

Report on Committee on Constitutional Affairs and Human Rights 2017

The Committee on Constitutional Affairs and Human Rights has had an eventful year in 2017.

Judges and judicial independence in Hong Kong became the subject of unjustified attacks from both domestic and overseas quarters in 2017 following the giving of judgments by the Hong Kong courts adjudicating on the criminality and penalties in respect of incidents of public protests and occupation between 2012 and 2014. This Committee assisted the Bar Council in the preparation of two statements which were released in February and August 2017 respectively.

The HKSAR Government published a “Discussion Paper” in July 2017 to outline the Co-location Arrangement for immigration, customs and quarantine clearance of passengers that it would seek with the responsible Mainland authorities at the West Kowloon Station of the Guangdong-Shenzhen-Hong Kong Express Rail Link. The outlined “Three Step Process” and its possible implications to the systems of the HKSAR under the Basic Law of the HKSAR have been the subject of assiduous study by this Committee. The Bar Council had been constantly briefed by this Committee on developments on this front. With hindsight, the fact that the Bar Council had decided not to issue a substantive position paper before the commencement of the said “Three Step Process” might have been a blessing in disguise, given that the HKSAR Government had deplorably ceased to refer to and, by this posture of silence, defend the legal basis proffered in the “Discussion Paper” for justifying the introduction of the mode of co-location implementation envisaged in the Co-location Arrangement after the Chief Executive of the HKSAR signed the related Co-operation Arrangement with the Governor of Guangdong Province on 18 November 2017.

Non-refoulement protection related law and screening arrangements have been an ongoing topic of this Committee’s work. In 2017, members of this Committee taught in the Bar’s course for equipping lawyers to be engaged in legal representation of claimants under the Unified Screening Mechanism. Also, the Bar has been maintaining a dialogue with the Security Bureau in relation to its review of the USM, including the mechanism for delivering publicly funded legal assistance to claimants. A member of this Committee in particular is sitting in an advisory panel established to monitor the pilot scheme established by the Security Bureau to deliver such assistance to claimants by a different mode of operation, notwithstanding that the Bar Council has determined to be this mode of delivery of services is incompatible with the Code of Conduct. Further, this Committee has continued its engagement with other NGOs in this field for promotion of training and advocacy.

Policy initiatives and consultations nowadays can involve multiple areas of practice. This has been illustrated by the Inter-departmental Working Group on Gender Recognition’s Consultation Paper (Part I) on whether Hong Kong should establish a gender recognition system and if so, in what parameters. The questions put forward for consultation involved consideration of issues not only from the human rights perspective but also from the family law perspective. Here the production of the Bar’s response had led to collaboration between this Committee and the Committee on Family Law. It is somewhat expected that in one or possible topics engaging this Committee in the coming year that assistance and collaboration will be sought from other practice area committee. And reciprocal requests are also welcome.

On the advice of this Committee, the Bar Council resolved in March 2017 to express agreement with the Statement of the Equal Opportunities Commission and the Gender Research Centre of

the Institute of Asia-Pacific Studies, Chinese University of Hong Kong to call on the HKSAR Government to start public consultation on introducing legislation to prohibit discrimination on the grounds of sexual orientation, gender identity and intersex status.

On the advice of this Committee, the Bar Council also resolved in March 2017 to issue a statement citing the entitlements that four Chinese citizens and lawyers/legal activists were entitled to under Mainland Chinese laws and international human rights and obligations subscribed by the People's Republic of China in the then upcoming trials for alleged offences of "subverting state power", "inciting subversion of state power" and "disruption of court order".

This Committee expects more work in 2018 as the administration of the HKSAR as a local administrative region of the People's Republic of China directly under the Chinese Central People's Government enters into the New Era of Socialism with Chinese Characteristics. Another possible source work, and this is stated in a more positive note, is the marking of the 70th Anniversary of the signing of the Universal Declaration of Human Rights.

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Committee on Constitutional Affairs & Human Rights

30 November 2017