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Expansion of the jurisdiction of the Ombudsman

Submission to the Panel on Administration of Justice and Legal Services
for the meeting on 27 April 2009

1. Public consultation on Ombudsman's jurisdiction

Society for Community Organization (SoCO) would like to urge the government to conduct a public consultation based on the Review Report of the Ombudsman.

The government has stated that it will consider whether a consultation will be conducted based on the contents of the Review Report and the aspects of the report that the public would be interested in¹.

As the Review Report focuses on extremely important aspects related to the jurisdiction of the Ombudsman and whether the Ombudsman should handle human rights related issues, we are of the opinion that a public consultation would be beneficial. Since there is no Human Rights Commission the Ombudsman might take up some of the functions that such a commission could have.

2. Extension of The Ombudsman's Jurisdiction

Police and ICAC

Part 3, Section 7 regarding the functions and powers of the Ombudsman restricts the investigation power of the Ombudsman to only investigate the Independent Commission Against Corruption (ICAC), the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission relating to the **Code of Access to Information**.

Schedule 2 states that The Ombudsman may not investigate the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force or the Hong Kong Police Force in relation to the prevention, detection or investigation of any crime or offence.

¹ 'Background brief prepared by the Legislative Council Secretariat for the meeting on 27 April 2009. Review of the jurisdiction of the Office of the Ombudsman' LC Paper No CB(2)1384/08-09(09)

Thus it is quite limited what actions of e.g. the Police that can be investigated.

It would be useful if the Administration could provide more information as to what falls under the ambit of the ‘prevention, detection or investigation’ of a crime or offence.

For instance would the administration of people in police custody be included in that category and labeled ‘investigation of crime’? Would investigation of mal-administration of searches, the welfare of detainees, of visits to detainees be under the jurisdiction of the Ombudsman?

We would recommend that Part 1, Schedule 1 and 2 are amended, so that the Independent Commission Against Corruption (ICAC), the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission are included in Part 1 so that these organizations fully fall under the jurisdiction of the Ombudsman. Correspondingly Schedule 2 on Actions not subject to investigation should be amended.

3. Ombudsman’s involvement in human rights protection

The Administration has yet to inform the Panel of its views on Part 2 of the Ombudsman’s Review Report. Given the significance of the that part of the review we would urge the Administration to seriously consider the overseas experiences and make a general review not only of the Ombudsman’s functions and powers in relation to human rights but also review the need for a Human Rights Commission.

Recommendations

1. Conduct a public consultation on the powers and functions of the Ombudsman with particular focus on human rights issues.
2. Extend the jurisdiction of the Ombudsman to have full investigation power into all administrative actions of Independent Commission Against Corruption (ICAC), the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission.
3. Review the powers and functions of the Ombudsman related to human rights issues. The Administration should provide a time frame as to when it will inform the Panel on its view of Part 2 of the Ombudsman’s Review Report.