

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

Date : 6 June 2014
Time : 5 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
Mr Reggie HO
Professor KUNG Lap-yan
Ms Joanne LEUNG
Dr Hon Priscilla LEUNG, SBS, JP
Ms YEUNG Wai-wai

Members Absent

Ms Shirley HA
Professor KWAN Kai-man
Ms Lavinia LAU
Hon James TO

In Attendance

Representatives from Constitutional and Mainland Affairs Bureau (“CMAB”)
Mr LAU Kong-wah, JP Under Secretary for Constitutional and
Mainland Affairs (“USCMA”)
Mrs Philomena LEUNG 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 (“AS(CMA)4A”)
(Secretary)
Mr LAI Wing-yiu Unit Manager, Gender Identity and Sexual
Orientation Unit

Opening remarks

The Chairperson welcomed USCMA to the meeting and noted that he would have to leave at around 5:45 p.m. due to other prior commitments.

Agenda Item 1: Confirmation of minutes of meeting held on 24 February 2014

2. The Chairperson informed the meeting that a member had proposed amending the phrase “and concluding observations made by the United Nations Human Rights Committee on the past reports of the HKSAR under ICCPR.” in paragraph 15 of the minutes to “and Concluding Observations made by the United Nations Human Rights Committee on the past reports of the HKSAR under ICCPR and ICESCR.”. Members had no objection to the proposed amendment. The minutes were confirmed subject to this amendment.

Agenda Item 2: Matters arising

3. With reference to paragraph 4 of the minutes of the last meeting, AS(CMA)4A reported that the Equal Opportunities Commission (“EOC”) had commissioned the Gender Research Centre under the Hong Kong Institute of Asia-Pacific Studies of the Chinese University of Hong Kong (“CUHK”) to conduct the Feasibility Study on Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status in mid-May 2014; and, according to EOC’s advice, information on court cases concerning sexual orientation discrimination in those jurisdictions with sexual orientation discrimination legislation would be collected in the context of the Feasibility Study and provided to the Advisory Group in due course.

Agenda Item 3: Progress report of the study on discrimination experienced by sexual minorities **[Paper No. 6/2014]**

4. PAS(CMA) introduced the paper. She informed members that since preparation of the interim report by the consultant on 30 May, the consultant had now recruited over 200 participants, including a number of lesbians and bisexuals. She said that as the number of participants who had opted for one-to-one interviews had exceeded that originally anticipated, more time would be required for the information collection work. If everything went smoothly, the consultant should be able to

complete all the focus groups and one-to-one interviews by July 2014 and that the findings of the Study should be available towards the end of the third quarter or the fourth quarter of 2014. In reply to a member's enquiry, PAS(CMA) informed members that the draft final report of the Study would be presented to the Advisory Group when available.

5. A member asked whether the fact that more participants had opted for one-to-one interview would necessitate additional cost for the Study. PAS(CMA) said that the additional cost, if any, would be absorbed by the consultant.

6. Another member said she was told by some sexual minorities from the LGBT networks and communities that the consultant had not contacted them even though they had applied for participating in the Study; she was concerned whether the snowball recruitment would be affected. The Chairperson requested CMAB to draw the consultant's attention to this.

7. The meeting noted the progress of the Study.

Agenda Item 4: Research findings on legislative and other measures to eliminate discrimination on the ground of sexual orientation and gender identity in New Zealand and Australia
[Paper No. 7/2014]

8. PAS(CMA) introduced the paper and AS(CMA)4B presented the research findings.

9. In response to members' questions, AS(CMA)4B informed members of the following:

- (a) the Equal Opportunity Act 2010 of Victoria, Australia provided an exception under which a person might establish special services, benefits or facilities that met the special needs of people with a particular characteristic (including people of different sexual orientation and gender identity) and may limit eligibility for such services to people with the particular characteristic, such as personal counselling services on suicide prevention for people of a particular sexual orientation; and the presumed attribute of sexual orientation was also a protected ground; and
- (b) "gender identity" was covered under the ground of "sex" in the

Human Rights Act 1993 (“HRA”) of New Zealand, but the term was not defined therein, nor in reports published by its Human Rights Commission.

10. Noting that the HRA provided an exception which excluded a person of a particular sex, including gender identity, to participate in any sporting activities where strength, stamina or physique was relevant, a member said that after a male-to-female transgender had received hormonal treatment for a certain period of time, her physical strength would be much reduced and no longer have the competitive advantage over other females. AS(CMA)4B cited that there was also a case in New Zealand where the losing team in a game of women’s club cricket complained against the winning team for including a male-to-female transgender player and the local association concerned subsequently ruled that the transgender player was eligible to play having considered the impact of the hormonal treatment on her.

11. A member said that during a meeting of the Legislative Council Bills Committee, she heard a saying that homosexuality was a disorder/disability and asked if that was indeed the case. The Chairperson clarified that homosexuality per se had been removed from the list of mental illnesses in the Diagnostic Statistical Manual (“DSM”)-III in 1973, but gender dysphoria was still being categorised as a mental disorder in the current version of DSM-V published in 2013. The member further asked whether persons suffering from gender dysphoria would be considered as persons with a disability and if there was any statistics in this regard. A member advised that diagnosis of these cases would be determined by medical experts on a case-by-case basis.

12. A few members considered that it was not conducive to efficient discussion by the Advisory Group if some basic concepts such as homosexuality not being a disorder/disability needed to be revisited every now and then, since basic concepts regarding sexual orientation and gender identity had been thoroughly discussed at the first few meetings of the Advisory Group. Another member pointed out that the discussion at the Bills Committee referred to was in fact talking about gender dysphoria but not homosexuality and hence one should not be confused.

13. The member who raised the query in paragraph 11 clarified that she personally did not think that homosexuality was a disorder or disability either, but merely wished to seek clarification on what she had heard from other people. She considered that all members of the

Advisory Group should have the liberty to seek clarification on issues whenever necessary. Although different members on the Advisory Group might hold different views not shared by other members, she expected that all members would respect each other during the discussions. She expressed her feeling of being “discriminated” by the dominant majority in the meeting.

14. In response to the member’s remarks in paragraph 13 above, a member said that the words used and attitude of the member concerned made her, being a sexual minority, feel offended and not being respected. She was very disappointed that much time had been wasted discussing non-substantive matters. To facilitate the smooth running of the meeting, she suggested setting a limit on the time each member should be allowed to speak.

15. The Chairperson reiterated that the Advisory Group should focus the discussion on tackling discrimination on the grounds of sexual orientation and gender identity, and reminded all members once again to respect each other’s views which was fundamental to anti-discrimination.

16. The discussion of the item on overseas measures continued. Some members had the following suggestions on future research on this subject:

- (a) a member suggested looking into the experience of Macau as well since it also had a few ordinances containing clauses that prohibited discrimination on the ground of sexual orientation;
- (b) another member suggested focusing on religious exemptions;
- (c) one other member suggested looking into the difficulties encountered by overseas jurisdictions in the process of introducing legislation prohibiting discrimination on the ground of sexual orientation and/or gender identity; and
- (d) the Chairperson suggested the Secretariat to provide a summary table comparing the findings on all the overseas jurisdictions studied to facilitate the Advisory Group’s subsequent discussion.

17. In response to a member’s question, PAS(CMA) said that other than the United Kingdom, Australia and New Zealand, the Secretariat would also conduct desktop research into the experience in Canada, Taiwan and the United States. A member suggested that the progress of the research be expedited. The Chairperson said that it was also important that the research covered the necessary issues.

18. A member enquired if the research could also provide information as to whether same-sex marriage or civil partnership was allowed in the jurisdictions and the requirements for recognition of a change of sex. The Chairperson said that the Advisory Group should focus its work on addressing discrimination on the ground of sexual orientation and gender identity. PAS(CMA) added that matters concerning gender recognition would be looked into by the inter-departmental working group chaired by the Secretary for Justice.

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

Agenda Item 5: Publicity plan for 2014-15
[Paper No. 8/2014]

20. AS(CMA)4A introduced the paper.

21. In response to a member's questions, AS(CMA)4A advised that over 40 organisations had pledged to adopt the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation ("the Code"). PAS(CMA) said that CMAB would continue to appeal to other organisations in the public and private sectors to urge them to adopt the Code, and that briefings would be arranged for management staff on the good practices recommended in the Code.

22. Some members suggested CMAB to make public the list of organisations that had pledged to adopt the Code or if there were problems with this, then the nature of business of the organisations. One other member suggested that the organisations could be invited to sign a charter. Another member suggested CMAB to consider reviewing the content of the Code as he noted that there had been no update since the Code was issued in 1998.

23. A member asked if CMAB could provide members with the schedule of the seminars and briefings on the Code for public and private sector organisations to be organised so that members could sit in if they wished. PAS(CMA) said that as some of the seminars and briefings were organised specifically for the staff of individual companies, it might not be appropriate for individual members to sit in. The Chairperson said that CMAB might provide the Advisory Group with the list of seminars and briefings organised for reference afterwards if deemed fit.

24. A member suggested that during the seminars and briefings, the Administration could highlight corporate social responsibility as well as

the benefits the companies could enjoy through better staff morale and corporate image so as to increase their incentive to adopt the Code.

25. In response to a member's question as to whether CMAB had reviewed the effectiveness of the publicity measures undertaken in the past, PAS(CMA) said that CMAB had been collecting feedback from participants of the activities sponsored under the Equal Opportunities (Sexual Orientation) Funding Scheme as part of the assessment on their effectiveness. The member who raised the above question said that CMAB could also consider evaluating the effectiveness of the Announcement in the Public Interest ("API") in disseminating the messages of anti-discrimination against and equal opportunities for sexual minorities in the community, for example, by conducting an audience research. In response to another member's question, AS(CMA)4A advised that CMAB had so far received a very small number of complaints about the API since its broadcast in mid-December last year. One other member requested CMAB to provide the number of times that the API had been broadcast through each of the planned channels after they were completed.

26. The meeting noted the Government's publicity plan to promote equal opportunities on the grounds of sexual orientation and gender identity in 2014-15.

Agenda Item 6: Any other business

27. A member shared with the meeting information of three public forums to be organised from June to September this year in connection with the Feasibility Study on Legislating against Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status commissioned by EOC as well as the registration methods of the forums.

28. Another member took the opportunity to remind members of the conference on transgender rights that he was organising and invited them to join it on 30 June 2014.

29. The Chairperson also shared with the meeting that the European Commission ("EU"), CUHK and EOC were going to organise a symposium jointly on LGBT rights in late August 2014. She was invited to speak about the work of the Advisory Group. Speakers from EU countries would be invited in due course and more details would be provided to members nearer the time.

30. The discussion ended at 7:45 p.m. The next meeting will be held at 5 p.m. on 20 August 2014.

**Constitutional and Mainland Affairs Bureau
June 2014**