

香 港 人 權 監 察
HONG KONG HUMAN RIGHTS MONITOR

香港上環孖沙街二十號金德樓4樓
4/F Kam Tak Building, 20 Mercer Street, Sheung Wan, Hong Kong

電話 Phone: (852) 2811-4488 傳真 Fax: (852) 2802-6012
電郵地址 Email: info@hkhrm.org.hk 網址 Website: http://www.hkhrm.org.hk

Submission to LegCo Bills Committee on Domestic Violence (Amendment) Bill 2009
30 July 2009

1. It is trite law that all persons irrespective of their sexual orientation are equal before the law and shall be protected without distinction as required under Article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 25 of the Basic Law. The Hong Kong Human Rights Monitor opines that culture and religion cannot be cited as an excuse to deny the right to equality, the right to life, the right to personal security and the freedom from torture as guaranteed by the ICCPR.
2. Thus the Monitor welcomes that the Domestic Violence (Amendment) Bill (“the Bill”) 2009 adopts a gender-neutral definition of a cohabitation relationship, and that it offers equal protection to both homosexual and heterosexual cohabitants.

The long title

3. The Monitor notes that the Bill, in its English version, attempts to replace the words “domestic violence” in the English long title to the Ordinance with “Violence in domestic and cohabitation relationships” to distinguish cohabitation relationships from family.
4. The Chinese version of the Bill also attempts to replace the words “家庭暴力” in the Chinese long title to the Ordinance by “家庭關係及同居關係中的暴力” for the same purpose.
5. Presumably, these are done in response to address the misconceived or exaggerated concerns of challenging the legal definition of marriage and destroying the concept of family by the inclusion of homosexual cohabitation relationships.
6. The Monitor opines that it is unnecessary to amend the long title to the Ordinance. This is because the inclusion of heterosexual cohabitation relationships under the present DVO is not recognized or taken as to vary or replace the definition of “marriage” implied under section 40 of the Marriage Ordinance (Cap. 181) and sections 2 and 9 of the Matrimonial Causes Ordinance (Cap. 179).
7. It is particularly unnecessary in the English long title where the word “family” is not used.
8. It is important to note that family is not confined only to those constituted by marriage as recognized by law. By unnecessarily distinguishing cohabitation relationships from family in the title of the DVO, the Monitor worries that this change ignores the complexity of concept of family in a modern pluralistic and multicultural society.
9. The Monitor therefore considers it not simply unnecessary, but also undesirable, to amend the long titles to the Ordinance as stated in the Bill.
10. We are ready to accept the replacement of the words “家庭暴力” with “家居暴力” in the

Chinese long title of the Ordinance. No changes should be made to the English long title.

The short title

11. For the same reasons, the Monitor does not support any change to the English short title of the Ordinance while we are ready to accept the replacement of the words “家庭暴力” with “家居暴力” in the Chinese short title.

Definition of cohabitation relationship

12. The Monitor is of the view that the introduction of the definition of a cohabitation relationship under section 2(1) is unnecessary as the present DVO already covers heterosexual cohabitation relationships and the said relationships are determined with reference to the Common Law. The objective criteria for cohabitation relationships do not vary with the extension to homosexual cohabitation. The introduction of any unnecessary definition also artificially limits the development of case law.
13. The new definition of cohabitation relationship under section 2(1) is “a relationship between 2 persons who live together as a couple in an intimate relationship”. This new definition will reduce the flexibility of the Court to determine cohabitation relationships. For instance, it may prevent the court from providing protection to victims in polygamous cohabitation relationships. Hence the Monitor suggests deleting the definition, or at the very least the words “2” and “as a couple” from it.
14. A new section 3B(2) proposed by the Bill lists a number of factors to be considered by the court. The Monitor worries that these explicitly spelt out under section 3B(2) will tighten the scope of protection for cohabitants particularly those who happen to fail to fall within the factors listed. For instance, it may unnecessarily restrain the courts in their efforts to assist people partially living together. The factor of stability and permanence in the relationship is often unrealistic even for newlyweds.
15. It is stated under section 3B(2) that one of the factors to determine cohabitation relationship is whether there is stability and permanence in the relationship. But it is also stated under section 6(3) that the permanence of cohabitation relationship is the consideration for the Court to grant the application for authorization on the arrest for cohabitation relationship. The Monitor opines that it will lead to confusion. If “the permanence of relationship” carries the same meaning for both sections 3B(2) and section 6(3), it will be duplicated. If the duration for “the permanence of relationship” under section 6(3) is longer than the one under section 3B(2), it will be inconsistent as it has different interpretations on the same term.
16. The Monitor hence suggests the Administration to remove section 3B(2).
17. The Monitor urges the Administration to provide education materials to the public to explain the factors adopted in determining whether a cohabitation relationship exists. Provision of references and cases for the reference of LegCo Members and the public is also welcome.

Beyond the law

18. The Monitor urges the Administration to allocate adequate resources for the setting up of shelters and counselling social service specialized for homosexual cohabitants who were victims of domestic violence. Resources should also be provided to introduce public education regarding the prevention of domestic violence. Trainings should be provided to frontline workers such as social workers, police and medical professionals to enhance their sensitivity and understanding on domestic violence occurring in homosexual relationships.