

立法會

Legislative Council

LC Paper No. CB(2)1771/18-19

Ref. : CB2/PL/CA

Report of the Panel on Constitutional Affairs for submission to the Legislative Council

PURPOSE

This report which is made in accordance with Rule 77(14) of the Rules of Procedure of the Legislative Council ("LegCo") gives an account of the work of the Panel on Constitutional Affairs ("the Panel") during the 2018-2019 legislative session.

THE PANEL

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region ("HKSAR") Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 33 members, with Hon CHEUNG Kwok-kwan and Hon LUK Chung-hung elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

MAJOR WORK

Electoral matters

2018 Legislative Council Kowloon West Geographical Constituency By-election

4. The Panel discussed the practical arrangements for the 2018 LegCo Kowloon West ("KW") Geographical Constituency ("GC") By-election ("the By-election") held on 25 November 2018. Some members expressed concern about the arrangements relating to polling stations such as their accessibility and requested the Registration and Electoral Office ("REO") to take measures to facilitate electors as far as possible to cast their votes. The Administration

advised that to avoid causing confusion to electors, REO would use the same venues as far as possible for setting up polling stations as in the 2018 LegCo by-election held in March 2018 for the registered electors in KW GC to cast their votes. The Administration further advised that at least 90% of the 73 ordinary polling stations to be set up for the By-election would be located at venues accessible to electors with mobility difficulties.

5. Some members urged the Administration to learn from the experience of the computer theft incident of REO in March 2017 and devise necessary security measures for the By-election to avoid recurrence of similar incidents. The Administration advised that REO would prepare a detailed security plan to ensure public order and safeguard government properties during the By-election. Moreover, REO would strictly follow the internal physical and technical security guidelines governing the use of personal data only on a "need-to-know" and "need-to-use" basis. REO would also provide sufficient training to staff in handling personal data and security matters.

6. Some members expressed grave concern over the nomination of a person seeking candidature being ruled invalid by the Returning Officer ("RO") and urged the Administration to explain the criteria adopted by RO in making the decision. The Administration explained that in accordance with the Legislative Council Ordinance (Cap. 542) ("LCO"), RO had the power to determine whether the declaration made by a candidate in the nomination form that he/she would uphold the Basic Law and pledge allegiance to HKSAR was genuine, thereby deciding whether the relevant nomination was valid. The Confirmation Form was prepared by the Electoral Affairs Commission ("EAC") to facilitate ROs' discharge of their duties under the nomination procedure to ensure that all candidates fully understood the legal requirements, and on such basis were bona fide when signing the declaration in the nomination form. The Administration stressed that RO would, in accordance with the law and having considered the relevant information, decide whether or not a person was validly nominated as a candidate. Any person seeking candidature who did not agree with the RO's decision could lodge an election petition. Some members, however, considered the Administration failed to explain clearly the criteria applied in the vetting of candidates' eligibility in public elections. They requested that the Panel should further discuss the subject at a future meeting. The Panel has included the relevant matter on its list of outstanding items for discussion.

2020 Legislative Council General Election

Proposed technical amendments

7. The 2020 LegCo General Election will be held in the third quarter of 2020. The Administration consulted the Panel on the proposed necessary technical

amendments for the 2020 LegCo General Election and other public elections, including technical amendments concerning the electorate of functional constituencies ("FCs"), arrangements in the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), as well as various electoral procedures.

8. While members in general did not raise objection to the proposed amendments, some members expressed concerns about the mechanism for handling requests from bodies for registration as corporate electors for FCs. In particular, they noted that individual bodies in the information technology ("IT") sector had requested repeatedly over the years for inclusion in IT FC but still the Administration had not acceded to their requests. The Administration explained that the electorate of FCs in LegCo was provided for under LCO. Following the established practice, before each LegCo general election, the Constitutional and Mainland Affairs Bureau ("CMAB") would conduct a review of the delineation of the electorate of FCs in consultation with relevant bureaux/departments ("B/Ds"). The review was conducted on the basis of the existing electorate and all relevant requests received from individual bodies/persons since the last review in 2015.

9. The Administration further explained that for a body to be added to an FC, it should be a representative one and was active in supporting the development of the sector concerned. In line with the established practice, the advice of the relevant B/Ds would be sought in consideration of whether individual bodies fulfilled such criteria. The Administration informed members that the Innovation and Technology Bureau ("ITB") was working on establishing a common benchmark on eligibility of different IT professionals in Hong Kong for recognition as electors in IT FC. ITB was planning to consult the IT sector on relevant issues in the second half of 2019.

10. After consulting the Panel, the Electoral Legislation (Miscellaneous Amendments) Bill 2019 to implement the above legislative proposals was introduced into LegCo on 20 March 2019 for scrutiny.

Provisional recommendations on the boundaries and names of geographical constituencies

11. The Administration also consulted the Panel on EAC's provisional recommendations on the boundaries and names of GCs for the 2020 LegCo General Election. Members noted that the proposed boundaries and names of GCs, as well as the proposed number of seats to be allocated to the respective GCs, were the same as those for the 2016 LegCo General Election. Some members expressed concern that under the current proposal of allocating nine seats to New Territories West ("NTW") GC, there would be +11.9% of deviation

from the resulting number for NTW GC, which was close to the statutory limit¹. They were also concerned that given the extremely large area of NTW GC, Members returned by that GC had faced immense difficulties in serving their constituents. Noting that the maximum number of seats to be allocated to each GC was currently set at nine under LCO, some members urged the Administration to make early planning for the 2024 LegCo General Election and come up with necessary legislative amendment proposals in a timely manner for consideration by LegCo. In this connection, they opined that the Administration should review the relevant statutory provisions under LCO in consultation with LegCo Members as early as possible in the light of the trend of population changes, including those arising from the new development areas such as Kwu Tung North and Fanling North.

12. The Administration explained that EAC's provisional recommendations were drawn up in accordance with the relevant statutory requirements and the established working principles. Under the current proposals, the deviation from the resulting number for NTW GC (+11.9%) was still within the statutory permissible range (i.e. not exceeding or falling short of the resulting number applicable to that GC by more than 15%). Nevertheless, it was envisaged that the population size of NTW GC would continue to grow, thus rendering the resultant deviation to likely exceed the statutory limit by 2024. The Administration undertook that it would study the relevant issues with EAC and come up with proposals to address the issue for consultation with LegCo Members and the public before the 2023 District Council ("DC") Ordinary Election.

Pilot schemes of advance polling and electronic counting

13. The Panel was also consulted on the Administration's proposals of launching pilot schemes of advance polling and electronic counting in the 2020 LegCo General Election. Under the proposed pilot scheme of advance polling, Government employees who were required to perform election-related duties on the polling day of the 2020 LegCo General Election that would prevent them from voting would be eligible to vote on the advance polling day, which was proposed to be seven days before the main polling day that fell on a Sunday. As regards the pilot scheme of electronic counting, the Administration proposed to

¹ Under section 20(1)(a) and (b) of the Electoral Affairs Commission Ordinance (Cap. 541) ("EACO"), EAC shall ensure that the extent of each proposed GC is such that the population in that GC is as near as practicable to the number which results (i.e. the resulting number) when the population quota is multiplied by the number of Members to be returned to LegCo by that GC. Where it is not practicable to comply with this requirement, EAC shall ensure that the extent of the GC is such that the population in that GC does not exceed or fall short of the resulting number applicable to that GC by more than 15%. According to section 17(1) of EACO, "population quota" means the total population of Hong Kong divided by the total number of Members to be returned for all GCs in the election.

implement electronic counting using machines with both vote recognition and paper counting functions in three traditional FCs in the 2020 LegCo General Election. The Administration advised that the experience gained would facilitate further study on the feasibility of implementing electronic counting in the DC(Second)FC in future LegCo elections.

14. Some members expressed support for launching the proposed pilot scheme of advance polling so as to facilitate voting by polling staff who were previously unable to vote due to engagement in election-related duties on the polling day. These members pointed out that advance polling arrangements were also available in some overseas countries. They suggested that the Administration should make reference to relevant overseas experience in formulating the detailed arrangements for the proposed pilot scheme. Some other members, however, expressed grave concerns about various technical and security issues pertinent to the proposed pilot scheme, including the safekeeping of the marked ballot papers and other election-related materials between the advance polling day and the main polling day. They were also concerned about the possible impact of enabling certain electors to vote as early as seven days before the main polling day on the election results. These members expressed opposition to launching the proposed pilot scheme and considered that other administrative arrangements (e.g. assigning polling staff to work on different shifts on the polling day) should be explored to facilitate the polling staff concerned to vote on the polling day.

15. The Administration advised that the pilot scheme of advance polling was proposed in response to the recommendation made by EAC in its Report on the 2018 LegCo By-election as well as the views received during the public consultation on review of electoral arrangements in November 2017. The Administration explained that the proposed pilot scheme was aimed not only to facilitate voting by polling staff, but also to provide useful experience for REO in the long run if it was considered necessary and appropriate to implement advance polling on a larger scale to cater for the needs of other electors who were unable to vote on the polling day. The Administration assured members that REO would put in place sufficient security measures and enlist the support of the Police for safeguarding the election materials. The Panel passed a motion expressing support for launching the proposed pilot scheme and urging the Administration to examine beforehand whether the relevant legislation and administrative measures in place were clear and sufficient to guard against any possible manipulation of public elections, and ensure proper safekeeping of the election-related materials between the advance polling day and the main polling day.

16. Some members expressed concern on how to ensure transparency for the selection and procurement of the electronic counting machines for use under the pilot scheme of electronic counting. The Administration advised that an open

tendering process would be conducted to procure the counting machines. In accordance with the established practice, technical specifications of the machines would be set out in the tender documents. REO would ensure that the counting machines selected for use under the pilot scheme would attain an ultimate recognition accuracy of at least 99.99% as required in the tender documents, and would have the technological compatibility for continued use in subsequent LegCo elections.

17. Some members also raised concern about how the integrity and security of the electronic counting system could be ensured to avoid any possible manipulation of public elections. The Administration advised that REO would appoint an independent system testing and quality assurance service provider to conduct user acceptance tests for the counting machines to ensure that the machines met the relevant requirements. In addition, REO would appoint an independent computer audit firm to perform computer audit in relation to the level of stability of the entire electronic counting system.

2019 District Council Ordinary Election

Subsidy rate of the financial assistance for candidates and election expenses limit

18. The Administration consulted the Panel on its proposals that, starting from the 2019 DC Ordinary Election, the subsidy rate of the financial assistance scheme for candidates of DC election be increased from \$14 per vote to \$15 per vote and the election expenses limit ("EEL") for DC elections be increased from \$63,100 to \$69,000, taking into account the cumulative increase in the Composite Consumer Price Index from 2016 to 2019 which was expected to be 9.1%.

19. While members in general expressed support for the proposed increases, some members considered that the Administration should also review the calculation method of the amount of financial assistance payable to each eligible candidate, which was at present capped at 50% of EEL. They suggested that the amount should be calculated by multiplying the subsidy rate by the total number of valid votes obtained by the candidate, which, in their view, was more reasonable and could provide incentive for candidates to obtain more votes. There was also a suggestion that the Administration might consider setting the cap at 75% (instead of 50%) of EEL for candidates who were able to obtain a large number of valid votes (e.g. no less than 30% of the total number of valid votes cast in the constituency concerned). Besides, some members opined that the Administration should allocate free airtime of Radio Television Hong Kong to DC election candidates for publishing election advertisements.

20. While some members considered that there was still room for further increasing EEL to enable the use of more diverse means (e.g. producing videos) in electioneering campaigns, some other members were opposed to a large increase in EEL. These members considered that a large increase in EEL would put political parties or independent candidates with less financial resources at a great disadvantage in electioneering activities. The Administration advised that the proposed increase in EEL had taken into account the latest estimated cumulative inflation. The Administration considered the proposed increase reasonable. Nevertheless, the Administration agreed to consider members' views and suggestions.

21. Following consultation with the Panel, the District Councils Ordinance (Amendment of Schedule 7) Order 2019 ("the Order") and the Maximum Amount of Election Expenses (District Council Election) (Amendment) Regulation 2019 ("the Amendment Regulation") were made by the Chief Executive ("CE") in Council to give effect to the proposed increases and were submitted to LegCo for scrutiny. The Order and the Amendment Regulation came into operation on 28 June 2019.

Publicity programme

22. The Panel discussed the publicity programme for the 2019 DC Ordinary Election. Some members expressed concern that the budget for the proposed publicity programme, which was about \$7.5 million, was rather tight and might not be adequate to achieve effective publicity purpose. These members stressed the need to step up publicity efforts to publicize the importance of honest, clean and violence-free elections in view of previous media reports on vote-rigging and incidents allegedly involving violence in public elections. To prevent occurrence of similar incidents, members opined that the Administration should also step up enforcement actions.

23. The Administration pointed out that the proposed expenditure for publicity programme for DC elections had been increased from \$6.9 million in 2015 to about \$7.5 million taking into account inflation. The Administration advised that the first phase of the proposed publicity programme for the 2019 DC Ordinary Election would focus on the promotion of the importance of honest and clean elections. Reference had been made to the experience of the 2015 DC Ordinary Election in devising the proposed publicity programme. The Administration further advised that any reported violence cases relating to elections would be referred to the Police for follow-up investigation.

Personal data protection

Incident of leakage of passengers' personal data by Cathay Pacific Airways Limited and issues relating to protection of personal data

24. In the light of wide public concern about the incident of leakage of personal data of up to 9.4 million passengers by Cathay Pacific Airways Limited ("Cathay Pacific"), the Panel held a joint meeting with the Panel on Information Technology and Broadcasting and the Panel on Security to discuss the incident and issues relating to protection of personal data and cyber security. Members were briefed on the details of the incident and the follow-up actions taken by Cathay Pacific, the relevant Government departments and the Office of the Privacy Commissioner for Personal Data ("PCPD"). Members expressed strong dissatisfaction that Cathay Pacific failed to report the incident to the relevant authorities or notify the affected passengers until months after the data leakage was detected. They pointed out that the prolonged delay in announcing the incident had pre-empted the passengers concerned from taking proactive steps and timely measures to mitigate any potential harm or damage that could be caused by the data leakage. Some members questioned whether Cathay Pacific had followed the relevant guidelines on data breach handling issued by PCPD in the incident.

25. Cathay Pacific apologized at the joint meeting for the delay in announcing the incident. It briefed members that actions taken to follow up the incident included (i) investigation, containment and remediation; (ii) confirming which data had been accessed and whether it could be read by the attacker(s); and (iii) determining the types of personal data that pertained to each affected passenger and giving notifications to the parties concerned. Cathay Pacific explained that it had taken longer time than expected to execute the above follow-up actions as much time was needed in gathering essential information for assessing the impact of the breach on the affected passengers before proceeding to the subsequent steps (e.g. giving notifications to the relevant authorities). Cathay Pacific emphasized that there had never been any plan to cover up the incident and it started notifying the affected passengers within hours after reporting to the relevant authorities.

26. Members expressed grave concern that there was no requirement under the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO") for an organization to file data breach notifications whether to PCPD or to its affected clients. They enquired whether the Administration would introduce mandatory notification requirement in PDPO with reference to the General Data Protection Regulation ("GDPR") enacted by the European Union, so as to ensure timely disclosure of data breaches. Some members also queried whether the current prosecution process and penalties for non-compliance with PDPO had adequate deterrent

effect. The Administration advised that PCPD would have regard to GDPR in its ongoing review of PDPO. The review would be completed as soon as possible and all suggestions for amendment to PDPO would be considered in the light of the interest of all stakeholders.

Loss of a Register of Electors of the Registration and Electoral Office

27. The Panel was deeply concerned about the loss of a Register of Electors relating to the 2016 LegCo General Election, which contained the personal data of 8 136 registered electors. Shortly after the incident came to light in early April 2019, the Panel requested the Administration to brief members on the incident and the relevant follow-up measures. Members expressed grave concern that it was already the second time that REO lost the personal data of electors following the loss of two REO notebook computers in 2017. They considered that the incident had further undermined public confidence in the internal management of REO and its capability of handling voter registration information which involved sensitive personal data. Noting that the request for inspection of the Register concerned was made by the Independent Commission Against Corruption back in October 2016 and REO had been unable to find the Register since then, members were gravely concerned why the loss of the Register was not made public until early April 2019. Some members further queried whether deliberate cover-ups on the part of REO's personnel were involved in the incident. Members also enquired about the measures taken by the Administration to mitigate the impact on the large number of affected electors and to prevent recurrence of similar incidents in future.

28. The Administration advised that REO had reported the incident to the Police and to PCPD, which would commence a compliance investigation into the incident. Specific details of the incident, such as the circumstances under which the Register concerned was lost and the reasons for not reporting the loss by the relevant personnel, could only be ascertained after comprehensive investigations. The Administration informed members that to mitigate any possible damage brought about by the incident, REO had issued letters to notify all affected electors and had written to various Government departments and organizations which had frequent contact or handling of personal data to alert them to the incident. REO had also completed reviewing the voter registration information of all affected electors and confirmed that no abnormalities were detected.

29. The Administration further assured members that all necessary precautionary measures would be taken to prevent recurrence of similar incidents in future. REO would fully cooperate with the Police and PCPD in their investigations and submit a detailed report on the incident to CMAB and EAC. Besides, EAC would also conduct a comprehensive review of the incident

to identify problems or loopholes relating to the electoral arrangements as well as overall management of REO with a view to recommending improvement measures. REO pledged that it would fully assist in EAC's investigation and make improvements in accordance with the recommendations made by EAC. The Administration undertook that if human errors or deliberate cover-ups were found to be involved, actions would be taken in strict accordance with the established disciplinary mechanism.

Work of the Office of the Privacy Commissioner for Personal Data

30. The Panel received a briefing by the Privacy Commissioner for Personal Data ("the Privacy Commissioner") on an update of the work of PCPD. The Panel noted with concern that the number of complaints relating to the use of information and communications technology ("ICT") received by PCPD had increased by more than double from 237 cases in 2017 to 501 cases in 2018. A majority of the 501 cases (i.e. 270 cases) were related to disclosure or leakage of personal data on the Internet, which included 139 complaints relating to the incident of personal data leakage by Cathay Pacific. Members stressed the need to enhance public awareness of the importance of personal data protection in using ICT and called on PCPD to step up its efforts in this regard. Some members also expressed concern that some mobile applications ("apps") might capture and leak users' data stored in their smartphones and urged that appropriate measures should be taken to protect users' smartphone data.

31. The Privacy Commissioner concurred that the increasing popularity of mobile devices (e.g. smartphones and tablets) and the prevalent use of the Internet had brought about growing concerns over the privacy risks involved. He advised that PCPD would step up public education and publicity on protection of personal data privacy in connection with the use of ICT especially amongst children and the youth. The Privacy Commissioner advised that PCPD had also issued guidelines on compliance with PDPO in developing mobile apps. PCPD would conduct inspections on the personal data systems of organizations and take necessary enforcement actions upon receipt of complaints. The Privacy Commissioner further advised that PCPD would continue its efforts in strengthening collaboration and exchange of intelligence with data protection authorities of other jurisdictions for effective law enforcement. Apart from law enforcement, PCPD would engage and incentivize the business sector by assisting businesses to address privacy issues that might arise from their operations and to cultivate a culture of respect for personal data privacy within their organizations.

32. In response to some members' concern about whether and when amendments would be made to PDPO to strengthen the regulation of data protection, the Privacy Commissioner advised that PCPD was finalizing its

review of PDPO and had drawn up initial recommendations regarding the enhancement of data breach notification arrangements, retention and disposal of personal data by data users, penalties for non-compliance and regulation of data processing activities by data processors. The Privacy Commissioner also advised that since the compliance investigations by PCPD into the incidents of personal data leakage by Cathay Pacific and TransUnion Limited were near completion², PCPD would take into account the investigation findings as appropriate in finalizing its recommendations on the review of PDPO.

Work of the Equal Opportunities Commission

33. The Panel received a briefing by Mr Ricky CHU Man-kin, who assumed office as the Chairperson of the Equal Opportunities Commission ("EOC") on 11 April 2019, on an update of the work of EOC. Members exchanged views with the EOC Chairperson on the key initiatives of EOC in 2019-2020 and beyond. In particular, some members expressed concern about the efforts made by EOC in preventing sexual harassment in the sports, religious and education sectors and among ethnic minorities ("EMs"). The EOC Chairperson advised that EOC aimed to set up a one-stop support platform to facilitate individuals affected by sexual harassment to speak out about their experiences as victims of sexual harassment in a safe and confidential manner. To cater for the needs of EM victims of sexual harassment, EOC would provide interpretation services for persons concerned and enhance cultural sensitivity training for staff concerned. The EOC Chairperson further advised that EOC planned to set up a dedicated anti-sexual harassment unit to, among others, conduct a holistic review of the current legal protection regime against sexual harassment and recommend legislative amendments where appropriate.

34. Members noted that EOC embarked on a review of its complaint handling and legal assistance services in the latter half of 2017, with a view to examining and enhancing the effectiveness of the services. The review also covered EOC's governance and its management structure. Members were pleased to note that the review was completed in February 2019. In response to some members' request for making public the review report, the EOC Chairperson advised that he was studying the findings and recommendations of the review report, which would be published once ready.

35. The Panel also expressed concern that EOC would face the risk of running into deficit as the rental of the current EOC office premises was expected to increase when its leasing contract was due for renewal in August 2020. Some

² Pursuant to section 38(b) of PDPO, the Privacy Commissioner commenced compliance investigations into the incidents of personal data leakage by Cathay Pacific and TransUnion Limited on 5 November and 30 November 2018 respectively.

members asked whether the Administration would consider providing a permanent office for EOC in order to relieve the financial pressure faced by EOC.

36. The Administration advised that additional funding had been earmarked in the 2019-2020 Budget to increase the annual subvention to EOC to cover the additional operating expenditures arising from inflation. The Administration would keep in view the rental increase of EOC's office premises and seek additional funding resources if necessary. The Administration advised that it would need to consider the option of providing a permanent office for EOC carefully.

Human rights reports

International Convention on the Elimination of All Forms of Racial Discrimination

37. The United Nations ("UN") Committee on the Elimination of Racial Discrimination ("UNCERD") conducted a hearing on HKSAR's third report under the International Convention on the Elimination of All Forms of Racial Discrimination on 10 and 13 August 2018 and issued its Concluding Observations on 30 August 2018. The Panel discussed the outcome of the UNCERD hearing on HKSAR's third report with deputations and the Administration.

38. Some members expressed grave concern that in the Race Discrimination Ordinance (Cap. 602) ("RDO"), there was no provision, as in the three other anti-discrimination ordinances, which stated that it was unlawful for the Government to discriminate against persons on grounds of their race in the performance of its functions or the exercise of its powers. These members pointed out that back in 2009, UNCERD had recommended that all Government functions and powers should be brought within the scope of RDO and the same recommendation was also made by EOC. The Administration explained that RDO was binding on the Government and specifically prohibited discriminatory acts and practices of the Government in all areas prescribed in RDO, such as employment; education; the provision of goods, facilities or services; and the disposal or management of premises. Moreover, the Hong Kong Bill of Rights Ordinance ("HKBORO") (Cap. 383) prohibited the Government and public authorities from practising discrimination on the ground of race. Avenues were available to address complaints against the Government and public authorities through, e.g. the Ombudsman and LegCo.

39. Some members opined that discrimination against new arrivals from the Mainland was prevalent in Hong Kong. They called on the Administration to

address UNCERD's concern that indirect discrimination with regard to language, immigration status and nationality should be included among the prohibited grounds of discrimination in RDO. Some members also raised concern about the Administration's failure to follow up the recommendation repeatedly made by various UN committees that Hong Kong should enact comprehensive laws to prohibit all forms of trafficking in persons. In response to members' concerns, the Administration advised that it would take a critical look at all the issues relating to HKSAR as raised in the Concluding Observations and give a detailed response to UNCERD's recommendations in the next report of HKSAR to be submitted by January 2023.

International Covenant on Economic, Social and Cultural Rights

40. The Government would submit its fourth report on the implementation of the International Covenant on Economic, Social and Cultural Rights ("ICESCR") in HKSAR for incorporation as part of the third report of the People's Republic of China under ICESCR. The Panel received public views on the outline of the topics to be included in the fourth report of HKSAR.

41. Some members criticized the HKSAR Government for making no progress at all or even retrogressing in the development of democracy in Hong Kong. They expressed concern that the current-term Government had no plans to restart public consultation on constitutional development and that some persons who allegedly advocated "self-determination" in Hong Kong had been disqualified from seeking candidature in public elections. They requested the Administration to cover these in the fourth report of HKSAR. The Administration advised that the methods for selecting CE and forming LegCo were to be specified in light of the actual situation in HKSAR and in accordance with the principle of gradual and orderly progress with the ultimate aim of selecting CE and electing all LegCo members by universal suffrage. To attain this goal, the HKSAR Government of the previous term had put forward a universal suffrage package for selecting CE after conducting extensive public consultations but the relevant motion was voted down by LegCo. As any amendment to be implemented in the methods for selecting CE and forming LegCo would require tripartite consensus among LegCo Members, CE and the Standing Committee of the National People's Congress, it was imperative for the HKSAR Government to prudently consider all related factors, size up the situation and seek consensus.

42. Some members shared the concerns previously raised by the UN Committee on Economic, Social and Cultural Rights about the absence of comprehensive anti-discrimination legislation in Hong Kong and urged the Administration to provide a timetable for introducing legislation to outlaw discrimination on grounds of sexual orientation and gender identity. Some other

members were, however, concerned that legislating against discrimination on the ground of sexual orientation might result in "reverse discrimination" and considered it more appropriate to eliminate discrimination in this regard by administrative measures. The Administration undertook that it would continue to promote equal opportunities for people of different sexual orientation and transgender persons, with a view to fostering the culture and values of inclusiveness, mutual respect and non-discrimination in the community. The Administration advised that issues relating to the implementation of Articles 1 to 15 of ICESCR in HKSAR would be covered in its fourth report as appropriate.

United Nations Human Rights Council Universal Periodic Review

43. The UN Human Rights Council ("UNHRC") adopted at its meeting on 15 March 2019 the report by its Working Group on the Universal Periodic Review ("the Working Group") on the third review on China (including HKSAR) held on 6 and 9 November 2018. The Panel discussed the outcome of the third review of HKSAR by the Working Group with deputations and the Administration.

44. Some members criticized the Administration for misleading UNHRC by claiming that human rights and freedoms in Hong Kong were fully protected by the laws of Hong Kong. These members opined that various incidents, including the disqualification of LegCo Members, the Government's decision to ban the Hong Kong National Party, and the Government's refusal to renew the work visa of a foreign journalist, clearly reflected a marked decline in the freedom of speech and expression and the freedom of the press in Hong Kong and also dealt a severe blow to the development of democracy in Hong Kong. On the protection of press freedom, some members questioned what measures were in place to ensure that local and foreign journalists were free from political interference in carrying out their reporting work in Hong Kong. The Administration stressed that the HKSAR Government was firmly committed to protecting the freedom of speech and of the press, which was enjoyed by Hong Kong residents as guaranteed by the Basic Law and HKBORO. The Administration stressed that there was no press censorship in Hong Kong and the Government did not interfere with the operations of media organizations. The Administration advised that the Government had maintained an environment conducive to the operation of a free and active press, with some 80 foreign media organizations operating in Hong Kong which rigorously performed their role as a watchdog.

45. Some members expressed grave concern about the Administration's proposals to amend the Fugitive Offenders Ordinance (Cap. 503) and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525), which, in their view, would pose serious threats to the human rights protection of Hong Kong people.

The Administration explained that there was urgency to enact the amendment legislation and the relevant proposals sought to remove the loopholes in the existing legislation so as to ensure due administration of justice and prevent Hong Kong from becoming a haven for criminals.

OTHER ISSUES

46. The Panel also received a briefing by the Secretary for Constitutional and Mainland Affairs on CE's 2018 Policy Address and discussed the 2019 Voter Registration Campaign.

MEETINGS HELD AND VISIT CONDUCTED

47. From October 2018 to July 2019, the Panel held a total of 10 meetings (including one joint meeting with the Panel on Information Technology and Broadcasting and the Panel on Security). The Panel also conducted a site visit to REO in February 2019 to receive a briefing on the functions of electronic vote counting machines and observe a demonstration of electronic vote counting.

Council Business Division 2
Legislative Council Secretariat
11 July 2019

Legislative Council

Panel on Constitutional Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to implementation of the Joint Declaration and the Basic Law, relations between the Hong Kong Special Administrative Region Government and the Central People's Government and other Mainland authorities, electoral matters, district organizations, human rights, personal data protection and press freedom.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Panel on Constitutional Affairs

Membership list for the 2018-2019 session*

Chairman	Hon CHEUNG Kwok-kwan, JP
Deputy Chairman	Hon LUK Chung-hung, JP
Members	Hon Jeffrey LAM Kin-fung, GBS, JP Hon Starry LEE Wai-king, SBS, JP Hon CHAN Hak-kan, BBS, JP Dr Hon Priscilla LEUNG Mei-fun, SBS, JP Hon WONG Kwok-kin, SBS, JP Hon Mrs Regina IP LAU Suk-ye, GBS, JP Hon Paul TSE Wai-chun, JP Hon Claudia MO Hon Steven HO Chun-yin, BBS Hon MA Fung-kwok, SBS, JP Hon Charles Peter MOK, JP Hon CHAN Chi-chuen Hon Alice MAK Mei-kuen, BBS, JP Hon Dennis KWOK Wing-hang Hon Christopher CHEUNG Wah-fung, SBS, JP Dr Hon Helena WONG Pik-wan Hon IP Kin-yuen Hon Martin LIAO Cheung-kong, GBS, JP Dr Hon CHIANG Lai-wan, SBS, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon CHUNG Kwok-pan Hon Alvin YEUNG Hon CHU Hoi-dick Hon Jimmy NG Wing-ka, BBS, JP Hon LAM Cheuk-ting Hon Holden CHOW Ho-ding Hon Tanya CHAN Hon HUI Chi-fung Hon Kenneth LAU Ip-keung, BBS, MH, JP Dr Hon CHENG Chung-tai Hon AU Nok-hin

(Total : 33 members)

Clerk Ms Joanne MAK

Legal Adviser Mr Kelvin LEE

Date 11 July 2019

* Changes in membership are shown in Annex.

Panel on Constitutional Affairs

Changes in membership

Member	Relevant date
Hon CHAN Chun-ying, JP	Up to 14 October 2018
Hon CHAN Han-pan, BBS, JP	Up to 15 October 2018
Hon LEUNG Che-cheung, SBS, MH, JP	Up to 15 October 2018
Hon POON Siu-ping, BBS, MH	Up to 15 October 2018
Dr Hon Junius HO Kwan-yiu, JP	Up to 15 October 2018
Hon Abraham SHEK Lai-him, GBS, JP	Up to 17 October 2018
Hon CHAN Kin-por, GBS, JP	Up to 20 January 2019
Hon LAU Kwok-fan, MH	Up to 20 January 2019
Hon WONG Ting-kwong, GBS, JP	Up to 21 January 2019