

Minutes of Twelfth Meeting of the Advisory Group on Eliminating Discrimination against Sexual Minorities

Date : 23 October 2015
Time : 4:30 p.m.
Venue : Conference Room 1, G/F, Central Government Offices
2 Tim Mei Avenue, Tamar

Members Present

Professor Fanny CHEUNG, JP (Chairperson)
Hon. CHAN Chi-chuen
Mr Tommy CHEN
Dr Andy CHIU
Dr Joseph CHO
Ms Shirley HA
Mr Reggie HO
Professor KUNG Lap-yan
Professor KWAN Kai-man
Ms Lavinia LAU
Ms Joanne LEUNG
Hon. James TO
Ms YEUNG Wai-wai

Members Absent

Dr Hon. Priscilla LEUNG, SBS, JP

In Attendance

Representatives from Constitutional and Mainland Affairs Bureau (“CMAB”)
Mr Gordon Leung, JP Deputy Secretary for Constitutional and
Mainland Affairs
Ms Phidias TAM Principal Assistant Secretary for
Constitutional and Mainland Affairs
Mr Eric LEE Assistant Secretary for Constitutional and
Mainland Affairs (“AS(CMA)”)
Ms Elaine IP Assistant Secretary for Constitutional and
Mainland Affairs (Secretary)
Mr LAI Wing-yiu Unit Manager, Gender Identity and Sexual
Orientation Unit

Agenda Item 1: Confirmation of minutes of meeting held on 2 September 2015

The minutes of the meeting held on 2 September 2015 were confirmed without amendment.

Agenda Item 2: Matters arising

2. The Chairperson said that as mentioned in the Secretariat's notice to members issued on 20 October 2015, this meeting would focus on the deliberation of Chapters 1 and 2 as well as the first three recommendations in Chapter 3 of the draft report, namely i) training and resources for personnel in specific fields; ii) a code of practice for service providers in both public and private sectors; and iii) enhanced publicity campaign; therefore, matters relating to the recommendation on support services for sexual minorities and the further study on overseas experience of legislative and non-legislative measures as recorded in paragraphs 11 and 17 of the minutes of the last meeting respectively, would be discussed at the next meeting.

Agenda Item 3: Draft report of the Advisory Group [Paper No. 7/2015]

3. The Chairperson briefed members on the procedures for the conduct of discussion, which were as notified on 20 October 2015. She then invited AS(CMA) to introduce Chapters 1 and 2 of the draft report. AS(CMA) informed members that Chapter 1 was an introduction of some background information, including the establishment of the Advisory Group and the definition of "sexual minorities" in the context of the work of the Advisory Group; and that Chapter 2 was based on the information contained in past meeting papers, recapitulating the work of the Advisory Group in the past two years, which included stocktaking of major developments in Hong Kong as well as fact-finding and collection of views through the following means:

- (a) a study on discrimination experienced by sexual minorities in Hong Kong ("the study");
- (b) desktop research on the experience in tackling discrimination on the grounds of sexual orientation and gender identity in selected non-local jurisdictions ("desktop research"); and
- (c) meetings with stakeholder groups.

4. The Chairperson invited members to offer comments on these

two chapters in turn. Their comments were summarised as follows:

- (a) a member raised the following:
 - (i) The “Background” section of Chapter 1 should begin with a recognition of the existence of discrimination against sexual minorities in Hong Kong and the need to address it. Apart from the Basic Law and the Hong Kong Bill of Rights Ordinance, the Chapter should also cover the relevant United Nations (“UN”) human rights conventions including the International Covenant on Civil and Political Rights (“ICCPR”) and International Covenant on Economic, Social and Cultural Rights (“ICESCR”);
 - (ii) regarding the paragraphs on the stocktaking of major developments in Hong Kong in Chapter 2, the views of those in support of and those against decriminalising homosexual acts in the early 1990’s should both be presented. Besides, the landmark court case in 2005, namely *Leung TC William Roy v Secretary for Justice* in which some sections of the Crimes Ordinance relating to homosexual behaviour were ruled unconstitutional, should be added;
 - (iii) regarding the paragraph that set out the scope of religious exemption in the anti-discrimination legislation of those jurisdictions covered by the desktop research, the various definitions of “religious bodies” could be added in the footnote for reference;
 - (iv) the definitions of “gender identity” in the anti-discrimination legislation of jurisdictions studied should be provided in the report; and
 - (v) in connection with the account of the court cases, different views on whether religious freedom was being unreasonably or disproportionately interfered with should be presented;
- (b) two members agreed with the comments in paragraph 4(a) above. One of them suggested adding the *W v Registrar of Marriages* case as one of the major developments in Hong Kong on issues of concern to sexual minorities under Chapter 2 as well, while the other one opined that the paragraph on “People of Different Sexual Orientation” in the 2013 Policy Address by the Chief Executive should be mentioned in the “Background” section of Chapter 1;
- (c) another member said that among Asian jurisdictions, Macao had

also introduced legislative prohibition of discrimination on the ground of sexual orientation. Besides, she said that those areas of exemptions set out in Chapter 2, which were commonly found in the jurisdictions covered by the desktop research, had already been discussed at previous meetings and were considered by the Advisory Group as generally acceptable exemptions in any anti-discrimination legislation; the report should therefore reflect this accordingly;

- (d) one other member shared the view in paragraph 4(a)(i) above and raised his other views on the “Background” section of Chapter 1 as follows:
 - (i) those paragraphs touching on public debates over homosexual behaviours and the treatment accorded to persons with different sexual orientation or gender identity across different social institutions were not relevant to the work of the Advisory Group and should be removed; and
 - (ii) other than Macao, Nepal and Thailand had also introduced legislative prohibition of discrimination on the ground of sexual orientation and/or gender identity recently;
- (e) two members considered the draft of these two chapters comprehensive and easy for lay readers to understand. The draft had presented the different views on the subject in society as well as the local and global developments on related issues impartially;
- (f) one member agreed that the two draft chapters had presented the historical background in a fair manner and demonstrated the trend that the society was becoming more and more open on issues relating to sexual orientation and gender identity despite the fact that public debates continued. He disagreed to remove those paragraphs touching on public debates over homosexual behaviours and the treatment accorded to persons with different sexual orientation or gender identity across different social institutions as suggested by another member in paragraph 4(d)(i) above ;
- (g) one other member considered that the presentation of public debates on issues relating to sexual orientation and gender identity in the draft Chapter 1 was agreeable, and the historical

facts should not be avoided. As to Chapter 2, he raised the following:

- (i) in some jurisdictions, such as Canada, vilification was not tackled by anti-discrimination legislation but a separate hate crime law. This should be reflected in the content which covered the findings of the desktop research accordingly; and
 - (ii) the definition of “reverse discrimination” could be revised to “alleged unfair treatment of those who disapprove of homosexual behaviour or disagree with the agenda of homosexual movement like sexual orientation discrimination ordinance or gay marriage” for this context;
- (h) another member suggested that the paragraph on the composition of the Advisory Group should not only mention the sector or community from which the members came, but also the fact that they held different views on the subject; and
- (i) one other member opined that the Advisory Group should form a view as to whether there was discrimination against sexual minorities in Hong Kong and state its conclusion in the report. Together with the different views on the subject which the Advisory Group had examined, the conclusion on whether discrimination existed would be part of the basis for making the recommendations in Chapter 3.

5. Summarising members’ views, the Chairperson recapitulated that the following should be suitably incorporated in the revised draft:

- (a) relevant information relating to the 2013 Policy Address, ICCPR, ICESCR and the two court cases mentioned above;
- (b) based on the work undertaken by the Advisory Group so far, the Advisory Group acknowledged the existence of discrimination against sexual minorities in society and the different views on the subject both within the Advisory Group and in the community; and
- (c) the Advisory Group noted that in the anti-discrimination legislation of those jurisdictions studied in the desktop research, exemptions were commonly provided.

6. AS(CMA) proceeded to introduce the first three recommendations in Chapter 3 one by one. Regarding the recommendation on training and resources for personnel in specific fields that aimed to enhance their sensitivity towards sexual minorities, he also shared with members the views collected from small-scale focus groups with some personnel in the relevant fields to facilitate members' deliberation.

7. On this recommendation, members' views were summed up as follows:

Contents of training resources

- (a) the training resources should cover factual and objective information relating to sexual orientation and gender identity. The concerns of stakeholders over controversial issues needed not be included;
- (b) the training should be able to help the concerned personnel to enhance their understanding of the subject and better handle the sexual minority people in their working environment or under their care;
- (c) the message that sexual minorities should be treated equally and be respected should be delivered through the training;
- (d) the need for and benefits of maintaining a sexual minority-friendly environment should be explained;

Development, delivery mode and evaluation

- (e) training should be provided on a voluntary basis, and representatives from each relevant field should be consulted on their preferred delivery mode of training;
- (f) the developer of the training resources should have expertise in sexual orientation and gender identity issues while maintaining a "neutral" stance on controversies pertaining to this subject;
- (g) effectiveness of the training should be evaluated;

Others

- (h) public awareness of these training initiatives might help motivate the professionals and personnel concerned to

participate in the training; and

- (i) other than training for personnel in specific fields, sexual minorities might also be educated to speak out in case they encountered discrimination due to their sexual orientation or gender identity.

8. While two members requested to set out quantitative targets for the conduct of training in the report, such as the number of participants to receive such training and the number of training sessions to be organised within a certain period of time, some other members opined that mere counts of attendance might not be good indicators of outcome, and flexibility should be allowed for the Government and stakeholders to consider ways of implementing the recommendation.

9. The Chairperson concluded that in order to strengthen the training for the concerned personnel for maximum impact, the participation of representatives from each field during the development of training programmes was important. Training resources could be composed of different modules to facilitate adaptation to meet the respective needs of different professions, for both pre-vocational and in-service training, as well as for use in different contexts. Instead of setting quantitative attendance targets, the assessment of the effectiveness of training should be outcome-based.

10. Regarding the recommendation to draw up a new code of practice for providers of services, goods and facilities (“the new code of practice”), the following views and suggestions were raised:

- (a) on the contents of the new code of practice, a member reminded the meeting that the rights of service providers should also be attended to, with a view to balancing the legitimate rights of different stakeholders. Another member advised the Government to be mindful of the concerns of small and medium-sized enterprises when drawing up the new code;
- (b) two other members emphasised the need for enhancing public awareness of both the existing Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (“CoP”) and the new code of practice, as well as promoting the list of organisations that had adopted the code(s) of practice, to encourage voluntary adoption of the codes by more public and private organisations;

(c) one member suggested extending the existing CoP to cover gender identity and more domains, including provision of services, goods and facilities; disposal and management of premises; and education. He further suggested converting the extended CoP into a charter with a reporting mechanism, a commendation system and regular evaluation of effectiveness. For example, the number of organisations having signed the charter and the performance of these organisations in implementing the charter could be tracked. Participating organisations could choose to sign the whole charter or any part of it having regard to their business operation and other circumstances. A few members supported this idea. One of them also suggested incorporating the abovementioned sensitivity training into the charter as a requirement to be fulfilled. Another one of them was of the view that the effectiveness of the charter might facilitate the Government's consideration of the need for legislation to prohibit discrimination in future.

11. Regarding the recommendation on enhanced publicity campaign, members' views and suggestions were as follows:

- (a) a member suggested the involvement of sexual minorities in future publicity initiatives to make them more visible in society. The Government might make reference to the It Gets Better Project¹ which was a video-sharing platform where LGBT could share their stories and heterosexual allies could show support to their friends and family members. As to the promotion of the Gender Identity and Sexual Orientation Unit ("GISOU")'s hotline, information about how complaint cases were handled should be provided in the promotional materials;
- (b) another member suggested the Government to adopt more creative ideas in future Announcements in the Public Interest ("API"), while two other members said that before producing a new series of API, the Government should first evaluate the effectiveness of the existing one produced in December 2013, in order to make targeted improvement efforts. One of them opined that public awareness of the GISOU's hotline should also be evaluated before further publicity for the hotline was pursued;

¹ <http://www.itgetsbetter.org/>

- (c) one member considered that publicity campaign should be planned comprehensively with both long-term and short-term strategies. Another member emphasised the importance of marketing and public relations strategies. She and one other member supported the idea of producing television documentaries to reflect the real situation of sexual minorities in Hong Kong and to mitigate prejudice towards them;
- (d) a member opined that the Government should put more efforts in encouraging the private sector to participate in future publicity campaigns;
- (e) another member said that API could be produced for promoting the charter in future; and
- (f) the Chairperson said that the publicity campaign to promote non-discrimination against and equal opportunities for sexual minorities required comprehensive and diversified strategies and measures. She agreed that the existing publicity measures should be evaluated first with a view to identifying the room for improvement, for future campaigns to be programmed strategically.

12. After deliberation, the Chairperson requested the Secretariat to amend the draft report having regard to members' views and arrange circulation before the next meeting. The next meeting would feature both the remaining parts of Chapter 3 and the revised draft of those parts discussed this time.

Agenda Item 4: Any other business

13. The discussion ended at 7:00 p.m. The next meeting will be held at 4:30 p.m. on 13 November 2015.

**Constitutional and Mainland Affairs Bureau
November 2015**