

Government response to remarks by Chairman of Bar Association

In response to press enquiries on the speech made by the Chairman of the Bar Association, Mr Alan Leong SC, at the Opening of the Legal Year today (January 13), a Government spokesman made the following statement :

"The Government notes with regret that the Chairman of the Bar Association took the occasion of the Ceremonial Opening of the Legal Year to launch an attack on the way the Hong Kong SARG has handled a number of legal issues. Some of his comments were sweeping and exaggerated in nature and might give the impression that the rule of law is not observed in Hong Kong and that there is no judicial autonomy. Nothing could be further from the truth.

Right of abode issues

Contrary to what Mr Leong alleged, Hong Kong did not 'sacrifice social harmony and judicial autonomy' in resolving right of abode issues. A possible 25% increase in Hong Kong's population over a period of 10 years would undoubtedly have threatened social harmony, and the resolution of the issues has prevented that happening.

Judicial autonomy in Hong Kong is fully maintained in accordance with the Basic Law. The Basic Law gives the SAR courts the power of final adjudication but reserves to the Standing Committee of the National People's Congress the ultimate power to interpret the Basic Law. The Standing Committee's interpretation of provisions in the Basic Law was lawful and constitutional. It was a reflection of the rule of law operating in accordance with the Basic Law.

Mr Leong's statement that 'it has been perceived that any decision of the Court of Final Appeal (CFA) is only final if the Government wants it to be' is a sad indication of how misconceptions are created. The Standing Committee's power of interpretation relates only to provisions in the Basic Law. Only a very small percentage of CFA decisions relate to the Basic Law. In any event, the Government has made it very clear, on innumerable occasions, that it would not seek a further interpretation by the Standing Committee, save in highly exceptional circumstances. It has also explained why it

would be inappropriate to undertake never to seek such an interpretation. Moreover, the existing situation is entirely lawful and constitutional.

Lau Fong's case

Mr Leong refers to a recent case (Lau Fong's case) in which, he says, the Department of Justice apparently doubted the finality of a point of law already decided by the CFA. As Mr Leong should know, the statement in question was made by a private practitioner who was retained by the Government in a particular case. The Department of Justice moved quickly to explain that 'Any perception that the CFA's judgment was not accepted, or was not respected, was wholly unintended and is regretted by the Department of Justice.' It also explained that the Secretary for Justice had personally conveyed the same message to the Chief Justice. In such circumstances, the Government is disappointed that Mr Leong should drag up that incident.

Leung Kwok-hung

Mr Leong referred to the prosecution of Leung Kwok-hung and others for holding an unnotified public procession. He commented that the incident 'has suggested to many that the law is being used more as an instrument to govern than for protecting rights and freedoms and keeping government acts under checks.'

Laws are established not only to protect rights and freedoms and to keep government acts under checks, but also as a means of effective governance. Unrestricted freedom would lead to chaos. The ICCPR recognises that most rights and freedoms are subject to restrictions for certain legitimate aims, including public order. Our laws relating to public assembly conform to international human rights standards. The Government does not accept that they are draconian. Indeed, the Legislative Council passed a resolution in December 2000 supporting the retention of those laws.

The enforcement of the Public Order Ordinance by the police is an aspect of the rule of law. It is regrettable that the Chairman of the Bar Association should appear to sympathise with criticism that frontline police officers are used as 'instruments of political persecutions'. They are maintaining public order in Hong Kong in accordance with the law. The fact that the defendants in the Leung Kwok-hung case were convicted, despite human rights arguments, speaks for itself.

Article 23

In relation to the consultation exercise on Article 23 of the Basic Law, Mr Leong alleges that the Government has adopted a paternalistic and highly defensive attitude. He objects to the fact that the Government rallied support for its position, although he presumably considers it was acceptable for him to rally opposition to the proposals.

Contrary to what Mr Leong alleges, the Government did 'meaningfully engage the dissent'. Over 250 discussion sessions were held with interested groups, and Government officials attended no fewer than 11 meetings at the Legislative Council on the issue. The views of those who were critical of our proposals are being given careful consideration, and we are actively considering options to improve a number of the proposals.

Mr Leong is entitled to express his view on how the draft legislative text should best be put forward. However, the Government has pointed out that, in this context, there is nothing that can be done in respect of a white Bill that cannot be done in respect of a blue Bill.

Rule of law

The Government agrees that the rule of law is a fundamental attribute that the Hong Kong SAR possesses. It does not accept that the introduction of the accountability system, legislating for civil servants' pay cut, or the target date for enacting laws under Article 23 are in any way contrary to the rule of law. The first two of these matters were achieved through, or with the assistance of, constitutionally proper legislation, which was enacted by the Legislative Council in accordance with lawful procedures. A target date for legislating is simply that. It is fanciful to regard forward planning by Government as a breach of the rule of law.

Conclusion

Mr Leong is entitled to his views. However, it would be regrettable if the views of the Chairman of the Bar Association were perceived in Hong Kong or elsewhere as indicating that the rule of law is not fully maintained, and judicial autonomy is not fully

exercised in accordance with the Basic Law. It is noted that the Chief Justice, in his address at the Opening of the Legal Year today, expressed the view that 'since 1997, the rule of law and an independent Judiciary, which are of cardinal importance, have continued to thrive.'

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