國家人權機構研究規劃小組諮詢會議—駐華使節場次會議紀錄

時 間:102年9月24日上午9時30分至12時30分

地 點:法務部2樓簡報室

主 席: 黃召集人默 紀錄: 方伶

出席者:詳簽到表

主席(黄召集人默)

今天是採取非正式的談話形式,針對每位代表之發言如 有問題請隨時提出。

美國在臺協會政治組組員孟廉凱 (Kenneth Mangin) (書面意見如附件1)

美國現在並無所謂的國家人權機構,但是有兩個由美國國會所建立之機制:(一) 1964 年根據人權法案建立之平等就業機會委員會(Equal Employment Opportunity Commission, EEOC),保證大家有平等就業機會,申請工作之人不因種族、膚色、性別、身體上障礙、宗教等因素受到歧視;(二) 1957年於美國司法部下成立之民權處(Office for Civil Rights),也是扮演類似的角色,防止歧視之情事。有關臺灣建立國家人權機構之建議,則是應以符合巴黎原則為前提。

澳洲辦事處經濟暨政策處副處長歐棟 (Robert O'Donnell)

大家好,我是澳洲辦事處的代表,在臺灣待了一年半左右,之前大多是處理與經貿相關之事務,我們非常樂見臺灣 要成立國家人權機構,我覺得這是正確的方向。 澳洲人權委員會(Australian Human Rights Commission) 於 1996 年成立,是在聯邦的法律框架下建立之機制,其目標係保障並保護所有澳洲人民的人權,設有一般性質的規定及針對性別、種族、年齡及身障等特定方面保障之規定。在保障及保護人權時,此機構必須遵守國際人權條約,包括公政公約及身心障礙者權利公約等規範;該機構亦負責例如教育、提升公眾對於人權之意識、個人申訴及發展政策等事項,例如解決人權方面的申訴問題、接受來自公眾的詢問、開發教育上的計畫,以及提供建議予法庭、醫院及政府等。

澳洲人權委員會之組成,有一位主席,類似公司的執行長(CEO),並有 6 位委員分別處理包括原住民、年齡、種族、兒童、身心障礙及性別等不同議題,並設置 120 位工作人員,皆是公務員,其中三分之一人員處理申訴、三分之一負責開發政策,另外三分之一則是提供法律方面的服務。

就獨立性而言,對於人權機構是非常重要的。澳洲人權 委員會具有 A級 (A status),係完全符合巴黎原則的國家人 權機構,並定期受聯合國的檢視,亦即係符合聯合國人權促 進及保障的標準及國家人權機構所應具備之相關要件。委員 會不受政府強制性要求關注那些議題或用什麼方法處理這 些問題,而係有足夠權力關注特定議題,並解決人權問題。 有關預算管理方面,亦不受政府干預及限制,目前委員會的 預算是 1,800 萬澳幣,成員係指派制,每次指派任期為 5 年, 超過一般澳洲選舉任期的三年制。

有關臺灣成立國家人權機構之建議:第一,獨立性的重要,但仍需與政府及民間合作,並儘早建立良好合作關係;第二,提高公民社會、媒體及大眾對於國家人權機構的意識,瞭解該機構之存在,並強調公民社會在其中之重要性。

李委員念祖

臺灣目前處於建立國家人權機構或委員會非常初期的 階段,請問貴國於建立之初遇到何種困難及挑戰?

澳洲辦事處經濟暨政策處副處長歐棟 (Robert O'Donnell)

1986 年澳洲人權委員會設立時,是取代之前 1981 年至 1986 年類似的委員會,由於過去已有舊機制,且曾有反歧視法令,所以大家對於這樣的機制並不陌生,因此設立委員會時未受到太大的阻力。就挑戰而言,該委員會曾被質疑有何權力,例如是否有權於調查時蒐集證據並上呈證據,以及做成有拘束力的決策等爭議,後來決定該委員會可以蒐集並提出證據,但針對違反人權之事件無權決定做出何種懲罰,無法做出有約束性質的決策。

紐西蘭商工辦事處副代表 Serena Chui(補充資訊如附件 2)

紐西蘭人權委員會(Human Rights Commission)於 1977年設立,也是符合巴黎原則 A級的國家人權機構。就紐西蘭的憲政體制而言,並無成文憲法,此外,紐西蘭政府與原住民間也會制定條約,係非聯邦制度的議院制度。

紐西蘭人權委員會之編制,其中3位委員是永久性委員, 5 位是兼職性質委員。該委員會隸屬於政府,委員之指派由 司法部建議,預算也是來自於司法部,委員任期為5年制。 委員會的任務其實滿廣泛的,例如推動、保障人權及保護紐 西蘭不同族群間的關係,但是大眾對於該委員會最熟知的部 分是調解的功能。就調解個人與個人間的人權爭端部分(例如 員工與機構間的調解),調查結果顯示95%提出申訴的人都相 當滿意調解的結果。

至於困難方面,紐西蘭人權委員會誕生時,正好也是民

權或原住民權利高漲時期,那段期間有很多機構紛紛建立,委員會也是在那波浪潮應運而生。

李委員念祖

個人對政府之申訴案件,調解成功率的多寡?國家人權委員會調解的最終決定是否有約束性質並可強制執行?

紐西蘭商工辦事處副代表 Serena Chui

目前尚無有關個人對政府的申訴類別統計數據,大多是個人對公司或機構提出的申訴案,案件成功解決總體率一年為88%。某些案例顯示,紐西蘭人權委員會最終決策不具有約束性質,但對於被告的組織或公司會產生道德壓力;總體而言,提出申訴者大多對於調解的結果都感到滿意。

澳洲辦事處經濟暨政策處副處長歐棟(Robert O'Donnell)

大部分申訴案不是針對政府,而是個人對個人及個人對 機構提出,澳洲人權委員會做成之決定雖非約束性質,但會 產生道德上壓力。

加拿大駐台北貿易辦事處政策暨文化處副處長丁家俊 (Shawn Tinkler)

聯邦層級上,加拿大有人權委員會(Canadian Human Rights Commission)及人權審判庭(Canadian Human Rights Tribunal)兩個機構,各省及領地也各有人權委員會或人權審判庭。聯邦層級係依照聯邦法規運作,各省與地方層級的部分則須遵守自訂的人權法律,這些人權機構都符合巴黎原則。由於有為數眾多的人權機構,所以有一個組織像是聯盟一樣地連結聯邦及各地的人權機構,主要著重於人權教育的推動及加拿大境內關注人權之事項,例如與原住民的關係等議題。

加拿大遇到的挑戰,係如何將國內相關的法令及國際的人權法令等各式各樣的人權保障及保護的機制融合,並在加拿大落實。對於臺灣成立國家人權機構,建議該機構可以包括以下幾個重要的功能:接受及處理申訴、教育及促進人權的功能,包括提供法律上援助,該機構並應儘早與公民社會建立良好的關係。由於加拿大是多元文化的國家,人口的增長仰賴新移民移入,對新移民做人權教育對加拿大而言也是很好的機會。此外,國家人權機構或委員會是會演變的,加拿大也是如此。加拿大也是國際人權機構合作網絡的成員,並藉此與其他國家彼此合作及交流。

藉由加拿大的經驗,與各位分享有關臺灣建立國家人權機制時,應該注意這樣的機構必須是獨立的,成員指派必須有代表性、多元的、有適足的資金且有廣泛的職責,必須符合巴黎原則要求應履行的職責以及適當的法律程序,也要有做研究及報告的空間,因為有報告的機制,會讓過程更加透明化;除此之外,也要有來自公民社會的聲音以及與學術界間的合作關係等;決定國家人權機構或委員會的成員,必須以其經驗及經歷指派。

法國在台協會政治處處長柳颯颯 (Sarah Vandy)

法國設有國家人權諮詢委員會(National Consultative Commission of Human Rights)及人權捍衛者 (human rights defender) 兩個機構,人權捍衛者類似於監察使的角色。法國國家人權委員會係獨立之行政機構,其任務及職責包括:履行國際上人權保障及促進之職責、對政府及議院提出建議、促進政府及公民社會間的討論、推動人權保障以及提高公眾對於人權之意識。

法國的國家人權機構最初係成立於 1947 年, 起初有 10

位委員,之後更名為法國國家人權諮詢委員會,委員會主委及其他國家相關單位也開始合作。委員會一開始的角色是與其他國際機構討論人權的定義為何,1980年代開始,其角色逐漸轉變為對政府提出諮詢;1980年代後該機構係隸屬於法國首相,目前有70位成員;1993年聯合國採取巴黎原則後,委員會不斷在演進,後來變成獨立機構。從歷史角度而言,法國國家人權諮詢委員會是一步步演進的,1947年成立,1993年成為獨立機構,2007年明文規定於法令內。

法國國家人權諮詢委員會目前有 64 位成員,有 NGO 代表、公會代表、專家學者、1 位來自於國家大會的代表,以及1位參議院代表,藉此建立起委員會與立法機構間的橋樑。人權捍衛者也是委員會成員,委員有不同背景,有法官也有立法人員;委員會成員任期是 3 年,資金來自於首相辦公室,該委員會也是國際間人權機構網絡的成員。

法國國家人權諮詢委員會建立時並未遭遇太大困難,但 曾遇到三項挑戰,包括人民對於委員會存在並不熟知、委員 會做成之決議因不具拘束力,所以不太被遵守;因該委員會 正在演進當中,對於國際人權規範以及歐洲人權規範也尚不 嫻熟。至於委員會的獨立性一直都不是問題,但對於委員背 景的要求不太詳細,不似人權捍衛者詳細規定成員指派制, 是否得連選連任、可否兼任公職等。

人權捍衛者的角色類似於監察使,起初稱為調解人(者), 2008年才改成人權捍衛者的名稱。人權捍衛者可以接受個人 的申訴,如果個人認為人權受到侵害或是受歧視,可以向人 權捍衛者提出申訴,這是與法國國家人權諮詢委員會不同之 處,蓋委員會並不處理個案,而是處理較廣泛的議題。

有關法國國家人權諮詢委員會之成就,則是頒發人權獎

項予在法國或國外工作的 NGO,該獎項為7萬歐元,同時也頒發予促進人權教育或人權計畫的學校。

對於臺灣成立國家人權機構之建議,我國鼓勵臺灣建立 符合巴黎原則的獨立機制,該機構應該處理的人權問題,例 如本年2月國際人權專家在審查會議時曾提出的建議,尤其 是生命權的保障,即臺灣政府應該儘早廢除死刑。

南非聯絡辦事處代表 Musawenkosi Aphane

南非曾經實施長達 50 年種族隔離政策,後來覺得應該參考其他國家作法及實施並納入憲法,因此 1990 年頒布新憲法以及人權相關法律,以反映南非的人權狀況及需求。一般而言,人權概念區分為三代:1920 年代是第一代人權—公民及政治權,1980 年代是第二代人權—經濟、社會及文化權,但我們覺得必須要再往前一步,注重第三代人權,例如受教育權利、健康權及適足住宅等權利。南非憲法第二章即專章規定這部分,且這部分是不能更改的,就算政府及黨派是百分之百多數也不能更改這部分的立法。除了憲法第二章,第九章規範國家人權機構必須是獨立機構,資金是由各邦(州)提供,不可與哪個黨派特別交好。該機構並設置公眾保護者(public protector),類似於其他國家監察使的角色,如果個人針對某件事對政府提出申訴,公眾保護者就要確保人民權利受保障。

南非人權委員會(South Africa Human Rights Commission) 也遵循類似原則,如果有個人主張權利被侵害,可以針對特 定事件向委員會提出申訴,委員會之決定可以被強制執行; 另一個機構則是專門處理第三代人權、公民及政治權、經濟 社會權及其他權利。另外,還有專門保障女性、兒童及身心 障礙人士權利的部會,如果委員會無法保障這些族群的權益, 該部會就會保障以上族群的人權,例如身障人士需要推輪椅, 該部會就要確保人行道上是否有可以推輪椅的走道,或是上 下巴士時,巴士會把地板降低方便身障人士上車,因為南非 工作年齡層有 2%是身障人士,所以設置該部會確保這些族 群的人權。

我們也設置各種議題的監察使,例如媒體監察使,因為有時媒體沒有證據就發表對某人的看法,個人就可以向監察使報告;亦有消費者監察使,例如公司把商品價格提升到不合理程度,例如五年前麵包價格高漲,後來發現是幾個廠,將合制定不合理的標價,後來消費者監察使訴諸審判庭,過些公司集團就被處以高達160億新臺幣的罰鍰;又例如建設公司將建材的價格提高,也是消費者監察使關注的問題。總之,南非是從第一層,也就是最高層級的政府一層層往下保障人權,監察使將報告提出給南非司法及憲政發展部,他們會整合報告提交給南非人權委員會,也會分享給NGO,由NGO審視官方報告是否符合事實,如果同意,就會把報告提交至同儕檢視機制,讓非洲聯盟各國審查,評斷南非對於人權的保障作為是否正確。

英國貿易文化辦事處政治處處長傅曉蕾 (Fleur Willson)

英國平等及人權委員會(Commission for Equality and Human Rights,下稱平權委員會)於2006年依據平等法創立,結合原先的種族、平等機會(特別重視性別平等)以及身心障礙者等三個委員會所成立的新委員會,並自 2007 年開始運作,其目的是保障及執行有關平等及非歧視的規範。平等及人權委員會負責的職責更廣,除了先前三個委員會的職責以外,也負責宗教、年齡、性傾向等各方面的人權問題。

大不列顛由四個地區組成,北愛爾蘭不適用於平權委員

會的保障機制,而是在貝爾法斯特(Belfast)自治區成立人權委員會,所以平權委員會僅適用於其他三個地區。平權委員會是非政府的公眾組織,運作資金雖然來自於英國政府的平等辦公室,但是獨立於英國政府外的機構。

委員會有 11 位成員,有各式各樣的背景,有來自威爾斯地區的代表、愛爾蘭地區的代表,或是保障身心障礙者權利的代表等。平權委員會之設立法源是 2006 年平等法,該法其實是來自 2004 年 5 月英國政府所提出的「人人都要獲得平等對待白皮書」(Fairness for All: A New Commission for Equality and Human Rights White Paper)。平等法第 3 節規範人權委員會之目的係促進社會發展,讓社會達到平等以及人權保障的狀態;第 30 節規範人權委員會的角色,係確認人權狀況,有必要時得干預法律程序,發現政府組織不遵守人權標準時,可以提出報告或申訴。

所有政府單位都須遵循英國 1998 年人權法,以及歐洲基本權利憲章等規範。平權委員會是採取預防勝於治療的作法,希望在對簿公堂前先把案件解決。為了達到這個目的,該委員會要確保人民知道他們的權利,以及公司雇主或服務提供者應確保員工權利所受的保障,以及如何保護員工的尊嚴。委員會也會與議員或立法官員合作、與政府互動,也會推動計畫,例如運用在 youtube、linkedln 等社群網站,推動個人訴說關於平等或不平等的人權故事;委員會也提供熱線/救助線,若個人認為人權被侵犯,可以打電話諮詢。基本上平權委員會並不會把太多的案件訴諸法院,比較希望上法院前就先把問題解決,少數案子才會訴諸法院,比較希望上法院前就先把問題解決,少數案子才會訴諸法院。例如,之前有位女性應徵公司希望有彈性工作時間,是因為需要照顧身心障礙的兒子,但公司不答應,後來平權委員會訴諸法院,女性獲得勝訴。

英國設立平權委員會時,並未遭遇太多阻力,因為先前已經設立三個委員會,所以建立新委員會時並未引起太多爭論。平權委員會每三年都要提交報告予政府,檢視英國國內人民的人權保障狀況。例如去年提交的報告提到要給受刑人或吉普賽人更多權利,但有些人覺得不可思議。平權委員會花費心力提出報告,但是人民不一定認同報告結果,所以引起不同意見及爭議。不過,平權委員會也做了很多推廣人權的工作,並致力於提升公眾的人權意識。

有關是否有其他國際組織提供英國國家人權機構任何協助的部分,我們是受到國際認可的人權委員會,也是符合巴黎原則等級 A 的人權委員會;自 2008 年之後,平權委員會也推出影子報告。

至於英國國家人權機構的成效,包括:(一)更好的工作環境的計畫(working better),例如前述女性因為身心障礙的兒子,所以需要彈性工時,就是這個計畫下的一大重點;(二)提供研究資源予勞工相關的政府單位,幫助他們瞭解不一樣的族群受到歧視,有時候是因為大家對於某個族群不瞭解,所以此計畫是幫助大家瞭解各個族群;(三)照護與支持的計畫,特別針對身心障礙人士或老年人。英國政策以前是社會安全網,現在則轉換為提供跳板,幫助這些族群早日瞭解自己情況,以及所能受到的幫助,讓所有人民獲得對自己生活的自治權,讓這些人都可以對於社會以及經濟有所參與及貢獻。

有關臺灣建立國家人權機構,建議遵循巴黎原則。幾年前臺灣已經批准公政公約以及經社文公約,就是一個很好的開始,因為這兩個公約都是聯合國非常重要的公約,臺灣的批准也受到國際社會的肯定。另外,也建議臺灣未來可以採

用外國專家所提供的結論性意見與建議,例如暫時停止執行死刑。

德國在台協會 Sandra Haebel

德國的國家人權保障機制包括德國人權研究所(German Institute for Human Rights)及人權政策及人道救援委員(The Commissioner for Human Rights Policy and Humanitarian Aid)。人權研究所於 2001 年依據巴黎原則成立,雖非 NGO 但屬民間機構,資金來自政府的司法部及外交部等四個部會,其運作以委員會為中心,設有主委、副主委及數位委員,其任務為資訊提供,例如發新聞稿、舉辦與人權相關的會議、進行人權研究、與國際及國內人權機構交流,並公布研究結果讓公眾及政府周知。人權研究所主要關注議題是社會學習及反歧視,如少數族群、移民或身心障礙者所遭遇之問題。

人權研究所是資訊機構,主要任務是提供資訊予政府部會,讓政府部會參考這些資訊再形成自己的意見,以討論人權議題。人權研究所也會提出有關教育方面的資訊,為警察、社工及教師提供訓練課程及教材。不過,人權研究所並不受理個人申訴,如果個人認為人權被侵害,可以向人權研究所該詢並接受資訊,但人權研究所無法幫他們處理申訴。

除了人權研究所之外,1998年後設置人權政策及人道救援委員,是比較有政治元素的職位,係非政府組織、各部會以及議院間的橋樑,並與歐盟代表、歐洲理事會,或聯合國代表密切交流並提供建議予政治人物,但並非監察使,也不受理個人申訴。

歐盟政經組組長莫博嘉(Borja Morales Perez)

今天不是討論歐盟各國國家人權機構的運作, 焦點放在

歐盟基本權利署(European Union Agency for Fundamental Rights)的運作。2007年時,歐盟成立基本權利署,主要任務是獨立提供與基本權利相關之建議予歐盟會員國或所屬機構,以確保基本權利在歐盟各地都能受到保障。歐盟基本權利署是根據歐盟基本權利憲章所建立的機制,憲章主要目的是加強基本權利的保障,由於憲章是具有法律約束性質文件,所以會員國都必須遵守。歐盟基本權利憲章主要規範9個基本領域,包括伸張正義、受害人保護及提供給受害者賠償、兒童權利、禁止歧視、反種族歧視及反排外等。

基本權利署的任務也包括蒐集及分析資訊,並將資訊傳遞及提升公眾對於人權的意識,但不處理個人申訴,比較是提供建議的角色。基本權利署總共有 90 位員工,各自具備法律、科學、溝通及網絡等不同專業背景,由管理委員會負責基本權利署的運作並定義主要任務內容,其資金來源由歐盟提供,每一個歐盟會員國可以指派代表,也會有來自歐盟執委會及歐洲理事會的專家。歐盟基本權利署也設有科學委員會,總共有 11 位委員,除此之外,也非常歡迎 NGO 參與,並與聯合國人權高級專員辦公室有專案及資訊交流上的合作。

歐盟成立基本權利署時,並未遇到太多困難或挑戰。有關臺灣建立國家人權機構的建議,歐盟當然非常樂見臺灣成立國家人權機構,但必須確保該機構的獨立性,至於人權改善方面,歐盟鼓勵臺灣遵循兩人權公約國家報告審查後,國際人權專家提出的結論性意見與建議,例如死刑問題,建議臺灣可以暫停死刑的執行。

加拿大駐台北貿易辦事處政策暨文化處副處長丁家俊 (Shawn Tinkler)

有關調解部分,在加拿大卑詩省運作地相當成功,上個 年度當地人權審判庭收到 2,000 封 email 及 7,000 通申訴電話, 經過過濾受理 1,028 件案件,其中有 50 個案件進行進一步的 審查,其中 70%是用調解方式處理,我想聯邦層級也一樣。 調解對於申訴人或對造都是比較有效率的方式,可以降低人 權委員會及人權審判庭的成本,調解後的解決方法可能是很 多樣的,或許被害人只是要對方一個抱歉,或者受害人是被 公司免職,可能只是希望公司幫他寫一封好的推薦信,或希 望公司改變內部政策,總之調解能夠讓雙方很快速達成協議 並解決問題。委員會並無法強制執行所做成的決定,如果受 害人對於調解的結果不滿意,可以將案件再訴諸法庭。不過 因為目前有些公司單位的法務或法律專家對於調解並不是 太熟悉,所以委員會也對這些專家提供更多的訓練。調解的 目標是要避免案件拖延過長,但為了保護當事人隱私權,調 解的決議或結果並不公開,所以對於公眾可能無管道知悉調 解的結果。

張委員珏

(一)貴國人權委員會如何面對國際所提供之建議?(二) 有無轉捩點造成貴國國家人權機構的轉化及建置?(三)調解 委員會及人權委員會之間的關係?

法國在台協會政治處處長柳颯颯 (Sarah Vandy)

依據聯合國普遍定期審查機制,法國必須每四年提交報告,國家人權諮詢委員會也會提交獨立報告、NGO也會提交影子報告,同時也會接到來自於其他國家的建議,法國政府會花幾天時間討論,決定要採取哪些建議,也會說明未採取該建議的因素。

有關調解委員會及國家人權諮詢委員會之間的關係,法

國的人權捍衛者,其實是諮詢委員會的成員之一,主要提供政策或建議,至於調解委員會或調解人員主要任務是接受個人申訴,所以是不一樣的機制。

李委員念祖

請問加拿大代表,人權委員會可否調解個人對政府的申訴?

加拿大駐台北貿易辦事處政策暨文化處副處長丁家俊 (Shawn Tinkler)

聯邦層級部分,設有加拿大人權委員會與加拿大人權審 判庭,在此層級的申訴,大部分是個人對政府單位提出,如 果是各省層級,可能是個人對私人企業提出的申訴,也有可 能是對省級政府提出申訴,所以要看管轄權判斷,如果是聯 邦層級,大部分是個人對政府的申訴案件。

廖顧問福特

其實臺灣有共識要建立國家人權機構,但是要建立何種 類型的機構,是目前要探討的問題,請教法國及歐盟為何建 立不接受申訴的機構?

歐盟政經組組長莫博嘉(Borja Morales Perez)

歐盟基本權利署其實是在歐盟層級的單位,如果比較細部的話要回歸各個國家處理,所以歐盟基本權利署並不處理國家層級的案件。

法國在台協會政治處處長柳颯颯 (Sarah Vandy)

有時候是因為歷史的緣故,一開始法國國家人權諮詢委 員會的角色就是提供意見及建議予政府及議院,調解角色是 後來才出現的,所以有時候是基於歷史情境所做出的選擇。

吳委員景芳

請教貴國國家人權委員會的決定,是否有拘束力及執行力?

澳洲辦事處經濟暨政策處副處長歐棟 (Robert O'Donnell)

沒有拘束力。

英國貿易文化辦事處政治處處長傅曉蕾 (Fleur Willson)

沒有拘束力,但英國政府必須考慮委員會做成之決定。 法國在台協會政治處處長柳颯颯(Sarah Vandy)

沒有拘束力,但法國政府也會考慮國家人權諮詢委員會的決定,因為委員會的專家可以提高辯論的層級,而非僅是做些基本的辯論及討論。

南非聯絡辦事處代表 Musawenkosi Aphane

依案件性質判斷,有時候必須上陳予憲法法庭,決定人權委員會之決定是否能被強制執行。之前有位女性提出居住權的訴訟,但是有關居住權或對於其他事物權利的底線,是該權利能取得某一個可用的東西,若該東西不存在或不可用,就不會產生相應的權利,因此,該位女性因資源不存在的關係而沒有勝訴。所以,該決定是否可以執行須視個案而定,若該資源可被取用,該決定就可以被執行,如果住宅或水資源不存在,該權利就無法被執行。

加拿大駐台北貿易辦事處政策暨文化處副處長丁家俊 (Shawn Tinkler)

加拿大人權委員會的決定有一定的拘束力,若該決定未受遵守,可以提到法院作進一步審理;倘當事人對於加拿大

人權審判庭之決定不服,可再提起上訴。

主席(黃召集人默)

謝謝大家的參與,本小組將與政府部門、NGO代表以及 學者專家陸續召開諮詢會議,再將諮詢結果呈報總統府。最 後再度感謝貴國參與本次會議,以及對於臺灣的建議及鼓 勵。

美國在臺協會書面意見

We do not have a National Human Rights Institution (NHRI), but some of the functions of an NHRI are executed by the Equal Employment Opportunity Commission (EEOC) and the Justice Department's Civil Rights Division, which were both created by acts of Congress. The majority of U.S. states also have human rights or civil rights commissions.

The EEOC's mission is to eliminate illegal discrimination from the workplace. The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. The EEOC was created in the historic Civil Rights Act of 1964.

The Justice Department's Civil Rights Division was created in 1957 by the enactment of the Civil Rights Act of 1957, and works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. The Division enforces federal statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin.

We would generally recommend that NHRIs conform with the Paris Principles, a set of international standards which frame and guide the work of national human rights bodies. The Paris Principles were drafted at an international NHRIs workshop in Paris in 1991, and they were adopted by the United Nations General Assembly in 1993.

紐西蘭商工辦事處提供之補充資訊

----Original Message----

Subject: New Zealand Human Rights Commission

Dear all,

Thank you for the invitation last week to participate in a roundtable on National Human Rights Institutions (NHRIs). There were many different models discussed and limited time to delve into the details. I hope the attached additional information will be helpful for your consideration of the options for Taiwan. In addition to the information attached, there is also a wealth of information on the NZ Human Rights Commission (HRC) on its website:

http://www.hrc.co.nz/ http://www.hrc.co.nz/resources#case

including some information in Chinese:

http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/21-Feb-2010_20-10-47_What is the HRC_Trad_Chinese.html

http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/22-Mar-2010_12-45-02_Enq_and_Comps_Traditional_Chinese.html

Some of the questions raised during discussions revolved around whether decisions of the HRC were enforceable. There appeared to be concern that the decisions from the HRC may not be influential if they are non-binding, and there appeared to also be particular concern around whether government authorities would heed the HRC. The HRC is focused on finding mediated solutions acceptable to all parties. In practice government (central, regional and local) are not usually the subject of complaints (all legislation must be evaluated for compliance with regard to domestic and international human rights obligations before it may be passed), and when they are, it is rare for the recommendations to be ignored. Even private organisations (which form the bulk of complaints) would hesitate to ignore the HRC. There is strong societal expectation and pressure to respect the HRC. This may be attributed in part to the belief in the importance of the role of the HRC, and confidence in its independent nature.

Where the mediation is unable to resolve a complaint, the HRC may also provide support for legal proceedings.

http://www.hrc.co.nz/wp-content/uploads/2012/01/Office-of-Human-Rights-Proceedings-leaflet.html

Although a number of presenters noted their NHRIs having accreditation as "A" NHRIs by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC), we do not see membership of the ICC as an key issue. Rather it is meeting the underlying Paris Principles that are most crucial to NHRIs.

Please forward to your colleagues if I have omitted anyone. If you have any further questions, please also be in touch.

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Human Rights Commission feedback appears in track changes (in response to request of 12 September 2013)

Draft Q and A for Chinese Taipei Ministry of Justice

- **1. Q:** Please brief us on the mandate and function of your national Human Rights Institution, the composition of the members and staff and the mechanism to support its independence.
 - **A:** The New Zealand Human Rights Commission (the Commission) is New Zealand's National Human Rights Institution (NHRI). The Commission is an independent Crown Entity, administered and funded by the Ministry of Justice, but functionally independent from the Executive. The Principles Relating to the Status of National Institutions ('Paris Principles') adopted by the UN General Assembly (res 48/134, 1993) state that to be effective, NHRIs should meet six criteria, namely:
 - Have a clearly defined and broad-based mandate based on universal human rights standards
 - Autonomy from government
 - Independence guaranteed by legislation or the constitution
 - Pluralism including membership broadly reflective of society
 - Adequate resources

Adequate powers of investigation.

The Paris Principles provide an internationally agreed basis for assessment of an NHRI's independence and effectiveness. The Commission is accredited as an 'A' status NHRI, meaning that it is considered by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights to fully comply with the Paris Principles.

Like other New Zealand independent Crown Entities, the Commission is governed by a Board of Commissioners, appointed by the Governor General of New Zealand, at the recommendation of the Justice Minister. Commissioners are issued with a warrant for the duration of their term of appointment (up to five years). Commissioners are appointed with regard not only to their personal attributes but also their knowledge and/or experience of matters likely to come before the Commission. In total, the Commission may have up to eight Commissioners (three full-time and five part-time) appointed at any one time. Full-time Commissioners are statutorily specified as holding the following offices:

- Chief Commissioner
- Race Relations Commissioner
- Equal Employment Opportunities Commissioner.

Currently, in addition to the above three full-time Commissioners, the Commission has three part-time Commissioners. One of these Commissioners is appointed with responsibility for disability issues. Government Ministers have no power to direct the Commission or the Commissioners. The Ministry of Justice is mandated to monitor the Commission's performance and for administering and developing Human Rights policy. Further information about the current human rights Commissioners and former Commissioners can be found

http://www.hrc.co.nz/human-rights-environment/about-the-human-rights-commission/commissioners

There are two main pieces of law in New Zealand that specifically promote and protect human rights. One is the Human Rights Act 1993, and the other is the New Zealand Bill of Rights Act 1990. The New Zealand Bill of

Rights Act sets out a range of civil and political rights, which arise from the International Covenant on Civil and Political Rights. The New Zealand Bill of Rights Act includes, among other things, the right to freedom of expression, the right to religious belief, and the right to freedom of movement, and the right to be free from discrimination and medical experimentation. The New Zealand Bill of Rights Act requires the Government and anyone carrying out a public function to observe these rights, and to justify any limits placed on them.

The Human Rights Act establishes the Commission's mandate, setting out the functions and powers of the Human Rights Commission. The Commission has two primary functions. These are to advocate and promote respect for and appreciation of human rights in New Zealand society; and to encourage the maintenance and development of harmonious relations between individuals and the diverse groups in New Zealand society. The Commission also has the power to resolve disputes relating to unlawful discrimination, on the basis of 13 specific prohibited grounds of discrimination. If a New Zealand resident believes they have been discriminated against, they can ask the Commission for assistance. The Commission runs an enquiries and complaints service, which includes a mediation service dealing with the resolution of unlawful discrimination complaints. The Human Rights Act's intention is to help ensure that all people in New Zealand are treated fairly and equally and to ensure the fostering of harmonious relations.

Within the Commission there is also an independent Office for Human Rights Proceedings, which has the power to provide legal representation for people who bring proceedings before the Human Rights Review Tribunal (the tribunal exists as a separate judicial entity).

The Human Rights Act specifies that in order to carry out its primary functions, it has the following functions:

- be an advocate for human rights
- encourage and coordinate programmes and activities in the field of human rights
- inquire into infringements of human rights
- make public statements on human rights and race relations

- promote understanding of the human rights dimensions of the Treaty of Waitangi
- publish guidelines and voluntary codes of practice
- receive and invite public representations on human rights
- bring proceedings and intervene in court on human rights issues
- report to the Prime Minister on any matter affecting human rights and how New Zealand complies with international human rights standards and legislation
- develop a national plan of action for human rights (the first plan was released as Mana ki te Tangata / the New Zealand Action Plan for Human Rights on 31 March 2005)
- provide a service to deal with enquiries and complaints about discrimination
- through the Office of Human Rights Proceedings, offer legal representation at the Human Rights Review Tribunal.

In 2013-2014, the Commission has identified four key human rights outcome areas that it is working across. These are:

- Work and education
- Housing, health and community
- Violence and abuse
- Human rights mainstreaming.

The Commission is working on these areas through education, promotion and advocacy; monitoring and reporting; and enquiries and complaints and legal interventions.

More information on the Commission's mandate, function and structure can be found at www.hrc.co.nz. The Human Rights Act 1993 can be found at http://legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html?search=qs act%40bill%40regulation%40deemedreg disability+commissioner resel 25-h&p=1&sr=1

2. Q: Were there any doubts, difficulties, or challenges faced when establishing your national human rights institution? How did you overcome them?

A: New Zealand's Human Rights Commission was set up in 1977 and has therefore been operating for some time, even before the Bill of Rights Act

(1990) and Human Rights Act (1993) were legislated for in New Zealand. There are often cases where independent Crown Entities take a different position from the Government of the day. It is one of the checks and balances built into New Zealand's system of Government, and the independence of these entities is part of their inherent value.

In 2001 the Human Rights Amendment Act established a number of significant changes to the functions and powers of the Commission. This is when the primary and other functions of the Commission described above in answer to question one were restated and in some instances introduced. Prior to 2001 the Office of the Race Relations and the Human Rights Commission existed separately. As a result of the changes in 2001, the two entities were merged. The specific functions of the Race Relations Commissioner and the Equal Opportunities Commissioners are set out in the 2001 Act. For further background on the changes made in 2001 please see this webpage.

At the same time, the Human Rights Amendment Act established the Office of Human Rights Proceedings. This Office is part of the Commission and is led by the Director of Human Rights Proceedings. The Director performs his function independently from the rest of the Commission and from Ministers.

3. Q: Did the United Nations or any other international organisation assist your country in terms of the establishment of the Human Rights Institution?

A: The Paris Principles provide a clear road-map for NHRIs and how they should function. The Principles define the role, composition, status and functions of NHRIs.

As mentioned above, the Commission has 'A' status accreditation with the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights (ICC). Accreditation is granted on either an 'A', 'B' or 'C' status. 'A' status accreditation grants NHRIs the right to participate in the work and decision-making of the ICC and the work of certain processes of the Human Rights Council and other UN Treaty Bodies. Further information about the different accreditations can be found <a href="https://example.com/here-new-commission-making-new-comm

The accreditation process is facilitated by the ICC's Sub Committee on Accreditation. The Sub Committee reviews and accredits NHRIs in compliance with the Paris Principles. The accreditation process has evolved over the past years, based on principles of transparency, rigour and independence. Measures to improve the accreditation process include:

- A system of periodic review of NHRIs every five years
- An appeal process to ensure NHRIs ensure greater transparency and due process
- Rigorous review of each application
- Focussed recommendations
- Wider distribution and improved knowledge of Sub Committee recommendations by NHRIs and other stakeholders to ensure in-country follow up and contribute to the accreditation process.

Other important roles undertaken by the ICC are to assist NHRIs which are under threat and encourage NHRI legislative reform and provision of technical assistance (e.g. education and training) to build status and capacity of NHRIs. The Sub Committee develops General Observations on interpretation of the Paris Principles.

4. Q: Please share with us the achievements of your national human rights institution in terms of the protection of human rights.

A: New Zealand's has a strong record on human rights issues and the Commission acts as an advocate for human rights, protecting and promoting them within our system. Whilst New Zealand has relatively high levels of realisation of human rights, maintaining a continuous focus on human rights and better promoting and protecting human rights is necessary to ensure ongoing protection. As one of its primary functions, the Commission plays an important role in encouraging the maintenance and development of harmonious relations between individuals and the diverse groups in New Zealand society. The Commission undertakes a range of work to this end and further information on this work can be found at this webpage.

Further specific areas of focus of human rights that the Commission works in are listed below, with hyperlinks to further information about the Commission's activities:

- Equal Employment Opportunities
- The Treaty of Waitangi
- <u>Disabled People</u>
- Enquiries and Complaints

The mediation service run by the Commission's Enquiries and Complaints team, dealing with complaints of unlawful discrimination, is particularly successful in dealing with complaints through an alternative dispute resolution model, outside of a court process. For the year ending 30 June 2012, 88 percent of discrimination complaints were closed within one year with the situation advanced. From questionnaires sent to all parties involved in mediation through the Commission, of those who responded, on a five point scale, 95 percent were satisfied or very satisfied with the process.

5. Q: What would be your suggestion for the establishment of the Taiwanese Human Rights Institution? What would be the urgent Human Rights issues that you would expect to be addressed?

A: In general, National Human Rights Institutions are set up to protect and promote a fairly uniform set of principles, as outlined in the Paris Principles. In New Zealand's case a number of the key current priorities are highlighted the HRC's website on http://www.hrc.co.nz/human-rights-environment including ensuring fair and equitable treatment during the post-earthquake recovery programme in Christchurch, maintaining the principles of the Treaty of Waitangi which creates a partnership between the Crown (i.e. the Executive) and indigenous groups, gender identity and sexual orientation issues, the use of sign language, and monitoring places of detention as required under the protocol to the Convention Against Torture. However, the exact strategic focus and work emphasis undertaken by any individual NHRI will differ based on the country-specific human rights situation and context.