

HKSAR Government responds to US report on human rights

The Hong Kong Special Administrative Region (HKSAR) Government today (March 31) expressed strong opposition to the comments contained in the United States Department of State's 2020 Country Reports on Human Rights Practices (the Report) relating to the HKSAR.

A Government spokesman said, "Human rights are fully protected by law in Hong Kong. The Basic Law, which serves as the constitutional document of the HKSAR, provides a constitutional guarantee for fundamental rights and freedoms, including the right to equality before the law, and is buttressed by the rule of law and an independent judiciary. Safeguarding human rights and freedoms is a constitutional duty of the HKSAR Government. The Government attaches the utmost importance to and is firmly committed to upholding human rights and various freedoms in Hong Kong."

"One Country, Two Systems"

The Report calls into question China's willingness to uphold the "one country, two systems" principle. Such an accusation is utterly groundless. The HKSAR is an inalienable part of the People's Republic of China (PRC), is 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".

Hong Kong National Security Law

"We strongly object to the comments in the Report smearing the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the National Security Law). National security is a matter within the purview of the Central Authorities. It is the legitimate right and duty of every country to safeguard its national security. Whether it is in a unitary or federal system, legislation on national security is invariably carried out by the central authorities rather than a local government. Enacting laws on national security with extraterritorial effect is also squarely in line with international practice. Smearing the National Security Law out of political motivation is clear hypocrisy in adopting double standards," the spokesman said.

The National Security Law upholds the rights and freedoms of Hong Kong people as well as the high degree of autonomy of the HKSAR. The National Security Law clearly stipulates that the HKSAR shall protect the rights and freedoms enjoyed by residents under the Basic Law and the provisions of the

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong in accordance with the law. However, certain rights and freedoms recognised in the ICCPR are not absolute: the ICCPR stipulates that certain rights and freedoms may be subject to restrictions as prescribed by law if it is necessary in the interests of national security, public safety, public order or the rights and freedoms of others, etc.

"The National Security Law has clearly stipulated four categories of offences that endanger national security. It clearly sets out the elements of the offences, penalties, mitigation factors and other consequences. There is no chance of law-abiding persons inadvertently violating the law. The arrests made by the Police are based on evidence and strictly according to the laws in force.

"The National Security Law, like any law in the HKSAR, applies equally to every person in Hong Kong; no one is above the law. We are appalled by remarks in the Report that seemed to suggest that people with certain political backgrounds should be immune to legal sanctions.

"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 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. A stable environment is vitally important to the business activities of both local and overseas enterprises in Hong Kong."

Judicial Independence

The Report also expressed concerns on judicial independence in the HKSAR. That the courts of the 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 prosecutorial decisions. The HKSAR Government must stress that all prosecutorial decisions are made independently based on objective assessment of all admissible evidence,

applicable laws and the Prosecution Code, without political consideration. Article 63 of the Basic Law stipulates that prosecutions in the HKSAR are made by the Department of Justice (DoJ), free from any interference. Prosecution would only be commenced by the DoJ if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it is in the public interest to do so.

Any demand or statement purporting to interfere with the prosecutorial decisions and process controlled by the DoJ or the independent exercise of judicial power by the judiciary of the HKSAR not only disrespects the HKSAR's judicial system and undermines the spirit of the rule of law, but also attempts to meddle in Hong Kong's affairs, which are internal affairs of the PRC.

General Election of the Legislative Council

On the postponement of the General Election of the Legislative Council (LegCo), the health and the well-being of the people are the overriding concerns 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.

The Government does not agree to the Report's claim that the decision to disqualify four LegCo members "sought to restrict the rights to express or report on dissenting political views". 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 fulfil 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. Four members of the sixth-term LegCo have submitted nomination to run for the seventh-term LegCo General Election that was originally scheduled for September 6, 2020. Their nominations were invalidated by Returning Officers before the end of the nomination period, and they hence lost the qualification for running for the election and were immediately disqualified from being LegCo members. The NPCSC's Decision is a constitutional, lawful and reasonable arrangement. It is necessary and complies with the relevant stipulations of the Basic Law.

Oath-taking Requirement

The Report expressed concerns on the oath-taking requirement for public officers. Article 104 of the Basic Law states that five categories of public officers, that is the Chief Executive, Principal Officials, members of the Executive Council and of the LegCo, judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with law, "swear to uphold the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and swear allegiance to the Hong Kong Special Administrative Region of the People's Republic of China" when assuming office. The NPCSC endorsed the Interpretation of Article 104 of the Basic Law on November 7, 2016, which explains that oath-taking is the legal prerequisite and required procedure for public officers specified in Article 104 of the Basic Law to assume office, and must comply with the legal requirements in respect of its form and content. The Interpretation also makes it clear that an oath taker who makes a false oath or who, after taking the oath, engages in conduct in breach of the oath shall bear legal responsibility in accordance with the law.

The Public Offices (Candidacy and Taking Up Offices) (Miscellaneous Amendments) Bill 2021 seeks to implement Article 104 of the Basic Law, and its Interpretation and other oath requirements for public officers accurately, so as to fulfil the constitutional obligation of the HKSAR. The Government believe that the Bill is significant in upholding the constitutional order of the HKSAR, ensuring "patriots administering Hong Kong", and is conducive to the progress of the "one country, two systems" principle.

The spokesman reiterated that foreign governments should not interfere in any form in the internal affairs of the HKSAR.