

Response to concerns over national security law

Different views have been expressed in recent days by legal sector on 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 (draft Decision), a spokesman for the Department of Justice today (May 25) issued the following statement to address the concerns:

The National People's Congress (NPC) is the highest organ of state power in the People's Republic of China. Under the Constitution, the NPC has the power to introduce laws and other legal instruments including making Decisions. The Decision is to be made pursuant to Article 31, 62(2), (14) and (16) of the Constitution and the relevant provisions of the Basic Law. Under Article 6 of the draft Decision, the NPC delegated the Standing Committee of the NPC (NPCSC) the duty to make the national security law applicable to the HKSAR.

National security is outside the limits of the autonomy of the HKSAR but a matter under the purview of the Central Authorities. In view of the current situation in Hong Kong and the difficulty faced by the HKSAR to complete on their own legislation for safeguarding national security in the foreseeable future, the Central Authorities have the right and duty to introduce a national law to improve at the national level the legal framework and enforcement mechanisms for national security for the HKSAR. Such national law is under the ambit of "defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region" as set out in Article 18(3) of the Basic Law.

Under Article 23 of the Basic Law, HKSAR is authorised to legislate national security laws, however, it does not preclude the Central Authorities from legislating at a national level for national security.

As clearly stated in the draft Decision and the Explanatory Statement of the draft Decision, when making the Decision, the NPC will comply with the laws, the "one country, two systems" principle and also endeavour to safeguard the lawful rights and interests of people in Hong Kong.

Article 2 of the Basic Law clearly stipulates that the HKSAR enjoys executive, legislative and independent judicial power, including that of final adjudication. Article 85 also states that the HKSAR courts shall exercise judicial power independently, free from any interference. The independence of the Judiciary is respected and upheld in the HKSAR.

Given that the details of the national security law to be enacted by the NPCSC and introduced to Annex III of the Basic Law to be promulgated by the HKSAR are not yet made public at this stage, it is inappropriate for anyone to make unwarranted speculations on the content of the legislation.

The HKSAR Government would continue to provide explanation when necessary. It is hoped that members of the public would understand in an objective manner.

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