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The Legislative Council of the
Hong Kong Special Administrative Region
Panel on Constitutional Affairs

Written Submission by the Tongzhi Community Joint Meeting

1. The Panel on Constitutional Affairs has invited interested parties to give views on the proposed outline of the topics to be included in the third report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights.
2. The Tongzhi Community Joint Meeting (TCJM) is an alliance of a number of Hong Kong's *tongzhi* groups formed to provide resources to the *tongzhi* community and to campaign for reforms to Hong Kong's legal and administrative systems to prevent discrimination on the grounds of sexual orientation and gender identity. *Tongzhi* (同志) is a Chinese word, often translated as 'comrade', which refers to people of different sexual orientations and gender identities in the Chinese-speaking world.
3. The TCJM supports the establishment of a human rights institution for the purpose of promoting the protection and education of human rights and monitoring the implementation of the various international human rights treaties signed by Hong Kong, as discussed on 21 June 2005 by the Home Affairs Panel. The Economic and Social Council of the United Nations replied on 13 May 2005 to the second report of the Hong Kong Special Administrative Region under the International Covenant on Economic, Social and Cultural Rights that the absence of such a human rights institution remained a principal subject of concern to it, notwithstanding the existence of the Equal Opportunities Commission (EOC), implying that the latter had a narrower mandate than desirable. The TCJM believes that this implication is well founded, and is particularly concerned that the EOC is unable to take cases relating to discrimination on the grounds of sexual orientation. The TCJM believes that only a human rights institution with a broad mandate will remedy this concern.

4. The TCJM believes that the resources currently allocated by Government to the Equal Opportunity Funding Scheme are insufficient and that planned increases are also insufficient. An increase of \$500,000 a year indicates rather the lack of priority placed by the Government in this area. The sums allocated are insufficient to reach, or benefit much of, the community. Caps on publicity spending in particular should be lifted as publicity is the key element in getting information to the public. It is noteworthy in this regard how little the Government's Code of Practice is known about in the community and how much less it is observed. Considerable effort is required to remedy this, which will require greater funding than that allocated at present. The inadequate funding of the GISOU has prevented its activities having much impact in society as a whole.
5. The TCJM advocates the inclusion of much greater detail in the report by the Social Welfare Department (SWD) of measures they have taken to improve social workers' readiness to address domestic violence in same-sex relationships. The recent amendment to the Domestic Violence Ordinance (DVO) to cover same-sex relationships requires Government departments to deal with the issues and cases arising from violence inside same-sex partnerships, an area new to the SWD and one which has a need for some differences of approach. The SWD needs to be specific about how it is handling, and how it will handle, these problems.
6. The TCJM requests the Government to review its position on the conditions required for it to legislate against discrimination on the grounds of sexual orientation and gender identity.
 - a. The Government claims that there is insufficient consensus on this issue to proceed. In judging that this is the case, it has paid exaggerated attention to earlier, ill-formulated canvassing of public opinion and to some well-organised and vocal concern groups (largely emerging from parts of the Christian religion which form a smaller percentage of the population than the approximately 5-10% of the community which is of diverse sexuality) which have expressed contrary views. In any case, the Government has shown in its recent enactment of changes to the DVO to include same-sex relationships that it is capable of acting despite lack of any consensus because it believes the legislation is right. Its publication of the Code of Practice and its implementation of supporting measures shows that it accepts the justice of this cause.
 - b. Despite recognizing in its own Code of Practice the importance of preventing discriminatory acts, the Government has paid scant attention to the human rights of sexual and gender minorities whose rights are guaranteed under Hong Kong's Basic Law and the international covenants that the Government has signed. These are human rights which should not require public consensus to be implemented.

- c. The Government's refusal to legislate is leading to increasing anomalies. For instance, on March 10, 2006 the Administration based its inaction upon the fact that concern organizations which opposed the introduction of such legislation considered that overseas experience had shown that if such legislation was introduced, challenges against the legal age of consent for same-sex acts and for legislation for same-sex marriage would follow. Yet recent judicial review cases (basing their rulings upon the Basic Law and precedents in the Common Law) have already begun to destroy the viability of discriminatory laws and administrative actions, and have already levelled the age of consent. The recent ruling by Mr Justice Hartman indicates that in Common Law acts which are classed as discriminatory on the grounds of sex are now also automatically classed as discriminatory on grounds of sexual-orientation. Legislation is urgently required to bring Hong Kong legislation into line with the rulings of Hong Kong courts.
 - d. International business practices are increasingly demanding the adoption of diversity policies which prevent discrimination on the grounds of sexual-orientation and gender identity. Hong Kong is lagging behind the best practice of the international business community.
7. The TCJM urges the Government to recognise the virtue of its own policies, the increasing requirements of legal rulings and the clear will of the international business community by introducing legislation to prevent such discrimination.

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For the Tongzhi Community Joint Meeting
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