

LCQ6: Legislation on Article 23 of Basic Law

Following is a question by Hon Dennis Kwok and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (May 27):

Question:

In January this year, the Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (the Liaison Office) published an article in a newspaper, stating that "... we will, as always, continue to support the Government of the Hong Kong Special Administrative Region in establishing and perfecting the legal system and enforcement mechanism of the Special Administrative Region to safeguard national security ...". In addition, some political figures in Hong Kong have recently initiated an online petition to urge the Government of the Hong Kong Special Administrative Region (SAR) to expeditiously enact legislation on Article 23 of the Basic Law. In this connection, will the Government inform this Council:

(1) whether there have been, since January this year, officials from the Liaison Office and other offices set up by the Central Government in SAR, or local political organisations and figures, expressing to any official of the SAR Government the view that there is a pressing need at present for SAR to enact legislation on Article 23; if so, who have put forward such a view and of the relevant details;

(2) whether it has assessed the impacts, to be brought about by the SAR Government's embarking, at the present moment, on the legislative exercise for Article 23, on Hong Kong's political and economic situations and social atmosphere, as well as on the relationship between Hong Kong and the international community; if it has assessed, of the outcome; if not, the reasons for that; and

(3) whether the Chief Executive will undertake that the current-term Government will not commence the legislative exercise on Article 23 within the remainder of its term; if not, of the reasons for that?

Reply:

President,

Regarding the issue of enacting legislation on Article 23 of the Basic Law (BL 23), my consolidated reply in view of the deliberation of the draft Decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region (HKSAR) to safeguard national security (the Decision) recently announced at the third session of the 13th National People's Congress (NPC) is as follows:

HKSAR is an inalienable part of the People's Republic of China. Safeguarding national sovereignty, security and development interests is the constitutional requirement of HKSAR, the duty of the HKSAR Government, and also in the interest of all Hong Kong residents. The SAR has the constitutional obligation to enact legislation on BL 23. While there has been almost 23 years since Hong Kong's reunification with China, for various reasons, the SAR still has not enacted legislation on BL 23 and this is very disappointing. Different parties may put forward their views on this matter to the SAR Government and we will not disclose the details.

Different countries have enacted legislation to safeguard national security, covering the legal system and enforcement mechanisms in respect of national safety. By way of web search, it would be easy to find the laws of different countries which are related to national security; for example, the United States has at least 20 relevant items of such laws which include the National Security Act, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act, Logan Act, Homeland Security Act, Intelligence Reform and Terrorism Prevention Act, Foreign Intelligence Surveillance Act, Foreign Agents Registration Act, Foreign Missions Act, Alien Registration Act and Cybersecurity Information Sharing Act, etc. As regards other jurisdictions, examples include the Treason Felony Act, Official Secrets Act, Political Parties, Elections and Referendums Act, and Security Service Act of the United Kingdom; the National Security Act, Criminal Code, Access to Information Act, Secure Air Travel Act, Canada Elections Act and Canadian Security Intelligence Service Act of Canada; as well as the National Security Law Amendment (Espionage and Foreign Interference) Act, Criminal Code Act, Crimes Act and Foreign Influence Transparency Scheme Act of Australia. This shows that every country has laws and duty to safeguard its national security and sovereignty.

Safeguarding national sovereignty and security is essential to building a stable and safe society. It is only with a stable and safe society that members of the public can live safely and peacefully, the economy can develop steadily, and prosperity can be sustained. The SAR Government maintains that establishing and improving the legal system and enforcement mechanisms for safeguarding national security is beneficial to Hong Kong's economic development and the livelihoods of our people, beneficial to maintaining Hong Kong's long-term prosperity and stability, and beneficial to Hong Kong's fundamental interests.

On 22nd this month, at the third session of the 13th NPC, the deliberation of the Decision was announced. Legislation on national security is undoubtedly within the purview of the Central Authorities. Just as it is in any other country in the world, it is the authority of the country to legislate on its own national security. NPC is the highest organ of state power, and its decisions have the highest authority with legal effect. The SAR Government supports the NPC's deliberation of the Decision, and it is necessary to highlight the following key points regarding the Decision:

First, the SAR Government is firmly committed to safeguarding national security, and legislation is of greatest urgency. In view of the increasingly pronounced national security risks faced by the HKSAR, to legislate on BL 23 has been stigmatised and demonised, and there is difficulty for the executive and legislative authorities of the SAR to complete on their own legislation for safeguarding national security in the foreseeable future. The violence associated with the disturbances arising from the legislative exercise of the Fugitive Offenders Bill since June last year has been escalating, with the emergence of various incidents involving explosives and firearms, which amounts to a risk of terrorist activities, seriously threatening personal and public safety. During this period, organisations advocating "Hong Kong independence" and "self-determination" incited protesters, especially young people, to desecrate and burn the national flag openly, vandalise the national emblem and storm the Central People's Government's office in Hong Kong, and made plans to mobilise so-called "international support" to interfere with Hong Kong's affairs. These acts smeared the implementation of "One Country, Two Systems" in Hong Kong and openly challenged the authority of the Central Government and the SAR Government. Further, some of the political parties' members proclaimed many times that they would paralyse the SAR Government. Some other people begged for foreign countries to interfere with Hong Kong's affairs and even to impose sanctions on Hong Kong. Such behaviour has crossed the baseline of "One Country", threatening China's sovereignty and national security, and challenging the authority of the Central Authorities and the Basic Law. Although these despicable acts subsided earlier when the epidemic was severe, as the epidemic eases, rioters have returned to the streets of Hong Kong three days ago (Sunday) causing road blockage, criminal damage, arson, beating and chasing citizens, attacking the police, spilling harmful liquids, etc. causing at least 10 people being injured and sent to hospital. Moreover, those advocating "Hong Kong independence" flagrantly waved flags at the scene. This manifests the necessity and urgency for establishing and improving the legal system and enforcement mechanism to safeguard national security, so as to effectively prevent, curb and punish acts that threaten national security.

Second, the Decision will ensure the enduring success of "One Country, Two Systems". "One Country" is the prerequisite for and foundation of "Two Systems". Establishing and improving at the national level the legal system and enforcement mechanisms for HKSAR to safeguard national security will be conducive to safeguarding national security as well as Hong Kong's development, long-term prosperity and stability. Only when national security is safeguarded can "One Country, Two Systems" be faithfully implemented, then the advantages of the "One Country, Two Systems" can be fully utilised to better develop the economy and improve people's livelihood, thereby better protecting the legitimate rights and freedoms of all members of the public in Hong Kong.

Third, the Decision only targets acts of secession, subverting state power and organising and carrying out terrorist activities that seriously threaten national security, as well as activities interfering with HKSAR's affairs by foreign or external forces. These are exactly the situations which the political and business sectors in Hong Kong and members of the public

have been extremely worrying about over the past year. The situations have prompted the public to have a deeper understanding on the importance of national security, and also urge the SAR Government to respond proactively. The Decision only targets the small minority of criminals jeopardising national security, while the overwhelming majority of members of the public who are law-abiding will be protected.

Fourth, legislation for national security will endeavour to safeguard the lawful rights and interests of people in Hong Kong. The protection enjoyed by the Hong Kong residents under the Basic Law and other laws, including freedom of speech, press, assembly, demonstrations, processions, etc., will not be affected. The legislation also will not affect the independent judicial power, including that of final adjudication, exercised by the Judiciary in Hong Kong.

The Decision does not amend the Basic Law, nor does it replace or exclude the provisions of BL 23. As stated in the Decision, "HKSAR should legislate as soon as possible to safeguard national security as required by the Basic Law of Hong Kong". HKSAR, therefore, still has the obligation to legislate as required under BL 23 as soon as possible.

Upon passage of the Decision, HKSAR Government will fully support the work of the Standing Committee of NPC, and to discharge its responsibility of safeguarding national security to ensure the long-term prosperity and stability of Hong Kong under "One Country, Two Systems".

Thank you President.