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Submission to the Bills Committee on Marriage (Amendment) Bill 2014

Amnesty International Hong Kong considers the proposed Marriage (Amendment) Bill 2014, with requirement of surgery before transgender persons could get married, a clear violation of their human rights.

Amnesty International HK is deeply concerned at Bill which intends to write genital reassignment surgeries¹ including the removal of all reproductive organs and the constructions of organs of the person's experienced gender, into the law.

The genital reassignment surgeries result in irreversible sterilization as they involve the removal of either the testes or uterus, depending on their transitioning toward the female or male gender. This should not be a requirement for changing their legal gender, or hinder their right to marriage. Clause 4, 40A, of the proposed amendment is clearly a violation of rights of transgender persons.

Such sterilization requirement violates the physical integrity of transgender persons and their right to be free from inhuman, cruel or degrading treatment, which is protected under international human rights laws, including International Covenant on Civil and Political Rights (ICCPR) Art. 7, and the UN Convention against Torture and Inhuman, Cruel or Degrading Treatment or Punishment Art. 16.

The right to obtain documents that reflect gender identity is a right protected by international human rights standards including ICCPR Art. 16 and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Art. 15).

¹ Referred to in Hong Kong as sex reassignment surgery.

Marriage right is protected also under international human rights laws including ICCPR Art. 23. The right to respect for private and family life is protected under ICCPR Art. 17. The requirement of surgery would make marriage impossible for many transgender persons, due to medical or other reasons.

In the 22nd session of UN Human Rights Council meeting, in the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, when transgender persons are required to undergo unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their experienced gender, resulted in permanent sterility and irreversible changes to the body, it is considered to be interfering in their family and reproductive life, and amount to a severe and irreversible intrusion into persons' physical integrity².

"The Special Rapporteur calls upon all States to repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, "reparative therapies" or "conversion therapies", when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups."³

Amnesty International HK urges the Hong Kong Government to:

- abolish any medical requirement, including surgeries and sterilization, in relation to legal gender recognition and marriage;
- provide explicit legal protection against discrimination on grounds of gender identity and expression in all areas;

Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

² A/HRC/22/53 [1 February 2013] – "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez", para. 78.

³ Ibid., para. 88.