

**Notes of Discussion of the
Ninth Sexual Minorities Forum
held on 22 December 2009 at 10:00 a.m.
in the Conference Room 601, 6/F, Central Government Office
West Wing, Central**

Present

Constitutional and Mainland Affairs Bureau

Mr. Arthur HO	DS(CMA)1 (Chairman)
Ms Christina CHONG	PAS(CMA)4
Mr. Louis LO	AS(CMA)4A
Mr. LAI Wing Yiu	UM/GISOU
Miss Carmen TSOI	UO/GISOU

Labour and Welfare Bureau

Ms Tracy CHU	PAS(Welfare)2(Atg) / AS(W)2A (Agenda Item 3 only)
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Social and Welfare Department

Mrs. WONG HO Fung See	CSWO (Domestic Violence) (Agenda Item 3 only)
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Non-governmental Organizations
(NGOs)

Mr. Joe CHAN	AIDS Concern
Mr. William Roy LEUNG	Amnesty International Hong Kong Section
Mr. Chung TO	Chi Heng Foundation
Mr. Roddy SHAW Kwok Wah	Civil Rights for Sexual Diversities
Mr. Ferrick CHU	Equal Opportunities Commission
Miss WEI Siu Lik	F'Union
Mr. CHO Man Kit	Hong Kong Ten Percent Club
Mr. Reggie HO	HORIZONS
Mr. CHAN Ka Leung	New Creation Association
Mr. CHUNG Kam Fai, Kelvin	

Mr. Noel CHEN
Mr. Albert LUK
Dr. Sam WINTER

Dr. Robin BRADBEER

Ms Connie CHAN
Miss YEUNG Wai Wai

Rainbow Action
The Satsanga
Transgender Asia Research,
Education and Advocacy Centre
The Transgender Equality and
Acceptance Movement (TEAM)
Women Coalition of HKSAR

Agenda Item 1 : Confirmation of minutes of meeting held on 1 December 2006, 20 April 2007 and 20 June 2008

The notes of the meeting on 1 December 2006, 20 April 2007 and 20 June 2008 were confirmed without amendments.

Agenda Item 2 : Matters arising

2. Referring to the discussion on Education Bureau (EDB)'s policy and guidelines in handling matters related to sexual orientation at the last meeting, the Chairman said that EDB was considering members' suggestions in deciding the way forward. The item could be discussed at future meetings if members so wished.

3. On paragraph 63 of the minutes of meeting held on 20 June 2008, the Chairman said that CMAB was collecting views from bureaux and departments on the practicability of extending the Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation (the Code) to cover gender identity. A member asked whether CMAB would also consult academics and relevant non-governmental organisations. Another member considered it unacceptable that little progress had been made since the last meeting.

4. The Chairman indicated that inputs from relevant Government bureaux and departments were necessary to assess whether the proposed extension was feasible, for example, whether it was appropriate to assign transgendered staff to carry out gender sensitive work and how the public would react to such assignments.

After CMAB had solicited views from these bureaux and departments for conducting a thorough analysis on the issues at stake, this item would be discussed at future Sexual Minorities Forum (Forum) meetings.

5. A member remarked that the general public expected that government staff should perform their assigned duties in a professional way, regardless of the staff's sexual orientation or gender identity. If there were practical difficulties concerning the performance of gender sensitive work by transgendered staff, there should be similar concern over homosexual staff. He suggested that the relevant bureaux/departments should be invited to future Forum meetings to explain their concerns.

6. The Chairman said that if there was any discussion on this topic at the next meeting, it would be desirable if the key bureaux/departments concerned would be present to brief members on relevant issues regarding the possible extension of the Code to cover gender identity in their respective work area.

7. In response to a member's question on the date for the next meeting of the Forum, the Chairman said that the aim was to hold the Forum meeting every several months. Noting that the membership issue had previously impeded the proper functioning of the Forum, the Chairman said that the Forum should not be further affected by the membership issue so that it could be convened more regularly to discuss substantive issues.

Agenda Item 3 : Policy on combating domestic violence and services provided by the Social Welfare Department to persons (including same sex couples) involved in domestic violence (SMF Paper no.1/2009)

8. Mrs. WONG HO Fung See briefed members on the SWD's policy on the subject matter and services provided to persons involved in domestic violence. Following Mrs Wong's presentation, Ms Tracy CHU briefed members on the contents of the Domestic Violence (Amendment) Bill 2009 passed on 16 December 2009.

9. A member asked whether SWD had conducted any literature review and research on same-sex domestic violence for the purpose of reviewing the existing system and services. He further asked if SWD would launch new services to tackle same-sex domestic violence in view of such research findings.

10. A member asked whether SWD would allocate resources to organise a pioneer project or provide funding to NGOs or sexual minority groups to provide sensitivity training to frontline social workers. Given that the amended Domestic Violence Ordinance (DVO) would take effect on 1 January 2010, she referred to the need of sensitivity training for frontline social workers in SWD-run service centres. She opined that the current promotional materials were heterosexual-centred and there was a need for tailor-made promotional materials and seminar for sexual minorities.

11. Mrs. WONG said that social workers would provide appropriate support services to clients based on the circumstances of each case. In addition to the regular training provided for social workers of SWD and NGOs, social workers of both SWD and NGOs recently attended a seminar on the subject organised by the Tung Wah Group of Hospital CEASE Crisis Centre in late 2009. SWD had also invited an expert to provide sensitivity training to social workers in early 2010. The Department would keep an eye on the service need and strengthen training for social workers as appropriate.

12. Taking into account the changing societal needs, Mrs WONG added that there would be ongoing sensitivity training provided to social workers on all fronts. The Procedural Guidelines for Handling Battered Spouse Cases would be revised to include same-sex cohabitants. She also agreed to consider inviting Forum members to brief social workers on the special circumstances of domestic violence between same-sex cohabitants with a view to providing better services to them.

13. A member requested Ms CHU to brief members on the need for an intimate relationship in the definition of "cohabitation relationship" as provided in the amended DVO and requisite burden of proof.

14. In reply, Ms CHU explained that there was a detailed discussion in the Legislative Council (LegCo) and a majority of LegCo members agreed that an intimate relationship was a crucial element in determining cohabitation relationship for the purpose of the amended DVO. She highlighted that the omission of the intimacy requirement might lead to the coverage of all people living under the same roof, which was not the policy intent of the DVO. As regards the burden of proof, she suggested that legal advice should be sought beforehand having regard to the complexity of judicial proceedings.

15. A member referred to many cases handled by him, in which the clients were denied temporary accommodation and support service as the cases were regarded as outside the scope of the domestic violence service centres. Mrs WONG said that the member could refer the cases to her for follow-up actions.

16. On the welfare agencies providing support services on domestic violence, a member observed that some of them had religious background and they had expressed opposition to amending DVO to cover same-sex cohabitants at the early stage. Despite their religious background, Mrs WONG emphasized that under the Code of Practice for Registered Social Workers, in providing services to clients, social workers shall not discriminate based on the client's sexual orientation.

17. As regards the funding dedicated to the subject of domestic violence, Ms CHU supplemented that \$1.8 billion were allocated to SWD in the area of family and child welfare, which included support services for domestic violence victims. The services provided by SWD would cover domestic violence victims in both heterosexual and homosexual cohabitation relationships. That said, Ms CHU agreed that she would liaise with colleagues in SWD on the strengthening of public education and publicity programmes in respect of domestic violence between same-sex cohabitants after the commencement of the Domestic Violence (Amendment) Ordinance 2009.

18. In response to Members' request, Ms CHU agreed to provide the Forum with information on the training provided for social workers handling domestic violence cases between same sex cohabitants and the publicity work concerning the Domestic Violence (Amendment) Ordinance 2009 by way of an information paper.

Agenda Item 4 : Mention of Sex in Official Documents and Births Registration

19. Ms Christina CHONG briefed members on the mention of sex in official documents and births registration. She said that as representatives from the Security Bureau and the Immigration Department were not able to attend the meeting, she would help relay member's question on the part of birth certificate, if any, to the Immigration Department.

20. Instead of altering sex status on the birth certificate, a member requested the Government to introduce gender recognition legislation allowing transgendered people (including pre-operative and non-operative transsexuals) to change their legal gender. This would allow transgendered people to marry in their preferred gender.

21. Another member commented that this agenda item should be about transgendered person's right to have a birth certificate that reflected one's gender identity and this was separate from the transgendered person's right to marriage in their preferred gender. He criticised the Immigration Department or Security Bureau for not attending the Forum to discuss the matter with members. He pointed out that there were an increasing number of countries allowing transgendered people to make changes to their legal documentation without undergoing any gender reassignment surgery. On the contrary, there was no such procedure available in Hong Kong and transgendered person could only change their Identity Card and other miscellaneous documents such as driving licence, but not the birth certificate conferring one's legal gender status. He proposed that at the next Forum meeting, a senior official from the Immigration Department or Security Bureau be invited to take part in the discussion on this agenda item.

22. A member supplemented that any change to the official documents was solely under the personal discretion of the Director of Immigration, which should not happen in a society governed by the rule of law. With an increasing number of transgendered people in Hong Kong in recent years, the member expressed disappointment that there had been no progress since the subject was discussed three years ago in the Forum on 1 December 2006.

23. The Chairman noted members' views which would help CMAB, Immigration Department and Security Bureau better understand transgendered people's situation. He remarked that the Immigration Department and Security Bureau were not able to discuss the issues due to the judicial review case. He noted some members' disagreement on this point and would relay members' views and suggestions to the Immigration Department and Security Bureau. In order to take the issue forward, the Chairman suggested that this item could be discussed at the Forum or through a separate avenue.

24. A member considered that discussion at the Forum should be a starting point where the presence of the press at the Forum meeting would make the Immigration Department and Security Bureau accountable to the general public. He insisted that senior official should be nominated to attend the meeting. The Chairman agreed to relay member's view to the Immigration Department and Security Bureau for their consideration.

25. Another member said that sex should be omitted in certain documents if that reference was considered unnecessary. The Hong Kong Certificate of Education Examination (HKCEE) Results Notice was one of the many examples. This was particularly helpful to those transgendered people not intending to receive gender reassignment surgery and this would alleviate inconvenience in their daily lives. She considered that Hong Kong was lagging behind many overseas countries in this area. She asked if the item could be discussed at the next meeting with the attendance of representatives from the Immigration Department or Security Bureau.

[Post-meeting note: In response to CMAB's query, the Hong Kong Examination and Assessment Authority had decided that gender will cease to be displayed on the Results Notices of the HKCEE or Hong Kong Advanced Level Examination starting from the 2010 exams. Similar arrangement will be made for the Hong Kong Diploma of Secondary Education Examination which will be first held in 2012.]

26. The Chairman explained that CMAB normally would invite relevant bureaux/departments to attend meetings of the Forum as appropriate and bureaux/departments had responded positively to the invitation. He would convey members' views and suggestions to the Immigration Department and Security Bureau and see what arrangement could be made.

27. A member referred to the four questions raised in paragraph 5 of the notes of meeting on 1 December 2006 and requested the Security Bureau to update the current situation on these four questions. The Chairman agreed to convey the member's request to the Security Bureau.

Agenda Item 5 : Public Education and Publicity Programme of Gender Identity and Sexual Orientation Unit

28. Mr LAI Wing Yiu briefed members on promotional work by the Gender Identity and Sexual Orientation Unit (GISOU).

29. A member asked whether GISOU would consider producing a TV API to promote equal opportunities on ground of sexual orientation. Another member opined that GISOU should promote the Code of Practice against Discrimination in Employment on ground of Sexual Orientation (the Code) at some regular venues, e.g. Civil Service Training and Development Institute, and in the private sector. He also asked whether the government had any mechanism to ensure that its suppliers or partners would comply with the Code.

30. In reply, the Chairman said that the Code provided a guide for both the government and the private sectors, which could include government suppliers and subcontractors, to follow in order to eliminate any sexual orientation discrimination in employment. He said that GISOU would consider the suggestions on publicity to promote the Code in different platforms.

31. A member opined that the content of the Code was dogmatic and dull. She questioned whether the government would revise the Code by adding real life examples or cases for elaboration. Another member opined that the Code was not legally binding and legislation was more effective. He asked whether the government would formulate a legislative timetable to prohibit discrimination on the ground of sexual orientation.

32. The Chairman said that the Government had no plan to legislate against sexual orientation discrimination. The government would soon receive views from the public on the report under the International Covenant on Economic, Social and Cultural Rights. The public would be able to express their views in that context.

33. As regards the suggestion to revise the Code, Ms CHONG said that the Administration had been monitoring the effectiveness of the Code. Since the content of the Code was generally valid and applicable to the present day situations, the Government currently had no plan to revise the Code. She added that the Administration would consider various means to promote the Code, including training programmes for civil servants, and she welcomed members' suggestion in this regard.

34. In response to enquiry about the content of briefing given by GISOU, Mr LAI said that he would introduce the content of the Code and use examples to help elaborate at appropriate times. Such examples were mainly court cases in the UK. Another member said that non-governmental organizations were ready to provide such cases to be included in the GISOU's briefing for reference. In response to a member's request on GISOU's forthcoming work, Mr LAI said that the GISOU would focus on promoting the Code among government staff in the coming year.

35. A member asked whether GISOU would ask those end-users about the effectiveness of the Code and whether there were any indicators to measure the extent to which the Code was applied in the private and public sector. Mr LAI replied that the participants would raise questions relating the application of the Code after briefing sessions. They were attentive during the briefing and to the content the Code. He added that GISOU would consider ways to gather end-users opinion on the Code.

Agenda Item 6 : Any Other Business

36. A member referred to a complaint case against a bus company which refused to rent a bus to a parade organized by a sexual minorities group. He was dissatisfied with GISOU's handling of the complaint. He said that the company had discriminated on ground of sexual orientation and asked whether the Chairman agrees with his observation. Another member opined that, since there was no legislation to outlaw discrimination on ground of sexual orientation, GISOU could have a limited role in handling a complaint case.

37. The Chairman said that the bus company had already explained their decisions to the sexual minorities group. GISOU had also relayed the bus company's views and GISOU's views to the complainant. He understood that some organizations had views different from that of GISOU and were not satisfied with GISOU's position on the complaint case. He emphasized that GISOU had taken the appropriate steps and followed up on the complaint case dutifully. In response to a complaint lodged against GISOU, The Ombudsman had studies the issue and decided that GISOU had handled the complaint in accordance with its complaint handling procedures.

38. A member enquired about the number of enquiries GISOU received, the number of case in which GISOU reasonably believed that the complainee had committed discriminatory acts, the number of case in which the complainee refuses to cooperate with GISOU, and the number of case in which the complainee denied the allegation but was held by GISOU to have committed a

discriminatory act. Mr LAI agreed to check the relevant records and provide the information to members after the meeting.

39. The Chairman concluded that the views from members provided useful reference for GISOU in handling complaint cases in future. He added that GISOU would consider ways to improve the complaint handling arrangements.

Date of next meeting

40. The discussion ended at 2:10 p.m. Members would be notified the date of the next meeting nearer the time.

**Constitutional and Mainland Affairs Bureau
March 2010**

Supplementary Information
Gender Identity and Sexual Orientation Unit's Statistics
on Enquiries and Complaints

Enquiries

As at 28 February 2010, GISOU has received **459** enquiries since the launch of its hotline on 7 July 2005. Of the enquiries, the most common types are as follows -

Types of Enquiry	No of Enquiries
GISOU's work	124 (27.0%)
Doubts about sexual orientation of the caller, the caller's family member or friend	107 (23.3%)
Service provided to transgender persons by the Government	50 (10.9%)
Equal Opportunities (Sexual Orientation) Funding Scheme	40 (8.7%)
Legislation against discrimination on the ground of sexual orientation	27 (5.9%)

The remaining cases were mostly issues such as same-sex marriages; Code of Practice against Discrimination in Employment on the Ground of Sexual Orientation; and contact number for homosexual support groups.

Complaints

During the same period, GISOU has received 34 complaints. The status and results of the complaints are listed below -

Status and Results of Complaint	No of Complaints
Conciliated	3
Not pursuable (mainly due to the lack of substance)	7
Complainant did not wish to pursue	1
Conciliation not taken forward (the complainee responded and while the complainant was not satisfied with the complainee's reply, he/she did not request GISOU to follow up the complaint) (Note)	21
Complaints being handled	2
Total	34

GISOU will give a full assessment of each complaint and give both parties an opportunity to comment and respond to the allegations made. GISOU will provide assistance to the complainant by inviting the complainee to reply and/or conducting conciliation in appropriate cases. GISOU focuses on the conciliation work and providing assistance to the complainant. Given its ambit, GISOU does not rule whether the complainees have committed discriminatory acts

Note: Among these 21 complaints, 19 of which were against the decision of Broadcasting Authority in respect of the TV programme concerning matters relating to homosexuality.