

LCQ5: Enacting legislation on Article 23 of Basic Law

Following is a question by the Hon Chan Siu-hung and a reply by the Secretary for Security, Mr Tang Ping-keung, in the Legislative Council today (May 11):

Question:

The Hong Kong Special Administrative Region has a constitutional obligation to enact legislation on Article 23 of the Basic Law. Article 7 of the Hong Kong National Security Law also clearly stipulates that "[t]he Hong Kong Special Administrative Region shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the Hong Kong Special Administrative Region and shall refine relevant laws". In this connection, will the Government inform this Council:

(1) of the latest progress regarding the enactment of legislation on Article 23, and the ways in which the Government plans to conduct public consultation; and

(2) how it will take forward the publicity and explanatory work regarding the enactment of legislation on Article 23, with a view to enabling members of the public to understand that as an inalienable part of the People's Republic of China, the Hong Kong Special Administrative Region is constitutionally bound, apart from morally obliged, to safeguard national security?

Reply:

President,

My consolidated reply to the Hon Chan's question is as follows:

Enacting local legislation on Article 23 of the Basic Law and refining laws relevant to safeguarding national security are the constitutional responsibilities of the Hong Kong Special Administrative Region (HKSAR). Article 23 of the Basic Law clearly stipulates that the HKSAR shall enact laws on its own to prohibit seven types of acts that endanger national security. Article 3 of the "Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security" adopted on May 28, 2020 and Article 7 of the National Security Law respectively require the HKSAR to complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law.

In fact, every state will enact laws on safeguarding national security. This is an inherent right of every sovereign state, and also an international practice. The authorisation by the Central Authorities for the HKSAR to enact

laws on its own for safeguarding national security has embodied the principle of "one country, two systems", and the State's confidence in the HKSAR.

As far as safeguarding national security is concerned, there are also practical needs to legislate on Article 23 of the Basic Law. Since the reunification of the HKSAR, the HKSAR has yet to legislate on Article 23 of the Basic Law, nor has it made full use of existing legislations, and there are deficiencies in the laws and enforcement mechanisms for safeguarding national security, resulting in underlying risks to national security. In recent years, following the overall development of the State, many western countries regard China as a major competitor and even take a completely hostile position against it. Given Hong Kong's unique environment and lifestyles under the principle of "one country, two systems", it is easy for external elements to infiltrate with malicious intention, or even attempt to foment "colour revolution", subvert the State power, as well as to promote and advocate "Hong Kong independence", thus intensifying national security risks. Since the failure of the HKSAR to complete the enactment of legislation on Article 23 of the Basic Law in 2003, there have been drastic changes in the national security risks of the HKSAR. Over the past two decades or so, Hong Kong has experienced social chaos a number of times, including the illegal Occupy Central movement in 2014, the Mong Kok riot in 2016 and the large-scale riots since 2019. We have even seen the emergence of acts and activities which have seriously undermined the rule of law and public order and endangered national security, including:

(1) The rise of activities of "Hong Kong independence" and "self-determination". Some leveraged on "soft resistance" means through the media, arts and culture, etc. to disseminate messages of opposing the Central Authorities and the HKSAR Government, and to incite hatred against the Central Authorities and the body of power of the HKSAR;

(2) Territory-wide large-scale riots, with damage of public facilities in a wide area. Also, some members of external organisations openly raised funds for or donated equipment to the rioters during the riots;

(3) Delivery of speeches, words or publications which contain slandering accusations, with a view to inciting the public, glorifying violence, and weakening the concepts of rule of law and law-abiding awareness of the public;

(4) Local terrorism, which is growing and increasingly materialised into actions. It includes "lone-wolf" attacks and organising, planning and committing local terrorism activities in small groups; and

(5) Long-term infiltration on all fronts by external elements through grooming local organisations or individuals as agents in Hong Kong, and taking part in activities endangering national security through the agents, including attempting to influence election results with a view to subverting the State power.

Since the implementation of the National Security Law, social order has

been restored, but the above national security risks should not be ignored. Moreover, activities of the criminals have gone increasingly underground and become increasingly clandestine, while some lawbreakers have absconded overseas and wantonly colluded with external elements, and continued to engage in acts and activities endangering national security.

Among the seven types of acts which the HKSAR shall enact laws to prohibit as prescribed in Article 23 of the Basic Law, two are directly covered by the National Security Law. Existing local legislations (such as the Crimes Ordinance, Official Secrets Ordinance and Societies Ordinance) only cover part of the relevant acts, with areas requiring enhancements.

The HKSAR Government has been carrying out relevant work in respect of the enactment of legislation on Article 23 of the Basic Law. Apart from examining relevant national laws as well as laws of similar nature in other jurisdictions, we are also reviewing the implementation experience of the National Security Law, the relevant court verdicts and deficiencies of the existing laws, as well as taking into account what has happened in the past, with a view to drawing up effective and pragmatic proposals and provisions to cope with the risks concerned.

As for publicity and explanatory work, we will adhere to the principle of openness and transparency and will proactively explain to the public and stakeholders the constitutional responsibility of the HKSAR to enact legislation on Article 23 of the Basic Law, as well as the content of various legislative proposals and the considerations involved. We will also listen to the views of the public and stakeholders with an open mind. In addition to traditional public consultation channels, we will also make good use of various platforms (including online platforms) to disseminate the relevant information and provide explanations to various stakeholders. Nevertheless, we do not rule out that there may still be people smearing the legislative work with malicious or even fake information when opportunities arise. We will make clarifications against such slanders proactively and promptly and, if necessary, engage professionals to assist us in preparing for the publicity and explanatory work.

The Security Bureau has been working in collaboration with the Department of Justice and relevant law enforcement agencies in taking forward the legislative work on Article 23 of the Basic Law. However, in view of the new wave of the epidemic, the HKSAR Government, including the Security Bureau and the Department of Justice, has treated the early stabilisation of the epidemic as the overriding mission since early this year. This has affected the legislative work. Besides, the work of formulating the legislative proposals is by no means easy, and is of a complicated nature as it involves the handling of acts and activities in various aspects which endanger national security. In addition, the international situation has witnessed drastic changes, while some existing laws relevant to safeguarding national security (such as the Official Secrets Ordinance and the Societies Ordinance) were enacted long time ago and require substantial amendments in order to cope with the prevailing national security risks. Apart from effectively addressing past and present national security risks and threats, the

legislative proposals shall also be sufficiently forward-looking to address possible risks in future. Besides, the legislative proposals must be practicable in terms of implementation and capable of effectively safeguarding national security.

President, we will continue to proactively embrace the challenges and handle the relevant work proficiently.

Thank you, President.