

# HKSAR Government responds to the European Commission Report

The Hong Kong Special Administrative Region (HKSAR) Government today (March 12) expressed strong opposition to the remarks in the report on Hong Kong issued by the European Commission (EU) and the High Representative of the Union for Foreign Affairs and Security Policy (the Report).

Hong Kong National Security Law

"We take great exceptions to the biased and ungrounded political smearing against the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law). National security is a matter within the purview of the Central Authorities. It is the legitimate right and duty of every state to safeguard its national security. Be it adopting a unitary or federal system, legislation on national security is invariably carried out by the central authorities rather than local government. Enacting laws on national security with extraterritorial effect is also squarely in line with international practice. In many countries, laws regarding national security have extraterritorial effect. The EU is demonstrating their obvious double standards against HKSAR."

It is totally untrue and biased to say that the Hong Kong National Security Law have had a chilling effect on the exercise of rights and freedoms in Hong Kong. The Hong Kong National Security Law clearly stipulates that the HKSAR shall protect the rights and freedoms enjoyed by residents under the Basic Law, and International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong in accordance with the law.

"The four categories of offences of endangering national security which the Hong Kong National Security Law provides are narrowly defined with the elements, the penalties, mitigation factors and other consequences of the offences clearly prescribed. Law-abiding people will not unwittingly violate the law."

"It should however be also pointed out that no one is above the law. Any acts, regardless of whether the relevant rights have been exercised, if violence is involved or the law has been violated, they will have gone beyond the constitutionally guaranteed bounds. The person will have to face legal sanctions regardless of his/her background. We should not let politics override justice. Political pluralism does not mean attempts to seriously undermining the performance of government duties and functions can be made. The arrests made by the Police are based on evidence and strictly according to the laws in force."

"We must emphasise that no one has any privilege to break the law without facing legal consequences. The Police have a statutory duty to

maintain public safety and public order. If the public express their views in a peaceful and lawful manner, there would be no need for the Police to use any force. The Police have a set of stringent guidelines on the use of force that are consistent with international human rights norms and standards."

"Since the implementation of the Hong Kong National Security Law, stability has been restored to society and national security has been safeguarded in the HKSAR. Our people can continue to enjoy their basic rights and freedoms in accordance with the law. Our economy and people's livelihood can revive (except for the reason of the epidemic). A stable environment is vitally important to the business activities of both local and overseas enterprises in Hong Kong."

"One Country, Two Systems"

The Report calls into question China's willingness to uphold the "one country, two systems" principle; and it is a groundless accusation. HKSAR is an inalienable part of the People's Republic of China (PRC), a local administrative region that enjoys a high degree of autonomy under "one country, two systems" and comes directly under the Central People's Government (CPG). To uphold and implement the principle of "one country, two systems" meets the interests of the Hong Kong people, responds to the needs of maintaining Hong Kong's prosperity and stability and serves the fundamental interests of the nation. The CPG has time and again made it clear that it will unswervingly implement the policy of "one country, two systems".

General Election of the Legislative Council

On the postponement of the General Election of the Legislative Council (LegCo), the health and wellbeing of the people are the overriding concern of any responsible government. The HKSAR Government has repeatedly stressed that the postponement of the 2020 LegCo General Election is entirely based on public health grounds. According to the decision made by the Standing Committee of the National People's Congress (NPCSC) on August 11, 2020, the sixth-term LegCo of the HKSAR will continue to discharge its duties for no less than one year until the commencement of the seventh-term LegCo. The decision also states clearly that the seventh-term LegCo of the HKSAR will have a term of four years after it has been formed in accordance with the law.

We do not agree to the Report's claim that the decision to disqualify the four LegCo members was "undermining Hong Kong's high degree of autonomy and the protection of fundamental rights and freedoms". The NPCSC's decision on the qualification of LegCo members of the HKSAR on November 11, 2020 clearly establishes that a member of the LegCo of the HKSAR does not fulfill the legal requirements and conditions on upholding the Basic Law and pledging allegiance to the HKSAR of the PRC if the member advocates or supports "Hong Kong independence", refuses to recognise the PRC's sovereignty over Hong Kong and the exercise of the sovereignty, solicits intervention by foreign or external forces in the HKSAR's affairs, or carries out other activities endangering national security. When the member is so decided in accordance with law, he or she is immediately disqualified from being a LegCo member.

The Decision is applicable to the members of the sixth-term LegCo whose nominations were decided to be invalid in accordance with law by the HKSAR during the nomination period of the election for the seventh-term LegCo of the HKSAR originally scheduled for September 6, 2020. He or she is immediately disqualified from being a LegCo member. The NPCSC's decision is a constitutional, lawful and reasonable arrangement. It is necessary and complies with the relevant stipulations of the Basic Law.

### Judicial Independence

The Report expressed concerns on the unfounded accusations of bias against courts. That the courts of HKSAR can exercise independent judicial power, including that of final adjudication, free from any interference has been enshrined under the Basic Law as set out in articles 2, 19 and 85. Article 92 of the Basic Law also clearly stipulates that judges and other members of the judiciary of the HKSAR shall be chosen on the basis of their judicial and professional qualities. The constitutional duty of judges, in the exercise of their judicial power, is to apply the law and nothing else. Such duty does not change when judges decide cases arising from or involving political controversies.

### Prosecutorial Decisions

The Report also expressed doubts on certain prosecutorial decisions. The HKSAR Government must stress that no one should interfere with the independent prosecutorial decisions which are based on an objective assessment of all admissible evidence, applicable laws and the Prosecution Code, without political considerations.

Article 63 of the Basic Law stipulates that prosecutions in the HKSAR are made by the Department of Justice, free from any interference. Prosecutions would only commence if there is sufficient admissible evidence to support a reasonable prospect of conviction.