

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

Date : 14 December 2015
Time : 4:45 p.m.
Venue : Conference Room 7, 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
Ms Lavinia LAU
Ms Joanne LEUNG
Dr Hon. Priscilla LEUNG, SBS, JP
YEO Wai-wai

Members Absent

Professor KUNG Lap-yan
Professor KWAN Kai-man
Hon. James TO

In Attendance

Representatives from Constitutional and Mainland Affairs Bureau (“CMAB”)
Mr Gordon Leung, JP Deputy Secretary for Constitutional and
Mainland Affairs (“DS(CMA)”)
Ms Phidias TAM Principal Assistant Secretary for Constitutional
and Mainland Affairs (“PAS(CMA)”)
Mr Eric LEE Assistant Secretary for Constitutional and
Mainland Affairs (“AS(CMA)4B”)
Ms Elaine IP Assistant Secretary for Constitutional and
Mainland Affairs (Secretary) (“AS(CMA)4A”)
Mr LAI Wing-yiu Unit Manager, Gender Identity and Sexual
Orientation Unit

Agenda Item 1: Confirmation of minutes of meeting held on 13 November 2015

A member said that she needed more time to study the draft minutes of the last meeting circulated to members on 12 December 2015. In this light, the Chairperson advised members to provide their comments on the minutes, if any, to the Secretariat by 18 December 2015. Subject to any comments received, the minutes of the meeting held on 13 November 2015 would be confirmed.

[Post-meeting note: As no member had made comments on the minutes by 18 December 2015, the confirmed minutes were circulated for the record on 28 December 2015.]

Agenda Item 2: Matters arising

2. AS(CMA)4A recapitulated that the Advisory Group had deliberated on all the recommendations in Chapter 3 of the draft report at the last meeting. Following members' comments, the Secretariat further revised the draft report and circulated the further revised draft to members on 11 December 2015. The Chinese translation of the further revised draft was also prepared and tabled at the meeting. Matters arising from the last meeting would be discussed under the next agenda item. She apologised on behalf of the Secretariat for not being able to circulate the documents earlier.

Agenda Item 3: Finalisation of the report of the Advisory Group [Paper No. 9/2015]

3. At the Chairperson's invitation, AS(CMA)4B briefed members on the revisions in Chapters 1 and 2 of the draft final report made since the last meeting. He also advised members that the Department of Justice ("DoJ") had been consulted on those paragraphs which touched on the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") in Chapter 1.

4. On these two chapters, some members had no further comment. Some other members made comments which are summarised below.

(a) A member suggested that:

(i) Chapter 1 should begin with the objective of the Advisory

Group, which was to tackle discrimination against sexual minorities in Hong Kong; and
(ii) the exact wording of Article 2(1) of the ICESCR should be put in the main text of the chapter instead of a footnote.
Members agreed to these changes.

- (b) One member proposed quoting Article 2(2) of the ICCPR also in the main text instead of a footnote. He disagreed that under Article 2(2), State Parties could decide how best to give effect to the rights recognised in the Covenant by the adoption of legislative and/or non-legislative measures; he opined that the adoption of legislative measures was mandatory. In this regard, AS(CMA)4B informed the meeting that the understanding of the covenants as presented in the draft report was based on legal advice by DoJ. A member requested the Secretariat to provide DoJ's advice in this respect for members' reference. The Secretariat agreed.

[Post-meeting note: DoJ's advice was provided to members for reference on 22 December 2015.]

- (c) One other member commented that Chapter 1 should also cover Article 32 of the Basic Law and Article 18(4) of the ICCPR. She emphasised the equal importance of protecting the freedom of religious belief and the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, as compared to ensuring non-discrimination of sexual minorities. Hence, in addition to the mention of Article 32 of the Basic Law and Article 18(4) of the ICCPR in Chapter 3, the two articles should also be covered in Chapter 1 alongside the provisions related to the right to non-discrimination.
- (d) Another member said that those who supported anti-discrimination legislation would also agree that religious freedom should be respected. He suggested to reflect this in the relevant paragraphs of the report. He also suggested the Secretariat consult DoJ again to ensure that the meaning of provisions of the ICCPR and ICESCR were correctly presented in the report.

5. The Chairperson concluded that Chapter 1 should begin with the objective of the Advisory Group. She would also look into the revisions suggested by members in the paragraphs concerning the ICCPR and

ICESCR having regard to the advice from DoJ.

6. AS(CMA)4B proceeded to brief members on the changes in Chapter 3 of the draft final report, in which members' comments raised at the last meeting had been incorporated.

7. The Chairperson invited members to offer comments. A member opined that the Advisory Group should acknowledge in the report the need to take into consideration the freedom of religious belief and the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions if legislation was to be pursued in future.

8. Regarding the recommendation on support services for sexual minorities, a member opined that the Advisory Group should conclusively recommend setting up dedicated shelters and dedicated support centres / community centres for sexual minorities, instead of reviewing the existing support services. Another member supported the provision of dedicated shelter services for sexual minorities, but he also saw the need to first examine the service gaps carefully. One other member considered that whether dedicated shelters should be provided for sexual minorities was debatable, and a review should be conducted to examine the need for such service. The Chairperson advised that the Advisory Group could acknowledge the existence of service gaps, but should not overlook the need for a comprehensive review. She also advised that it should be for the service providers to consider how support services for sexual minorities could be provided in a dual-track model.

9. After deliberation, the meeting agreed to revise the wording of the recommendation in paragraph 3.37 to read "The Advisory Group considered that an in-depth review should be taken by the Government in collaboration with relevant service providers to examine the effectiveness of each of the existing support services in order to delineate service gaps. The Advisory Group particularly recommends that the existing provision of shelter services and other support services for sexual minorities should be reviewed to identify the services that could meet the needs of sexual minorities and the areas that might need improvement. On the basis of such a review, it could be further considered how support services for sexual minorities could be provided in a dual-track model, i.e., alongside the existing services provided through non-government organisations and government bureaux/departments, dedicated support services for sexual minorities could be introduced in a delivery mode that the service

providers deemed appropriate.”

10. Regarding the recommendation to draw up a Charter on non-discrimination of sexual minorities, a member considered it necessary to reflect in the report that while the inclusion of the ground of “gender identity” in the Charter would be a complicated matter given the difficulties of defining in different contexts which transgender persons should be accorded the same treatment as persons of his/her preferred gender, the right to non-discrimination to which transgender persons are entitled should not be jeopardised unreasonably. Another member expressed worry that in the development of the Charter, the concerns of schools with a religious background might be neglected. In reply, AS(CMA)4B said that stakeholders of the relevant domains should be consulted on the content of the Charter and their concerns about its implementation, and appropriate means should be identified to address the concerns raised, such as providing for reference some examples where differential treatment would be justified in special circumstances and not regarded as discrimination. One other member pointed out that the voluntary Charter aimed at commending those organisations which adopted good practices written in the Charter, instead of discrediting those that did not.

11. Regarding the recommendation on conducting further study on other jurisdictions’ experience of legislative and non-legislative measures, some members commented that the description of purpose of the study should carry an explicit link to future consultation on both legislative and administrative measures. One member proposed specifically recommending the Government to conduct one single public consultation exercise to seek views simultaneously for both legislative and administrative measures. Some other members disagreed and considered that the Government should be allowed flexibility on the manner of conducting consultation as long as both legislative and administrative measures would be covered. The member who suggested specifying a single simultaneous consultation left the meeting at this juncture to express her discontent. Two other members left in support.

12. After deliberation, the meeting agreed that:

- (a) the description of purpose of the further study should be amended to read “The findings of the study would form the basis for public consultation on both legislative proposals and administrative measures to eliminate discrimination...”; and

- (b) in the description of the scope of the study, one aspect to be covered by the study should also be amended to read “The study should provide recommendations on how stakeholders with diverse views could facilitate and participate in public discussion in Hong Kong on both legislative proposals and administrative measures to eliminate discrimination...”

13. Two members raised their concern on whether the report could be completed before the term of the Advisory Group expired and enquired if the term should be further extended to allow more time for the Advisory Group to finalise the report. The Chairperson said that the Advisory Group’s term had already been extended once, and members should endeavour to conclude the final report for submission to the Government before the end of the extended term. Another member added that if there was no further room for compromise between different views, it might not be meaningful to extend the term again and repeat the discussion.

14. As members present had no further comment on the rest of the draft final report, the Chairperson requested the Secretariat to revise the report having regard to the amendments agreed above and circulate the revised draft final report for members’ review the soonest possible so that the report could be concluded in time before the expiry of the term of the Advisory Group.

Agenda Item 4: Any other business

15. There being no other business, the discussion ended at 7:10 p.m. As this was the final meeting of the Advisory Group, the Chairperson thanked members for their participation in and contribution to the work of the Advisory Group in the past two and a half years. She also thanked the Secretariat for its support. On behalf of the Government, DS(CMA) thanked the Chairperson and members for their efforts in rendering considered advice to the Government.

**Constitutional and Mainland Affairs Bureau
December 2015**