

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

Date : 5 December 2013
Time : 9:30 a.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
Professor KWAN Kai-man
Dr Hon Priscilla LEUNG, SBS, JP
Hon James TO
Ms YEUNG Wai-wai

Members Absent

Professor KUNG Lap-yan
Ms Lavinia LAU
Ms Joanne LEUNG

In Attendance

Representatives from Constitutional and Mainland Affairs Bureau (CMAB)

Mr Gordon LEUNG, JP	Deputy Secretary for Constitutional and Mainland Affairs (DS(CMA))
Mrs Philomena LEUNG	Principal Assistant Secretary for Constitutional and Mainland Affairs (PAS(CMA))
Mr Ronald CHAN	Political Assistant to Secretary for Constitutional and Mainland Affairs
Mr Eric LEE	Assistant Secretary for Constitutional and Mainland Affairs
Ms Elaine IP	Assistant Secretary for Constitutional and Mainland Affairs (AS(CMA)) (Secretary to the Advisory Group)
Mr LAI Wing-yiu	Unit Manager, Gender Identity and Sexual Orientation Unit

Representatives from Equal Opportunities Commission (for Agenda Item 3 Only)

Dr York CHOW, GBS	Chairperson
Dr Ferrick CHU	Head (Policy and Research)
Ms Lisa CHAN	Acting Head (Corporate Communication and Training)
Mr Kelvin MAK	Senior Policy and Research Officer

Representatives from Security Bureau (SB) (for Agenda Item 4 Only)

Mrs Millie NG	Principal Assistant Secretary for Security (PAS(S))
Ms Alice YEUNG	Assistant Secretary for Security

Representatives from Policy 21 Limited (Consultant) (for Agenda Item 5 Only)

Mr H K YIP	Director
Ms Ruby LO	Deputy Director
Mr Ben WONG	Research Assistant

Agenda Item 3: Exchange of views with the Equal Opportunities Commission (EOC)

The Chairperson welcomed the representatives from EOC, and invited them to share with Members their views on elimination of discrimination against sexual minorities and EOC's work plan in this regard.

2. EOC Chairperson said that between April and September 2013, EOC had met with different stakeholders. Some supported the enactment of legislation with a view to providing legal protection for sexual minorities, eliminating misunderstanding of sexual minorities and bringing about diversity and inclusion in the community. On the other hand, some were against the legislative approach for fear that this would be seen as promoting homosexuality in the community which would lead eventually to legalisation for same-sex marriage, and undermining the traditional values of marriage and family. There were also concerns that if legislation was enacted, certain religions might no longer be able to preach according to their doctrines and beliefs and that such legislation

could be open to abuse. From EOC's viewpoint, the rights of sexual minorities should be respected. Legislating to protect discrimination on the ground of sexual orientation would serve to protect all persons from being discriminated, irrespective of their sexual orientation. It would not lead to reverse discrimination. If such legislation was enacted, EOC would enforce the ordinance drawing on its experience in enforcing the existing four anti-discrimination ordinances; since there were established procedures and protocols in place, such legislation could not easily be abused. As to the work plan, EOC intended to conduct a comprehensive research in the form of focus groups and survey questionnaire to collect the following information:

- (a) how sexual minorities were discriminated against, harassed and vilified in the public domains;
- (b) public views on the discrimination and harassment experienced by sexual minorities;
- (c) public views towards providing legal protection for sexual minorities against discrimination; and
- (d) proposals of various stakeholders for equal rights legislation.

After the research, EOC intended to conduct a public consultation to gauge views on the scope of protection that the proposed sexual orientation discrimination ordinance (SODO) should offer and the exceptions that should be included.

3. The Chairperson shared information on the study that Advisory Group has commissioned and suggested that the two research initiatives should complement each other and avoid duplication. She also invited members for their views and questions. A member pointed out that there were cases overseas where individuals were penalised for refusing to provide certain services which were contrary to their religious beliefs, for example refusing to bake a wedding cake for a homosexual couple. He was concerned about the impact the proposed SODO would have on freedom of speech and freedom to pursue a life-style in accordance with one's religious beliefs. Specifically he asked whether an employee would enjoy protection under the proposed SODO if that employee was dismissed by a pro-gay employer simply because that employee spoke against homosexuality, and whether organisations that were known not to

support homosexuality could enjoy protection from being insulted or vilified publicly. He emphasised that people who did not support homosexuality should continue to have the right to voice out their views. A member responded that according to his understanding, the Sex Discrimination Ordinance did not extend protection to employees who did not share a common stance on some sex-related issues with the employer. One other member asked for figures of overseas court cases concerning sexual orientation discrimination in those jurisdictions with SODO as well as how those jurisdictions without SODO addressed the question of sexual orientation discrimination. The Chairperson asked if EOC could provide the information as well as any relevant court cases relating to the concerns members expressed. EOC Chairperson agreed.

4. A member expressed appreciation of EOC's work in eliminating discrimination against sexual minorities and EOC's clear position of supporting the enactment of legislation, as well as taking the initiative to clarify some misconceptions over legislating against sexual orientation discrimination. He also suggested EOC to issue leaflets to enhance public's understanding on the issue and asked the timeframe of EOC's work plan. In response, EOC Chairperson said that EOC intended to conduct the comprehensive research on sexual orientation and gender identity in the first half of 2014, with a view to submitting the research report to the Administration by the end of the year. He added that depending on Government's action plan, EOC might consider conducting public consultation on legislating to prohibit discrimination against sexual minorities probably in the second half of 2014. The Chairperson said that the Advisory Group would also collect information on actual discrimination cases through focus groups and there could be overlap with EOC's work in this regard.

5. A member queried if the Administration and EOC had adequate liaison and suggested strengthening communication. DS(CMA) responded that there had been communication and sharing of information between the Administration and EOC at the working level. As EOC was an independent body, CMAB respected its autonomy and would defer to EOC to decide on its work on this front. In the meantime, the Administration would continue to maintain communication with EOC. EOC Chairperson stressed that EOC's position in favour of legislation

was based on the principles of diversity and inclusion as well as equal opportunities. He also supplemented that EOC wished to work in coordination with the Advisory Group and the Administration as far as possible.

6. A member recalled that EOC Chairperson had said that no religious exemption should be provided if legislation was enacted to prohibit discrimination on the ground of sexual orientation and asked Dr CHOW whether that was his personal stance or that of EOC's; the member said he had asked some EOC members about this earlier and was informed that this had not been discussed at EOC before. EOC Chairperson clarified that at the EOC Forum held this September, he had said publicly that EOC would not take the initiative to propose exemptions for the legislation and was of the view that stakeholders were in a better position to put forward proposals in this regard in the light of their specific concerns. He said further that in his earlier discussion with the representatives of some religious bodies, some of them had said that they did not wish to pursue for religious exemption. Another member remarked that some religious bodies had requested religious exemption while some not, and that this issue should be thoroughly thrashed out at the Advisory Group if and when sexual orientation discrimination legislation was discussed.

7. In response to some members' concern over whether legislation prohibiting sexual orientation discrimination would lead to a large number of lawsuits, EOC Chairperson remarked that EOC handled about 16,000 enquiries under the four existing anti-discrimination ordinances every year, of which only about 900 cases called for investigation. Many of these cases were settled without the need to go to court and each year less than 10 cases were put before the court and some of these were settled before the hearing. Therefore, members needed not over-worry about huge number of court cases. However, a member opined that a small number of lawsuits might not fully reflect the impact of legislation against sexual orientation discrimination particularly the chilling effect it had on freedom of speech and pursuit of religious beliefs.

8. A member suggested EOC to share the findings of its comprehensive research, when available, with the Advisory Group to

facilitate its discussion on legislation in due course, and another member suggested inviting EOC to exchange views with the Advisory Group again after its research was completed.

9. The Chairperson thanked the representatives from EOC for exchanging views with the Advisory Group.

Agenda Item 1: Confirmation of minutes of meeting held on 11 September 2013

10. Having regard to members' views expressed at the last meeting, the Chairperson informed the meeting that members' discussion had been recorded in a more detailed manner. The minutes of meeting on 11 September 2013 were confirmed without amendments.

Agenda Item 2: Matters arising

11. With reference to paragraph 28 of the minutes of the last meeting, AS(CMA) reported that the Secretary for Constitutional and Mainland Affairs had written to the top management of 90 entities, including private sector corporations with over 3,000 local employees, public sector bodies under the jurisdiction of The Ombudsman, publicly-funded tertiary institutions and major chambers of commerce, on 19 September 2013 to appeal for their support to adopt the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (the Code). Over one-third of the appealed organisations had indicated support and some responded that they were conducting internal study and would reply later. CMAB would continue to follow up with these organisations and seek their support to adopt the Code.

12. With reference to paragraph 36 of the minutes of the last meeting, a member queried why the suggestion of thrashing out proposals in respect of the Chief Executive's 2014 Policy Address was not included in the agenda of the meeting. He did not accept the Secretariat's explanation that there had been a public consultation on the Policy Address since mid-October and members of the Advisory Group could put forth their views through the Policy Address consultation mechanism direct. He opined that as the 2014 Policy Address would be delivered in

coming January, the Advisory Group should have a discussion and form a stance at this meeting for submission to the Chief Executive. DS(CMA) explained that the content of the Policy Address was decided by the Chief Executive having regard to the views received through the public consultation process and contributions from policy bureaux, including CMAB. CMAB would report the progress of the Advisory Group's work as appropriate. One member shared with the meeting his experience of participating in other advisory bodies. He said that an advisory body might publish reports after achieving some pre-set milestones but it was rare for advisory bodies to make public its stance at the preliminary stage of its work. While it might not be the opportune time to mention the work of the Advisory Group in the Policy Address, consideration could be given to referring to the work of the Advisory Group in the accompanying documents, for example the Policy Agenda booklets. As there was a channel for CMAB to make contribution, it was considered more appropriate for CMAB to follow up. After deliberation, the Chairperson requested CMAB to take note of Members' views in preparing its contribution to the Policy Address exercise.

Agenda Item 4: Proposed amendments to the Crimes Ordinance (Cap. 200)

[Paper No. 7/2013]

13. The Chairperson welcomed the representatives from SB and PAS(S) introduced the paper.

14. A member said that other than s.118C, s.118F(1), s.118F(2)(a), s.118H and s.118J(2)(a) in Cap. 200 that had been ruled unconstitutional by the court, some other provisions in Cap. 200, such as sections 118D, 118I, 118J(1) and 118K, should also be amended or repealed since they were also discriminatory. Meanwhile, although the Administration had expressed that no prosecution had been taken in respect of those provisions that were ruled unconstitutional, there were still incidents of the Police taking action in respect of those unconstitutional provisions. Therefore, the member supported these provisions be amended as soon as possible. Another member also supported the legislative amendment, and shared the view that the legislative amendment exercise should be taken forward as soon as possible since action had been much delayed already.

He also requested SB to reflect to the enforcement authority the need to remind frontline officers about the position of the five unconstitutional provisions.

15. In response to members' comments and enquiries, PAS(S) thanked the members for their support to the proposed legislative amendments and advised the following:

- (a) the Administration would introduce legislative amendments to s.118C, s.118F(1), s.118F(2)(a), s.118H and s.118J(2)(a) of the Crimes Ordinance to reflect the court rulings the soonest possible in the current legislative session;
- (b) the enforcement authority would be asked to remind their frontline officers that the provisions in sub-paragraph (a) above had no legal effect and they should not take enforcement action based on these provisions;
- (c) the Law Reform Commission (LRC) had established the Review of Sexual Offences Sub-committee (Sub-Committee) since 2006 to review the law relating to sexual and related offences in Hong Kong. In view of the imminent need to protect children from sexual abuse, the Sub-Committee had spent some time in studying the establishment of an administrative scheme on sexual conviction record check and made corresponding recommendations in 2010, to which the Administration had promptly set up the Sexual Conviction Record Check Scheme in 2011. After that, the Sub-Committee had resumed their work on the comprehensive review of sexual offences and published the consultation paper on rape and other non-consensual sexual offences in September 2012 as the first of a series of four consultation papers to be issued by the Sub-Committee on the overall review. The guiding principles of the review included clarity of the law, respect for sexual autonomy, the protective principle, gender neutrality, avoidance of distinctions based on sexual orientation, and adherence to the Human Rights laws and practices guaranteed under the Basic Law. The review on the age of consent for sexual intercourse or other sexual

- acts would be addressed in the next consultation paper; and
- (d) the original plan of the Administration was to introduce legislative amendments to the provisions in sub-paragraph (a) above in a holistic manner upon the completion of LRC's review. However, in view of some requests from the legal sector, the Administration proposed to introduce amendments to amend/repeal these five provisions first. The review of other provisions related to sexual offences in Cap. 200, including penalty, would continue to be dealt with by the Sub-Committee.

16. The Chairperson thanked the representatives from SB for attending the meeting and answering members' queries.

Agenda Item 5: Study on discrimination experienced by sexual minorities

[Paper No. 8/2013]

17. PAS(CMA) introduced the paper and informed the meeting that the procurement process for selecting a consultant to carry out the study had been completed .

18. In response to members' queries, PAS(CMA) advised that the fee of the study was more than \$400,000. As the other bidder was not selected, it was inappropriate to disclose its identity. The Chairperson noted that it had been catered in the study plan that in-depth one-to-one interviews could be arranged for those respondents who did not want to join focus group discussion.

19. The Chairperson welcomed the representatives from Policy 21 Limited and invited them to introduce the study plan and discussion guide.

20. Ms Ruby LO recapped the objectives of the study and explained the sampling methods to be adopted. In order to recruit target respondents with a diverse background, about 200 respondents would be recruited from three sources – about 100 from social networks and communities, about 60 through snowball sampling and about 40 from online social

platforms and media outlets. With informed consent of all respondents, all focus group discussion and in-depth interviews would be audio-taped and the recording would be suitably processed to protect the identity of the respondents. During the discussion process, the moderators would encourage respondents to elaborate on their experience of being discriminated against and the problems they faced in a progressive manner, i.e., warming up at the beginning and then discussing more in-depth questions gradually. Upon completion of the data collection process, all data collected would be analysed by experienced researchers with the support of computer software to ensure the quality of data analysis.

21. In response to a member's query as to whether ethical clearance had been sought for the study, Ms Ruby LO said that ethical approval should be available by the end of December; she also agreed to provide the relevant approval for members' reference.

22. Members discussed the age range of the target respondents, including whether the lower limit should be reduced from 18 years old to 16 years old and whether the upper limit of 65 years old should be lifted. Having regard to concerns over the need to obtain parental/guardian consent for participants under the age of 18 as well as the need to take into account the situation of elderly LGBT, it was agreed after some discussion that the target respondents should be of age 18 and above.

23. Other views on the study plan raised by members were as follows:

- (a) some of the social networks and communities proposed by the consultant for recruiting target respondents were no longer active;
- (b) since most LGBT neither belonged to any social network or community nor visited any gay or lesbian commercial venues or those online social platforms, the consultant should consider recruiting more respondents through snowball sampling as well as using other means to reach out to more potential target respondents. A member suggested holding a press conference, but

- there was no discussion or resolution made; and
- (c) the ratio of target respondents to be recruited from the three proposed sources should be reconsidered.

24. After deliberation, the Chairperson advised that if members wished to furnish the consultant with any reference information, they could do so through the Secretariat. She also requested CMAB to liaise with the consultant to revise the study plan in the light of members' views expressed and circulate the revised version for members' consideration.

[Post-meeting note: the revised study plan and the discussion guide were circulated to members by email on 19 December 2013. A member made an enquiry about the sampling methods in recruiting respondents for the study. The Chairperson suggested an additional question for the discussion guide. The response to the member's enquiry and the revised discussion guide were circulated to members for information on 16 January 2014.]

Agenda Item 6: Final cut of the TV and radio Announcement in the Public Interest (API)

25. AS(CMA) reported that production of the TV and radio APIs based on the messages agreed by the Advisory Group at the first meeting had been completed, and arrangement had been made to broadcast them starting from the latter half of December 2013. The Chinese and English versions of the TV API as well as the Cantonese version of the radio API were then shown to members.

26. In response to a member's query, AS(CMA) advised that the broadcasting frequency of the API at TV and radio stations would be determined by the Information Services Department.

27. The meeting noted the completion of the production of the TV and radio APIs.

Agenda Item 7: Proposed discussion items for the Advisory Group
[Paper No. 9/2013]

28. AS(CMA) briefed members the proposed items for discussion for the coming 9 to 12 months as set out in the paper.

29. A member disagreed that the Advisory Group had agreed that the study on discrimination experienced by sexual minorities should be conducted first, before the Group further considered how to take forward the work of the Advisory Group as stated in paragraph 5 of the paper. In his opinion, that was only the view of some members, not that of the Advisory Group. Another member queried why the three discussion items proposed by two members earlier were not included in the paper. She remarked that the three items in question should be included as proposed items for discussion. AS(CMA) explained that as recorded in paragraph 36 of the minutes of the second meeting, since the three items were related to specific aspects of legislating against sexual orientation discrimination, the Chairperson had proposed that they be discussed at a later stage after the study findings were available. Some members agreed with this course of action. After discussion, the Chairperson supplemented that the three proposed discussion items would be included under item (d) “To consider different options in the course of action to eliminate discrimination against sexual minorities”. While the specific ways forward to address problems relating to discrimination against sexual minorities should be discussed after the completion of the study, in the interim the Advisory Group could explore different options in the course of action to eliminate discrimination against sexual minorities.

30. A member asked if SB should be invited to discuss with the Advisory Group on issues relating to the judicial review case *W v Registrar of Marriages* and whether the Advisory Group should discuss matters concerning the 2016 Population By-census (16BC) since he noted that the classification of “sex” for the 16BC might be refined to take into account transgender and transsexual persons. He considered these issues time-sensitive and should be discussed by the Advisory Group at an early date. He also requested the secretariat to bring time-critical matters relating to sexual minorities under consideration by the Administration to the Advisory Group for deliberation. While some members supported the

suggestion to discuss the refinement of the classification of “sex” for the 16BC, some members disagreed on the ground of its irrelevancy to the scope of work of the Advisory Group which should be focussing on eliminating discrimination against sexual minorities. After some discussion, the Chairperson requested the Secretariat to collect more information from Census & Statistics Department first. Another member also suggested that members raise with the secretariat any proposed issues they would like to discuss as it would not be realistic to expect the secretariat to be aware of all matters under consideration by the Administration which might touch on sexual minorities.

31. After deliberation, the meeting agreed that the two items proposed by members in paragraph 7 of the paper, i.e. the third report of the HKSAR of PRC under the International Covenant on Economic, Social and Cultural Rights and background paper on gender recognition prepared by Dr Sam Winter, be included in the agenda of the next meeting.

Agenda Item 8: Any other business

32. The Chairperson reported that the Post-Gay Alliance (PGA) had written to her requesting clarification of the remarks of two members made during the exchange of views with the three groups at the last meeting, and advised that she would reply to PGA taking note of their view and indicating that the Advisory Group would continue to keep a dialogue with them. She also requested the Secretariat to circulate the email from PGA to members after the meeting.

[Post-meeting note: PGA’s email was circulated to members for information on 5 December 2013.]

33. A member noted that many transgenders were concerned about the way how they were addressed (“Mr” or “Miss”) and said that the Advisory Group should be sensitive to this in addressing its own members.

34. The discussion ended at 12:30 p.m. The next meeting will be held at 5 p.m. on 24 February 2014.

**Constitutional and Mainland Affairs Bureau
December 2013**