

## **Submission of the Equal Opportunities Commission**

### **Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

**March 2021**



平等機會委員會  
EQUAL OPPORTUNITIES COMMISSION

## 1. Introduction

1. The Equal Opportunities Commission (EOC) was established in 1996 pursuant to the enactment of the Sex Discrimination Ordinance. It is a statutory body having the duties and powers to implement the four anti-discrimination Ordinances: the Sex Discrimination Ordinance (SDO); the Disability Discrimination Ordinance (DDO); the Family Status Discrimination Ordinance (FSDO); and the Race Discrimination Ordinance (RDO). Law enforcement aside, the EOC is also responsible for promoting equality and eliminating discrimination.
2. The SDO provides protection from discrimination on grounds of sex, pregnancy, breastfeeding, marital status, as well as providing protection from sexual harassment. The DDO provides protection from discrimination and harassment on grounds of disability, as well as disability vilification. The FSDO provides protection from discrimination on grounds of the family status of caring for a family member. The RDO provides protection from discrimination and harassment on grounds of race, as well as racial vilification.
3. The EOC welcomes the work of the United Nations Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity (“Independent Expert”), and the call for evidence to inform the report to the 47<sup>th</sup> session of the Human Rights Council. The EOC notes that it previously made two submissions to the Independent Expert in January and June 2017. The first submission focused on the proposed areas of focus of the Independent Expert, and the second on the situation in Hong Kong, in relation to the report to the 72<sup>nd</sup> session of the General Assembly.<sup>1</sup>
4. The EOC has done a wide range of work over the last eight years relating to advancing equality for people in Hong Kong identified by their sexual orientation, gender identity or intersex status. In this submission we refer to lesbian, gay, bisexual, transgender and intersex (LGBTI) people given there is evidence they face significant levels of discrimination in society. The last three EOC Strategic Work Plans have all included goals and work relating to advancing equality for LGBTI people.
5. One of the goals in the EOC’s three-year strategic work plan for the period 2013-15 was to advocate for protection from discrimination and promotion of equality for people identified by their sexual orientation or gender identity. In the EOC’s Strategic Plan 2016-19, one of the corporate goals was to foster a safe environment free from discrimination and harassment, including those on the grounds of sexual orientation, gender identity and intersex status. The current Strategic Plan for 2020-22 also has a strategic goal of reducing inequalities for groups at high risk of discrimination, including LGBTI people.<sup>2</sup>
6. The EOC work relating to LGBTI equality has consisted of research, submissions, education and community engagement on a number of key issues: LGBTI anti-discrimination laws; gender

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<sup>1</sup> Submission of the Equal Opportunities Commission, Public Consultation on Protection Against Violence and Discrimination based on sexual orientation and gender identity, January 2017, <https://www.eoc.org.hk/EOC/Upload/submission/201701.pdf>

Submission of the Equal Opportunities Commission, Report of the Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, at the 72<sup>nd</sup> session of the General Assembly, June 2017, <https://www.eoc.org.hk/EOC/Upload/submission/201706.pdf>

<sup>2</sup> EOC Strategic Plan, 2020-22, pages 32-33,

<https://www.eoc.org.hk/eoc/Upload/UserFiles/File/stratgeicplan/2020/SP2020E.pdf>

recognition laws for transgender people; equality for persons in same sex relationships; and equality in relation to the operation of criminal laws.

7. Our EOC work has identified the following core issues which relate to the questions asked in the call for evidence:
  - There is evidence that LGBTI people in Hong Kong face discrimination in various aspects of public life such as employment, education, the provision of goods facilities and services, and premises;
  - There are barriers faced by the LGBTI people as to the right to equality and non-discrimination given there are no comprehensive LGBTI anti-discrimination laws; there are no gender recognition laws for transgender people; there are various areas of law where same sex couples are not recognized; and there are some areas of criminal law where homosexuals and heterosexuals are treated differently in connection with certain offences;
  - The attitudes of the general public are increasingly more supportive of legislative protections for LGBTI rights such as the introduction of LGBTI anti-discrimination laws;
  - There are some religious and family groups that are strongly opposed to the introduction of LGBTI anti-discrimination laws, gender recognition laws for transgender people, or relationship rights for same sex couples.
  
8. Below we set out our responses to the specific questions asked by the Independent Expert.

#### **Question 1**

**Has the State adopted, in public policy, legislation or jurisprudence, working definitions of gender and related concepts (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming) aiming to address violence and discrimination based on sexual orientation and gender identity? If so, please give examples, with commentary as needed to explain context, scope and application.**

- a) **if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?**
  - b) **if that is not the case, please provide information as to the reasons.**
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9. The EOC wishes to provide evidence on four key issues relating to equality for LGBTI people in the context of legislation, policies and case law: anti-discrimination laws; gender recognition laws for transgender people; equality for persons in same sex relationships; and equality in relation to the operation of criminal laws.

### (i) LGBTI anti-discrimination laws

10. There are currently no comprehensive LGBTI anti-discrimination laws in Hong Kong covering any of the grounds of sexual orientation, gender identity or intersex status.
11. The Bill of Rights which implements into Hong Kong most of the provisions of the International Covenant on Civil and Political Rights (ICCPR) does provide protection from discrimination on a number of grounds which includes “other status”, by implementing article 26 of the ICCPR.<sup>3</sup> This has been interpreted by the courts as covering sexual orientation discrimination. However the Bill of Rights only applies to the Government and public authorities, not the private sector; it does not create a comprehensive framework of anti-discrimination law like the four anti-discrimination laws; and it does not provide the EOC and powers in relation to non-discrimination provisions of the Bill of Rights.
12. The EOC commissioned the Chinese University of Hong Kong (CUHK) to conduct a research on introducing anti-discrimination legislation on grounds of sexual orientation, gender identity and intersex status,<sup>4</sup> and a research report was subsequently published in January 2016. This research examined key issues relating to the introduction of such legislation including: qualitative evidence of discrimination against people on grounds of their sexual orientation, gender identity or intersex status; public attitudes to the introduction of the legislation via a telephone survey and interviews; as well as a comparative analysis of similar legislation in other countries and jurisdictions for the purpose of developing legislation in Hong Kong. This study is referred to in this submission as the CUHK 2016 Research (CUR 2016).
13. CUR 2016 involved both qualitative and quantitative elements to systematically examine the experiences of discrimination by LGBTI people in Hong Kong. The study featured a territory-wide telephone public opinion survey with 1,005 respondents; qualitative findings collected from three public forums; 13 public focus groups including those with strong concerns; and interviews with 61 respondents from the LGBTI community in 14 focus groups.
14. In the study’s focus groups, LGBTI respondents were of the view that discrimination on the grounds of sexual orientation, gender identity, or intersex status occurs frequently in the areas of employment, education, provision of services, disposal and management of premises, as well as government functions. Upon encountering discrimination, LGBTI respondents felt that they had little or no means of redress. Of the LGBTI respondents that completed questionnaires about their experiences of discrimination, in the last two years, 88% had experienced discrimination because of being LGBTI. Further 30% had attempted suicide in their lifetime, and in the last two years 30% had contemplated suicide.<sup>5</sup>
15. In relation to public attitudes towards introducing LGBTI anti-discrimination legislation, it was clear that there is increasing support for legislation among the general public. Based on the telephone survey, 55.7% of respondents agreed with the introduction of LGBTI anti-discrimination. This was almost a twofold increase from the corresponding figure (28.7%) in

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<sup>3</sup> Bill of Rights Ordinance, article 22,  
[https://www.elegislation.gov.hk/hk/cap383?xid=ID\\_1438403137111\\_003](https://www.elegislation.gov.hk/hk/cap383?xid=ID_1438403137111_003)

<sup>4</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, commissioned by the EOC and conducted by Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong, January 2016:  
<https://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

<sup>5</sup> Ibid pages 59-60.

a 2006 Government survey.<sup>6</sup> Support was also particularly strong among those aged 18-24, 91.8% of whom agreed with legislation.

16. In light of the findings of the research, one of the key recommendations from the report was that the Government should consider conducting a public consultation on introducing such legislation:

*“It is recommended that the Hong Kong Government should consider conducting a public consultation on introducing anti-discrimination legislation on the grounds of sexual orientation, gender identity and intersex status. Given the evidence of widespread discrimination against LGBTI people, it is recommended that the consultation should focus on the scope and possible content of the legislation, rather than whether there should be legislation.*

*It is recommended that this consultation should cover all the key elements of possible anti-discrimination legislation: which protected characteristics to cover, the format of the legislation, definitions of the protected characteristics, prohibited conduct, domains of protection, possible exemptions, and the role of an equality body.”<sup>7</sup>*

17. Since the publication of the CUR 2016 report, there have also been several recent pieces of research conducted and published which link to the issues of introducing LGBTI anti-discrimination legislation. The results of these recent research highlight several important developments:
- there is increasing public support for the introduction of LGBTI anti-discrimination legislation; and
  - the opposition of the public to the introduction of LGBTI anti-discrimination legislation is at a historic low.
18. In February 2019 Centre for Comparative and Public Law at the University of Hong Kong published survey results relating to public attitudes towards transgender people and anti-discrimination legislation (the HKU 2019 Survey).<sup>8</sup> This survey was conducted from the period May to June 2017 to obtain a representative sample of Hong Kong residents aged 18 or over, with 1437 people completing it. Some key findings were that a majority of 58% of the public were either very accepting (20%) or moderately accepting (38%) of transgender people. Further in relation to anti-discrimination legislation, 67% supported anti-discrimination legislation to protect transgender people from discrimination, with 45% completely agreeing and 22% somewhat agreeing. Only 14% of people surveyed completely or somewhat disagreed.<sup>9</sup>

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<sup>6</sup> Survey on public attitudes towards homosexuals, Home Affairs Bureau, prepared by MVA Hong Kong Limited, March 2006 Page 21 paragraph 3.5.3, <https://www.legco.gov.hk/yr05-06/english/panels/ha/papers/ha0310cb2-public-homosexuals-e.pdf>

<sup>7</sup> Ibid page 197.

<sup>8</sup> “Public Attitudes Towards Transgender People and Antidiscrimination Legislation”; Centre for Comparative and Public Law at the Faculty of Law, The University of Hong Kong; Kelley Loper, Holning Lau, Charles Lau, Yiu-tung Suen; 1 February 2019, <http://www.law.hku.hk/ccpl/wp-content/uploads/2019/02/CCPL%20Briefing%20Paper%20-%20Trans%20Issues%20Final.pdf>

<sup>9</sup> Ibid see pages 2-4 of the research report.

19. In January 2020, the Sexualities Research Programme of CUHK published further research on public attitudes towards LGBTI rights.<sup>10</sup> A territory-wide representative telephone survey was conducted in September 2019, interviewing 1,058 people Chinese-speaking residents aged 18 or above.
20. Several of the survey questions related to the issue of LGBTI anti-discrimination legislation. In relation to protections from sexual orientation discrimination, 60% of the respondents (as compared to 56% in CUR 2016 on introducing LGBTI anti-discrimination legislation) said they very much agreed/ agreed that there should be legal protection against discrimination for people of different sexual orientations in Hong Kong. Only 12% said they disagreed/ very much disagreed (as compared to 35% in CUR 2016).<sup>11</sup> In relation to protections from discrimination for transgender people, 57% of the respondents very much agreed/ agreed that there should be legal protection against discrimination for transgender people in Hong Kong. Only 10% said they disagreed/ very much disagreed. The last figure was lower than the 14% of respondents in the HKU 2019 Survey referred to previously, who disagreed that Hong Kong should have a law that protects people from being discriminated against because they are transgender.<sup>12</sup> These findings highlighted that, not only is the support for the introduction of LGBTI anti-discrimination legislation at an historic high, but also that the opposition of the general public to the introduction of such legislation is at a historic low.
21. It should be noted that in the Government's fourth report on the ICCPR submitted by the HKSAR Government to the UN in September 2019, the Government stated that in its view there are still deeply divided views in the society on whether legislation should be introduced to prohibit discrimination on grounds of sexual orientation and gender identity. The Government stated that it would conduct further study on the experience of other jurisdictions in tackling this kind of discrimination through legislative and non-legislative measures.<sup>13</sup>
22. The Government did introduce in 2014 a Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation.<sup>14</sup> The Code is intended to facilitate self-regulation on the part of employers and employees in eliminating discriminatory practices in employment on the grounds of sexual orientation. As at January 2021, 326 public and private organisations had adopted the Code. However, the Code does not constitute legally binding anti-discrimination legislation, it only covers the employment sector, and on the ground of sexual orientation.
23. To date, the Government has not proceeded to consult on or introduce LGBTI anti-discrimination legislation. As a result, the EOC is conducting further research and consultation on possible legislative provisions of LGBTI anti-discrimination legislation, and will be making further submissions to Government in due course.

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<sup>10</sup> "Public Attitudes towards LGBT+ legal rights in Hong Kong 2019/20"; Sexualities Research Programme, The Chinese University of Hong Kong; Dr Yiu Tung Suen, Dr Randolph Chun Ho Chan, Eliz Miu Yin Wong; January 2020, [https://socsc.cuhk.edu.hk/wp-content/uploads/2020/01/201920-SRP-PolicyBrief\\_EN.pdf](https://socsc.cuhk.edu.hk/wp-content/uploads/2020/01/201920-SRP-PolicyBrief_EN.pdf)

<sup>11</sup> Ibid page 4.

<sup>12</sup> Ibid page 11.

<sup>13</sup> Fourth Report of the Hong Kong Special Administrative Region of the People's Republic of China on the ICCPR, paragraphs 198-201, [https://www.cmab.gov.hk/doc/en/documents/references/papers\\_reports\\_others/human\\_rights/FourthReportPRC/FullReport-e.pdf](https://www.cmab.gov.hk/doc/en/documents/references/papers_reports_others/human_rights/FourthReportPRC/FullReport-e.pdf)

## (ii) Gender recognition laws and related case law

24. Currently in Hong Kong there is an administrative procedure for a person to legally change gender if the person is a transgender person, but there is no comprehensive gender recognition legislation which sets out the rights of a person, and requirements to change gender. Currently the procedure also requires a person to have sex-reassignment surgery, in order to be able to legally change gender on official identity documents.
25. In June 2017 the Government conducted the first part of a public consultation on whether a gender recognition scheme should be established in Hong Kong.<sup>15</sup> The consultation arose out of the landmark *W v Registrar of Marriages* decision by the Court of Final Appeal in May 2013 which ruled that the Marriage Ordinance and the Matrimonial Causes Ordinance was in breach of the right to marriage of a post-operative transsexual woman who wished to marry her male partner.<sup>16</sup> The decision also raised much broader issues by recommending that the Government introduce comprehensive legislation regarding gender recognition and related rights for transgender people.
26. The EOC provided a detailed submission in response to the consultation in which it stated that gender recognition legislation should be introduced as soon as possible in order to protect the human rights of transgender people, including to be free from discrimination.<sup>17</sup> The EOC highlighted that issues of gender recognition of transgender people in their affirmed gender are often closely related to discrimination that transgender people face, for example when their identity documents are inconsistent with their affirmed gender.
27. The EOC submitted that such gender recognition legislation should be introduced to comply with international and Hong Kong human rights obligations regarding gender recognition:
  - Which require the introduction of gender recognition legislation to provide legal recognition for a person in their affirmed gender;
  - does not have medical requirements (such as mandatory sex reassignment surgery) which may breach the rights to self-determination and self-autonomy, and to be free from inhumane and degrading treatment;
  - does not have requirements regarding marital or family status (eg to be unmarried or without children) which may breach the rights to privacy, family life, and to non-discrimination on grounds of gender identity, marital or family status.
28. Since the close of the consultation, the case of *Q, R and Henry Tze* [2019] HKCFI 295 is challenging the requirement of sex reassignment resulting in sterilization as a breach

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<sup>15</sup> Inter-Departmental Working Group on Gender Recognition, Consultation Part 1, June 2017, <https://www.iwggr.gov.hk/eng/pdf/consultation01.pdf>

<sup>16</sup> *W v Registrar for Marriages* FACV No4 of 2012, <http://www.hklii.hk/eng/hk/cases/hkcfa/2013/39.html>

<sup>17</sup> Response of the Equal Opportunities Commission Inter-Departmental Working Group on Gender Recognition Consultation Paper: Part 1 Gender Recognition, January 2018, <https://www.eoc.org.hk/eoc/upload/2018121622321114772.pdf>

of human rights of three transgender claimants.<sup>18</sup> The claim was rejected in the High Court but is being appealed to the Court of Appeal.<sup>19</sup>

29. It should be noted that since the close of the public consultation period in January 2018, there have been no further steps taken by the Inter-Departmental Working Group on Gender Recognition in terms of either publishing a report on the consultation, or indicating what next steps would be taken. As a result, to date no gender recognition legislation for transgender people has been introduced in Hong Kong.

### **(iii) Equality for persons in same sex relationships**

30. Currently in Hong Kong, only heterosexual marriages can be entered into and are legally recognized, and there is no ability to enter into other forms of legal relationships such as civil partnerships or civil unions, whether heterosexual or same sex couples. There are also a number of areas of law in Hong Kong where rights are only provided or in preference to married couples, including protections from discrimination; rights relating to public housing; inheritance; and family related rights such as parental rights, IVF treatment and adoption. Such a situation may cause indirect discrimination against persons in same sex relationships who cannot enter into a marriage in Hong Kong, and therefore do not have the same rights in the above areas of law.
31. The EOC has analysed the discriminatory impact of the above issues in the context of the existing anti-discrimination laws, as well as other legislation which provides different treatments based on marital status. In March 2016, following the EOC's Discrimination Law Review (DLR), the EOC made submissions on reforming all four of the existing anti-discrimination Ordinances.<sup>20</sup> The issue of discrimination in the context of relationships is directly relevant to protections from marital status discrimination under the SDO, and protections from family status discrimination under the FSDO. This is because both areas currently only provide protections from discrimination for persons that are married. This means same sex couples are not protected from discrimination in such circumstances, as they cannot marry in Hong Kong and overseas marriages are not recognized for most purposes.
32. As a result, the EOC recommended for the purpose of protection from marital status discrimination under the SDO that:

*"It is recommended that the Government conduct comprehensive research and public consultation on the issues of discrimination and the related issue of possible legal recognition of heterosexual and homosexual cohabitation relationships in Hong Kong, including existing cohabitation relationships and same sex marriages from overseas.*

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<sup>18</sup> 1 February 2019, [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=119924&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=119924&currpage=T)

<sup>19</sup> <https://www.scmp.com/news/hong-kong/law-and-crime/article/2184662/transgender-men-fail-legal-bid-be-listed-male-hong-kong>

<sup>20</sup> Discrimination Law Review, Submissions to Government, EOC March 2016, see pages 111-132, <https://www.eoc.org.hk/eoc/upload/DLR/2016330179502227490.pdf>



*The consultation should:*

- Consult on providing protection from discrimination for persons in cohabiting relationships in relation to the marital status protection under the Sex Discrimination Ordinance, including the possible repeal, amendment or addition of specific exceptions;
- Consider all the other potentially discriminatory legislation and policies as to whether it is appropriate to reform them;
- Consider the possible different methods of recognising such relationships, including coverage of heterosexual and homosexual relationships.”

33. Similarly, in relation to protections from family status discrimination, the EOC recommended that:

*“... the Government conduct research and consult on the extension of protection under the Family Status Discrimination Ordinance to protection in relation to:*

- Caring for immediate family members in cohabiting relationships;
- Caring for immediate family members of former spouses or former cohabiting partners.”

34. More recently, the EOC commissioned detailed legal research to examine other areas of law in Hong Kong where there is different treatment on grounds of marital status. The research was conducted by Allen & Overy on behalf of the EOC and published in June 2019.<sup>21</sup> The research examined 21 areas of law and found that in most areas of life, only heterosexual married couples are recognized for a wide range of rights from inheritance, public housing, parental rights, reproductive rights such as IVF and stamp duty benefits relating to property transactions. This may cause an indirect discriminatory impact on same sex couples.
35. It should also be noted that there have been a series of cases relating to discrimination in relationship rights over the last five years, which are directly relevant to the above issues. All of these cases have been brought under the Bill of Rights, and claims of sexual orientation discrimination.
36. In 2018, the Court of Final Appeal handed down a judgment *QT v Director of Immigration*<sup>22</sup> which related to the Government’s immigration policy on dependent visas for the partners of person on a working visa in Hong Kong. QT is in a same sex civil partnership entered into in the United Kingdom and her partner is on a working visa. The Government refused to grant QT a dependent visa. The Court of Final Appeal unanimously decided that the refusal to grant a dependent visa was indirect sexual orientation discrimination and not justified. As a result of the decision, the Government has since changed its policy on dependent visas by granting the same to dependants in a legal relationship entered into overseas which is equivalent to marriage. This covers same sex marriages, as well as civil partnerships and civil unions, irrespective of whether they are heterosexual or same sex relationships.<sup>23</sup>

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<sup>21</sup> The Recognition and treatment of relationships under Hong Kong law, Allen & Overy, June 2019, <https://www.eoc.org.hk/EOC/upload/ResearchReport/2019626142922933384.PDF>

<sup>22</sup> [2018] HKCFA 28, [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=116049&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=116049&currpage=T)

<sup>23</sup> Hong Kong Government Press Release, 18 September 2018, <https://www.info.gov.hk/gia/general/201809/18/P2018091800579.htm>

37. In 2019, the Court of Final Appeal handed down another landmark judgment relating to sexual orientation discrimination.<sup>24</sup> It concerned the decision by the Secretary for the Civil Service to not provide spousal benefits under the Civil Service Regulations to a civil servant's same-sex spouse, and a decision by the Commissioner of the Inland Revenue that the petitioner was not entitled to elect for joint assessment with his same-sex spouse because that right was restricted to a husband and wife. The Court of Final Appeal decided that both the refusal to provide employment benefits, and the refusal to allow joint tax assessments was unlawful indirect sexual orientation discrimination.
38. There have also been two other recent first instance decisions relating to sexual orientation discrimination in Government policy and legislation on particular entitlements. In March 2020 the High Court decided the Government's public rental housing policy that denied same sex couples who were married overseas from applying for housing under the category of a family was unconstitutional indirect sexual orientation discrimination under article 25 of the Basic Law and article 22 of the Bill of Rights.<sup>25</sup>
39. In September 2020 the High Court also decided a case relating to inheritance rights if one partner of a couple dies without a will.<sup>26</sup> The case involved a same sex couple in Hong Kong who had married overseas. The claimant owned a property in Hong Kong. However, under the terms of the Intestates' Estates Ordinance and the Inheritance (Provision for Family and Dependents) Ordinance, without a will a deceased person's property could not be inherited by the same sex married partner, as their marriage is not recognised in Hong Kong. The High Court held this was unlawful indirect sexual orientation discrimination under article 25 of the Basic Law and article 22 of the Bill of Rights.
40. There has also been a challenge that the denial of the ability to enter into a marriage or civil partnerships for same sex couples in Hong Kong was forms of unlawful sexual orientation discrimination. In the MK case, the High Court decided in October 2019 that there was no sexual orientation discrimination by denying same sex couples the right to marry, and there was no positive legal obligation on the Government to develop any form of equivalent relationship to marriage. As a result the claim failed.<sup>27</sup>
41. In September 2020 High Court also rejected a claim that the non-recognition of overseas same sex marriages as compared to heterosexual overseas marriages was unlawful sexual orientation discrimination.<sup>28</sup> The Court decided that the claim was misconceived, as it was not possible to compare the situation of same sex and heterosexual married couples from overseas without analysing a particular decision or treatment, which was not argued in the case.

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<sup>24</sup> *Leung Chun Kwong v Secretary for Civil Service* [2019] HKCFA 19,  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=122337&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=122337&currpage=T).

<sup>25</sup> *Infinger v Hong Kong Housing Authority* [2020] HKCFI 329,  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=126959&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=126959&currpage=T).

<sup>26</sup> *Ng Hon Lam Edgar v Secretary for Justice* [2020] HKCFI 2412,  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=130884&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130884&currpage=T)

<sup>27</sup> *MK v Government of the HKSAR* [2019] HKCFI 2518,  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=124943&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=124943&currpage=T).

<sup>28</sup> *STK v Secretary for Justice* [2020] HKCFI 2411,  
[https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=130883&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=130883&currpage=T).

42. To date, the Government has not taken forward the EOC's Discrimination Law Review recommendations to comprehensively review and possibly reform the anti-discrimination laws (covering marital and family status discrimination).

#### **(iv) Equality in the operation of criminal laws**

43. In Hong Kong there have been a number of criminal laws relating to sexual offences which discriminated against persons based on their sexual orientation, for example as they only applied to homosexuals, or had greater penalties for homosexual conduct. Such laws have been successfully challenged by a series of cases, and the Law Reform Commission has also reviewed and made recommendations for reform of two similar existing offences (see paragraph 47 below). The EOC has advocated that such criminal laws should be repealed or reformed as soon as possible in order to eliminate such discrimination. The relevant cases, and the work of the Law Reform Commission on the issues are summarized below.
44. In *Leung TC William Roy v Secretary for Justice* (unrep CACV 317/2005, [2006] HKEC 578) the Court of Appeal considered the constitutionality of criminal laws which provided for different ages of consent for homosexual sexual activity from heterosexual activity (21 years as opposed to 16 years). The Court decided such laws were discriminatory on the basis of sexual orientation and therefore unconstitutional and in breach of the Basic Law and the Bill of Rights.<sup>29</sup>
45. In *Secretary for Justice v Yau Yuk Lung Zigo* (2007) 10 HKCFAR 335, [2007] 3 HKLRD 903 the Court of Final Appeal also found that criminal laws that criminalized homosexual buggery otherwise than in private was also discriminatory, unconstitutional and in breach of the Basic Law and the Bill of Rights.<sup>30</sup>
46. Most recently, a case in 2019 challenged seven sexual offences under the Crimes Ordinance. A judicial review argued that the offences were unconstitutional and in breach of article 25 of the Basic Law and article 22 of the Bill of Rights as they discriminated against homosexual men by providing offences which only existed for them, or with greater penalties for homosexual men.<sup>31</sup> The High Court decided that all of the provisions were either entirely unconstitutional sexual orientation discrimination, or should be read down to eliminate the discriminatory effect.
47. The Law Reform Commission has been reviewing sexual offences in Hong Kong over recent years and one of their consultations examined the problems of sexual offences which discriminated against persons on grounds of their sexual orientation by only applying to homosexuals.<sup>32</sup>

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<sup>29</sup>[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=54227&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=54227&QS=%2B&TP=JU)

<sup>30</sup> [https://legalref.judiciary.hk/lrs/common/ju/ju\\_body.jsp?AH=&QS=&FN=&currpage=T&DIS=57763#](https://legalref.judiciary.hk/lrs/common/ju/ju_body.jsp?AH=&QS=&FN=&currpage=T&DIS=57763#)

<sup>31</sup> *Yeung Chu Wing v Secretary for Justice* [2019] HKCFI 1431, [https://legalref.judiciary.hk/lrs/common/ju/ju\\_frame.jsp?DIS=122165&currpage=T](https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=122165&currpage=T).

<sup>32</sup> Law Reform Commission, Consultation on sexual offences involving children and persons with mental impairment, November 2016, [https://www.hkreform.gov.hk/en/docs/sexoffchild\\_e.pdf](https://www.hkreform.gov.hk/en/docs/sexoffchild_e.pdf)

48. The submission of the EOC to the consultation made recommendations that all sexual offences that discriminate against persons on grounds of sexual orientation should be repealed or amended to eliminate any discrimination as soon as possible.<sup>33</sup>
49. The Law Reform Commission made final recommendations to reform sexual offences in December 2019, and included recommendations to reform the offences which discriminate against persons on grounds of sexual orientation.<sup>34</sup> In particular, recommendations were made to repeal two homosexual offences involving young persons: homosexual buggery with or by a man under 16 (section 118C of the Crimes Ordinance); and gross indecency with or by a man under 16 (section 118H of the Crimes Ordinance).<sup>35</sup> To date, those recommendations are yet to be implemented by legislative reforms.

## **Question 2**

**Has the State ratified, signed, or adhered regional or international human rights treaties, declarations, programs or policies or any other international instruments aiming to address violence and discrimination based on sexual orientation and gender identity that involve the implementation of a gender framework (for example gender theory, gender-based approaches, gender perspective, gender mainstreaming)?**

- a) if that is the case, has the State carried out evaluations, assessments or evidence-gathering about the impact of the implementation of such actions and, if so, what are the main trends identified?**
- b) if that is not the case, please provide information as to the reasons.**

### **(i) Ratification and implementation of international human rights treaties**

50. China is party to the following core six UN human rights treaties: Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); International Covenant on Economic, Social, and Cultural Rights (ICESCR); Convention on the Rights of Persons with Disabilities (CRPD). Although China signed the International Covenant on Civil and Political Rights (ICCPR) on October 5, 1998, it has yet to ratify it.
51. All of the above Treaties apply in the Hong Kong Special Administrative Region. Specific protection of a wide range of fundamental rights is provided for in the Basic Law of Hong

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<sup>33</sup> EOC Submission, Consultation on sexual offences involving children and persons with mental impairment, February 2017, <https://www.eoc.org.hk/eoc/upload/201721016129562806.pdf>

<sup>34</sup> Law Reform Commission, Review of Substantive Sexual Offences, December 2019, pages 65-66, [https://www.hkreform.gov.hk/en/docs/rsubstantive\\_sexual\\_offences\\_e.pdf](https://www.hkreform.gov.hk/en/docs/rsubstantive_sexual_offences_e.pdf)

<sup>35</sup> Crimes Ordinance, <https://www.elegislation.gov.hk/hk/cap200>

Kong<sup>36</sup> and the Bill of Rights Ordinance.<sup>37</sup> The Basic Law states that the ICCPR and the ICESCR continue to apply in Hong Kong. It also provides for equality before the law.<sup>38</sup>

52. As stated previously, the Bill of Rights Ordinance implements into Hong Kong most of the provisions of the ICCPR. It provides for protection from discrimination on a number of grounds:

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>39</sup>*

53. This implements into Hong Kong law article 26 of the ICCPR, and has been interpreted by the courts to include protection from discrimination on grounds of sexual orientation (see the cases referred to in Question 1).

54. The Bill of Rights also provides for protection from discrimination in the enjoyment of all the rights in the Bill of Rights:

*“(1)The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.  
(2)Men and women shall have an equal right to the enjoyment of all civil and political rights set forth in this Bill of Rights.”<sup>40</sup>*

55. It should be noted that the Bill of Rights only applies to the activities of the Government and public authorities.<sup>41</sup> It does not apply to any activities by the private sector.

## **(ii) Adherence to international human rights treaties**

56. In relation to adherence to international human rights obligations relating to discrimination on grounds of sexual orientation and gender identity, various human rights monitoring bodies of the United Nations have made specific recommendations to the Hong Kong Government to adopt anti-discrimination legislation relating to sexual orientation and gender identity: the Human Rights Committee in relation to the ICCPR in 1999 and 2013,<sup>42</sup> and the Committee on Economic, Social and Cultural Rights in relation to the ICESCR in 2001, 2005 and 2014.<sup>43</sup>

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<sup>36</sup> Basic Law of Hong Kong, [https://www.basiclaw.gov.hk/en/basiclawtext/chapter\\_3.html](https://www.basiclaw.gov.hk/en/basiclawtext/chapter_3.html)

<sup>37</sup> Hong Kong Bill of Rights Ordinance, <https://www.elegislation.gov.hk/hk/cap383>

<sup>38</sup> Article 25 Basic Law.

<sup>39</sup> Article 22 Bill of Rights.

<sup>40</sup> Article 1 Bill of Rights.

<sup>41</sup> Section 7 Hong Kong Bill of Rights Ordinance.

<sup>42</sup> ICCPR/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](http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/the_rights_of_the_individuals/Advance_Version_2013_ICCPR_e.pdf)

<sup>43</sup> E/C.12/CHN/CO/2, paragraph 41.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCHN%2FCO%2F2](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FCHN%2FCO%2F2)

57. By way of example in 2013 the Human Rights Committee, which has the responsibility for monitoring compliance with the ICCPR, noted and recommended:

*“The Committee is concerned about the absence of legislation explicitly prohibiting discrimination on the basis of sexual orientation and reported discrimination against lesbian, gay, bisexual and transgender persons in the private sector (arts. 2 and 26). Hong Kong, China, should consider enacting legislation that specifically prohibits discrimination on ground of sexual orientation and gender identity, take the necessary steps to put an end to prejudice and social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation or gender identity...”*

58. In relation to the issues of the requirements for transgender people to change gender, the UN Committee Against Torture expressed concern of the existing requirements to have sex re-assignment surgery resulting in sterilization in order to legally change gender:

*“While welcoming the set-up of an interdepartmental working group on gender recognition... the Committee is concerned about reports that transgender persons are required to have completed sex-reassignment surgery, which includes the removal of reproductive organs, sterilization and genital reconstruction, in order to obtain legal recognition of their gender identity.”<sup>44</sup>*

59. As a result the UN Committee Against Torture recommended the Hong Kong Government to:

*“Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons, including by removing abusive preconditions for the legal recognition of the gender identity of transgender persons, such as sterilization...”<sup>45</sup>*

### **(iii) Position of the Government in relation to adherence to international human rights obligations**

60. The Government provides its position on adherence to international human rights obligations under international treaties in its periodic reports relating to specific treaties. For example the Government recently provided its position on issues relating to discrimination against people on grounds of sexual orientation and gender identity in its reports on the ICCPR<sup>46</sup> and the ICESCR<sup>47</sup> in September 2019 and December 2019 respectively.

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<sup>44</sup> Concluding Observations on the fifth periodic report of China with respect to Hong Kong China, Committee Against Torture, CAT/C/CHN-HKG/CO/5, 3 February 2016, paragraph 28, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CAT%2fC%2fCHN-HKG%2fCO%2f5&Lang=en)

<sup>45</sup> Ibid paragraph 29(a).

<sup>46</sup> Fourth Report of the Hong Kong Special Administrative Region of the People’s Republic of China on the ICCPR, paragraphs 198-201, [https://www.cmab.gov.hk/doc/en/documents/references/papers\\_reports\\_others/human\\_rights/FourthReport\\_PRC/FullReport-e.pdf](https://www.cmab.gov.hk/doc/en/documents/references/papers_reports_others/human_rights/FourthReport_PRC/FullReport-e.pdf)

<sup>47</sup> Fourth Report of the Hong Kong Special Administrative Region of the People’s Republic of China under the ICESCR, paragraphs 2.10-2.15, [https://www.cmab.gov.hk/doc/en/documents/references/papers\\_reports\\_others/human\\_rights/FourthReport\\_PRC/FullReport-e.pdf](https://www.cmab.gov.hk/doc/en/documents/references/papers_reports_others/human_rights/FourthReport_PRC/FullReport-e.pdf)

### Question 3

What kinds of information and data are collected by States to identify forms of violence and discrimination faced by people based on sexual orientation and gender identity? Is the data designed to capture causes and patterns of violence and discrimination against lesbians, gay men, bisexual women, bisexual men, trans women, trans men, and gender diverse persons?

a) does this data collection take an intersectional approach (for example, connecting an individual's multiple social categories to enable more precise analysis (e.g. collecting data about LGBT persons by identities such as race, age, national status and ethnicity)?

b) does the data include information on the relationship between victims and perpetrators?

#### (i) Statistics and evidence of sexual orientation and gender identity discrimination

61. The Government has set up an enquiries and complaints hotline operated by the Constitutional and Mainland Affairs Bureau (CMAB) Gender Identity and Sexual Orientation Unit for individuals who have experienced discrimination on grounds of their sexual orientation or gender identity. There were only 2 complaints received between July 2017 and June 2020.<sup>48</sup> The Government has stated that they have subsidized a local charitable organisation to operate a 24-hour hotline service in January 2018 to provide easily accessible support, counselling and referral services for sexual minorities to the support LGBTI communities in Hong Kong. Over 2 400 calls have been received during 2018 and 2019.<sup>49</sup>
62. In relation to the EOC, given there are no comprehensive anti-discrimination laws covering sexual orientation or gender identity over which it has duties and powers, the EOC does not gather data of complaints relating to those grounds. However as previously referred to in the CUR 2016 research, there is evidence of LGBTI people facing discrimination in Hong Kong in various aspects of public life such as employment, education, the provision of services, and premises.
63. Of the 61 participants in the LGBTI focus groups, 43 respondents completed a questionnaire where 100% opined that discrimination experienced by LGBTI people was either common or very common in Hong Kong, and 93% thought that Hong Kong is not an LGBTI-friendly place. Only 5% said that Hong Kong was LGBTI-neutral, and a mere 2% thought Hong Kong was LGBTI-friendly.<sup>50</sup>
64. In the past two years, 88% had experienced discrimination because of being LGBTI, and 44% considered that they often/very often encountered discrimination. When the 43 respondents were asked if they had ever encountered discrimination in their lifetime, the corresponding percentages were elevated to 98% and 65% respectively. Only 2% revealed

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<sup>48</sup> Constitutional and Mainland Affairs Bureau, Enquiries and Complaints Hotline, [https://www.cmab.gov.hk/en/issues/equal\\_hotline.htm](https://www.cmab.gov.hk/en/issues/equal_hotline.htm)

<sup>49</sup> Fourth Report of the Hong Kong Special Administrative Region of the People's Republic of China under the International Covenant on Economic, Social and Cultural Rights [https://www.cmab.gov.hk/doc/en/documents/references/papers\\_reports\\_others/human\\_rights/FourthReport\\_PRC/FullReport-e.pdf](https://www.cmab.gov.hk/doc/en/documents/references/papers_reports_others/human_rights/FourthReport_PRC/FullReport-e.pdf)

<sup>50</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, commissioned by the EOC and conducted by Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong, January 2016, pages 59-60, : <https://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

that they had never experienced discrimination on the grounds of sexual orientation, gender identity or intersex status.

65. In the past two years, 32%, 37%, 50% and 21% of the respondents reported as having experienced discrimination in the domains of employment, education, service provision and the disposal and management of premises respectively. 30% of the respondents had attempted suicide in their lifetime. Alarming, in the past two years 30% contemplated suicide, whereas 7% had attempted suicide.
66. The CUR 2016 research report also provided detailed analysis and examples of discrimination faced by LGBTI people in the above domains as well as other relevant areas of public life.<sup>51</sup>

## **(ii) Other collection of data relating to LGBTI people**

67. The CUR 2016 research report recommended that the Government should collect and publish data on LGBTI people in Hong Kong in its relevant Government and public authority research and publications.<sup>52</sup> It was found that because the number of LGBTI people remains unknown in Hong Kong, their needs in relation to particular services were uncertain, and may be underestimated. Collection of data on LGBTI people can help to guide policy decisions and resource allocations.
68. The EOC itself has come across some recent data relating to LGBTI people in Hong Kong in its research on sexual harassment in universities, “Break the Silence: Territory-Wide Study on Sexual Harassment of University”.<sup>53</sup> The research is discussed in more detail in the response to Question 4. Among the 14,442 responding university students of the survey, 6.7% identified themselves as LGBTI, although it should be noted that the research didn’t use representative sampling.
69. The Government has rejected calls to include a question in the 2021 census of Hong Kong relating to sexual orientation.<sup>54</sup> This has been advocated for by groups working on LGBTI rights who were of the view that the inclusion of such a question, would result in Government being better informed in formulating relevant policies and possible legislative changes.

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<sup>51</sup> Ibid pages 60-84.

<sup>52</sup> Ibid page 203-204.

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<sup>54</sup> Gay Star News, 10 January 2019, <https://www.gaystarnews.com/article/hong-kong-govt-rejects-calls-to-include-sexual-orientation-in-next-census/>



#### Question 4

##### Is comprehensive sexuality education taught in schools?

a) if yes, please provide information as to the respective programs. Please provide examples (e.g. copies of curricula, citations to policies).

b) if not, are there efforts deployed by the State to establish and promote comprehensive sexual education, which incorporates diverse sexual orientation and gender identity perspectives? What have been the obstacles to adopt such policies or programs? Also, is the State adopting any alternative measures?

70. In Hong Kong, sex education is not a compulsory and independent subject. The Education Bureau (EDB) adopted an integrated approach to implement sex education since the curriculum reform in 2001 and reinforced in the revised Moral and Civic Education Curriculum Framework which was updated in 2008. The “Guidelines on Sex Education in Schools” published in 1997 is no longer an instructional curriculum document for schools. Such school-oriented sex education is guided by minimal Government’s intervention.
71. The EOC conducted a large scale study “Break the Silence: Territory-Wide Study on Sexual Harassment of University” (the Study) in 2019.<sup>55</sup> A total of 14,442 university students in Hong Kong has responded to the online questionnaire. The overall response rate was 14.3% representing the 101,016 full-time undergraduate and postgraduate students of the nine participating universities in the school year of 2018. Respondents were invited to participate in semi-structured in-depth interviews of this Study. A total of 28 in-depth interviews were successfully conducted. Results of the Study found that 23% of university students were sexually harassed within 12 months before the survey. Students professed to be LGBTI were 1.7 times more likely to be sexually harassed on campus than other students. The results also found that insufficient or lack of sexuality education was viewed by many interviewees to be the root cause of sexual harassment at university. Without proper sexuality education, students may not have a positive attitude towards relationships and sexual norms.
72. Discrimination in the area of education was widely reported by LGBT people in the CUR 2016 research.<sup>56</sup> This was especially the case for those who had come out of the closet, or those whose gender expression deviated from the “social norms” regarding gender. The LGBT respondents reported that they had experienced discrimination from their classmates and peers, as well as from their teachers, principals and counsellors.
73. Another study “Gender and Sexual-Orientation Harassment and Discrimination Experiences of LGBTQ Students in Secondary Schools” (2015) conducted by the Department of Special Education and Counselling at the Hong Kong Education University also suggested that LGBT

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<sup>55</sup> CHAN, James K.S., LAM, Kitty K.Y., CHEUNG, Christy C.M., LO, Jimmy T.Y. (2019) Break the Silence: Territory-wide Study on Sexual Harassment of University Students in Hong Kong. Hong Kong: Equal Opportunities Commission.

[https://www.eoc.org.hk/eoc/Upload/ResearchReport/SH2018/ENG/SH%20University%20Report\\_ENG\\_Full%20Report.pdf](https://www.eoc.org.hk/eoc/Upload/ResearchReport/SH2018/ENG/SH%20University%20Report_ENG_Full%20Report.pdf)

<sup>56</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, commissioned by the EOC and conducted by Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong, January 2016:

<https://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

teenagers suffered discrimination at both individual and institutional levels.<sup>57</sup> An example of the personal level discrimination involved a student's classmates throwing water at him after he presented his project about homosexuality in Rwanda in a Liberal Studies class. On the institutional level, examples included strict rules on school uniforms which caused difficulties for transgender students. A transgender student who identified as male was not allowed to wear a male uniform and to have short hair, even though a medical certificate which indicated he was experiencing gender dysphoria was presented.

74. The EOC recommended to the EDB a thorough reform of sex education is necessary. In May 2019, the EOC co-organised the "Roundtable on Reforming Sexuality Education in Hong Kong" with the Lee Hysan Foundation. About 50 stakeholders from Non-Governmental Organisations (NGOs), primary and secondary schools and school sponsoring bodies participated in a discussion on the current curriculum for sex education and its implementation in schools, with a view to making recommendations to the EDB for reform.<sup>58</sup>
75. The participants of the Roundtable identified four major challenges encountered in the implementation of sexuality education:
- Insufficient knowledge of sexuality education and awareness of gender equality among teachers and social workers;
  - Insufficient and scattered teaching materials;
  - A lack of motivation for schools to conduct sexuality education and misunderstanding about sexuality education; and
  - A lack of structured and updated guidelines for implementation of sexuality education.
76. One of the recommendations from the Roundtable was that sexuality education should also cater for the needs of students with different sexual orientations and gender identities.

### Question 5

**Are there examples where the concept of gender has been used in religious narratives or narratives of tradition, traditional values or protection of the family to hinder the adoption of legislative or policy measures aimed at addressing or eradicating violence and discrimination based on sex, gender, sexual orientation and gender identity?**

77. In Hong Kong there is considerable evidence from research, public statements and petitions, as well as conduct by people or organisations in public life, that some religious and family groups strongly opposed the introduction of laws and policies to advance the equality of LGBTI people. The issues being opposed to include the introduction of LGBTI anti-discrimination laws, gender recognition laws for transgender people, and the introduction of relationship rights for same sex couples, and the depiction of same sex relationships in the media and publications (see Question 9).

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<sup>57</sup> Gender and Sexual-Orientation Harassment and Discrimination Experiences of LGBTQ Students in Secondary Schools, 2015, [https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Funding%20Programme/policy/1314/20150526/HKIEd%20press%20statement\\_E.pdf](https://www.eoc.org.hk/EOC/Upload/UserFiles/File/Funding%20Programme/policy/1314/20150526/HKIEd%20press%20statement_E.pdf)

<sup>58</sup> Submission to the Task Force on Review of School Curriculum of the Education Bureau - Key issues and recommendations raised by participants of the Roundtable on Reforming Sexuality Education in Hong Kong <https://www.eoc.org.hk/eoc/upload/20191028115746386751.pdf>

78. However, it should be noted that such opposition is only expressed by some religious or family groups, it is not universal. Further, there appears to be some differences between religious groups, for example with greater opposition amongst Christian based religious and family groups, compared with some other religions.
79. It should also be noted that the EOC has done considerable work on examining how the rights to freedom of religion can effectively be taken into account in developing LGBTI anti-discrimination laws. These issues were examined in the CUR 2016 research by examining the comparative LGBTI anti-discrimination laws in relevant jurisdictions such as Britain, Australia, Canada, New Zealand, and Taiwan, as well as existing anti-discrimination Ordinances such as the Sex Discrimination Ordinance and the Race Discrimination Ordinance. The report highlighted that the existing human rights protections in Hong Kong's Bill of Rights already protect the right to freedom of religion.<sup>59</sup> Further, in a number of jurisdictions there are some exceptions relating to religion which for example allow discrimination on grounds of sexual orientation or gender identity, where it is necessary to comply with religious requirements.<sup>60</sup> Such possible exceptions could be taken into account in developing LGBTI anti-discrimination legislation in Hong Kong.
80. The issues of research on attitudes of religious and family groups; evidence of statements and other action by religious and family groups; and evidence of discrimination in religious based organisations are examined in more detail below.

#### **(i) Evidence regarding views of some religious and family groups**

81. In January 2020 the Sexualities Research Programme of CUHK published research on public attitudes towards LGBTI rights.<sup>61</sup> A territory-wide representative telephone survey was conducted in September 2019, interviewing 1,058 people who were Chinese-speaking residents aged 18 or above. This included questions relating to views of religious and non-religious persons on LGBTI rights, as well as the views of those that adhere to family values on LGBT rights.
82. The results highlighted that even among people that adhere to religious or family values there is significant support for LGBTI anti-discrimination laws, and some support for same sex marriage:
- 49% of persons who are religious support sexual orientation anti-discrimination laws compared to 66% of non-religious persons;
  - among those who said they very much agreed/ agreed with the statement 'obedience is part of filial piety', 53% said they still very much agreed/ agreed that there should be legal protection against discrimination for people of different sexual orientations in Hong Kong; 31% stayed neutral and only 16% opposed such legislation;

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<sup>59</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, pages 171-177.

<sup>60</sup> Ibid pages 152-161.

<sup>61</sup> "Public Attitudes towards LGBT+ legal rights in Hong Kong 2019/20"; Sexualities Research Programme, The Chinese University of Hong Kong; Dr Yiu Tung Suen, Dr Randolph Chun Ho Chan, Eliz Miu Yin Wong; January 2020, [https://socsc.cuhk.edu.hk/wp-content/uploads/2020/01/201920-SRP-PolicyBrief\\_EN.pdf](https://socsc.cuhk.edu.hk/wp-content/uploads/2020/01/201920-SRP-PolicyBrief_EN.pdf)

- among those who said they very much agreed/ agreed with the statement ‘marriage is important’, 56% said they still very much agreed/ agreed that there should be legal protection against discrimination for people of different sexual orientations in Hong Kong; 29% stayed neutral and only 15% opposed such legislation;
- 38% of religious people supported the right of same sex couples to marry, compared to 55% of non-religious persons;
- among those who said they very much agreed/ agreed with the statement ‘obedience is part of filial piety’, 37% said they still very much agreed/ agreed that same sex couples should be able to marry; 30 percent stayed neutral and 33% opposed;
- among those who said they very much agreed/ agreed with the statement ‘marriage is important’, 44% said they still very much agreed/ agreed that same sex couples should be able to marry; 29% stayed neutral and 27% opposed.

83. The CUR 2016 research examined in detail with focus groups the attitudes towards legislation of LGBTI anti-discrimination laws. This included focus groups with religious and parental groups that opposed the introduction of such legislation. Such groups expressed various reasons for opposing the legislation including that it was against “Chinese traditional family values”; it was against their Christian moral beliefs; and that the introduction of such legislation could inhibit the right to freedom of expression and freedom of religion for those who don’t approve of LGBTI people.<sup>62</sup>

#### **(ii) Statements and other action by religious leaders and organisations**

84. There have been various statements, petitions or other action by religious or family related organisations which have actively opposed the introduction of various LGBTI rights.

85. For example, in relation to issues of relationship rights, as previously referred to, the Court of Final Appeal decided in 2019 in the *Leung Chun Kwong v Secretary for Civil Service* case that it was a breach of the Bill of Rights and unlawful sexual orientation discrimination to deny spousal employment benefits and taxation benefits to a same sex couple that was married overseas. However, it should be noted that a group of 27,000 individuals, 80 civil groups and five lawmakers earlier urged the Government to protect “traditional family values” and appeal the High Court decision.<sup>63</sup>

86. The leader of the Catholic Church in Hong Kong Cardinal John Tong Hon has also publicly expressed concerns about the possible introduction of a Sexual Orientation Discrimination Ordinance, and same sex marriage. In November 2019, he issued a notice to the diocese

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<sup>62</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, commissioned by the EOC and conducted by Gender Research Centre of the Hong Kong Institute of Asia Pacific Studies of The Chinese University of Hong Kong, January 2016, pages 112-120, <https://www.eoc.org.hk/eoc/upload/ResearchReport/20161251750293418312.pdf>

<sup>63</sup> Hong Kong Free Press, 24 May 2017, Protect family values’: Hong Kong Gov’t urged to appeal ruling on marriage benefits for gay couple. <https://www.hongkongfp.com/2017/05/24/protect-familyvalues-hong-kong-govt-urged-appeal-ruling-marriage-benefits-gay-couple/>

encouraging people to study the platform of various political parties and candidates standing in the District Council Elections. Cardinal Tong encouraged people to give due consideration to “the stance of each candidate and that of the political party he/she might belong to with regard to the core values of marriage and the family, and the proposal to enact the Sexual Orientation Discrimination Ordinance.” In his view, the inclusion of same-sex marriage and the proposed Sexual Orientation Discrimination Ordinance would challenge and misinterpret the core values and key concepts of marriage and family in Hong Kong.<sup>64</sup>

### **(iii) Evidence of discrimination by religious based organisations**

87. There is also evidence in Hong Kong of discrimination against LGBTI people both in religious based schools, and religious institutions.

88. In relation to schools, the CUR 2016 research examined evidence of discrimination in schools. The research highlighted widespread discrimination in schools against LGBTI students or teachers, including religious based ones. The report noted:

*“The religious background of schools exerts certain influences in the education domain. In Hong Kong, many of the secondary schools are run by Catholic- and Protestant-sponsoring bodies. Even some tertiary institutions are religiously affiliated. The LGBT people in this Study perceived the message that the “conduct of LGBT people is regarded as immoral” is commonly disseminated in assemblies and religious classes, and sometimes incorporated in school curricula such as integrated humanities or liberal studies. These practices convey messages to LGBT students that the school management board and the teachers are inclined to hold negative views about the LGBT community and their behaviour.”<sup>65</sup>*

89. There have also been public reports in the media of religious based schools discriminating against homosexuals by refusing to employ them. According to a news report in 2014, a Christian school imposed a moral contract called the Standard of Biblical Ethics and Integrity. The school said it wanted to uphold ‘good Christian role models’ and has a policy of refusing to hire anyone who is a relationship that is not a heterosexual marriage.<sup>66</sup>

90. In relation to discrimination against LGBTI people within religious institutions, the CUR 2016 research also examined this issue and found:

*“Discrimination in religious communities as reported by LGBT people appeared to be very serious, particularly in the Christian community. It was reported that once a member was suspected to be a homosexual, he or she would often be suspended from serving in the church. In some cases, the LGBT Christians were isolated, forced to have confession in Sunday services, or expelled from the church. Some churches disseminated homophobic messages, which placed the LGBT Christians under huge pressure, or requested their LGBT members to receive “conversion therapy”. In one extreme case, a LGBT clergyman was forced to resign from the church. Many LGBT Christians had to leave their churches, forgoing their youth*

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<sup>64</sup> [Cardinal cautions on same-sex marriage](http://sundayex.catholic.org.hk/node/2358), CATHOLIC NEWS OF THE WEEK, [1st September 2019](http://sundayex.catholic.org.hk/node/2358)

<sup>65</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, page 70.

<sup>66</sup> South China Morning Post, 16 March 2014, <https://www.scmp.com/news/hong-kong/article/1449664/international-christian-school-sha-tin-bans-gay-teachers>

*memories and long time friendships. It was reported that that there was less discrimination within the Buddhist or Taoist community”.*<sup>67</sup>

#### Question 6

**Are there examples where a concept of gender has been used in religious, traditional, or indigenous narratives or values in a manner which promotes the acceptance of persons with diverse sexual orientations or gender identity, or protects LGBT individuals from violence and discrimination as well as covering a wider range of persons?**<sup>68</sup>

91. There is evidence that some religious organisations in Hong Kong are more accepting of LGBTI people and promote their equality. Further, the EOC has done specific work relating to the issues of the relationship between the rights of LGBTI people, while upholding the rights of persons to freedom of religion.
92. As stated previously and highlighted in research conducted in Chinese University in 2020, not all religious persons in Hong Kong opposed LGBTI rights. For example, 49% of religious persons support the introduction of sexual orientation anti-discrimination legislation.
93. There are some religious groups that have actively pledged acceptance and support LGBTI people. An example of this is the Pledge for Christian churches developed by the religious group The Covenant of the Rainbow. This allows religious organisations and religious individuals to sign that they committed to walk together with sexual minorities, providing a safe and respectful environment where sexual minorities may participate freely in church life, as well as affirming the equality of sexual minorities and supporting their claims to civil rights.<sup>69</sup> The Pledge has been organised by 11 Christian based organisations and signed by 755 organisations and individuals to date.
94. In November 2016 an international conference on LGBTI rights and freedom of religion was held in Hong Kong. The conference was organised by the European Union Office to Hong Kong and Macao, the Hong Kong Institute of Asia Pacific Studies of CUHK, the German Consulate to Hong Kong and Macao, and with the support of the EOC. A wide range of stakeholders attended and spoke at the event including politicians, scholars, religious leaders, and those working in the education sector.<sup>70</sup> The focus of the conference was to analyse how LGBTI rights and rights relating to freedom of religion interact and can be appropriately balanced.

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<sup>67</sup> Report on study on legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, page 82.

<sup>68</sup> For relevant examples, see para. 3 of the Independent Expert’s Report to the 73rd Session of the United Nations General Assembly, available at <https://undocs.org/A/73/152>.

<sup>69</sup> <https://rainbowcovenant.com.hk/en/covenant/>

<sup>70</sup> LGBTI Rights and Freedom of religion in Hong Kong and the European Report on the conference 26 November 2016, [https://eeas.europa.eu/sites/eeas/files/lgbt\\_report\\_en\\_final\\_0.pdf](https://eeas.europa.eu/sites/eeas/files/lgbt_report_en_final_0.pdf)

### **Question 7**

**Are there examples in which narratives or “gender ideology,” “genderism” or other gender-related concepts have been used to introduce regressive measures, in particular but not limited to LGBT persons or communities?**

95. The EOC is not aware of examples of narratives of gender ideology, genderism or other gender related concepts to introduce regressive measures towards LGBTI people in Hong Kong.

### **Question 8**

**Are there initiatives taken by States in connection with the right to freedom of religion, belief or conscience (including the figure of conscientious objection) that have had the practical impact of limiting the enjoyment of human rights (including sexual and reproductive rights) of LGBT persons?**

96. The EOC is not aware of any such initiatives by the Government.

### **Question 9**

**Have there been public expressions or statements by political and/or religious leaders that have led to indefinite extension, modification or suppression of actions, activities, projects, public policies or application of gender frameworks?**

97. There have been a number of instances where in response to public complaints by religious or family based organisations or individuals, public bodies have taken action in relation to restricting or criticising publications which depicted homosexuality and same sex relationships.
98. In 2006, RTHK aired a TV programme called “Gay Lovers” which was a documentary style programme which focusing on the day to day lives of two gay couples, looking at their difficulties, their fears and their aspirations. Some Christians complained against the documentary to the Broadcasting Authority. The Broadcasting Authority found that the RTHK programme had breached its Code of Conduct by not remaining impartial in depicting “controversial issues”, and by showing the sensitive programme at a time when children may watch it without parental guidance.
99. A claim was brought before the High Court challenging the finding by the Broadcasting Authority that it was a breach of the right to freedom of expression, and that the restriction was made on the basis of sexual orientation discrimination (that homosexuality may be offensive to certain viewers).<sup>71</sup> The Court decided that the decision by the Broadcasting Authority did in fact breach the right to freedom of expression, and on the basis of a discriminatory factor relating to sexual orientation.
100. In 2018, it was reported that 10 children’s books telling stories relating to same-sex parenting have been moved to the “closed stacks” of Hong Kong’s public libraries, following a campaign

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<sup>71</sup> Cho Man Kit v Broadcasting Authority HCAL 69/2007, High Court, [https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=61024&QS=%2B&TP=JU](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=61024&QS=%2B&TP=JU)

by the Family School Sexual Orientation Discrimination Ordinance Concern Group.<sup>72</sup> The Leisure and Cultural Services Department (LCSD) said the books were moved based on “concerns expressed by various readers.” LCSD acknowledged that the books did not “encourage or criticize same-sex marriage or advocate homosexuality,” and did not involve inappropriate messages, which was why the books could still remain part of the public libraries’ overall collection.

#### **Question 10**

**Who are main actors who argue that the defenders of human rights of LGBT individuals are furthering a so-called “gender ideology”? What are their main arguments? Have they been effective in regressing the human rights of LGBT individuals? Have their strategies directly or indirectly also impacted on the human rights of women and girls?**

101. The EOC is not aware of their being major strategies or arguments in Hong Kong that defenders of human rights of LGBTI individuals are furthering a gender ideology, or that this has impacted on the human rights of women and girls.

#### **Question 11**

**Can you provide examples of coalitions working together on resisting attacks on gender ideology? Please share examples of feminist and LGBT and other groups working together and with what kinds of frameworks, arguments and results?**

102. Given the response to Question 10 above, the EOC is not aware of examples of coalitions working together on resisting attacks on gender ideology.

#### **Question 12**

**What policies, programs and/or practices has the State adopted to meet Sustainable Development Goals 5 (gender equality) and 10 (reduced inequalities)? Do these rely on gender frameworks inclusive to diverse sexual orientations and gender identities and/or aiming to address violence and discrimination based on sexual orientation and gender identity? Please identify relevant examples.**

103. The EOC is not aware of specific policies programs or practices the Hong Kong Government has adopted to meet Sustainable Development Goal 5 or 10.
104. The Government has introduced a system of gender mainstreaming involving the integration of gender perspectives and needs in legislation, policies or programmes, as well as in the design, implementation, monitoring and evaluation processes. The gender mainstreaming work includes a gender mainstreaming checklist for Government bodies to use, a gender focal point network, and gender benchmark for appointing female non-official members to

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<sup>72</sup> 20 June 2018 “Children’s books with LGBTQ themes disappear from shelves at Hong Kong libraries amid pressure from anti-gay group” Hong Kong Free Press, 20 June 2018, <https://hongkongfp.com/2018/06/20/childrens-books-lgbtq-themes-disappear-shelves-hong-kong-libraries-amid-pressure-anti-gay-group/>



Government Advisory and Statutory Bodies.<sup>73</sup> These focus on women's equality, and do not specifically include in the frameworks measurements relating to sexual orientation or gender identity.

105. The Government does refer to its work ensuring gender equality and reducing inequalities in its reports on compliance with the core United Nations international human rights treaties which apply in Hong Kong, such as the ICCPR and the ICESCR as previously discussed, as well as in relation to CEDAW, CERD and CRPD.

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<sup>73</sup> [https://www.lwb.gov.hk/Gender\\_Mainstreaming/en/background/](https://www.lwb.gov.hk/Gender_Mainstreaming/en/background/)