

Special Committee on Constitutional Affairs & Human Rights

2009 is a year of anniversaries. One anniversary that is particularly pertinent to the work of the Special Committee on Constitutional Affairs and Human Rights is the 10th anniversary of the Interpretation by the NPCSC of Article 22(4) and Article 24(2)(3) of the Basic Law of the HKSAR (26 June 1999).

Matters on the interpretation of the Basic Law have not been a heavy source of work of the Special Committee except perhaps towards the end of the year when the HKSAR Government released its consultation document on electoral methods of returning the new Chief Executive and the new Legislative Council in 2012. Work of a broader but similar categorization (better known by the old expression, China watching) involved briefing the Bar Council on the writings and sayings of Cao Erbao, Cheng Jie and Zhang Xiaoming, and on the sufferings of weiquan lawyers/law scholars. Members of the Special Committee also met on a few occasions Mainland Chinese visitors who were interested in discussing on how human rights are protected in Hong Kong.

What has been truly occupying the Special Committee are four local incidents. The first was the 2007 Annual Report of the Commissioner on Interception of Communications and Surveillance in which the Commissioner documented shortcomings of the ICAC in complying with the Interception of Communications and Surveillance Ordinance (Cap 589) and orders made by panel judges under that Ordinance. The shortcomings did deserve criticisms. The second involved the implementation of the Race Discrimination Ordinance (Cap 602) and the Bar continued to be involved in the vetting of associated subsidiary legislation and code of practice, as well as maintaining in a submission to the United Nations Committee for the Elimination of Racial Discrimination the various statutory deficiencies. The third concerned the much rushed pilot scheme to do drug testing in secondary schools in Tai Po that the Bar's comments turned to have substantially shaped.

The last and definitely not least item was HKSAR Government's re-design of the screening mechanism for persons claiming protection of non-refoulement under the Convention Against Torture. Associated with the new mechanism is to be publicly funded legal assistance to be administered by the Duty Lawyer Service. After the Security Bureau had negotiated with the Duty Lawyer Service under wraps of confidentiality for half a year, both the Bar and the Law Society managed to become participants in the process to make sure that only suitably trained lawyers may provide the needed legal assistance, demanding from the lawyer knowledge and skills not commonly used in ordinary litigation; and that the lawyers be appropriately remunerated, bearing in mind that the current duty lawyer rate scale is unlikely to attract such suitably trained lawyers on a continuing and sustainable basis.

The Special Committee also provided assistance to the Bar Council on the Voting by Imprisoned Persons Bill and the crime reports relating to one Mrs Mugabe and one Miss Mugabe.

There will be at least one anniversary to mark in 2010, namely the 20th anniversary of the adoption of the Basic Law of the HKSAR. The manner in which the NPCSC and the Central Authorities will celebrate this anniversary is anyone's guess. Yet this occasion together with the matters anticipated with the retirement of Li CJ and the appointment of his successor in mid-2010 and the matters of development of the political system of the HKSAR carried forward from 2009, will be more than sufficient to keep the Special Committee busy.

It remains for me to thank members of the Special Committee for their continuous support.

Membership:

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Philip Dykes SC
Michael Blanchflower SC
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