

HKSAR Government strongly objects to Hong Kong Policy Act Report released by US State Department

The Hong Kong Special Administrative Region (HKSAR) Government today (April 1) expressed strong opposition to the remarks contained in the so-called Hong Kong Policy Act Report issued by the United States (US) Department of State.

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." The so-called Hong Kong Policy Act and sanctions imposed by the US Government are clearly an interference in the internal affairs of the PRC, in the pretext of human rights, democracy and autonomy.

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 (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 question 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 background should be immune to legal sanctions. We must emphasise that no one has any privilege to break the law without facing legal consequences.

"The right of peaceful assembly is fully protected under the Basic Law. However, such freedoms are not absolute. As the Chief Justice of the Court of Final Appeal at the Ceremonial Opening of the Legal Year 2020 stated that, "we see clear limits in the law to the exercise of rights. The enjoyment or insistence on one's rights does not, for example, provide any excuse to harm other people or their property, or to display acts of violence."

"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."

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 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.

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.