



Clerk to Panel on Administration of Justice and Legal Services
The Legislative Council Secretariat (Attn: Ms Emily LIU)
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

17 November 2017

Dear Ms Liu,

Panel on Administration of Justice and Legal Services: "Consultation Paper on Gender Recognition issued by the Inter-departmental Working Group on Gender Recognition in June 2017"

On behalf of The Professional Commons I would like to make a short submission to the panel on the above captioned consultation paper. We will not be making a long submission as our views are well documented in our original submission to the IWG – see attached.

Basically we would encourage the Panel to consider the simple, legal, aspects of the proposed legislation. The Hong Kong Government has been given clear instructions by the Court of Final Appeal in the “W” case that they should move to implement a Gender Recognition Ordinance based upon the current UK legislation. We would urge the panel to pressure the Government into implementing this instruction as soon as possible. It has now been three years since that judgement was handed down, and nothing has happened, except a time-wasting exercise in “consultation”. This is unacceptable.

We also urge the Panel to ensure that the Hong Kong Government lives up to its international obligations. These are numerous. On this issue we fully support, and quite from, an analysis¹ on recent international developments and recommendations regarding gender recognition legislation and related issues.

¹ Private communication

First, on 22 April 2015 the Parliamentary Assembly of the Council of Europe made a resolution “Discrimination on transgender people in Europe”.² This was the first resolution by the Parliamentary Assembly specifically on transgender issues. The Council of Europe is the largest international human rights organisation in Europe, with 47 Member States. Although the resolution relates to Europe, similar issues and concerns arise in Hong Kong. The resolution regretted the widespread discrimination that transgender people face in Europe and stated:

“3. The Assembly is concerned about the violations of fundamental rights, notably the right to private life and to physical integrity, faced by transgender people when applying for legal gender recognition; relevant procedures often require sterilisation, divorce, a diagnosis of mental illness, surgical interventions and other medical treatments as preconditions.”

As a result, the Assembly made a series of recommendations to all Council of Europe Member States, including to:

“6.1 as concerns anti-discrimination legislation and policies:

6.1.1 explicitly prohibit discrimination based on gender identity in national non-discrimination legislation and include the human rights situation of transgender people in the mandate of national human rights institutions, with an explicit reference to gender identity;

...

6.2 as concerns legal gender recognition:

6.2.1. develop quick, transparent and accessible procedures, based on self-determination, for changing the name and registered sex of transgender people on birth certificates, identity cards, passports, educational certificates and other similar documents; make these procedures available for all people who seek to use them, irrespective of age, medical status, financial situation or police record;

6.2.2. abolish sterilisation and other compulsory medical treatment, as well as a mental health diagnosis, as a necessary legal requirement to recognise a person’s gender identity in laws regulating the procedure for changing a name and registered gender;

6.2.3. remove any restrictions on the right of transgender people to remain in an existing marriage upon recognition of their gender; ensure that spouses or children do not lose certain rights;

² Council of Europe, Resolution 2048 (2015),

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21736&lang=en>

6.2.4. *consider including a third gender option in identity documents for those who seek it;*

6.2.5. *ensure that the best interests of the child are a primary consideration in all decisions concerning children...*"

Secondly, in October 2015 the World Medical Association (WMA) made a statement on transgender peoples' rights.³ The WMA is an international organization representing physicians. It was founded in 1947 to ensure the independence of physicians, and to work for the highest possible standards of ethical behaviour and care by physicians at all times. Its work includes promoting human rights protection in relation to issues of healthcare.

The statement notes:

"Transgender people are often professionally and socially disadvantaged, and experience direct and indirect discrimination, as well as physical violence. In addition to being denied equal civil rights, anti-discrimination legislation, which protects other minority groups, may not extend to transgender people. Experiencing disadvantage and discrimination may have a negative impact upon physical and mental health."

The statement also makes a number of recommendations including:

"3. The WMA affirms that, in general, any health-related procedure or treatment related to an individual's transgender status, e.g. surgical interventions, hormone therapy or psychotherapy, requires the freely given informed and explicit consent of the patient.

...

7. The WMA condemns all forms of discrimination, stigmatisation and violence against transgender people and calls for appropriate legal measures to protect their equal civil rights. As role models, individual physicians should use their medical knowledge to combat prejudice in this respect."

Thirdly, on 8 October 2015 a group of organisations led by the United Nations Development Programme published a comprehensive report on transgender health and human rights issues in the Asia Pacific region.⁴ The report included references to the current situation and concerns regarding legal gender recognition of transgender people in Hong Kong.

³ <http://www.wma.net/en/30publications/10policies/t13/>

⁴ Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific, United Nations Development Programme,

<file:///C:/Users/peterreading/Downloads/rbap-hhd-2015-asia-pacific-trans-health-blueprint.pdf>

The report noted that few jurisdictions in Asia have anti-discrimination legislation relating to gender identity.⁵ In relation to issues of legal gender recognition the report states:

“In other countries, laws and policies limit gender recognition to a minority of trans people, with strict stipulations that violate other human rights. One of these is requiring trans people to undergo all gender-affirming medical surgeries— often discussed in laws as “full sex reassignment surgery.” This requirement has been heavily critiqued by UN agencies, human rights experts, and health professional bodies (WHO, 2014; Méndez, 2013; Global Commission on HIV and the Law, 2012; WPATH Board of Directors, 2015; International Commission of Jurists, 2007).

Although many trans people wish to medically transition, the steps involved mean it is often a long-term goal. For other trans people, it is never a possibility because of financial, medical, or personal reasons. This is particularly true for trans men, as creating male genitals involves multiple stages of surgery; frequent technical difficulties and postoperative complications mean only a small minority of trans men have such operations (Coleman et al., 2011). If legal gender recognition requires such medical steps, trans people can be forced to spend many years, or all of their lives, with no legal verification of their gender identity.”⁶

In relation to the specific situation in Hong Kong the report states:

*“Gender recognition laws in Japan, Singapore, South Korea, Taiwan, **Hong Kong SAR**, China, and mainland China all require gender reassignment surgeries and sterilisation. In Singapore and **Hong Kong SAR**, China, even after undergoing these procedures, trans people can change the gender markers only on their National Registration Identity Cards, not their birth certificates.”⁷*

The report contains a series of recommendations including on the specific issues of introducing anti-discrimination legislation and gender recognition legislation which fully respects transgender peoples’ human rights.

The report recommends that governments in the Asia Pacific region introduce anti-discrimination legislation:

⁵ Ibid page 26.

⁶ Ibid page 63.

⁷ Ibid page 64.

“Ensure that trans people are protected under anti-discrimination provisions and audit other existing or proposed laws to ensure they protect trans people regardless of their gender identity, gender expression, or sex.”⁸

In relation to legal gender recognition the report also recommends that governments:

“Take all necessary legislative, administrative, and other measures to fully recognise each person’s self-defined gender identity, with no medical requirements or discrimination on any grounds.

Review or repeal laws or policies that deny trans people the right to have their affirmed gender recognised in identification documents

Ensure that gender recognition procedures are accessible, fair, and non-discriminatory, and respect trans people’s dignity and privacy; and that changes to identity documents will be recognised in all legal and administrative contexts”⁹

Fourthly, on 3 February 2016, the United Nations Committee Against Torture published its Concluding Observations in relation to the Hong Kong government’s compliance with the Convention Against Torture.

In relation to transgender persons the Committee stated:

“28. While welcoming the setting 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 removal of reproductive organs, sterilization and genital reconstruction, in order to obtain legal recognition of their gender identity.”¹⁰

It also recommended:

“29. Hong Kong, China should:

⁸ Ibid page 111.

⁹ Ibid page 112.

¹⁰ 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,

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/38/PDF/G1601738.pdf?OpenElement>

(a) 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..."

In conclusion, The Professional Commons, taking into account the legal and moral obligations placed on the Hong Kong Government, as highlighted above, support the adoption of a gender recognition ordinance based as close as possible on the current UK Gender Recognition Act.

Thank you for giving us the opportunity to make a submission to the Panel.

Yours faithfully,



Dr Robin Bradbeer

Policy Convener, The Professional Commons Task Force on Transgender Law Reform Ordinance