

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1014/06-07(05)

Ref : CB2/PL/HA

**Panel on Home Affairs**

**Background brief prepared by Legislative Council Secretariat  
for the meeting on 9 February 2007**

**Establishment of a human rights commission**

**Purpose**

This paper gives an account of previous discussions held by the Panel on Home Affairs on the establishment of a human rights commission in the Hong Kong Special Administrative Region (HKSAR) since the first Legislative Council (LegCo).

**Background**

Human rights treaties applicable to HKSAR

2. The following six United Nations (UN) human rights treaties apply to the HKSAR -

- (a) International Covenant on Economic, Social and Cultural Rights (ICESCR);
- (b) International Covenant on Civil and Political Rights (ICCPR);
- (c) International Convention on the Elimination of All Forms of Racial Discrimination;
- (d) Convention on the Elimination of All Forms of Discrimination against Women;
- (e) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and
- (f) Convention on the Rights of the Child.

3. The implementation of these six human rights treaties is monitored mainly through the UN reporting process. The HKSAR Government submits reports under the six human rights treaties to the respective UN Treaty Monitoring Bodies (TMBs) regularly. The Panel on Home Affairs monitors the submission of reports to UN under these treaties by the HKSAR Government and its progress in following up the recommendations made by the TMBs concerned.

Recommendations made by the UN Human Rights Committee (UNHRC) regarding the establishment of a human rights commission

---

4. The United Kingdom (UK) submitted its fourth periodic report in respect of Hong Kong under ICCPR to UNHRC in August 1995. In paragraph 10 of the report, it was stated that the Hong Kong Government had carefully considered the proposal of establishing a human rights commission in Hong Kong and concluded that it was not the best way forward in the particular circumstances of Hong Kong. In paragraph 22 of its Concluding Observations issued on 3 November 1995 after its consideration of the report, UNHRC recommended the State Party to reconsider its decision on the establishment of a human rights commission.

5. In paragraph 9 of its Concluding Observations issued on 15 November 1999 in relation to HKSAR's first report under ICCPR, UNHRC reiterated that it *"remains concerned that there is no independent body established by law to investigate and monitor human rights violations in the HKSAR and the implementation of Covenant rights"*.

6. In paragraph 8 of its Concluding Observations issued on 30 March 2006 in relation to HKSAR's second report, UNHRC *"regrets that the HKSAR has not implemented a number of recommendations contained in its previous concluding observations. It remains concerned regarding the limited mandate and powers of the Ombudsman, including its lack of oversight function of the police, and the Equal Opportunities Commission (EOC). The HKSAR should consider the establishment of an independent human rights institution compliant with the Paris Principles"*.

Recommendations made by UNCESCR regarding establishment of a human rights commission

---

7. UNCESCR considered UK's second periodic report under ICESCR on 23 to 25 November 1994. In paragraph 33 of its Concluding Observations adopted by the Committee on 7 December 1994, the Committee *"enjoins the Government of Hong Kong to establish procedures to allow an appropriate body to adjudicate on complaints of infringement of the rights under the Covenant, and to allow the Hong Kong legislature to consider the desirability of establishing a human rights commission"*.

8. In paragraph 14 of its Concluding Observations issued by UNCESCR on 6 December 1996 after consideration of UK's third periodic report, the Committee reiterated its serious concern that *"The Hong Kong Government continues to object to the establishment of a human rights commission"*.

9. In paragraph 15 of its Concluding Observations issued on 11 May 2001 in relation to HKSAR's first report under ICESCR, UNCESCR reiterated its concern on *"The failure of the HKSAR to establish a national human rights institution with a broad mandate and its failure to establish adequate alternative arrangements for the promotion of economic, social and cultural rights"*.

10. In paragraph 78 of its Concluding Observations issued on 13 May 2005 in relation to HKSAR's second report under ICESCR, UNCESCR reiterated its concern on *"the absence of a human rights institution with a broad mandate, while noting HKSAR's position that the Equal Opportunities Commission has comparable functions"*.

### **Previous discussions held by Panel on Home Affairs on the establishment of a human rights commission**

#### Meetings held

11. The issue of the establishment of a human rights commission in HKSAR had been raised at various meetings of the Panel on Home Affairs held on 13 March 2000, 16 July 2001, 7 February 2003, 11 April 2003, 9 May 2003, 21 June 2005 and 9 June 2006 when the submission of reports of HKSAR under ICCPR or ICESCR to UN and the relevant Concluding Observations were discussed. The Panel had also requested the LegCo Secretariat to conduct a research study on the establishment of human rights commissions as well as the monitoring mechanism for the implementation of human rights treaties in other jurisdictions. The relevant research report was discussed at the Panel meetings on 22 March and 14 May 2004.

#### The Administration's responses to the calls for setting up a human rights commission

12. Members raised queries from time to time about the reasons for the Administration's repeated refusal of setting up a human rights commission despite the recommendations made by UNHRC and UNCESCR. The Administration had made the following responses -

- (a) the existing framework for the protection of human rights had served Hong Kong well and it did not see any obvious advantage of setting up the proposed institution;

- (b) human rights in Hong Kong were founded on the rule of law, an independent judiciary, and a sound legal aid system, and these foundations had been strengthened by the constitutional entrenchment of ICCPR and ICESCR under Article 39 of the Basic Law (BL);
- (c) safeguards were provided by The Ombudsman, EOC, the Privacy Commissioner's Office (PCO) and the legislature;
- (d) non-government organisations (NGOs) and the media also played an active role in the monitoring process;
- (e) proposals for new legislation were vetted by the Human Rights Unit of the Department of Justice to ensure that they complied with the human rights provisions of BL, before they were introduced into LegCo; and
- (f) it would review the need for the establishment of the proposed institution when a major fault had been identified in the existing framework for the protection of human rights.

13. The Administration had also pointed out that UNCESCR had not regarded HKSAR's failure to establish such an institution as a breach of the Covenant. In fact, none of the international human rights treaties which applied to HKSAR required the State Parties to establish a central monitoring body for monitoring human rights.

14. At the Panel's request made at its meeting on 7 February 2003, the Administration agreed in May 2004 to provide annual overviews of developments relating to the aforementioned six treaties applicable to HKSAR. The Administration submitted, in 2004 and 2005, two annual reports of such overviews covering developments relating to the various human rights treaties applicable to HKSAR [LC Paper No. CB(2)2324/03-04(01) and CB(2)2403/04-05(01)].

Measures considered by the Panel to facilitate the monitoring of the implementation of human rights treaties

---

15. Noting the Administration's position on the issue of establishment of a human rights commission, some deputations had suggested the following measures to the Panel -

- (a) setting up a subcommittee under the Panel to monitor the implementation of international human rights treaties;
- (b) extending the ambit of EOC to include the monitoring of the implementation of human rights provisions of BL and the Hong Kong Bill of Rights Ordinance;

- (c) enhancing the existing framework, e.g., enhancing the transparency of the appointment process of members of the existing human rights institutions in order to safeguard the independence of these institutions; and
- (d) setting up an additional unit, similar to the Race Relations Unit, under the Home Affairs Bureau (HAB) to act on complaints relating to discriminatory acts not covered under the existing three anti-discrimination ordinances.

16. Hon Albert HO considered that, given the diversity and complexity of human rights issues, a specialised body should be set up for monitoring the implementation of the human rights treaties and promoting human rights in HKSAR. Hon Cyd HO considered that there was no way to fully monitor the implementation of the human rights treaties in HKSAR unless a human rights commission was established. Hon Emily LAU called on the Administration to conduct a public consultation exercise on the establishment of a human rights commission.

17. The Administration responded that an institution purporting to be a national human rights institution should conform to the Paris Principles, which provided the minimum standards for the status and role of a national human rights commission, in order to secure international recognition. The Administration pointed out that the first step for the establishment of a human rights commission was to have the necessary legislation in place incorporating the provisions of the human rights treaties as applicable to HKSAR. In this connection, the enactment of legislation against racial discrimination would be an important step forward.

18. The Administration further pointed out that EOC conformed quite closely to the requirements in respect of independence, autonomy, pluralism, power of investigation, resources, and the initiation of legal action, which were amongst the key criteria of the Paris Principles. However, its mandate was restricted to the scope of the existing anti-discrimination ordinances and did not cover other human rights. The Administration indicated that, in addition to working on the anti-racial discrimination legislation, it might consider taking other long-term measures, such as examining the possibility of amalgamating the three statutory bodies providing safeguards for human rights in different areas, namely, EOC, The Ombudsman and PCO, to form a human rights commission.

19. The Administration reiterated that, having considered the implications, it was not ready to take the steps necessary for the establishment of an institution that fully met the requirements of the Paris Principles. It had, however, taken steps to enhance its collaboration with NGOs in monitoring the implementation of the international human rights treaties. For example, a regular communication channel was established between HAB and NGOs on human rights issues, i.e. the Human Rights Forum, the first meeting of which was held in October 2003.

### Motion passed by the Panel

20. When the Panel discussed the Concluding Observations adopted by UNCESCR after consideration of HKSAR's second report under ICESCR at its meeting on 21 June 2005, some members present expressed the view that it was of utmost importance to promote and protect human rights. They asked about the major difficulties in setting up a human rights institution in HKSAR.

21. The Administration responded that it agreed in principle to explore the subject matter. However, it would be necessary for the Administration to first enact anti-discrimination legislation in certain areas if it decided to set up a human rights institution which conformed to the Paris Principles. Hon WONG Yung-kan and Hon WONG Ting-kwong, however, expressed concern that a human rights institution with a broad mandate, if set up, might overlap with EOC in functions and responsibilities. The Administration considered that another option could be expanding the ambit of EOC.

22. After discussion, the Panel passed a motion urging the Administration to establish a human rights institution for the purpose of promoting the protection and education of human rights and monitoring the implementation of the various international human rights treaties.

### Recent position of the Administration

23. In its initial response to the concluding observations of UNHRC on HKSAR's second report under ICCPR, the Administration stated that its position remained that Hong Kong's current human rights framework provided sufficient protection and support for human rights in the territory and saw no obvious need for setting up another human rights institution.

24. When the Panel discussed the relevant Concluding Observations at its meeting on 9 June 2006, some deputations expressed the view that the Administration was backtracking on its stance in respect of the establishment of a human rights commission as recommended by UNHRC. They considered that the Administration had previously adopted a fairly open mind on the issue and had agreed in principle to explore in that direction. The Administration responded that it had not changed its stance and had maintained the same position, i.e. it had no plans or timetable for the establishment of the institution as there was no obvious need.

25. Some members expressed dissatisfaction with the Administration's response. They also queried the Administration's position that the recommendations made by TMBs were of an exhortatory nature rather than legally-binding. The Administration explained that it accepted a recommendation made by UNHRC to be binding insofar as it reflected obligations imposed on the HKSAR Government under ICCPR. However, the

Administration was not obliged to follow a recommendation which did not arise from any obligation under ICCPR, such as the recommendation of setting up a human rights commission in HKSAR. The Administration considered that it was merely a recommendation of UNHRC on how to ensure that ICCPR could be properly implemented in HKSAR but the recommendation itself was not legally binding.

26. Hon Albert HO expressed the view that a human rights commission and the Government were not necessarily on opposite sides, and the former could provide checks and balances which were required in an open and pluralistic society. He asked whether the Administration would consider setting up a task force comprising representatives of NGOs to work out concrete proposals for establishing a human rights commission. The Administration responded that it welcomed further opportunities to exchange views on the matter with NGOs at meetings of the Human Rights Forum.

#### **Relevant motion and questions moved/raised at Council meetings**

27. At the Council meeting on 1 March 2006, Hon Emily LAU moved a motion urging the Government to implement the recommendations made by UNHRC. The motion was negated.

28. Details of the questions relating to the establishment of a human rights commission in the HKSAR raised at Council meetings since the first LegCo are in the **Appendix**.

**Relevant questions raised at Council meetings  
relating to the establishment of a human rights commission in the HKSAR  
since the first LegCo**

<b>Meeting date</b>	<b>Question</b>
13.6.01	Oral question raised by Hon SZETO Wah on the establishment of a human rights institution in accordance with the recommendation of a United Nations Committee
20.11.02	Written question raised by Hon Emily LAU on the establishment of a human rights commission

Council Business Division 2  
Legislative Council Secretariat  
6 February 2007