

November 30, 2020

Dear Editor,

Your article “Hong Kong’s independent judiciary braced for Beijing onslaught” is incomplete and will lead to misunderstanding. I am duty bound to set the record straight.

The Basic Law provides that judges of the HKSAR shall be appointed by the Chief Executive on the recommendation of an independent commission. The only criteria upon which judges are appointed is their judicial and professional quality. Judges enjoy security of tenure and immunity. Upon the appointment, district court judges and above are precluded from returning to practice in Hong Kong as a barrister or a solicitor. This “non-revolving door” system has worked well in preventing perceived potential conflict of interest. More importantly, Article 85 of the Basic Law explicitly guarantees judicial independence, free from any interference.

It should be reiterated that, in cases that endanger national security, the Chief Executive only designates, in different levels of courts, a list of judges to hear these cases, rather than choosing a judge to preside over a specific case. When adjudicating cases under the National Security Law, judges remain independent and impartial in performing their judicial duties. As pointed out by the Chief Justice of the Court of Final Appeal in a statement he made on behalf of the Judiciary, in “the handling or determination of any legal dispute, only the law and legal principle will be considered”<sup>1</sup>. The suggestion that the Government can partake in “forum shopping” to find more favourable judges is simply baseless.

Safeguarding national security is a national matter, and this holds true in any states. The courts of the Hong Kong Special Administrative Region (HKSAR) have been entrusted by the Central Authorities to exercise jurisdiction in adjudicating most cases involving the National Security Law. Only in situations clearly

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<sup>1</sup> See <https://www.info.gov.hk/gia/general/202007/02/P2020070200414.htm> dated 2 July 2020.

specified under Article 55, where the HKSAR cannot effectively perform its obligation under the National Security Law and becomes a risk to national security, and with approval from the Central People's Government, the jurisdiction of the CPG Office on National Security will be engaged.

The National Security Law does not affect the implementation of "One Country, Two Systems" in Hong Kong. Nor does it affect Hong Kong's autonomy as authorised under the Basic Law. The legitimate rights of the HKSAR residents and important principles of the rule of law are expressly protected under the law. It has restored stability and predictability, and brings about an environment conducive to economic and human development much desired by all. Hong Kong will maintain its capitalist system, practice the common law system, and uphold judicial independence as provided under the Basic Law.

Yours faithfully,

Ms Teresa Cheng, SC  
Secretary for Justice  
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The People's Republic of China