

HKSAR Government strongly condemns and firmly rejects US Congressional-Executive Commission on China's slandering remarks and despicable threats against Hong Kong judges

The Government of the Hong Kong Special Administrative Region (HKSAR) today (May 12) strongly condemned and firmly rejected the so-called "staff research report" recently published by the United States (US) Congressional-Executive Commission on China and the so-called "hearing" on the situation of Hong Kong, which again made slandering remarks and despicable threats against Hong Kong judges.

A spokesperson for the HKSAR Government said, "It is most despicable for the so-called 'staff research report' to name judges of the HKSAR specifically with a threat of imposing so-called 'sanction' on them. The threat is a shameless, sinister and malicious attempt to put spiteful pressure on judges in the HKSAR, to interfere with the judicial process in the HKSAR, and to undermine the system for the administration of justice in the HKSAR. This attempt has clearly exposed the hypocrisy and double standard of the US politicians concerned, who claim to uphold the rule of law but have, in practice, seriously damaged it with political manipulation put above the law. It is a serious violation of the basic principle of international law and international relations.

"Since the implementation of the Hong Kong National Security Law (NSL) in June 2020, US politicians have been repeatedly exploiting different incidents and occasions, as well as creating excuses, to attack the HKSAR in its dutiful, faithful and lawful implementation of the NSL. The politically motivated attempts by US politicians to undermine HKSAR's due administration of justice by repeating a lie as if it were a truth simply reflects their ill intent and amounts to nothing more than an indecent act. Such attempts will only expose the politicians' own weaknesses and faulty arguments and be doomed to fail.

"The HKSAR Government also condemned the yet another attempt by Sebastien Lai to solicit foreign political powers to procure a defendant's evasion of the criminal justice process. It is equally outrageous that Kevin Yam, a solicitor of the High Court of Hong Kong, saw it fit to join this political farce to slander, and support the so-called 'sanctions' against, the very court of which he is an officer.

"The HKSAR's judicial system has always been highly regarded by international communities. In the HKSAR, the only criterion upon which judges are appointed is their judicial and professional quality, and their appointment by the Chief Executive under Article 88 of the Basic Law is upon the recommendation of an independent statutory commission comprising representatives of the Judiciary, the legal profession and distinguished figures of the community. Under the NSL, the Chief Executive establishes a list or panel of judges for dealing with national security cases. The listing and handling of cases, as well as the assignment of which judge or judges are to handle cases, have always been judicial functions to be exercised by the Judiciary independently. It is a well-established practice for specialist judges to be designated for dealing with a particular area of law. When adjudicating cases, regardless of whether the cases concern national security or otherwise, judges remain independent and impartial in performing their judicial duties, free from any interference. The arrangement on the designation of judges under the NSL does not undermine the impartiality of judges or the exercise of the independent judicial power by the HKSAR courts in adjudicating cases.

"When considering whether to issue a certificate under Article 46 of the NSL for a case to be tried without a jury, the Secretary for Justice would take into account the relevant provisions of the NSL and the individual circumstances of each case. It is well-established that trial by jury is not an indispensable element of a fair trial in the determination of a criminal charge. The purpose of the relevant provisions that stipulate the arrangement for a case to be tried by a panel of three judges is precisely to ensure a fair trial and the due administration of justice. Where three designated judges sit without a jury to hear a national security case, their verdict is given in a fully reasoned judgment which is published online for public scrutiny. The facts of the case and the court's considerations in determining the sentence are clearly set out in written judgments, which are accessible by everyone under Hong Kong's open and transparent judicial system. If one reads the judgments fairly, properly and objectively, there is no basis to suggest that they have not exercised their judicial powers independently and decided the cases strictly in accordance with the law and evidence.

"Moreover, the same procedural safeguards are in place to ensure a fair trial as in a jury trial, and the same appeal procedure is available to a defendant in case of a conviction and sentence. As guaranteed by the Basic Law and the Hong Kong Bill of Rights, defendants charged with criminal offences, including those under the NSL, shall have the right to a fair trial by the Judiciary exercising judicial power

independently. The arrangement does not undermine any legitimate rights and interests of the defendants.

"Acts and activities endangering national security may have very serious consequences. While the NSL has put in place a stringent threshold for the grant of bail for national security cases, the law does not violate the presumption of innocence. On the contrary, it is clearly stipulated in the judgment of the Court of Final Appeal that the NSL has emphasised protection and respect for human rights as well as adherence to rule of law values while safeguarding national security. As a matter of fact, a number of defendants charged with offences endangering national security have been released on bail after the courts have duly considered the requirements stipulated in the NSL and relevant local laws. Many common law jurisdictions, including the United States, even have in place regimes that authorise prolonged detention on national security grounds without charge.

"The Judiciary is committed to upholding the rule of law. The independent judicial power of the HKSAR courts is guaranteed under the Basic Law. All judges and judicial officers will abide by the Judicial Oath and administer justice in full accordance with the law, without fear or favour, self-interest or deceit. The HKSAR Government is confident that they will not be deterred by any threats from discharging their judicial duties independently and fearlessly. The HKSAR Government will fully support and take whatever steps as may be necessary to ensure that all judges and judicial officers will be able to continue to discharge their duties without worry or fear about such threats."

Ends/Friday, May 12, 2023