

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

Date : 2 February 2015
Time : 4 p.m.
Venue : Conference Room 5, 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 KWAN Kai-man
Ms Lavinia LAU
Ms Joanne LEUNG
Dr Hon Priscilla LEUNG, SBS, JP
Ms YEUNG Wai-wai

Members Absent

Mr Reggie HO
Professor KUNG Lap-yan
Hon James TO

In Attendance

Representatives from Constitutional and Mainland Affairs Bureau (“CMAB”)
Mr Gordon Leung, JP Deputy Secretary for Constitutional and
Mainland Affairs
Ms Phidias TAM Principal Assistant Secretary for
Constitutional and Mainland Affairs
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

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

Ms Ruby LO

Deputy Director

Mr Ben WONG

Research Assistant

By Invitation

Representatives from Family School Sexual Orientation Discrimination Ordinance Concern Group (“Concern Group”) (for Agenda Item 3 Only)

Mr Howard LAI

Mr Albert LAW

Mr Kinal NG

Mr Roger WONG

Mr Patrick YEUNG

Representatives from Kowloon Union Church (“KUC”) (for Agenda Item 4 Only)

Rev Grace BOK

Rev Phyllis WONG

Representative from Queer Theology Academy (“QTA”) (for Agenda Item 4 Only)

Ms Pearl WONG

Agenda Item 1: Confirmation of minutes of meeting held on 18 November 2014

As there were no proposed amendments, the minutes of meeting held on 18 November 2014 were confirmed.

Agenda Item 2: Matters arising

2. With reference to paragraph 17 of the minutes of the last meeting, AS(CMA)4A reported that the stock-take summary of the work of the Advisory Group had been posted on the webpage for the Advisory Group in the CMAB website.

3. With reference to paragraph 19 of the minutes of the last meeting, AS(CMA)4A reported that an icon had been added to the constant side panel of the CMAB website as shortcut to access the webpage on the Advisory Group.

Agenda Item 3: Exchange of views with Family School Sexual Orientation Discrimination Ordinance Concern Group

4. The Chairperson welcomed the representatives from the Concern Group.

5. One of the representatives shared with the Advisory Group a set of presentation slides that had been used by the Concern Group on various occasions, such as speeches at schools and churches, and uploaded online for reference by the public. In view of the time constraints of the session, a full presentation was not given but could be presented at a future session if that could be arranged. He said that the Concern Group was opposed to enacting legislation against discrimination on the ground of sexual orientation (“SODO”), having studied the legislative proposals put forward by LGBT groups and discussed with the Chairperson of the Equal Opportunities Commission (“EOC”). The Concern Group believed that SODO would interfere with some aspects of human rights. There was high expectation of the work of the Advisory Group but he was worried that the recommendations of the Advisory Group might be biased due to its unbalanced membership which was skewed towards the sexual minorities.

6. The other representatives of the Concern Group also expressed the following views and concerns:

- (a) one representative opined that in Hong Kong, even without the enactment of SODO, its negative impact had emerged. He found that people were already not allowed to speak against homosexuality, or they would be rebuked. On the social media, views were biased against traditional family values. He also witnessed how the International Christian School (“ICS”) was unfairly criticised as discriminatory when his child studied at the school;
- (b) another representative expressed concern that if SODO was enacted, the freedom to teach traditional family values in schools would be jeopardised, and there could be “reverse discrimination” when one did not support homosexuality;
- (c) one other representative said that while people of different sexual orientation should be respected and not discriminated against, overseas experiences had revealed that tackling the problem through SODO was a disproportionately excessive

move. Family values would be under attack if SODO was pursued too fast; and

- (d) one representative said that SODO would suppress traditional family values and the rights of some people, which might not be good for a pluralistic society; also it might bring controversy and disputes to the society. In considering whether SODO should be enacted, it was necessary to take into account the local culture and public sentiment. Many people were afraid to voice their views against enacting SODO, therefore the Concern Group came forth to speak for these people. He hoped that those who supported and opposed to SODO would not attack each other.

7. The Chairperson said that the Advisory Group would not only look into the discrimination faced by sexual minorities but also consider the different views of stakeholders before advising on the recommended strategies and measures to tackle the problems identified. Having regard to the tight working timeframe of the Advisory Group, it would be difficult to arrange a further session with the Concern Group for going through their presentation slides. The slides would be circulated to members for reference. She then asked if members would like to raise any questions with the representatives. A member enquired about the result of the ICS incident, while another member asked the representatives' views on what was meant by pursuing SODO too fast and how the Concern Group would define traditional family values.

8. One representative said that owing to pressure from the public and the media, the school management of ICS decided to revise its policies by removing the requirement for its employees to sign the "Standards of Biblical Ethics and Integrity" despite that it had been the established employment policy of the school and the parents were deeply concerned. Two other representatives said that they did not deny the technical feasibility of enacting SODO, but were very concerned about the negative impact of the legislation in the long run having regard to overseas experience. In particular, they were concerned about the implications on procreation and children's development, which might be sacrificed when the institution of marriage was undermined and homosexual couples had a right of adoption. For the stable development of the society, measures to eliminate discrimination should be discussed and had the support of public opinion. Besides, as mutual trust between those who supported and opposed to legislation was very important if SODO was to be pursued, politicians who supported SODO should not intentionally stir up issues again as in the ICS case.

9. The Chairperson thanked the representatives for sharing their views and concerns, and requested the Secretariat to inform members after the meeting of the web link to the Concern Group's presentation slides mentioned above for reference.

Agenda Item 4: Exchange of views with Kowloon Union Church (“KUC”) and Queer Theology Academy (“QTA”)

10. The Chairperson welcomed the representatives from KUC and QTA, and invited them to speak in turn.

11. A KUC representative appreciated the opportunity to share with the Advisory Group the discrimination faced by sexual minorities in Hong Kong and why legislation was needed to protect them. Another KUC representative supplemented that she was aware of numerous cases where one had lost his/her job upon disclosing his/her sexual orientation or gender identity.

12. The QTA representative remarked that QTA aimed to promote justice and equal rights for people with different sexual orientations through publications and education. QTA and the One Body in Christ Church had recently obtained funds to jointly provide counselling hotline and support groups for sexual minorities. Through the provision of these services, they had learnt about the struggles of some people in the sexual minorities and their experiences relating to churches. For example, a lesbian who attended a school run by a church was repeatedly asked to change her sexual orientation, which eventually led her to suffer from depression and hence adversely affected her studies and subsequent career prospect; in another case, a gay teacher was always afraid of losing his job.

13. The Chairperson requested the representatives to elaborate further on how the Christian churches thought the discrimination faced by sexual minorities should be addressed. One of the KUC representatives said that there were in fact different views among Christian churches as to how the Bible should be interpreted regarding homosexuality and whether legislation should be enacted to prohibit discrimination on the ground of sexual orientation, and that some Christians did support equal rights for sexual minorities. When KUC launched the campaign “Covenant of the Rainbow”, which promoted an inclusive and friendly attitude towards sexual minorities, with other Christian groups and churches in 2013, they collected about 700

signatures in support of the campaign. On the other hand, the churches were in general concerned about the impact on religious freedom and freedom of education if legislation was to be pursued. She opined that to address this concern, the ordinance to prohibit discrimination on the ground of sexual orientation could model on the existing four anti-discrimination ordinances which provided religious exemptions.

14. The Chairperson asked if members had any questions to raise with the representatives. A member asked whether the representatives had any concrete suggestions for tackling the discrimination faced by sexual minorities and how the strong objection of quite a number of Christian churches to legislation could be mitigated. The representatives responded that in addition to a roadmap for legislation based on the framework of the existing anti-discrimination ordinances, the Government should also provide additional resources for public education and support services for sexual minorities, including counselling and temporary shelter. They also said that they respected others' views on whether legislation should be enacted, but hoped that other churches could also see this issue from a different angle. Basic human rights were very important and should co-exist with traditional moral values, which should also include "respect" and "inclusiveness". It was believed that legislation could effectively help sexual minorities by preventing discrimination.

15. Another member asked the representatives how legislation could deal with objections to homosexuality in the family and churches. A KUC representative responded that although legislation could not resolve problems in the private domain, it could serve as an educational tool and instill a value in the society. As the society became more accommodating of sexual minorities, this group of people and their families would definitely face less stress and live a happier life.

16. The Chairperson thanked the representatives from KUC and QTA for sharing their views. Before the representatives left the meeting, they submitted a publication concerning equal rights for LGBT people for members' reference.

Agenda Item 5: Final report of the study on discrimination experienced by sexual minorities

[Paper No. 1/2015]

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

18. A member suggested the Consultant to amend a paragraph in the final report relating to blood donation for the sake of accuracy. In response to the member's enquiry, Mr Ben WONG advised that the presentation of findings in paragraphs 4.2.8 and 4.3.7 of the draft final report was recast after careful re-consideration in the final report.

19. Another member tabled his written comments on the final report and expressed the following views:

- (a) whether an act was an unfair treatment depended on whether there were justifications for it. Since the experiences mentioned in the report were self-reports by participants not verified with other relevant parties, he considered the study not objective enough. Though the report had explained the limitations of the study, they would likely be overlooked by the media in reporting findings in future. He also doubted if the findings should be used as the basis of informed discussion on whether legislation should be pursued;
- (b) since one of the academic advisors to the Consultant was well known to be in favour of legislation against discrimination on the ground of sexual orientation, he questioned if that advisor's involvement in the study would bias the findings;
- (c) the bullying problem in schools should be tackled not by legislation but education. Calling nicknames was very common and was faced by students not belonging to the sexual minorities as well; and
- (d) the right of the sexual minorities not to be discriminated against should be balanced with the rights of other people and organisations, such as the rights of theological colleges to exercise their religious liberty in recruiting students, and the rights of landlords to choose their tenants. In the report, differential treatment by theological colleges were remarked as debatable in the footnotes, but that might still be inadequate to draw readers' attention to the subsisting arguments.

20. Two other members agreed with the observation in paragraph 19(d) and suggested incorporating the footnotes concerned to the main body of the report.

21. The Chairperson reminded members that the objective of the study was not to assess the extent or frequency of discrimination against sexual minorities, but to provide a qualitative account as to in what domains and in what ways the sexual minorities had been discriminated against, through gathering information on their personal experience. She also said that the report had clearly stated the limitations of the study in order not to mislead the readers or exaggerate the problem.

22. One member said that she maintained her reservations about the sampling methods and the issue of press release and newspaper advertisement to recruit respondents for the study. She also disagreed with the payment of honorarium or allowance to participants of the study. She opined that the study over-emphasised the personal feeling of the participants which should not be equated to discrimination. It was, for instance, reasonable for landlords to choose tenants who appeared to be trustworthy, and landlord's differential treatment of different tenants might not necessarily be attributed to the landlords' discrimination against sexual minorities.

23. In response to members' questions, Ms Ruby LO advised the meeting of the following:

- (a) the academic advisor mentioned above had only overseen the pilot interviews and advised to include the question relating to support measures for sexual minorities in each domain in the discussion guide prior to the commencement of the main study. All the subsequent focus group discussions and in-depth interviews for the main study were conducted by other staff members of the Consultant;
- (b) to ensure that participants would be recruited from diverse backgrounds for the study from different sources instead of mainly from the sexual minority communities, the Consultant had adopted a combination of sampling methods including open invitation via newspaper advertisements, and had successfully recruited more than half of the participants not from sexual minority communities; and
- (c) it was a common practice for comparable studies to provide participants in focus group discussions or in-depth interviews with some compensation as a token of gratitude. For this study, each participant was paid \$250, while the prevailing average for other studies was about \$300 - \$350.

24. A member drew the meeting's attention to a case in the report relating to a transgender being refused one part of a medical examination. He said that the case might be the result of a lack of knowledge about transgenderism and sex reassignment surgery on the part of the healthcare staff concerned rather than discrimination. Another member supported this view. She also suggested the Consultant to revise some terminologies relating to transgenders in the report. The meeting agreed that there was a need to enhance the knowledge of healthcare staff in this regard.

25. The Chairperson suggested the Consultant to differentiate clearly the subjective feeling of being discriminated against and the substantive acts of unfair treatment in public domains in the conclusion of the report, revise the report having regard to members' comments and submit both the Chinese and English versions of the final report to the Advisory Group for conclusion of the study at the next meeting.

Agenda Item 6: Research findings on legislative and other measures to tackle discrimination on the ground of sexual orientation and gender identity in Taiwan and the United States
[Paper No. 2/2015]

26. AS(CMA)4B presented the paper summarising research findings on measures in Taiwan and the United States. He also informed the meeting that the summary table of the findings on the jurisdictions studied had been updated with an index of landmark court cases in different domains included, as suggested by members earlier.

27. A member tabled and presented a paper which aimed to supplement the paper prepared by the Secretariat by providing more cases and perspectives for reference by the Advisory Group. He opined that, instead of enacting an anti-discrimination ordinance to tackle discrimination on the grounds of sexual orientation and gender identity across the board, specific legislation could be adopted to address the problems of discrimination in the concerned public domain, similar to the approach taken in Taiwan and the United States. He hoped that the views and concerns in the response paper would be taken into account in the deliberation on the way forward regarding legislation against discrimination on the grounds of sexual orientation and gender identity. One other member asked if the response paper could be disclosed to the public, the member concerned said that the paper should be kept for the

Advisory Group's perusal and reference pro tem since it was prepared in haste and might need to be revised in case of inaccuracy in details. The Chairperson thanked the member for preparing the paper for the Advisory Group's reference and said that if members had amendments to propose to the paper, they could be sent to the member concerned direct.

28. In response to a member's question, the Chairperson said that the Advisory Group would from the next meeting onwards discuss recommendations on the strategies and measures to tackle the discrimination faced by sexual minorities, and that the strategies and measures to be considered might include public education, specific support measures, and/or legislative proposals. She expected that to be the focus of the coming two meetings.

Agenda Item 7: Any other business

29. A member raised that although ethnic minorities constituted only around 6% of the population in Hong Kong¹, the Government provided funding to non-governmental organisations to operate nine support service centres for ethnic minorities². He urged that the Government should provide dedicated support service centres for sexual minorities as well and that the centres should provide temporary shelter and counselling services which were also suggested by participants in the study to be useful support measures for sexual minorities. The Chairperson said that the Advisory Group would also take support services for sexual minorities into account when considering the recommendations for the Government.

30. The discussion ended at 7:00 p.m. The next meeting was scheduled for 5 p.m. on 27 April 2015.

[Post-meeting note: After the meeting, a member suggested that the next meeting commence earlier if possible. After consultation with the Chairperson and other members, the next meeting would be advanced to start at 4:30 p.m. on 27 April 2015.]

Constitutional and Mainland Affairs Bureau February 2015

¹ According to the results of the 2011 Population Census

² According to the website of the Home Affairs Department (http://www.had.gov.hk/r ru/english/programmes/programmes_comm_sscem.html), the Government is funding non-profit-making organisations to operate six support service centres and two sub-centres for ethnic minorities.