

October 18, 2021

The Editor

The Times

Dear Editor,

The article by Alistair Carmichael dated 14 October contained absurd and misleading comments on our legal system and the National Security Law (NSL). It is incumbent upon me to clarify.

First and foremost, our judicial independence is premised on the solid infrastructure that has been laid down in the Basic Law, including the security of tenure, the immunity of judges, and importantly the express provision in Article 85 of the Basic Law that guarantees judicial independence, free from any interference. All judges are required to administer justice without fear or favour.

It cannot be stressed enough that the provisions of

the NSL clearly specify the elements of each offence, including the criminal acts and intents, the scope of application and the penalties. The same standard of proof applies to NSL offences just like any other criminal offences. Similar provisions are commonly found under the national security laws in foreign jurisdictions. It is appalling to see that some politicians have deliberately vilified it with an attempt to mislead the international community.

The NSL clearly stipulates that the rights and freedoms enjoyed by residents under the Basic Law and international covenants as applied to Hong Kong shall be protected in accordance with the law and is recognised and affirmed by the courts in Hong Kong. However, it must be borne in mind that such rights and freedoms are not absolute but may be subject to restrictions prescribed by law which are necessary in the interests of, amongst others, national security.

Judgments set out the reasons by which the decisions were arrived at, demonstrating to all objective

and fair-minded observers that first, due administration of criminal justice system remains in compliance with human rights protection and principles of the rule of law, and secondly, judges have all along been handling cases strictly in accordance with admissible evidence and applicable laws free from any interference. The NSL does not in any way affect judicial independence. The appellate system in Hong Kong ensures that justice is properly administered and due process is observed.

Last but not least, as noted by Lord Sumption, a former Justice of the UK Supreme Court and a serving Non-Permanent Judge of the Court of Final Appeal of HK, who wrote to the Times in March that “[t]he permanent judiciary of Hong Kong is completely committed to judicial independence and the rule of law. Successive chief justices have made this clear in public statements. These statements are not just lip service. They represent the convictions of experienced, courageous and independent-minded judges.”

Yours faithfully,

(Ms Teresa Cheng, SC)

Secretary for Justice

Hong Kong Special Administrative Region

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