressing discrimination based on sexual orientation and gender identity in Hong Kong, they are unable to address the complaint.¹¹
 - iv. An openly gay DJ, Alton Yu, raised a complaint during a press briefing in February 2023, asserting that he had experienced humiliation on the grounds of his sexual orientation. Yu alleged that his colleagues, who are also DJs, publicly shared his private photo on their talk show, which he considers an act of discrimination. Furthermore, he stated that these two colleagues had persistently discriminated against and bullied him in the workplace for many years due to his sexual orientation.¹²
 - v. A 33-year-old lesbian was denied a cervical smear test at a medical centre in May 2020, after she disclosed her history of same-sex sexual activity, excluding any involvement with men. She filed a complaint with the Hong Kong government's Constitutional and Mainland Affairs Bureau, the department responsible for handling complaints of sexual orientation discrimination, alleging discrimination based on her sexual orientation. However, the response she received stated that the medical centre did not discriminate against her based on her sexual orientation.¹³

- vi. In July 2022, a non-binary secondary school student was compelled by the school to cut their hair short due to their assigned male gender at birth. The school issued threats of barring them from participating in activities and classes if they refused to comply. The student experienced distress after having their hair cut against their wishes and lodged a complaint with the EOC. However, there has been no progress on the case thus far. Sharing their story on social media inspired several other students to come forward and share their own experiences of gender identity-based discrimination in school, shedding light on the fact that such incidents are not uncommon in local secondary schools.¹⁴
10. The situation of discrimination in Hong Kong is worsening, yet the HKSAR Government has taken no action to address it. Not only is there a lack of planning or a timeline for implementing an anti-discrimination law based on SOGIESC, but the training and education on LGBTQ inclusion have also been halted since 2020.
11. In 2019, the Constitutional and Mainland Affairs Bureau (CMAB) of the Hong Kong government announced plans to provide specialized training resources for professionals in five specific fields: medical and healthcare, disciplined services, social workers, human resources, and teachers. The aim was to enhance practitioners' knowledge and sensitivity towards sexual minorities. However, no progress has been made since the release of the training resources for the first two fields in 2019¹⁵ and 2020¹⁶. This coincides with the appointment of the current Head of CMAB, Secretary for Constitutional and Mainland Affairs Erick Tsang Kwok-wai in mid-2020 and the subsequent resignation of the high-ranking official responsible for the training, Under Secretary for Constitutional and Mainland Affairs, Andy Chan, in early 2021.

Recommendations

12. We strongly urge the Hong Kong government to promptly introduce an anti-discrimination law that comprehensively addresses discrimination, hate speech, and harassment based on sexual orientation, gender identity, gender expression, and sex characteristics in all public and private sectors with utmost urgency. Additionally, it is essential for the government to expedite the resumption of sensitive training without further delay.

II. Establish gender recognition law and procedure for transgender persons

13. Currently, transgender individuals in Hong Kong who seek to change their gender markers on official documents can only rely on outdated administrative regulations¹⁷ that were established over twenty years ago. Despite significant progress in human rights standards for legal gender recognition procedures, the Hong Kong government persists in upholding these outdated regulations. Consequently, there is a lack of clear legal definition and recognition of transgender individuals, thereby undermining their legal rights¹⁸. The situation for transgender people in Hong Kong remains highly unsatisfactory, as there has been no progress regarding both legal gender status and the requirement for full gender reassignment surgery.
14. The Hong Kong Court of Final Appeal (CFA) issued a favourable ruling in February 2023, granting two transgender men the right to change the gender marker on their

identity cards (ID cards) to male based on their gender identity, without the previous requirement of undergoing full gender affirmation surgery¹⁹. However, the ruling did not address whether transgender women are also allowed to change their gender marker under the same circumstances. Despite about half a year having passed since the ruling, the Hong Kong government has not taken any action or announced any plans or timelines to update its policies in accordance with the court's decision. This lack of action has caused concern within the local transgender community. Transgender advocacy groups have repeatedly demonstrated and criticized the government for its delay in responding to the court's ruling, but their concerns have been disregarded²⁰²¹²².

15. Transgender advocacy groups' concerns are valid as the Hong Kong government has a poor track record of delaying the implementation of the highest court's rulings on transgender rights. In response to the landmark ruling by the CFA in 2013, which called for the legislation of a local gender recognition law²³, the government established an Inter-departmental Working Group on Gender Recognition (IWG)²⁴ in 2014 to conduct consultations and provide recommendations for the law. However, no consultation report has been announced, and there has been no further progress or updates since 2017. It has been nine years since the ruling, and yet there is still no plan or timeline for enacting the legal gender recognition law.

Recommendations

16. We strongly urge the government to resume the work of the Working Group on Gender Recognition immediately and to complete the gender recognition legislation in accordance with international human rights standards within one year.

III. Equal Rights for Same-sex Couples

17. Same-sex couples, who have entered into a legal union overseas, are not granted full partnership rights in Hong Kong under the current Marriage Ordinance. However, limited rights in four areas—dependent partner visa²⁵, couple joint assessment of taxation, civil servants' couple benefits²⁶, and making after-death arrangements for their deceased partners²⁷—have been secured through judicial review court cases initiated by same-sex couples who were married overseas.
18. The local courts have restricted their jurisdiction to specific subject matters when it comes to handling same-sex partnership rights²⁸. This piecemeal approach has resulted in a long and challenging journey for same-sex couples, as they have to fight against systemic discrimination by bringing discriminatory matters to the court one at a time. The list of issues is extensive, including housing, healthcare, inheritance, welfare, and compensation, among others²⁹. This journey can extend over several decades and does not guarantee the equal enjoyment of full rights for same-sex couples, as there is a lack of legal recognition for same-sex unions.
19. The housing rights of same-sex couples provide a clear example. Two separate court rulings³⁰³¹ have granted same-sex couples who are married abroad equal housing rights to those of heterosexual couples. However, the Hong Kong government has appealed³² these rulings, preventing the implementation of these rights. The Court of Appeal hearing took place in February 2022, but surprisingly, the judgement is still pending and has not been issued by the Court for more than a year and a half, without

any reasons provided. This delay is not typical for high-level courts in Hong Kong. The government is using the ongoing judicial proceedings as an excuse to avoid reviewing local legislation and ensuring equal rights for same-sex couples.

Recommendations

20. We strongly urge the Hong Kong government to take proactive measures to eliminate discrimination against same-sex couples by enacting legislation that recognizes same-sex partnerships, including those formed overseas, and ensuring that same-sex couples have equal rights to those of heterosexual couples.

(2325 words)

¹ The report is issued by the Centre for Comparative and Public Law at the Faculty of Law, The University of Hong Kong; the Sexualities Research Programme at The Chinese University of Hong Kong; and the Human Rights Law Program at the University of North Carolina School of Law. Full text: <https://ccpl.law.hku.hk/content/uploads/2023/05/Change-Over-Time-Report-2023-FINAL-English.pdf>

² Report on Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status, 2016, Full report: <https://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

³ Equality watchdog chair expresses support for LGBT legislation, says consultation in a year reasonable, 16 May 2016, <https://hongkongfp.com/2016/05/16/equal-opportunities-chair-expresses-support-anti-lgbt-discrimination-legislation-consultation-set-begin-year/>

⁴ Hong Kong must end its eternal stalemate in the fight for equality, 17 May, 2019, <https://www.scmp.com/comment/insight-opinion/article/3010487/hong-kong-must-end-its-eternal-stalemate-fight-equality>

⁵ EOC Chairperson reaffirms need for legislation against discrimination on grounds of sexual orientation and gender identity, June 2021, [Chairperson reaffirms need for legislation against discrimination on grounds of sexual orientation and gender identity, News from the EOC Issue 259 EOC](https://www.eoc.org.hk/eoc/upload/ResearchReport/202106251750293418312.pdf)

⁶ News in Chinese: 平機會主席朱敏健：研現行反歧視條例下納性小眾保障, 17 June 2023, <https://www.hk01.com/article/909889>

⁷ Cap. 480 Sex Discrimination Ordinance, <https://www.elegislation.gov.hk/hk/cap480>

⁸ Half of transgender people in Hong Kong face discrimination, CUHK research shows, 13 May 2021, <https://hongkongfp.com/2021/05/13/half-of-transgender-people-in-hong-kong-face-discrimination-cuhk-research-shows/>

⁹ Majority of younger Hongkongers support LGBTQ+ equality, but discrimination still common, survey finds, 3 October 2022, <https://hongkongfp.com/2022/10/03/majority-of-younger-hongkongers-support-lgbtq-equality-but-discrimination-still-common-survey-finds/>

¹⁰ Hong Kong groups urge gov't to oppose Gay Games, say 'obscene' event could trigger 'repeat' protests, 22 June 2023, <https://hongkongfp.com/2023/06/22/hong-kong-groups-urge-govt-to-oppose-gay-games-say-obscene-event-could-trigger-repeat-protests/>

¹¹ The link to the news article from the web archive of the now closed local newspaper, Apple Daily: <https://collection.news/appledaily/articles/Z6FP5XRK7BEHZPKKTKCJ6KUZ6Y>

¹² News in Chinese: 余迪偉不滿艾粒擲取半裸照當笑料 怒斥：Enough is enough！呢單係性取向歧視同職場歧視！, 10 February 2023, <https://channelchk.com/a/7234>

¹³ The link to the news article from the web archive of the now closed local newspaper, Stand News: <https://collection.news/thestandnews/articles/148001>

¹⁴ News in Chinese: 中五生投訴學校髮禁 學者籲學校給予彈性 稱事件為社會帶來討論, 20 July 2022 <https://www.hk01.com/article/794617>

¹⁵ CMAB launches training resources to enhance sensitivity of medical and healthcare professionals towards sexual minorities, 28 January, 2019, <https://www.info.gov.hk/gia/general/201901/28/P2019012800680.htm>

¹⁶ CMAB launches training resources for frontline officers of disciplined services to enhance sensitivity towards sexual minorities, 4 November, 2020 <https://www.info.gov.hk/gia/general/202011/04/P2020110400689.htm>

¹⁷ Currently, 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.

¹⁸ For example, if a post-surgery trans woman is raped by a man, it is unclear if the perpetrator would be charged by rape offence as the local Crimes Ordinance defines the crime as "A man who rapes a woman shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life."

Also, the privacy and personal data of transgender persons are not being protected after they have changed their gender maker. A wide range of institutions, such as banks and financial services companies, can still access, record, and disclose

their personal history of gender change as there is no law to regulate disclosure.

¹⁹ The judgement of the Court of Final Appeal in 2023: [Q and Tse Henry Edward v. Commissioner of Registration](#)

²⁰ News in Chinese: 性別承認跨部門小組成立9年未有下文 團體促立法保障跨性別人士, 31 March 2023, <https://www.hk01.com/article/883487>

²¹ Transgender activists urge Hong Kong's Immigration Department to approve ID card sex change requests following landmark court ruling, 31 March 2023, <https://www.scmp.com/news/hong-kong/society/article/3215575/transgender-activists-urge-authorities-approve-id-card-gender-change-requests-following-landmark>

²² Trans concern group urges Hong Kong gov't to update ID card gender policy following landmark ruling, 10 July 2023, <https://hongkongfp.com/2023/07/10/trans-concern-group-urges-hong-kong-govt-to-update-id-card-gender-policy-following-landmark-ruling/>

²³ Judgement: W V. The Registrar Of Marriages <https://www.hklii.hk/en/cases/hkcfa/2013/39>

²⁴ Website of Inter-departmental Working Group on Gender Recognition, <https://www.iwggr.gov.hk/eng/news.html>

²⁵ [QT v Director of Immigration](#)

In July 2018, the Court of Final Appeal ruled that same-sex civil partner registered overseas of an eligible sponsor should be entitled for a dependant visa.

²⁶ [Leung Chun Kwong v Civil Service & Inland Revenue](#)

In June 2019, the Court of Final Appeal determined that same-sex spouse of a civil servant registered overseas should be entitled to medical and dental benefits, and all same-sex couple registered overseas should be entitled to joint assessment for taxation.

²⁷ Gay widower drops legal challenge after Hong Kong gov't affirms equality in after-death arrangements, 7 October, 2021, <https://hongkongfp.com/2021/10/07/gay-widower-drops-legal-challenge-after-hong-kong-govt-affirms-equality-in-after-death-arrangements/>

²⁸ The judgement of Court of Appeal in 2020: [Sham Tsz Kit v Secretary for Justice](#). The Judgement highlights that the Court cannot apply the proportionality test "in the absence specific subject matter" while handling same-sex partnership rights.

²⁹ Research report: [The Recognition and Treatment of Relationships under Hong Kong law](#).

Areas of differential treatment between opposite-sex marriages and same-sex couples 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.

³⁰ The Kong Court of First Instance's judgment of [Infinger Nick v. The Hong Kong Housing Authority](#) (2020), which is about the Allocation of Public Rental Housing.

³¹ The Kong Court of First Instance's judgment of [Ng Hon Lam Edgar, Li Yik Ho v The Hong Kong Housing Authority](#) (2021), which is about Home Ownership Scheme.

³² Hong Kong Free Press, Gay couples can't have equal access to subsidised housing due to 'intrinsic biological differences,' Hong Kong gov't tells court, 18 February 2022, <https://hongkongfp.com/2022/02/18/gay-couples-cant-have-equal-access-to-subsidised-housing-due-to-intrinsic-biological-differences-hong-kong-govt-tells-court/> ; Hong Kong Free Press, Same-sex couples not allowed subsidised Hong Kong housing because of 'scarcity of resources,' gov't argues in appeal, 17 October 2022, <https://hongkongfp.com/2022/02/17/same-sex-couples-not-allowed-subsidised-hong-kong-housing-because-of-scarcity-of-resources-govt-argues-in-appeal/>