

HKSAR Government strongly disapproves of untruthful and smearing remarks on Safeguarding National Security Ordinance by International Bar Association's Human Rights Institute

â€‹The Hong Kong Special Administrative Region (HKSAR) Government today (March 27) strongly disapproved of and condemned the slanders and smears, as well as unfounded criticisms, made by the International Bar Association's Human Rights Institute (IBAHRI) against the Safeguarding National Security Ordinance (the Ordinance). Such remarks were made with extremely malicious intentions to mislead the international community into believing that the Ordinance runs contrary to the fundamental principles of international law, thereby creating a negative impression of the Ordinance.

A spokesman for the HKSAR Government emphasised, "As a matter of fact, to effectively prevent, suppress and punish illegal acts endangering national security is precisely to better safeguard the fundamental rights and freedoms of individuals and ensure the property and investments in the HKSAR are protected by law. Protecting human rights and respecting the principle of the rule of law are the legislative principles of the Ordinance and have been included in the provisions. Article 2 of the Ordinance clearly stipulates that human rights are to be respected and protected. The rights and freedoms enjoyed under the Basic Law and the provisions of two international covenants as applied to the HKSAR are to be protected in accordance with the law, i.e. the rights and freedoms including the freedoms of speech, of the press and of publication, the freedoms of association, of assembly, of procession and of demonstration, are enjoyed and to be protected in accordance with the law under both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to the HKSAR. The critics not only neglected the provisions as well as the scope of application of the relevant international covenants, but also lashed out and smeared wantonly, fully exposing their malicious intentions to harm Hong Kong."

The spokesperson continued, "The offences endangering national security stipulated by the Ordinance target acts endangering national security with precision, and define the elements and penalties of the offences with clarity. The prosecution has the burden to prove beyond reasonable doubt that the defendant has the actus reus and mens rea of an offence before the defendant may be convicted by the court."

"Extraterritorial effect for the offences endangering national security under the Ordinance fully aligns with the principles of international law, international practice and common practice adopted in various countries and regions. It is both necessary and legitimate, and is also in line with those

of other countries and regions around the world. It can be seen that the national security laws of various countries, including the United States (the US), the United Kingdom (the UK), Australia, Canada and the Member States of the European Union (the EU), also have extraterritorial effect under the 'personality principle' and the 'protective principle'. In formulating the extraterritorial effect under the Ordinance, we have taken into account the principles of international law and international practice of state jurisdiction, as well as the nature of the offences. The critics' remarks completely displayed their hypocrisy with double standards," the spokesman continued.

As regards the provisions on application to the court for imposing restrictions on consultation with legal representatives in the light of circumstances of endangering national security under the Ordinance, the spokesman emphasised that the provisions only temporarily delay the arrested persons' right to consult legal representatives, and it will not affect the arrested persons' right to confidential legal advice in accordance with the law and the choice of legal representatives. "According to the judgment of the European Court of Human Rights, an arrested person's right to consult a legal representative may be temporarily restricted in exceptional circumstances where the government has compelling reasons to do so. Such restriction is permitted under the laws of, for instance, the UK, the EU, the US and Canada. Although the arrested person's right to consult a legal representative is restricted to some extent, the investigating officers must still respect all relevant rights that the arrested person is entitled to under the law, including the right to silence. Overall, we believe that the restriction would not affect the right to a fair trial that the defendant enjoys," the spokesman said.

The spokesman reiterated, "During the public consultation of the Basic Law Article 23 legislation, 98.6 per cent of the submissions of opinions showed support and gave positive comments. After the Ordinance was passed by the Legislative Council unanimously on March 19, 2024, members of the public and various sectors of the community including the commercial sector and major chambers of commerce, the legal sector (including the Hong Kong Bar Association and the Law Society of Hong Kong), real estate association, the youth sector, other professional sectors and political parties, welcomed, voiced support and acknowledged that the legislation is the constitutional obligation the Government fulfilled to safeguard national security. The IBAHRI disregarded the support for the Ordinance from members of the public and wantonly attacked. The HKSAR Government expressed strong disapproval of such unfounded slanders again.