

Report of the Committee on Constitutional Affairs and Human Rights 2019

The Chairperson of the CCAHR remarked in her annual report in 2018 that the year 2018 was an “eventful year”. It appears that the year of 2019 turned out to be even more eventful, if not exceptional. The year began with the continuation of our work on the National Anthem Bill, and soon the CCAHR was pre-occupied by the introduction of the Extradition Amendment Bill. The protest and the escalating conflicts between the protesters and the police dominated the second half of the year, which ended with the enactment of the controversial Prohibition of Face Covering Regulation (“PFCR”) by the Chief Executive in Council pursuant to the Emergency Regulation Ordinance (“ERO”). The successful challenge to both the ERO and the PFCR before the Court of First Instance has led to a highly controversial statement from the Legal Affairs Committee of the National People’s Congress on the power of the judiciary and the role of the Standing Committee on the National People’s Congress.

The CCAHR was pleased that the Government has taken on board most of our comments on the National Anthem Bill. We have built up a good rapport with the Constitutional and Mainland Affairs Bureau and are able to maintain a continuing dialogue on various constitutional issues.

Upon the introduction of the Extradition Amendment Bill, the CCAHR has assisted the Bar Council in addressing the concerns over the Bill. We have liaised with and received considerable support from the English Bar, the Australian Bar and the New Zealand Bar, for which we are most grateful. They have, upon short notice, generously shared their experience and provided us with their expert inputs in our analysis of the Bill. They have also expressed their concern over the Bill at the international level. The Australian Bar is also instrumental in putting the Hong Kong situation on the agenda of various United Nations Human Rights bodies.

As events unfolded, public focus has shifted from the Bill to excessive and unreasonable use of force by the police. The CCAHR has assisted the Bar Council in responding to some of these concerns. Some of the responses on the police’s use of force have attracted concerns from some members of the Bar. In anticipation of a call for amnesty, the CCAHR has prepared a background study for the benefit of the Bar Council on the legality and modality of a possible amnesty, without expressing any view on the desirability of introducing such a measure, which is typical in the context of transitional justice. By the end of the year, the CCAHR has turned its attention to the controversial PFCR which was introduced pursuant to the equally controversial ERO, and the subsequent statement of the Legal Affairs Committee of the National People’s Congress on the roles of the judiciary and the National People’s Congress on constitutional review of legislation.

Apart from the work on the Extradition Amendment Bill and its aftermath, the CCAHR considered the periodic reports made by the HKSAR Government under the ICCPR and the Disability Convention. The Bar Chairman and the Vice Chair of this Committee spoke at the first Human Rights Conference of LawAsia held in Delhi in February 2019. Members also participated in the 29th Seminar on the Basic Law organized by the Joint Committee on the Promotion of the Basic Law, and met with various overseas visitors/representatives of various international organizations.

At the time of this report, it is still unclear how the saga on the Extradition Amendment Bill will end. The CCAHR will continue to monitor the situation and to assist the Bar Council on these matters. Serious constitutional issues regarding the constitutional jurisdiction of our courts have been raised. The CCAHR will have to follow up on the hearings of some of the periodic reports before the respective UN treaty bodies in the coming year. There will also be the appointment of the Chief Justice and the filling of the vacancy in the Court of Final Appeal upon the retirement of Mr Justice Ribeiro PJ. The coming year promises to be no less eventful.

I would like to take this opportunity to thank members for their inputs, and in particular, to the two Vice-Chairpersons, Erik Shum and Po Wing Kay, who, with their acute constitutional sensitivity and great efficiency in formulating responses, have contributed significantly on many constitutional issues that have arisen over the year.

Membership:

Johannes Chan, SC (Hon.) (Chairman)

Erik Shum (Vice Chairman)

Po Wing Kay (Vice Chairman)

Abraham Chan, SC

Jenkin Suen, SC

Charles K C Chan

Kirsteen Lau

David W K Tang

Anthony Chan

Randy Shek

Raymond H M Kong

Timothy Parker

Jeffrey Tam

Richard Yip

Ernest C.Y. Ng

Lorraine Tsang

Anson Wong Yu Yat

Matthew Lai

Vickie Lui

Michael H J Lee.

Johannes Chan, SC (Hon)

Chairman

Committee on Constitutional Affairs and
Human Rights

4 December 2019