

National Security Law in line with international practice of safeguarding national security

In response to the statement on the National Security Law (NSL) by United Nations special rapporteurs, the Department of Justice made the following statement today (October 13):

The enactment of the NSL is in line with the international practice of safeguarding national security and the sovereign rights of each state. Hong Kong's legal system and rule of law remain robust with law and order restored, enabling Hong Kong residents to enjoy their rights and freedoms in a safe and peaceful environment.

The NSL clearly stipulates that the Hong Kong Special Administrative Region 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, such rights and freedoms are not absolute. It must be borne in mind that the ICCPR expressly states that they may be subject to restrictions as prescribed by law that are necessary for protection of national security, public safety, public order (ordre public) or the rights and freedoms of others, and more.

In handling cases concerning offences endangering national security, the Department of Justice's (DoJ) prosecutors must act in accordance with the NSL and local law. All prosecutorial decisions are based on admissible evidence and applicable laws. Cases will never be handled any differently owing to the political beliefs or background of the persons involved. Prosecutions would be instituted only if there is sufficient admissible evidence to support a reasonable prospect of conviction and if it is in the public interest to do so. The DoJ has been carrying out this constitutional duty in a professional and fair manner. Article 63 of the Basic Law expressly guarantees that all prosecutions are controlled by the DoJ, free from any interference.

When adjudicating cases under the NSL, as in any other case, judges remain independent and impartial in performing their judicial duties, free from any interference. On how to handle applications for bail by persons charged with offences endangering national security in accordance with the NSL, the Court of Final Appeal has already laid down relevant principles in a judgment on February 9.

The Basic Law, the NSL and provisions of the ICCPR as applied to Hong Kong guarantee defendants' right to a fair trial. As a matter of fact, in the first trial of offences contrary to the NSL in the Court of First Instance of the High Court, the defendant's legal representatives accepted that the defendant would still have a fair trial before a panel of three judges without a jury.

No one should comment on cases in respect of which legal proceedings are still ongoing as the matter is sub judice.

Ends/Wednesday, October 13, 2021