

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

Date : 27 April 2015
Time : 4:30 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
Ms Shirley HA
Mr Reggie HO
Professor KWAN Kai-man
Ms Lavinia LAU
Ms Joanne LEUNG
Hon. James TO
Ms YEUNG Wai-wai

Members Absent

Professor KUNG Lap-yan
Dr Hon. Priscilla LEUNG, SBS, JP

In Attendance

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

Representatives from Policy 21 Limited (“Consultant”) (for Agenda Item 3 Only)

Ms Ruby LO

Deputy Director

Mr Ben WONG

Research Assistant

Agenda Item 1: Confirmation of minutes of meeting held on 2 February 2015

AS(CMA)4A informed the meeting that there was a typographical error in paragraph 3 of the minutes of the last meeting that needed to be amended. She also said that a member had proposed amendments to paragraphs 28 and 29 and, after liaison with the Secretariat, had agreed to revise the proposed amendments as the version tabled¹. The Chairperson asked if members agreed to the proposed amendments.

2. Members had no objection to the proposed amendments. The minutes of the meeting held on 2 February 2015 were confirmed subject to these amendments.

Agenda Item 2: Matters arising

3. AS(CMA)4A reported that there were no matters arising from the minutes of the last meeting.

Agenda Item 3: Final report of the study on discrimination experienced by sexual minorities **[Paper No. 3/2015]**

4. The Chairperson welcomed the representatives from Policy 21 Limited (“the Consultant”). AS(CMA)4B introduced the paper and the Consultant briefed the meeting on the further revisions made to the draft final report of the study having regard to members’ suggestions raised at

¹ The proposed amendments tabled were:

- (a) to add “, and that the strategies and measures to be considered might include public education, specific support measures, and/or legislative proposals” in paragraph 28 after “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
- (b) To amend “He urged that the Government should provide a dedicated support service centre for sexual minorities as well and that the centre should provide temporary shelter and counselling service...” in paragraph 29 to “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 service...”.

the last meeting.

5. In response to a member's question, AS(CMA)4B advised that the experiences of discrimination reported by post-gay and intersex participants had been presented separately in the main text of the final report as suggested by another member at an earlier meeting. The member pointed out a typographical error in a paragraph stating the enumeration results and suggested a textual amendment to an excerpt in the Chinese translation of the final report.

6. The Chairperson asked if members had any other comments and whether they agreed to endorse the final report. A member indicated his wish to abstain from the endorsement of the final report having regard to the limitations of the study, including the subjective nature of self-reports of discrimination. The Chairperson reiterated that the study was designed not to measure the prevalence of the problem in Hong Kong but to have a better understanding of the personal experience of the sexual minorities in being discriminated against, and the report had clearly stated the limitations of the study. That said, the member's wish to abstain would be respected.

7. Another member asked whether and when the final report would be published for reference by the public. The Chairperson suggested the final report be published together with the Advisory Group's recommendations to the Government when ready, in order to provide a complete picture with both the problems identified and the recommended strategies and measures to tackle these problems. The meeting agreed.

8. As members had no further comment on the final report, the Chairperson said that the study was concluded and requested the Secretariat to circulate the endorsed final version of the report to members after the meeting.

Agenda Item 4: Suggestions on strategies and measures to eliminate discrimination against sexual minorities
[Paper No. 4/2015]

9. PAS(CMA) presented the paper. The Chairperson then invited members to offer views on the strategies and measures to be recommended by the Advisory Group in its future report to the Government.

10. In respect of possible strategies and measures relating to legislation, the meeting noted that the Secretariat had conducted desktop research on the experience of other jurisdictions. PAS(CMA) supplemented that the findings were based solely on materials in Chinese or English and readily available on the Internet regarding six jurisdictions which had specific legislation against discrimination on grounds of sexual orientation/gender identity. While the findings shed light on some issues raised in the implementation of the legislation overseas, future discussions on the development of viable legislative proposal for consultation would require much more comprehensive and in-depth information, e.g. on precise delineations of prohibited conduct under the law.

11. A member suggested referring the legislative issues to the Law Reform Commission (“LRC”) for consideration in view of the intricacy of the subject. Another member said that it often took a long time for the LRC to consider a subject and the Government had no obligation to adopt the LRC’s recommendation; therefore the Advisory Group should endeavour to formulate concrete recommendations to the Government if possible instead of referring the matter to the LRC. One other member opined that the legislative issues could be considered by both the Advisory Group and the LRC.

12. One member commented that whether and if so how certain problems should be addressed by anti-discrimination legislation required very cautious consideration. Even if exemptions were provided in the legislation to allow the exercise of competing rights, such exemptions would carry an implication that the exempted acts were tolerated but fundamentally wrong. He shared the view of some churches that people with different sexual orientations should be respected, while those who disapprove of homosexual acts should be entitled to their own opinion. In considering proposals for legislation, he suggested exploring specific provisions for the concerned public domains to tackle the problems identified, instead of pursuing an anti-discrimination ordinance which covered all domains. Reference could be made to the legislation in Taiwan which prohibited discrimination on grounds of sexual orientation and gender identity in the domains of employment and education.

13. Another member expressed reservation towards pursuing the legislative route, and said that administrative measures should first be taken to address the problem. Legislative measures should only be taken if administrative means were proven ineffective. One other member concurred and advised that if a genuine need for legislation was

demonstrated, the practical approach of enacting legislation in a targeted manner for specific domains would be preferable.

14. A member said that rights of the church and clergy should be respected, and anti-discrimination measures could take such forms as guidelines or codes of practice other than anti-discrimination laws. The utmost concern should be the effectiveness of the measures. Another member said that the public could be consulted on measures in different forms with regulatory effect, and any legislative measures needed not follow the framework of the existing four anti-discrimination ordinances.

15. One member opined that there was an imminent need for legislation for two reasons. Firstly, the study on discrimination experienced by sexual minorities in Hong Kong had revealed that some respondents were reluctant to disclose their sexual orientation or gender identity for fear of being discriminated against and this was a source of stress for the sexual minorities. Secondly, some research had reported that a large proportion of transgenders had contemplated suicide due to issues concerning their gender identity. In addition to protecting sexual minorities from discrimination, legislation would make them feel safe. Nevertheless, she also agreed that the Advisory Group should take into account the concerns of those who did not agree with homosexuality when considering whether and how recommendations relating to legislation should be made to the Government, and that exemptions should be provided to avoid causing negative impact on other parties.

16. A member shared the view that legislation was needed and said people with religious beliefs should also consider the matter empathically from the angle of the sexual minorities. He also suggested setting a reasonable timeframe for pursuing legislation regardless of how it would be enacted. Another member considered it impractical to impose a timeframe for the Government to pursue legislation since there were many factors, such as public sentiment, that the Government had to consider in order to decide whether and how legislative measures should be adopted. It would be more pragmatic for the Government to put efforts into the necessary ground work, such as more in-depth studies on overseas experience.

17. One member observed that no correlation was established between the suicide rate of transgenders and the extent to which public policies or laws were in favour of the sexual minorities. In any case, remedial measures should be relevant and proportionate to the actual problem.

18. The meeting agreed that the Government should be recommended to conduct more in-depth studies on the experience of other jurisdictions in tackling discrimination on the grounds of sexual orientation and gender identity, with a view to informing further discussions on the proposal to enact legislation against discrimination.

19. While the meeting in general agreed with the proposed broad strategies and measures set out in the paper, a member suggested that the Advisory Group's recommendation should also cover support services for sexual minorities and education in schools. One member agreed with the importance of support services for sexual minorities, such as temporary shelter and counselling service, but disagreed with the suggestion that would touch on school education, which could be controversial. The meeting agreed that the Advisory Group should also look into support services for sexual minorities in the formulation of strategies and measures to be recommended to the Government.

20. A member suggested to revisit the findings of the desktop research on overseas experience in tackling discrimination on grounds of sexual orientation and gender identity at the next meeting, since the Advisory Group had noted the findings of the desktop research at the past few meetings but had not discussed in detail the relevance of the overseas experience, in particular how other jurisdictions had sought to address the concerns about religious freedom and freedom of speech, to the local context. He believed that a further review of the findings would help the Advisory Group's formulation of recommendations to be made to the Government. He also suggested including the conclusion of deliberations as well as different views raised by members in the final report of the Advisory Group for reference by the Government. The meeting agreed.

Agenda Item 5: Any other business

21. Noting that the current two-year term of the Advisory Group would expire on 9 June 2015, and having regard to the latest progress of the work of the Group, the Chairperson asked DS(CMA) if the Government had any plan to extend the term of the Advisory Group. DS(CMA) thanked the Advisory Group for the work it had done and proposed that, subject to members' views, an extension of the term of the Group to 31 December 2015 be sought to allow sufficient time to complete its recommendations. The meeting supported the proposed extension of the term of the Advisory Group.

22. The discussion ended at 6:30 p.m. The next meeting will be held at 4:30 p.m. on 22 July 2015.

Constitutional and Mainland Affairs Bureau
April 2015