

**Legislative Council Panel on Home Affairs
Subcommittee on Human Rights Protection Mechanisms**

**Administration's comments on the draft research report
prepared by the Legislative Council Secretariat
on human rights commissions
in Northern Ireland, Australia, South Korea and India**

Purpose

This paper provides the Administration's comments and observations on the draft research report "Human rights commissions in Northern Ireland, Australia, South Korea, and India" (LC Paper No. CB(2)1416/07-08(01)) prepared by the Legislative Council Secretariat. As requested by the Subcommittee, this paper focuses particularly on the analysis contained in Chapter 6 of the report.

Comments and observations

2. We note the contents of the report which sets out in detail the background and the regulatory framework under which the human rights commissions in the selected countries were established, the powers and functions of these commissions as well as their mode of operation.

3. Chapter 6 of the report summarises and compares the main features of the human rights commissions in the four countries. It identifies the similarities that –

- (a) all the places studied have a democratically elected legislature, an independent judiciary and other institutions dealing with certain aspects of human rights protection (para. 6.2.1); and
- (b) all the commissions studied enjoy a broad mandate authorised by their enabling legislation to address human rights concerns and all of them have similar general functions and powers (paras. 6.5.1 and 6.5.2).

4. The report also notes the differences among these human rights commissions that –

- (a) the definition of ‘human rights’ in their enabling legislation varies (para. 6.2.6);
- (b) there are wide variations in terms of the composition of the human rights commissions and the appointment of their members (para. 6.3.2); and
- (c) their degree of operation and financial autonomy are not the same (para. 6.4.1), which include –
 - (i) the organisational structure of the commissions ranges from simple to more complex; and
 - (ii) in terms of operational autonomy, not all the enabling legislation of the commissions studied contains provisions ensuring that the commission is independent and accords it sufficient resources to enable it to function independently and effectively.

5. The following are also worth noting –

- (a) as for employment of staff, all the commissions studied are subjected to stringent government control; and
- (b) as regards financial autonomy, none of the enabling legislation of the commissions studied contains provisions ensuring that the commission will receive adequate funding to enable it to carry out its mandate.

6. The report is informative and we appreciate the efforts which had been put into its compilation. The analyses mentioned in paragraph 4 above vindicate the point that the organisation, structure and operation of the mechanism for the protection of human rights should be determined by the circumstances of individual countries or places. This point is

accepted by the UN High Commission for Human Rights (UNHCHR). In “Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights”, the UNHCHR clearly stated that –

“In the course of its involvement in the work of national institutions, the United Nations has come to realise that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local cultural and legal traditions as well as existing political organisation.”

7. We are not aware of the criteria with which the four countries were selected for study. There is no information to suggest that the circumstances and considerations which led to the establishment of the human rights commissions in the four countries equally prevail in, or are applicable to, Hong Kong. Our community is different from these countries in terms of size, background and circumstances (such as cultural and social situation).

8. In Hong Kong, human rights are fully protected by law. The legislative safeguards are enshrined in the Basic Law, the Hong Kong Bill of Rights Ordinance and other relevant ordinances. They are buttressed by the rule of law and an independent judiciary. In addition, the many institutions we have in our system, including the Equal Opportunities Commission, the Privacy Commissioner for Personal Data, the Ombudsman, the Legal Aid Department and the Legal Aid Services Council all help to ensure that human rights are properly protected.

Constitutional and Mainland Affairs Bureau
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