



LGBTI Rights

There were no recommendations made on the Hong Kong Special Administrative Region, China (HKSAR) in the Second UPR Cycle.

Framework in HKSAR

The HKSAR government has consistently refused to take legislative steps to protect the human rights of LGBTI people. LGBTI rights are often ignored by the HKSAR government, despite sustained advocacy and widespread public support. According to a 2016 study, the majority of the HKSAR public agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity, and intersex status. However, the HKSAR Government has made no progress on or plan for such legislation. Additionally, the Hong Kong Law Reform Commission has proposed revisions to the sexual offences legislation that uses a definition of rape to include genitals reconstructed after sex reassignment surgery, but the HKSAR Government has not addressed this proposal.

The Convention against Torture (CAT) applies to HKSAR. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) apply to HKSAR. Article 39 of the Basic Law provides that they shall be implemented through HKSAR laws.

Challenges

- HKSAR lacks legislation to prohibit discrimination on the grounds of sexual orientation, gender identity, gender expression, and sex characteristics in the private sector, limiting equal protection of LGBTI persons before the law, in a manner consistent with Article 26 of the ICCPR.
- HKSAR does not adequately uphold the right of legal recognition, right to bodily and mental integrity, and the right to privacy of transgender persons. Policies and laws remain inconsistent with the Yogyakarta Principles plus 10, CAT and the ICCPR.

Cases, facts and comments

- Research funded by the Equal Opportunities Commission in 2016 found that nearly 60% of the HKSAR public agreed that there should be legal protection against discrimination on the grounds of sexual orientation, gender identity, and intersex status, and those aged 18–24 are especially supportive of legislation (91.8% in support).
- In a study done by the HKSAR Government, 214 LGBTI people were interviewed and 251 instances of discrimination were reported. 40% reported employment discrimination.
- If a transgender person wishes to change their gender marker on official documents, the Government requires that they undergo full genital sex-reassignment surgery, which normally results in their sterilization. Even then the legal status of the transgender person is unclear.
- The privacy of transgender people's personal data is not protected after they have changed their gender marker. A wide range of institutions, such as banks and financial services companies, can access, record, and disclose their personal history of gender change as there is no law to regulate disclosure.



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Recommendations

- HKSAR should adopt legislation prohibiting discrimination on grounds of sexual orientation, gender identity, gender expression, and sex characteristics in all public and private sectors and provide positive duties on the part of the Government to promote equality on these grounds within one year.
- HKSAR should take all necessary legislative, administrative, and other measures to guarantee respect for the autonomy and physical and psychological integrity of transgender and intersex persons by removing preconditions for legal recognition of gender identity, such as sterilisation.
- HKSAR should immediately guarantee that non-urgent or unnecessary medical interventions are postponed until an intersex child is sufficiently mature to participate in decision-making and give full, free and informed consent.
- HKSAR should revise sexual offences legislation to include genitals reconstructed after sex reassignment surgery for definition of rape and in line with recommendations from the Hong Kong Law Reform Commission, and international best practices and standards, within two years.
- HKSAR should introduce mandatory, inclusive, and comprehensive sexuality education curriculum in schools, including LGBTI-specific content, to promote and protect the sexual health of students by the 2019/20 academic year.

Questions to ask in advance

- *Evidence shows that the majority of the people in HKSAR support legislation on sexual orientation and gender identity discrimination. Why has the HKSAR Government made no progress on this legislation? What legislative actions will the HKSAR Government take in the next two years to ensure equal protection of LGBTI persons before the law?*
- *What is the schedule for the HKSAR Government to finish work on the "Gender Recognition public consultation"? When will the HKSAR Government plan to introduce legislation and policies to affirm legal recognition of the gender identity of transgender and intersex persons that respects their autonomy and physical and psychological integrity?*
- *What percentage of HKSAR schools provide comprehensive sexuality education to students with LGBTI-inclusive content? Can you please break that down by primary and secondary education stages, as well as by district. What actions will the Education Bureau take in the next two years to incorporate the Yogyakarta Principles plus 10 into sexuality education?*
- *How many intersex infants' genital surgeries were done by HKSAR public hospitals in the past 5 years? How will the HKSAR Government reform medical procedures on intersex infants so that medical interventions are delayed until intersex child are mature to make decisions?*

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