Report on the International Conference:

LGBTI

Rights and freedom of religion in Hong Kong and the European Union

28th November 2016, Yasumoto International Academic Park, the Chinese University of Hong Kong.

Co-organised by the European Union Office to Hong Kong and Macao, the Gender Research Centre of the Chinese University of Hong Kong and the Consulate General of Germany in Hong Kong with the support of the Hong Kong Equal Opportunities Commission.

Organised by:

With the support of:
On 28th November 2016, the European Union Office to Hong Kong and Macao, the Gender Research Centre (GRC) of the Chinese University of Hong Kong (CUHK) and the Consulate General of Germany in Hong Kong co-organised the international conference *LGBTI Rights and Freedom of Religion in Hong Kong and the European Union*, with the support of the Hong Kong Equal Opportunities Commission (EOC). Religious and civil society experts from Ireland, The Netherlands, Germany, Taiwan and Hong Kong discussed issues faced by lesbian, gay, bisexual, transsexual and intersex people (LGBTI) in Hong Kong and the European Union (EU). The discussion focused on ways to ensure equality and non-discrimination for LGBTI people, while taking into account the rights of religious groups and individuals.

The LGBTI Rights and Freedom of Religion in Hong Kong and the European Union international conference builds on the Working Together for an Inclusive Society: LGBTI Rights in Comparative Perspective international conference, co-organised by the European Union Office to Hong Kong and Macao, the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong and the EOC, on 28th and 29th August 2014, and further focuses on the specific issue of the relationship between LGBTI peoples’ rights to non-discrimination and freedom of religion, and how those rights can be reconciled. Both conferences compared the situation in Hong Kong with other jurisdictions in the European Union in terms of what lessons can be learned to advance the issues in Hong Kong.

**Background to the conference: LGBTI rights in the European Union**

The #EU4HumanRights initiative was launched in 2016 by the EU High Representative/Vice-President (HRVP) Federica Mogherini. Under its banner, the EU and its 28 Member States called for a year of human rights activism and global campaigning.

The rights of LGBTI persons are protected under existing international human rights law. For LGBTI persons to fully enjoy these rights, specific action is however often required. The EU is committed to the universality of human rights and reaffirms that cultural, traditional or religious values cannot be invoked to justify any form of discrimination, including discrimination against LGBTI persons. Based on these principles, LGBTI persons have the same rights as all other individuals.

The prohibition of discrimination is a fundamental principle of the European Union. EU-wide legislation ensures protection against discrimination on the basis of religion or belief, disability, age, sexual orientation in the following employment areas – covered by the EU Employment Equality Directive:

- Access to employment (recruitment) and vocational training
- Working conditions and access to self-employment/other forms of occupation
- Occupational pensions
- Equal access of partners to employment benefits.
**The LGBTI Rights and Freedom of Religion in Hong Kong and the European Union international conference**

EU Member States are obliged to apply these EU laws that prohibit discrimination based on sexual orientation. 13 of 28 EU Member States go beyond this and have extended protection to education and other social spheres such as healthcare, social security, public housing and other public goods and services. Seven EU countries, however, still limit protection to the area of employment. At the EU level, efforts to increase all levels of protection throughout the EU continue.

Framing discrimination on the ground of gender reassignment as a form of sex discrimination is confirmed by the Court of Justice of the European Union (CJEU). It means that that the instruments implementing the principle of equal treatment between men and women should be interpreted broadly to cover discrimination on grounds of intended or actual reassignment of gender. The EU Commission has commented that:

So far the CJEU has only ruled on gender reassignment. There is no case law concerning gender identity more generally speaking as covered by the protection against sex discrimination but the Commission considers that the approach should be materially similar

This means that trans people who do not intend to undergo any kind of medical gender reassignment should still be covered under the ground of sex. The term ‘gender expression’ may still be interpreted as somewhat broader in its coverage.

Hate speech on the grounds of sexual orientation is a criminal offence in 20 EU Member States since 2015. However, underreporting and a lack of statistics on hate speech and crimes on the grounds of sexual orientation and gender identity remain problems across the EU.

11 EU countries allow same/sx marriage: Belgium, Denmark, Finland, France, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom (excluding Northern Ireland). A form of civil union other than marriage exists in 22 EU member states. The exceptions are: Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia. 19 EU Member States grant entry and residence rights to same-sex registered partners.

In EU countries, the social acceptance of LGBTI persons at work ranges from 21% in Slovakia to 94% in Sweden. 60% of EU citizens generally see discrimination based on sexual orientation and gender identity as widespread. At the same time, 71% of Europeans support gay, lesbian and bisexual people to have the same rights as heterosexual people. 61% think that same sex marriages should be allowed throughout Europe.

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There is currently no comprehensive legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong (HK). The human rights legislations of the Bill of Rights and Basic Law do provide protection from discrimination, including in relation to sexual orientation and gender identity, but they only apply to the government and public bodies.

In relation to same-sex relationships, the HK Government does not legally recognise same-sex relationships; whether marriages, civil unions or any other form of relationship, even where such couples are in legally recognised relationships overseas. There are currently only two situations where there is some degree of recognition with limited effect:

(i) HK legislation does recognise same-sex cohabiting couples regarding domestic violence, and (ii) where a person has to make a medical decision on behalf of their same-sex cohabiting partner who is unable to do so themselves. HK employers are also guided by the Government’s ‘Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation’ (1996–97). However, the Code of Practice is not legally binding and it only applies to sexual orientation, not gender identity or intersex status.

In relation to transgender people, the Government’s current policy is that a person must undergo genital sex reassignment surgery which results in sterilisation, in order to legally change their gender (e.g. on ID cards and passports). This practice is internationally considered to be a breach of the human rights of transgender people because it constitutes a form of inhumane and degrading treatment. A decision by the Court of Final Appeal in 2013 decided that transgender people have a right to marry in their affirmed gender a person of the opposite sex. The court also recommended the enactment of comprehensive gender recognition legislation to set out the process for gender recognition and related rights, but to date no such legislation has been introduced or consulted on by the Government.

In November 2012, the then legislative councillor Cyd Ho submitted a motion in the Legislative Council to debate whether there should be consultation on prohibiting discrimination on the ground of sexual orientation. However, the motion was rejected.

On 26th January 2016, the ‘Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status’ was released. It was conducted by the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at the Chinese University of Hong Kong and commissioned by the EOC. The study revealed that discrimination against LGBTI people is a common occurrence in Hong Kong. The study also found that public opinion has noticeably shifted in favour of legislation against discrimination on the grounds of sexual orientation, gender identity, and intersex status. Over half (55.7%) of the telephone survey respondents agreed with legislation against discrimination – nearly double the comparable figure from a decade ago. Notably, the vast majority of youth (91.8%) considered anti-discrimination legislation necessary and nearly half (48.9%) of those with religious views also concurred. The study provided a comparative legal analysis of the LGBTI anti-discrimination legislation in seven jurisdictions, a number of which have similar legal systems to Hong Kong: Australia, the United Kingdom, Canada, New Zealand, the Netherlands, Taiwan and Macao.
The report concluded that the Hong Kong Government should launch a public consultation to pass legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status. The report stated that it is crucial that such consultation should contain as many details as possible to minimize misunderstandings and unnecessary anxieties. In consulting the public, the report recommended that the Government should provide clear definitions of the coverage of any possible legislation, including possible domains to be covered, and potential exemptions. The report also concluded that it would be important to explain aspects that are outside the scope of anti-discrimination legislation, for example the question of whether to legalise same sex marriage or civil unions.

In a separate exercise, the EOC conducted the ‘Discrimination Law Review’ to modernise all the existing anti-discrimination legislation. On 29th March 2016, the EOC released its recommendations, including that the HK Government should consult on and introduce protection from discrimination for persons in cohabiting relationships (heterosexual and same-sex), review other discriminatory legislation relevant to persons in cohabiting relationships, and consider possible methods for legally recognising cohabiting relationships.9

In relation to transgender people, the EOC has also made submissions and recommendations to the Government to introduce gender recognition legislation, and end the policy requiring genital sex reassignment surgery to legally change gender.10

In a few of these exercises, some members of religious groups expressed concern over the possible effects of the introduction of legislation against discrimination on the grounds of sexual orientation, gender identity and intersex status, as well as the potential legal recognition of same sex relationships. Their concerns related to the perceived impact such legislative changes could have on their rights, such as freedom of religion and freedom of expression.

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2 The situation can be contrasted with the fact that there is currently comprehensive anti-discrimination legislation relating to sex, pregnancy, marital status, family status, disability and race.


Welcoming remarks

Carmen Cano, Head of the European Union Office to Hong Kong and Macao, reiterated the commitment of the EU to the universal protection and fostering of human rights. Ms Cano pointed out that the LGBTI community continues to face widespread discrimination in employment, housing, education and healthcare, as well as being subject to violence.

“Discrimination is never right, and those who defend equality must do so for all. If Hong Kong aims to continue to be ‘Asia’s World City’ and attract foreign talents, it needs to tackle discrimination against LGBTI people. [...] LGBTI people deserve the same rights as all other individuals – no new human rights are created for them and none should be denied to them. It is simply about equality and the respect of diversity.”

Professor Alfred Chan, Chairperson of the Hong Kong Equal Opportunities Commission, highlighted findings from the 2016 ‘Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status’ which revealed that over half of Hong Kong’s population (55.7%) supports legislation to protect LGBTI people from discrimination. Among those respondents aged 18-24 year olds, this support reaches 91.8%. Despite this public support, LGBTI people in Hong Kong do not have access to equal education or employment opportunities and face problems accessing healthcare. There is also legal concern with regard to recognising same sex relationships and transgender people's rights. He welcomed the conference for bringing learning experiences from other jurisdictions, in particular to consider whether exemptions may be appropriate in some instances to respect freedom of religion.

“We must communicate constructively and sensitively, abolishing bullying and violence, and dispel the myths of stereotypes. [...] We are only working to protect the rights of the LGBTI people, providing them for the same rights, not anything more, but also not anything less.”
Welcoming remarks

Professor Fanny Cheung, Director of the Hong Kong Institute of Asia-Pacific Studies, the Chinese University of Hong Kong welcomed the delegates to the conference. Professor Cheung highlighted the aim of the conference, which was to engage policy makers, LGBTI experts and advocates, as well as religious figures, and provide a solid platform to learn from international experiences and identify practical solutions for eliminating discrimination and promoting LGBTI equality in the local context. Professor Cheung highlighted the importance of evidence-based advocacy and the role of the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies in collecting evidence on LGBTI issues in Hong Kong.

Karsten Tietz, Deputy Consul General of the German General Consulate to Hong Kong, said that faith does not require discrimination. He pointed to the experiences of many churches in Europe that support the rights of LGBTI people, while freedom of religion can be respected.

Keynote Speech by Prof. Isolde Karle:

"Homosexuality and the Church: No discrimination required!"

Prof Isolde Karle, Head of the Institute for Religion and Society at the Ruhr University of Bochum, Germany, argued that perceptions of homosexuality have been changing in European churches. The latest theological studies highlight how the New Testament celebrates liberation from oppression and welcomes diversity. Sexual identity is part of this human diversity and must be accepted as such. Many churches embrace LGBTI rights, but some still reject them, choosing instead to remain rooted in their historical rejection of homosexuality. Equality between males and females has been boosted through work and equal pay legislation. Prof Karle said it was time to take steps to ensure equality for LGBTI people.
Dr Jolita Pons, Head of the Political, Press & Information Section of the EU Office to Hong Kong’s, noted that LGBTI people in Europe still face social exclusion and violence, particularly in the education sector. Many LGBTI people therefore conceal their sexual orientation or gender identity. Article 21 of the ‘Charter of Fundamental Rights of the EU’¹¹ is the first international human rights instrument to expressly prohibit discrimination on the ground of sexual orientation. The Charter is binding and the EU has the authority to launch infringement procedures against a Member State for violation of the Charter.

Peter Reading, Legal Counsel at the Hong Kong Equal Opportunities Commission, highlighted that the Hong Kong Government needs to show leadership in tackling LGBTI equality. Despite the United Nations’ repeated recommendations to the Government to enact legislation against discrimination on the grounds of sexual orientation and gender identity, such laws have still not been introduced. Hong Kong’s protection of LGBTI rights lags behind other jurisdictions in Asia such as Taiwan, where discrimination on the grounds of sexual orientation, gender identity and gender expression is prohibited in the areas of employment and education; Macao, where discrimination on the ground of sexual orientation is prohibited in employment; and Thailand which in 2015 enacted legislation against discrimination of LGBTI people.

It is possible to develop LGBTI legislation which respects religion, freedom of expression and freedom of privacy. There is a need for leadership and commitment by the Hong Kong government. Dialogue, mutual respect and trust between LGBTI and religious groups can advance the issues.
Prof Suen Yiu Tung, Associate Director of the Gender Research Centre at the Chinese University of Hong Kong presented findings from the comprehensive 'Study on Legislation against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status'. He presented concrete evidence of LGBTI people encountering discrimination in employment, education, service provision, and management and disposal of premises. Bullying of LGBTI students in Hong Kong remains prevalent, particularly in some schools with religious affiliations, where homosexuality is sometimes described as immoral. LGBTI people have also described how churches have asked them to leave or publicly confess to their sexuality. However, Prof Suen also highlighted that 55.7% of the general public agreed with legislation to protect against discrimination on the grounds of sexual orientation, gender identity and intersex status, with the support among those aged 18-24 at a staggering 91.8%. Even among the respondents with religious beliefs, the support was at 48.9%. Despite some public concern that anti-discrimination legislation could potentially be in conflict with freedom of religion and expression, he argued that there are ways to move the debate forward.

Recommendations

- The Hong Kong Government should begin a public consultation on introducing legislation against discrimination on grounds of sexual orientation, gender identity and intersex status without delay, and then proceed to introduce that legislation in accordance with the recommendations of the United Nations.

As part of the public consultation and development of draft legislation, the Hong Kong Government should:

- Consider the relationship between the rights of LGBTI people not to be discriminated against, and the rights of others in relation to freedom of thought, conscience and religion; freedom of expression and the right to privacy.

- Consider the extent to which exemptions may serve a legitimate aim and be proportionate in relation to any areas including freedoms of religion, expression and the right to privacy.

- Take into account the structure, exemptions and practical experience of the existing anti-discrimination legislation in Hong Kong, as well as the experience of similar jurisdictions which have LGBTI anti-discrimination legislation.

- The Hong Kong Government should consider whether there is evidence of discrimination on grounds of religion or belief, and whether it may be appropriate to consult on and introduce anti-discrimination legislation on grounds of religion or belief.


Religious groups are encouraged to increase their engagement with and understanding of sexual minorities within their faiths.
Recommendations

• Legislative Council members should play an active role in advocating for LGBTI anti-discrimination legislation and other legislative provisions which promote equality and eliminate discrimination against LGBTI people in Hong Kong.

• Legislative Council members should hold the Government and the Equal Opportunities Commission to account in terms of their work to promote equality and eliminate discrimination against LGBTI people in Hong Kong.

• LGBTI civil society organisations should continue to engage with different stakeholders including the media to improve the general public’s understanding of LGBTI people, and the particular issues they face in society. In doing so, it would be beneficial to emphasise personal stories of LGBTI people so issues are more easily understood and relatable.

• LGBTI civil society organisations should widen support from allies in society such as heterosexual family members and friends, religious groups, the business sector, Legislative Council members, and other groups to improve the advocacy for LGBTI equality.
Ryan Lee Chun Yin, Queer Straight Alliance, presented the work that the Hong Kong LGBTI student organisation Queer Straight Alliance has been doing, in particular its mentorship programme which provides guidance to LGBTI youth. He highlighted that LGBTI students in schools are still bullied and shared how teachers or social workers ignore or take part in the bullying due to their lack of training on working with LGBTI youth.

Michael Barron, director of EQUATE, shared his experience successfully campaigning for same-sex marriage legalisation in Ireland and advocating for greater equality in schools. He highlighted how Ireland and Hong Kong share the strong influence of the Catholic Church on education. He also emphasised that the rights of LGBTI people to education shall be understood from the perspective of the children, rather than the interests of other stakeholders. For example, denying the rights of same-sex parents also means denying the rights of the children of such same-sex couples.

Chang Hong Cheng, Adjunct Lecturer in Law at the National Taiwan University of Science and Technology, shared the experience of the LGBTI community in Taiwan. He highlighted his experience teaching gender and sexual diversity from the perspective of legal training and recommended that more educational materials should be developed to teach LGBTI equality in academic settings.

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“It is important for students to interact with LGBTI community, to understand what problems they face. Face-to-face discussions help everyone understand and help students to overcome their personal fears.”

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Recommendations

• Schools should adapt the curriculum to include material on promoting equality and respect for all groups in society, including LGBTI people. Particular focus should be placed on preventing violence and bullying of LGBTI students as part of the duty of schools to act in the best interests of children.

• Educators at all levels should be trained in addressing bullying in all its forms and in creating a safe space for LGBTI students.

• In higher education courses related to equal rights and LGBTI issues, educators should facilitate students the chance to directly interact with LGBTI communities in order to better understand the challenges they face.

• Student groups in higher education should continue to provide opportunities to foster greater understanding and provide support and guidance to LGBTI people.

• LGBTI student groups should widen their engagement with allies in in other student bodies and diversify their outreach.

Reverend Wielie Elhorst, co-initiator of the declaration of Dutch churches against physical/verbal violence against LGBTI community and author of the book ‘Coming out Churches’ stated that amongst all churches, those in the Netherlands are perhaps the most supportive of LGBTI people. The Netherlands’ liberal culture, strong access to education on LGBTI issues, the more ‘humanised’ view of LGBTI people among religious groups and the growing visibility of LGBTI people have generated a positive view of LGBTI people in churches.

"The LGBTI Christian voice can deconstruct oppressive narratives [...] and show that certain values do not oppose each other but can rather be shared and complement each other"
Reverend Grace Bok, Hong Kong’s ‘Covenant of the Rainbow’, argued that anti-discrimination legislation for LGBTI people has not been introduced in Hong Kong because many people in senior positions in the Hong Kong government are Catholic or Christian. Reverend Bok said that LGBTI rights are repressed mostly by religious groups. She highlighted that there are LGBTI-friendly fellowships in Hong Kong and shared her experience working with the ‘Covenant of the Rainbow: Towards a Truly Inclusive Church’ campaign, which has been initiated by Christian organisations, local churches and theological student fellowships from diverse backgrounds in Hong Kong.

Recommendations

- Religious leaders and groups should encourage pastoral practice which promotes respect and care for everyone in society, including LGBTI people.

- Religious groups supportive of LGBTI rights should voice their support and raise and foster better understanding of the different perspectives on issues of LGBTI equality within religion.

- In Hong Kong, LGBTI civil society organisations should educate and engage in capacity building for religious LGBTI people, in order to advocate and/or be partners in dialogue in their own religious institutions.

Panel 5: Closing remarks and lessons to be learned

Jolita Pons, EU Office to Hong Kong and Macao - The EU welcomed the strong interest from the public in addressing equal rights for LGBTI people. Sharing expertise from so many different countries created an in depth discussion and provided many solutions on how to achieve equal rights. Non-discrimination is a core EU value, as it is in Hong Kong.
Peter Reading, Equal Opportunities Commission - The EOC was pleased to continue to support LGBTI conferences with a long-term view to advance the issues. A critical issue is to find solutions to the barriers to equality and a way forward. Other parts of the world have demonstrated that it is feasible, whether through legal, legislative or educational means – to advance LGBTI rights. The cases of Taiwan and Ireland show great promise in the education sector, with a focus on curriculums which include coverage of LGBTI equality. Finally, a diversity of views exists within religions – in Hong Kong and in other parts of the world. There are ways of achieving mutual respect and tolerance for all groups in society.

Prof Suen Yiu Tung, Gender Research Centre, Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong – The Gender Research Centre pledged to continue to conduct research that informs legal and social policy debates on sexual orientation, gender identity and intersex status in Hong Kong and beyond. The experiences from different parts of the world demonstrate that LGBTI people continue to face notable discrimination in different forms in various domains of life. Law, social policy, service provision and education need to go hand in hand to ensure the protection of equal opportunities for LGBTI people. Not all religions have negative attitudes towards LGBTI people. Views within the same religion are also diverse. Even if there are legitimate concerns about freedom of religion in legislating against discrimination on the grounds of sexual orientation, gender identity and intersex status, religion-related exemptions can be included in the new legislation. Freedom of religion should not be used as an excuse to halt the legal and social policy reforms to move forward.

Religious groups are encouraged to increase their engagement with and understanding of sexual minorities within their faiths.