

立法會
Legislative Council

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the Administration)

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Panel on Home Affairs

Subcommittee on Human Rights Protection Mechanisms

Minutes of meeting
held on Monday, 28 April 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon Albert HO Chun-yan (Chairman)
Hon Emily LAU Wai-hing, JP
Hon LI Kwok-ying, MH, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS

Members absent : Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon CHOY So-yuk, JP
Hon Daniel LAM Wai-keung, SBS, JP

Public Officers attending : Agenda Item II
Constitutional and Mainland Affairs Bureau

Mr Arthur HO
Deputy Secretary for Constitutional and Mainland
Affairs (1)

Mr Victor NG
Principal Assistant Secretary for Constitutional and
Mainland Affairs (5)

Mr Stanley NG
Assistant Secretary for Constitutional and Mainland
Affairs (5)A

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- Attendance by invitation** : Hong Kong Human Rights Monitor
Mr LAW Yuk-kai
Director
Professor Michael C Davis
Professor, Department of Government and
Public Administration, The Chinese University of
Hong Kong
- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)2
- Staff in attendance** : Mr Watson CHAN
Head (Research and Library Services Division)
Mr CHAU Pak-kwan
Research Officer 5
Ms Alice LEUNG
Senior Council Secretary (2)1
Ms Anna CHEUNG
Legislative Assistant (2)2
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I. Election of Chairman (if required)

Members agreed that re-election of the Chairman would not be required and Hon Albert HO would continue to assume chairmanship of the Subcommittee.

II. Research report on human rights commissions in Northern Ireland, Australia, South Korea, and India

[LC Paper Nos. RP05/07-08, CB(2)1708/07-08(01) and (02)]

2 The Subcommittee deliberated (index of proceedings attached at **Annex**).

3. Members received views on the research report on human rights commissions in Northern Ireland, Australia, South Korea, and India prepared by Research and Library Services Division of the Legislative Council Secretariat from

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(a) Mr LAW Yuk-kai of Hong Kong Human Rights Monitor; and

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(b) Professor Michael C Davis.

4. Members noted that Prof Michael C Davis had provided the draft reports on the National Human Rights Commissions in the Republic of Korea and India, which would form part of the 2008 report to be published by the Asian NGOs Network on National Human Rights Institutions and the Asia-Forum in July 2008. Members also noted that circulation of these reports was restricted to members of the Subcommittee.

[Post-meeting note: copies of the draft reports were tabled at the meeting and circulated to members vide LC Paper No. CB(2)1743/07-08 issued on 28 April 2008 (English version only)].

III. Way Forward

5. At the suggestion of the Chairman, members agreed that the Subcommittee would report on its work to the regular meeting of the Panel on Home Affairs scheduled for 13 June 2008. Members further agreed that the agreement of the Panel on Home Affairs and the House Committee would be sought for the allocation of a debate slot to the Chairman of the Subcommittee under House Rule 14A(h) for moving a motion at a Council meeting on Subcommittee report so as to provide an opportunity for Members to express their views on the subject and for the Administration to provide its response.

IV. Any other business

6. There being no other business, the meeting ended at 4:10 pm.

Council Business Division 2
Legislative Council Secretariat
6 June 2008

**Proceedings of the meeting of Subcommittee on
Human Rights Protection Mechanisms
on Monday, 28 April 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000519	Chairman	Members' agreement that re-election of the Chairman was not required.	
000520 - 001200	H(RL)	Powerpoint presentation on the research report on human rights commissions in Northern Ireland, Australia, South Korea, and India by the Research and Library Services Division of the Legislative Council Secretariat [LC Paper No. RP05/07-08].	
001201 - 002240	Chairman Mr LAW Yuk-kai	Presentation of views by Mr LAW Yuk-kai of the Hong Kong Human Rights Monitor as set out in LC Paper No. CB(2)1727/07-08(01).	
002241 - 003240	Prof Michael C Davis	Presentation of views as set out in LC Paper No. CB(2)1727/07-08(02).	
003241 - 003632	Admin	The Administration's comments on the research report as set out in LC Paper No. CB(2)1708/07-08(01).	
003633 - 003655	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's enquiries about - (a) the justifications that supported the Administration's decision of not adopting the concluding observations of the Human Rights Committee under ICCPR relating to the establishment of an independent human rights institution in Hong Kong; (b) whether the Administration would intend to apply the Paris Principles to the institutions in the existing framework; and (c) whether the Administration would consider that there were presently too many institutions for the protection of human rights and there was a need to reduce the number of institutions.	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's responses that -</p> <ul style="list-style-type: none"> (a) there already existed an extensive mechanism for protection of human rights in Hong Kong. The constitutional and legal provisions were firmly underpinned by the rule of law, an independent judiciary, statutory bodies and institutions and a comprehensive legal aid system. In the light of this, the Administration did not see an obvious need for establishing a HRC in Hong Kong; (b) the institutions in the existing framework (e.g. Office of the Ombudsman, EOC and OPCPD) were in essence largely in line with the Paris Principles in respect of its independence, legal and operational autonomy and financial autonomy; and (c) having regard that these institutions which helped promote and safeguard different rights in Hong Kong had their own specialized areas of work and the existing institutional framework met the needs of local situations, the Administration did not see a need to make any changes to reduce the number of these institutions at this stage. 	
003656 - 004620	Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's query as to why the Administration did not simply apply the Paris Principles to these institutions.</p> <p>The Administration's explanation that the Paris Principles were not mandatory and did not create any binding obligation on the HKSAR Government. In respect of their independence, operational autonomy, sufficient financial resources, the Office of the Ombudsman, EOC and OPCPD were in line with the attributes of the Paris Principles.</p>	
004621 - 005344	Ms Emily LAU Admin	<p>Ms Emily LAU's query as to the Administration's comments as stated in para. 7 of its paper, and her views that the review on the Office of the Ombudsman and OPCPD should be conducted by an independent body rather than by the institutions themselves and the appointment mechanism for the commissioners of these institutions failed to be compliant with the Paris Principles.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's explanation and responses that -</p> <ul style="list-style-type: none"> (a) as stated in para. 7 of its paper, Hong Kong community was different from the four countries studied in the research in terms of its population size, background, social and cultural situations. The Administration held the view that it should take into account local circumstances in promoting the work of human rights; (b) the institutions in the existing framework had their own mandates, areas of focus and expertise, so it was considered appropriate for them to conduct internal review. Notwithstanding this, there was an effective system of checks and balance for the monitoring of their work; and (c) the appointment of commissioners and members was made in accordance with the relevant provisions under their respective ordinances. The statutory institutions were subject to regulation by their respective ordinances and they were required to submit annual reports to LegCo and audited accounts to the Administration annually. Moreover, the work of these institutions was closely monitored by media. 	
005345 - 005752	Mr LAW Yuk-kai	<p>Mr LAW Yuk-kai's response on the Administration's views that -</p> <ul style="list-style-type: none"> (a) the Paris Principles required that the composition of commissioners of a HRC should reflect a degree of social and political pluralism and bear a broad range of expertise and experience on human rights issues; and (b) on the appointment of board members of these statutory institutions, the Administration should have listened to the suggestions of non-governmental organizations. 	

Time marker	Speaker	Subject(s)	Action required
005753 - 005945	Prof Michael C Davis	Prof Michael C Davis's response to the Administration's views that a HRC typically aimed to provide a comprehensive package of human rights services that were not adequately provided in courts and other public bodies and the institutions in the existing institutional framework failed in this regard.	
005946 - 010045	Ms Emily LAU	Ms Emily LAU's suggestion that the issue of the setting up of a HRC in Hong Kong should be discussed at a Council meeting.	
010046 - 011408	Chairman Prof Michael C Davis	<p>The Chairman's views that, after 1997, there were many judicial reviews challenging the decisions of public bodies which revealed that there was a lack of effective system for the public to redress their grievances other than the courts.</p> <p>The Chairman's enquiry and Prof Michael C Davis's response relating to the working relationship between IHRCs, their governments and the opposition parties in some Asian countries.</p>	
011049 - 011950	Mr LAW Yuk-kai Chairman Admin	<p>Mr LAW Yuk-kai's view on the setting up of IHRC as a positive approach and a system for resolving complaints by conciliation.</p> <p>The Chairman's question as to whether the Administration considered that there were shortcomings in setting up a HRC in Hong Kong and suggestion that the Administration should set up a mechanism which would observe the selection principle based on merit and non-discrimination in the appointment of commissioners or members of executive boards of public bodies.</p>	
011951 - 012441	Ms Emily LAU Mr LAW Yuk-kai Admin	<p>Ms Emily LAU's enquiry and Mr LAW Yuk-kai's views on the meetings of the Human Rights Forum (HRF) held by the Administration.</p> <p>The Administration's response that arrangement had been made for holding a HRF meeting in the very near future and invitation letters would be sent out in due course. Similar to previous practice, HRF would hold a meeting once every several months. It was hoped that concrete issues would be discussed at the meetings and members of HRF would be welcomed to suggest any issues for consideration.</p>	

Time marker	Speaker	Subject(s)	Action required
012442 - 012904	Chairman Prof Michael C Davis	Discussion on human rights education in Hong Kong.	
012905 - 013343	Chairman Prof Michael Davis Clerk Ms Emily LAU Mr LAW Yuk-kai Admin	Submission of report to the Panel at its June meeting scheduled for 13 June 2008. Agreement for seeking the agreement of the Panel and the House Committee for allocation of a debate slot to the Chairman for moving a motion on the Subcommittee's report at a Council meeting.	Clerk to follow up

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