

Sexual Minorities Forum

Issues regarding Sexual Orientation Discrimination

Recently, the issue of whether the Government should introduce a piece of anti-discrimination legislation on the ground of sexual orientation has generated considerable public attention. We have also received over 10,000 letters from members of the public opposing such legislation.

2. We have emphasized that the Government has not yet come to a view on whether to legislate against sexual orientation discrimination and has no fixed timetable on this issue. We would conduct the survey on public's attitudes towards homosexuals as a first step. We would like to present the relevant issues to Members and the presentation outline is attached.

Home Affairs Bureau
May 2005

Discrimination on the Grounds of Sexual Orientation and Gender Identity

Home Affairs Bureau
May 2005



BACKGROUND



International Covenant on Civil and Political Rights (ICCPR)

- Concluding observations of the Human Rights Committee on the report on the Hong Kong Special Administrative Region (HKSAR) in the light of the ICCPR on 15 November 1999 –
- Paragraph 15
“15. The Committee remains concerned that no legislative remedies are available to individuals in respect of discrimination on the grounds of race or sexual orientation.”

Necessary legislation should be enacted in order to ensure full compliance with article 26 of the Covenant.”



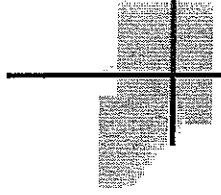
International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Concluding observations of the Committee on Economic, Social and Cultural Rights on the report on the HKSAR under the ICESCR on 11 May 2001 –
- Paragraphs 15, 30 and 31
“15. The Committee regrets that the HKSAR has not implemented a number of the recommendations in its concluding observations of 1996, despite the delegation’s assurance that these must be given effect. The Committee wishes to reiterate in particular its concern on the following issues:
 - a) The Covenant’s status in HKSAR’s domestic legal order continues to be different from that of the International Covenant on Civil and Political Rights, the provisions of which have been incorporated into domestic legislation;

- b) The failure of the HKSAR to extend the prohibition of race discrimination into the private sector;
- c) The failure of the HKSAR to prohibit discrimination on the basis of sexual orientation and age;
- d).....”

“30. It is the Committee’s view that the HKSAR’s failure to prohibit race discrimination in the private sector constitutes a breach of its obligations under article 2 of the Covenant. The Committee calls upon the HKSAR to extend its prohibition of race discrimination into the private sector.

31. The Committee also urges the HKSAR to prohibit discrimination on the basis of sexual orientation and age.”



Sexual Orientation

- What is sexual orientation?
- It has been argued that sexual orientation is a continuum ranging from heterosexuality to bisexuality to homosexuality.
- Heterosexuals are someone sexually attracted to persons of the opposite sex.
- Homosexuals are someone sexually attracted to persons of the same sex. Male homosexuals are usually called “gays” and female homosexuals “lesbians”.
- Bisexuals are someone sexually attracted to both men and women.



Transgenders

- Transgenders are someone who feel that their anatomical sex does not match their gender identity.
- There are two groups:
 - transgenders who live in the gender that corresponds to their anatomical sex
 - transgenders who live in the other gender
- Those who live in the other gender include:
 - transsexuals (i.e. persons who are undergoing or have undergone sex reassignment surgery)
 - transvestites (i.e. persons who dress in the clothing of the other gender, but who do not want to change their anatomical sex)



ISSUES AND PROBLEMS



Issues which have been raised

- anomalies in the criminal law
- legal position of transgenders
- should the life-long relationship of same-sex couples be recognized by law?
- should there be legislation against sexual orientation discrimination and gender identity discrimination?
- public education on and promotion of equal opportunities

Crimes Ordinance (Cap 200)

- "118C. Homosexual buggery with or by man under 21

A man who –

- (a) commits buggery with a man under the age of 21; or
- (b) being under the age of 21 commits buggery with another man, shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life."

- “118D. Buggery with girl under 21

A man who commits buggery with a girl under the age of 21 shall be guilty of an offence and shall be liable on conviction on indictment to imprisonment for life.”



Legal position of transgenders

- Under existing law, biological sex (sex at birth) cannot be changed.
- Persons who have undergone sex reassignment surgery may amend their Hong Kong Permanent Identity Cards and HKSAR passports. However, they cannot amend their birth certificates.



Gender Recognition Act 2004, United Kingdom

- Section 1 Applications
- “(1) A person of either gender who is aged at least 18 may make an application for a gender recognition certificate on the basis of –
 - (a) living in the other gender, or
 - (b) having changed gender under the law of a country or territory outside the United Kingdom.”

- Conditions for application

- (a) has or has had gender dysphoria;
- (b) has lived in the acquired gender throughout the period of two years ending with the date on which the application is made;
- (c) intends to continue to live in the acquired gender until death; and
- (d) has evidence to prove gender dysphoria (a report by a registered medical practitioner or a chartered psychologist practicing in the field of gender dysphoria which details the diagnosis of the applicant's gender dysphoria).

Recognition of the life-long relationship of same-sex couples

- Marriage Ordinance (Cap 181)

"Section 40-

(1) Every marriage under this Ordinance shall be a Christian marriage or the civil equivalent of a Christian marriage.

(2) The expression "Christian marriage or the civil equivalent of a Christian marriage" implies a formal ceremony recognized by the law as involving the voluntary union for life of one man and one woman to the exclusion of all others."

- Civil Partnership Act 2004 (United Kingdom)



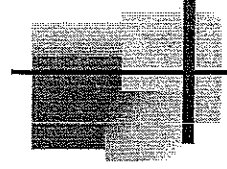
Public education and promotion of equal opportunities

- A "Gender Identity and Sexual Orientation Unit" similar to our Race Relations Unit will be set up shortly in the Home Affairs Bureau to –
 - (a) promote equal opportunities for persons of different sexual orientations;
 - (b) receive and handle complaints on sexual orientation discrimination; and
 - (c) conduct research on sexual orientation discrimination.



Dialogue with non-governmental organizations and concern groups

- A “Sexual Minorities Forum” has been established under the Home Affairs Bureau to discuss issues of concern to gay, lesbian and transgender groups.
- A dialogue is also maintained with religious (mainly Christian), education and family values groups.



WAY FORWARD



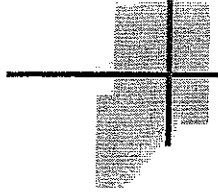
Way Forward

- Survey on public attitudes
- Public consultation
- Proposals
- Legislative amendments



First step - survey

- Objectives of the proposed survey on public attitudes towards homosexuals and bisexuals-
- (i) assess public awareness of homosexuality, heterosexuality, and bisexuality;
- (ii) assess public attitudes towards homosexuals (gays and lesbians) and bisexuals;
- (iii) assess public acceptance of homosexuals and bisexuals in different contexts and situations;
- (iv) assess public attitudes towards the rights of homosexuals and bisexuals; and
- (v) find out what can be done to address the problem of discrimination faced by homosexuals and bisexuals.



Survey Advisory Group

- Given the sensitivity of the survey and the diverse and conflicting views of the concern groups (the sexual minorities, family values groups and religious groups), we propose to set up a 3-member advisory group comprising university professors or experienced researchers to advise on the questionnaire design.