

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

Date : 24 February 2014
Time : 5 p.m.
Venue : Conference Room 4, 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
Hon James TO
Ms YEUNG Wai-wai

Members Absent

Professor KUNG Lap-yan
Professor KWAN Kai-man

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 (AS(CMA)4B)
Ms Elaine IP Assistant Secretary for Constitutional and
Mainland Affairs (AS(CMA)4A) (Secretary
to the Advisory Group)
Mr LAI Wing-yiu Unit Manager, Gender Identity and Sexual
Orientation Unit

Representatives from Policy 21 Limited (for Agenda Item 6 Only)
Mr H K YIP Director
Ms Ruby LO Deputy Director
Mr Ben WONG Research Assistant

Agenda Item 1: Confirmation of minutes of meeting held on 5 December 2013

The Chairperson invited PAS(CMA) to report the proposed amendments to the minutes of the last meeting received by the Secretariat. PAS(CMA) said that one member had proposed amending the word “outlaw” in paragraphs 4 and 6 of the minutes to “prohibit” to align with the United Nations’ terminology and adding the following to paragraph 23 of the minutes –

“Since most Lesbians, Gays, Bisexuals and Transgenders do not belong to a social network, do not visit gay or lesbian commercial venues nor visit LGBT online social platforms, the study SHOULD for the full inclusion of the community, be announced publicly. A member suggested holding a press conference, to which no one in the meeting was opposed.”

Another member also proposed the same amendment to paragraph 23 of the minutes as above.

2. Regarding the proposed amendment to paragraph 23 of the minutes, PAS(CMA) said that the Secretariat could not recall the suggestion of holding a press conference having been mentioned at the last meeting. It might have been briefly mentioned at the second meeting held on 11 September 2013 during discussion on how the respondents for the study on discrimination experienced by sexual minorities (“the Study”) could be recruited. As recorded in paragraph 31 of the minutes of that meeting, it was decided then that it would be better to defer to the research institutes to propose an unbiased method of selection of participants. In response to a member’s enquiry, PAS(CMA) said that as agreed at the first meeting, there was no audio recording of the discussion at the meeting.

3. Two members said that they also could not recall holding a press conference for the Study having been mentioned at the last meeting. One of the members who proposed this amendment remarked that this was indeed mentioned at the last meeting though there was neither discussion nor resolution and therefore, he considered it necessary to record it in the minutes. The Chairperson suggested that the proposed amendment to paragraph 23 be revised to “A member suggested holding a press conference, but there was no discussion or resolution made.”, and recommended the proposed amendments to paragraphs 4 and 6 be adopted. As members raised no objection, the minutes were confirmed subject to the amendments to paragraphs 4, 6 and 23.

Agenda Item 2: Matters arising

4. With reference to paragraph 3 of the minutes of the last meeting, AS(CMA)4A reported that the Equal Opportunities Commission was still in the process of collecting the information on overseas court cases concerning sexual orientation discrimination in those jurisdictions with sexual orientation discrimination legislation, and that the Secretariat would keep in view developments.

5. With reference to paragraph 23 of the minutes of the last meeting and the two members’ proposal of holding a press conference to publicise the Study, PAS(CMA) said that CMAB had discussed with the consultant on this. The consultant expected that the recruitment methods they proposed should suffice to recruit the target respondents, and had reservations about the effectiveness of holding a press conference. That said, CMAB understood the concern that certain groups of sexual minorities might not be aware of the Study through the recruitment channels hitherto proposed and having regard to the consultant’s advice, CMAB would propose placing newspaper advertisement in one English newspaper and one Chinese newspaper to further publicise the Study.

6. The Chairperson supplemented that she had reservations in holding a press conference as well, as reporters might raise questions that were not directly related to the Study at the press conference, diverting attention from the recruitment of target respondents to other matters. The Chairperson suggested that this matter could be further discussed under

Agenda Item 6.

7. With reference to paragraph 30 of the minutes of the last meeting, AS(CMA)4A reported that the Secretariat had liaised with the Census and Statistics Department (“C&SD”) who advised that it was still considering whether the classification of “sex” for the 2016 Population By-census (“16BC”) would be refined.

8. A member asked if this matter should be discussed at a future Advisory Group meeting. DS(CMA) suggested members or concern parties to submit their views and comments to C&SD direct so that the Advisory Group could focus on dealing with discrimination issues. Another member opined that the matter might not necessarily be discussed at the Advisory Group, but she was concerned over how sexual minorities could participate in the stakeholder consultation later. Two members recalled that at the last census, a person was not allowed to input the spouse’s sex being the same as his/hers and said that C&SD should pay attention to this.

9. To summarise, the Chairperson said that members could submit their views, if any, to C&SD direct and that CMAB would suggest C&SD to approach relevant members of the Advisory Group to solicit their views on this matter at a suitable time.

10. The Chairperson informed the meeting that the Secretariat had received the following two requests after the last meeting:

- (a) a member requested to invite responsible officials to attend this meeting to brief the Advisory Group on the Marriage (Amendment) Bill arising from the judicial review case *W v Registrar of Marriages* (“W case”); and
- (b) another member requested that a representative of the inter-departmental working group on gender recognition (“IWG”) chaired by the Secretary for Justice (“SJ”) or official from relevant departments be invited to attend this meeting to brief the Advisory Group on how the IWG would operate and how it could ensure that the policy/legal changes it recommended would have transgender people’s well-being in mind.

11. Upon the Chairperson's invitation, PAS(CMA) reported the following:

- (a) the Security Bureau ("SB") would introduce the Marriage (Amendment) Bill into the Legislative Council ("LegCo") by end March 2014. SB considered it premature to brief the Advisory Group on the details of the Bill at this stage, but it would be happy to forward the LegCo Brief on the Bill to the Advisory Group once the Brief was submitted to LegCo; and
- (b) the IWG was set up to conduct a comprehensive review of the legal issues concerning the rights of transsexual persons in Hong Kong, including a study of the relevant legislation in other jurisdictions, with a view to making appropriate recommendations to the Administration. The IWG had only just been set up and was planning out its work. As the IWG was dedicated to look into the question of gender recognition and to avoid duplication of efforts, if members had any views on the subject, it would be more appropriate for such views to be directed to the IWG.

12. The member who raised the request at paragraph 10(b) above said that he would like to know more about the operation of the IWG. A member noted that SJ had said at the Motion of Thanks debate for the Policy Address 2014 that the first IWG meeting had been held earlier and that the IWG had decided that it would first identify all the areas which might be affected by a change in the gender recognition regime so as to facilitate its consideration on the way forward.

13. Another member informed the meeting that he was organising a conference concerning transgender issues on 30 June 2014 with Prof. Stephen Whittle, who was renowned for pushing forward the United Kingdom's Gender Recognition Act, as guest. More details of the conference would be provided to members nearer the time.

14. The meeting noted the information in paragraphs 10 to 13 above.

[Post-meeting note: The LegCo Brief on the Marriage (Amendment) Bill 2014 was circulated to members for information on 28 February 2014.]

Agenda Item 3: The Third Report of the HKSAR of PRC under the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)

[Paper No. 1/2014]

15. PAS(CMA) introduced the paper. The member who proposed to discuss this matter said it was the Government’s constitutional responsibility to enact sexual orientation discrimination legislation, citing Article 39 of the Basic Law, Article 26 of the International Covenant on Civil and Political Rights (“ICCPR”), Article 2 of the ICESCR, and Concluding Observations made by the United Nations Human Rights Committee on the past reports of the HKSAR under ICCPR and ICESCR. He pointed out that surveys in the past two years showed that over 60% of respondents supported enacting legislation against sexual orientation discrimination.

16. DS(CMA) said that due to the time gap between the submission of the HKSAR’s third report under the ICESCR (in June 2010) and the hearing on the report (scheduled for May 2014), the United Nations Committee on Economic, Social and Cultural Rights (“the Committee”) issued a list of issues in relation to the third report for the HKSAR to provide additional information before the hearing. The Administration’s response to the entire list of issues would be submitted through the Central People’s Government and made public in due course.

17. A member opined that in considering whether legislation should be enacted to protect sexual minorities from discrimination, the Administration should also take into account Article 32 of the Basic Law which guaranteed Hong Kong residents’ freedom of religious belief and Article 18(4) of the ICCPR which aimed to respect the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, in addition to those Articles cited in paragraph 15 above. However, one other member did not agree to this.

18. The meeting noted the content of the paper.

Agenda Item 4: Background paper on gender recognition prepared by Dr Sam Winter
[Paper No. 2/2014]

19. AS(CMA)4A introduced the paper. The member who proposed to discuss this matter remarked that the current requirement that a person must have undergone sex reassignment surgery (“SRS”) before he/she was allowed to change the sex entry on the Hong Kong Identity Card was in violation of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and such requirements stemmed from discrimination. Therefore, the Administration should enact a Gender Recognition Ordinance modelled on the United Kingdom’s Gender Recognition Act (“GRA”) 2004 as proposed in Dr Sam Winter’s paper. Another member supplemented that as the requirement for SRS would render a person permanently sterile, it infringed one’s human rights, in particular the right to reproduction. He also shared with members the experience of a male-to-female transgender, who was forced to undergo a body search by a male airport staff when she entered Hong Kong a few months ago, as her identity document showed her to be a male. One other member remarked that whether the requirement for SRS was reasonable or not could be discussed but he did not agree that this was a case of torture. The Chairperson suggested that these views could be relayed to the IWG for reference.

20. Having regard to members’ discussion over the scope of work of the IWG, DS(CMA) explained the following:

- (a) in the judgment of the Court of Final Appeal (“CFA”) handed down in the *W* case, the CFA discussed as *obiter dicta* issues relating to transsexuals under other areas of law where legislative intervention might be needed and quoted GRA 2004 for the Administration’s reference;
- (b) although the *obiter dicta* did not form part of the CFA’s order, the Administration set up the IWG to look into the gender recognition regime of Hong Kong; and
- (c) in his speech at the Motion of Thanks debate held on 14 February 2014, SJ had mentioned the IWG’s scope of work and that the first IWG meeting had been held.

21. The meeting noted members' views and that CMAB would relay those views to the IWG for reference and any follow-up action the IWG considered appropriate.

[Post-meeting note: members' views were relayed to the Secretariat of the IWG on 17 March 2014.]

Agenda Item 5: The issue relating to discrimination against teachers' sexual orientation and gender identity by the International Christian School

[Paper No. 3/2014]

22. AS(CMA)4A introduced the paper. The Chairperson informed the meeting that a member who was unable to attend this meeting had set out his views in writing which were tabled.

23. The member who proposed to discuss this matter noted that the written response from the Education Bureau ("EDB") to the LegCo Panel on Education had stated that the school promised to review the relevant policies and measures and EDB would continue to follow up the case; therefore, he wished to know the follow-up action that EDB would take pursuant to the school's review and the timeframe for that. A member said that the school concerned was a private Christian school and there were some serious concerns that religious organisations would no longer be able to operate schools based on their convictions and beliefs and that schools would no longer have the liberty of not condoning conduct that was contrary to their religious beliefs. Some parents had placed their children in the school in question as they subscribed to the school's convictions and beliefs.

24. One other member opined that although the school concerned was a private school, it did receive government support; and employment of a teacher for subjects like Mathematics and English should be based on qualifications, instead of sexual orientation. In fact, enquiring an employee about his/her sexual orientation, even in a religious organisation, might also infringe his/her privacy. Therefore, it was important to strike a balance between freedom of religious belief and respect for one's privacy.

25. A member suggested that the Advisory Group could make reference to the experience of those overseas jurisdictions with sexual orientation discrimination legislation to see how they dealt with such concerns. Some members expressed that such concerns could be addressed through exemption provisions, and a public consultation would allow such issues to be thoroughly thrashed out.

26. The Chairperson recalled that conflict between freedom of speech and respect for rights did surface when the Sex Discrimination Ordinance was discussed, and opined that the Advisory Group could make reference to the experience of overseas jurisdictions and at the same time should take into account local circumstances.

Agenda Item 6: Progress report of the study on discrimination experienced by sexual minorities
[Paper No. 4/2014]

27. The Chairperson welcomed the representatives from Policy 21 Limited (“the Consultant”) and AS(CMA)4B introduced the paper.

28. Ms Ruby LO reported that the Pilot Study was conducted in late January 2014 to test out the flow in the discussion guide. Four one-to-one in-depth interviews, one for one gay, one lesbian, one bisexual and one transgender respectively, had been conducted. The overall flow was considered satisfactory. The interviews lasted for about 50 minutes each and the moderators could obtain the needed information, except that some participants did not immediately realise that “goods, facilities and services” included the services offered by banks, restaurants, clubs and public transport. In the light of this, the Consultant suggested i) elaboration of the explanatory note on “goods, facilities and services” under section D of the discussion guide to facilitate discussion, and ii) allowing flexibilities in the number of participants in each focus group so as to allow sufficient discussion time. She further advised that recruitment of target respondents had commenced on 19 February 2014 and leaflets would be distributed very soon. About 40 applications had been received so far, half from the LGBT networks and communities and the other half through snowball sampling or online / open recruitment. For those who did not prefer focus group discussion, one-to-one

interview in a suitable environment would be arranged. Members agreed to elaborating the explanatory notes on “goods, facilities and services” as suggested by the Consultant.

29. In response to members’ questions, Ms Ruby LO advised the following:

- (a) a recruitment notice was sent to the list of the LGBT networks and communities as included in the Study Plan on 19 February 2014;
- (b) about 8 transgenders had been recruited so far;
- (c) no respondent over the age of 50 had been recruited yet. The Consultant would step up efforts on this;
- (d) there would be a focus group for English-speaking participants;
- (e) in case of overwhelming response during the recruitment, “first-come-first-in” principle would be adopted in respect of applicants with similar demographic background; and
- (f) once a sufficient number of target respondents were recruited, the focus group discussion would commence.

30. In reply to the Chairperson, Mr H K YIP informed members that since the commencement of recruitment, the response was better than expected; and leaflets would soon be distributed in districts with high pedestrian flow such as the pedestrians-only streets in Causeway Bay and Mongkok, as well as clubs and bars. A member suggested the leaflets be distributed at other districts, such as Tin Shui Wai, as well so that target respondents with a variety of background could be recruited. Another member suggested distributing leaflets through the networks of District Council members and non-governmental organisations.

31. As regards the suggestion of newspaper advertisement, Mr H K YIP agreed that this could help reach out to more potential respondents. In response to a member’s enquiry, PAS(CMA) said that the cost of newspaper advertisement was not budgeted for earlier. A member said that in which newspapers the advertisement should be placed should be carefully considered.

32. In response to another member's query, Mr H K YIP explained that a minimum of 200 target respondents would be recruited for the Study and each respondent would be paid \$250 as a token of gratitude.

33. Members then discussed whether a press conference should be pursued for recruitment purpose. Mr H K YIP said that the Consultant did not consider press conference an effective approach to recruit target respondents having regard to some sexual minorities' concern over undue publicity which could risk disclosure of their identity. To avoid attracting too much media attention and public speculation on the Study at the recruitment stage, the Consultant would prefer a low-profile approach.

34. A member expressed reservation in pursuing press release, newspaper advertisement and press conference to recruit target respondents for the Study as well as incurring extra resources in this regard. She considered snowball sampling method a more pragmatic means having regard to the small number of target respondents to be recruited, and reminded that the content of the newspaper advertisement, if to be placed, must be neutral. The Chairperson requested the Consultant to ensure the neutrality and clarity of the content of the newspaper advertisement.

35. After deliberation, the meeting agreed that a press release should be issued and newspaper advertisement should be placed in one English and one Chinese newspaper but a press conference should not be pursued.

[Post-meeting note: The follow-up arrangements for the press release and newspaper advertisement were circulated to members for reference on 3 March 2014.]

Agenda Item 7: Research findings on legislative and other measures to eliminate discrimination on the ground of sexual orientation and gender identity in the United Kingdom

[Paper No. 5/2014]

36. PAS(CMA) introduced the paper and pointed out that the research was conducted by the Secretariat through desk-top search of

materials readily available on the Internet. AS(CMA)4B then presented the research findings.

37. As the Secretariat would also look into the experience of some other overseas jurisdictions, the Chairperson suggested that detailed discussion on how overseas jurisdictions addressed the concerns over legislating and how the relevance of overseas experiences in Hong Kong's context could be further discussed when more research findings were available. A member suggested that the research could focus on the exceptions in overseas legislation, while another member suggested that issues relating to reverse discrimination, if any, should be included.

38. The meeting noted the research findings set out in the paper.

Agenda Item 8: Any other business

39. There was no other business. The discussion ended at 8:05 p.m. The next meeting will be held at 5 p.m. on 6 June 2014.

**Constitutional and Mainland Affairs Bureau
February 2014**