

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

Date : 20 August 2014
Time : 5 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
Professor KUNG Lap-yan
Ms Lavinia LAU
Ms Joanne LEUNG
Dr Hon Priscilla LEUNG, SBS, JP
Hon James TO
Ms YEUNG Wai-wai

Members Absent

Mr Reggie HO
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
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)
Mr LAI Wing-yiu Unit Manager, Gender Identity and Sexual
Orientation Unit

Agenda Item 1: Confirmation of minutes of meeting held on 6 June 2014

As there were no proposed amendments, the minutes of meeting held on 6 June 2014 were confirmed.

Agenda Item 2: Matters arising

2. With reference to paragraph 11 of the minutes of the last meeting, AS(CMA)4A reported that CMAB had consulted the Central Registry for Rehabilitation (“CRR”) of the Labour and Welfare Bureau, Social Welfare Department (“SWD”) and the Hospital Authority (“HA”) on statistics of persons suffering from gender dysphoria or gender identity disorder (“GID”) being considered as persons with a disability. She said that CRR compiled statistics based on defined types of disability and gender dysphoria or GID was not one of the defined types. SWD and HA did not compile such statistics either.

3. With reference to paragraph 22 of the minutes of the last meeting, AS(CMA)4A reported that CMAB had made public the list of organisations that had pledged to adopt the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (“the Code”) on the CMAB website on 18 August, and that an article on this was featured in two local newspapers, namely *Headline Daily* and *The Standard*, on 19 August with a view to publicising this to the general public and appealing to more organisations to adopt the Code. She also added that the content of the Code had been under review from time to time.

4. In response to members’ enquiries, AS(CMA)4A said that some organisations which CMAB had approached earlier advised that they needed more time to consider whether to adopt the Code and/or to include their names on the list. She said that the list would be updated as and when more organisations pledged to adopt the Code. One member suggested that it might be worth looking into the concerns of those organisations which had reservations in adopting the Code.

5. With reference to paragraph 23 of the minutes of the last meeting, AS(CMA)4A reported that five seminars and briefings on the Code had been organised over the past two months, with a total of over 250 participants.

Agenda Item 3: Progress report of the study on discrimination experienced by sexual minorities

[Paper No. 10/2014]

6. PAS(CMA) introduced the paper. She informed members that as at 6 August, some 230 persons had indicated that they would like to participate in the study and that the consultant had interviewed about 200 persons. Although the requirement of the consultant was to obtain information in respect of no fewer than 200 persons only, the consultant was prepared to liaise with the other persons who had indicated interest with a view to obtaining information from them, at no extra cost, but this would require a bit more time. Separately, as the number of persons who had opted for one-to-one interviews had exceeded that originally expected, this also meant that more time was required for the interviews as well as preparation of interview records.

7. The Chairperson suggested, and members agreed, that the consultant should be given more time but 30 September 2014 should be set as the cut-off date for focus group discussions and one-to-one interviews. If arrangement could not be made to interview the remaining persons by then, they would have to be excluded from the study. On this basis, it was hoped that the consultant's draft final report could be ready for discussion at the next meeting of the Advisory Group.

8. In response to a member's view about the mix of respondents in terms of education attainment and personal income, the Chairperson said that the study was not a statistical survey and therefore, it was not necessary for the study to adopt a sampling that resembled the demographic structure of the sexual minority population in Hong Kong, which in any case was not known. That said, it would be useful if the consultant could include an analysis on whether there was any significant difference in response in terms of different age groups, education attainment and personal income.

9. 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 Canada

[Paper No. 11/2014]

10. AS(CMA)4B presented the paper and the research findings.

11. A member asked if it would be worth seeking the views of legal experts to ensure that what was presented in the paper was accurate. Another member remarked that this would take time and since the paper was only intended to provide a general overview for the Advisory Group's reference, it should suffice for this purpose. If members spotted any inaccuracies or had suggestions for improvement, these could be conveyed to the Secretariat. The Chairperson shared the view and said that members could provide suggestions on areas for improvement, if any, to the Secretariat.

12. Members deliberated on the paper and expressed the following views:

- (a) a member pointed out that religion was not just a domain like employment or provision of service; to many people, it was a way of life; and exemptions from the statute to take into account religious practices now existed in various forms, e.g., exemption from wearing helmets for Sikh motorcyclists. How to reconcile religion with homosexuality and gender identity would need to be viewed in this context;
- (b) a member said that the court cases overseas could shed light on the principles adopted in reconciling competing rights such as the freedom to practise religious beliefs and the right to be protected from discrimination; the reasoning and rationale of the judgments in the court cases provided useful reference to facilitate the Advisory Group's further discussion; and
- (c) a member noted that the various court cases suggested that anti-discrimination legislation could be costly; if defendants were merely lay citizens, lawsuits could cause them enormous financial burden.

13. Members also made the following suggestions:

- (a) where available, landmark court cases in different aspects or domains be included as far as possible;
- (b) an index of the court cases, by domain, be included;
- (c) when researching into the measures adopted by the United States ("US"), the Secretariat look into the executive order recently

issued by the US President relating to sexual orientation and gender identity in employment; and

- (d) other than the concerns of the religious sector, those of the business sector should also be looked into.

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

Agenda Item 5: The Administration's response to the issues regarding elimination of discrimination on the ground of sexual orientation and gender identity in relation to the third report of the HKSAR of PRC under the International Covenant on Economic, Social and Cultural Rights ("ICESCR")
[Paper No. 12/2014]

15. AS(CMA)4A introduced the paper. She said that it was a follow-up to Agenda Item 3 discussed at the fourth meeting of the Advisory Group held on 24 February 2014 with a view to informing members of the Administration's response to the issues regarding elimination of discrimination on the ground of sexual orientation and gender identity raised by the United Nations Committee on Economic, Social and Cultural Rights ("the Committee") in relation to the third report of the HKSAR of PRC under the ICESCR, as well as the relevant Concluding Observations issued by the Committee after the hearing on HKSAR's third report held on 8 May 2014.

16. A member noted that the Concluding Observations had stated that "[t]he Committee recommends that Hong Kong, China take steps to adopt comprehensive anti-discrimination legislation in compliance with article 2, paragraph 2 of the Covenant" and more details could be found in paragraph 41 of the document¹; he was of the view that it was the Government's constitutional responsibility to enact legislation to prohibit sexual orientation discrimination.

17. The meeting noted the contents of the paper.

Agenda Item 6: Any other business

18. A member asked if the Advisory Group should take stock of the work done thus far, and another member proposed that such information should be published, say, at the CMAB website. The Chairperson

¹http://www.cmab.gov.hk/doc/en/documents/policy_responsibilities/ICESCR_Concluding_Observation.pdf

suggested that the Secretariat prepare a paper on this for discussion at the next meeting. She also said, and members agreed, that the next meeting would focus on discussing the draft final report of the study on discrimination experienced by sexual minorities.

19. The discussion ended at 7:10 p.m. The next meeting will be held at 5 p.m. on 18 November 2014.

**Constitutional and Mainland Affairs Bureau
August 2014**