

LCQ6: Legislation on Article 23 of Basic Law

Following is a question by Dr the Hon Junius Ho (Dr the Hon Priscilla Leung to ask on his behalf) and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (March 17):

Question:

Article 7 of the National Security Law for Hong Kong, which has been implemented since June 30 last year, stipulates that "the 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 other words, the Hong Kong Special Administrative Region (Hong Kong SAR) should, pursuant to Article 23 of the Basic Law, enact laws on its own to prohibit acts endangering national security. The Government has also repeatedly indicated that the Hong Kong SAR has a constitutional obligation to enact legislation on Article 23 of the Basic Law. In this connection, will the Government inform this Council:

(1) of the latest progress of the work to enact legislation pursuant to Article 23 of the Basic Law; and

(2) whether, according to the Government's assessment, the relevant legislative work can be completed within the current term of the Legislative Council; if the assessment outcome is in the affirmative, of the legislative timetable; if it is in the negative, the reasons for that?

Reply:

President,

My consolidated reply to the question by Dr the Hon Junius Ho (Dr the Hon Priscilla Leung to ask on his behalf) is as follows:

Being an inalienable part of the People's Republic of China, the Hong Kong Special Administrative Region (HKSAR) has the duty to safeguard national security. The HKSAR has the constitutional responsibility for enacting legislation on Article 23 of the Basic Law (BL23) to prohibit any act of treason, secession, sedition, subversion against the Central People's Government (CPG), or theft of state secrets; to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR; and to prohibit political organisations or bodies of the HKSAR from establishing ties with foreign political organisations or bodies. Article 7 of the Hong Kong National Security Law clearly stipulates that "the 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".

The HKSAR Government has been carrying out relevant work in respect of the enactment of legislation on BL23. Such work includes examining the bill submitted by the HKSAR Government to the Legislative Council in 2003 and conducting legal research related to national security. Regarding taking forward the relevant work, I would like to point out the following:

Firstly, there have been drastic changes in Hong Kong's national security risks since the unsuccessful attempt to enact legislation in 2003. This period saw acts and activities which seriously undermined the rule of law and public order and endangered national security, including illegal "Occupy Central" in 2014, the Mong Kok riot in 2016, the establishment of the Hong Kong National Party which was banned in 2018 for advocating "Hong Kong independence"; and in particular, there was a spate of violence and riots perpetrated by rioters since June 2019, which lasted for more than ten months: during the period, rioters wantonly blocked roads, seriously vandalised shops, MTR stations and other public facilities, hurled a large number of petrol bombs, set fires, violently stormed and trashed the Legislative Council building, damaged government premises, as well as wilfully assaulted people holding different views. Moreover, local terrorism started to breed, as marked by seizure of large quantities of explosives, firearms and bullets. Illegal acts advocating "Hong Kong independence" were rampant and interference from foreign forces was severe with shameless individuals colluding with foreign forces and willingly serving as puppets and foreign proxies, begging foreign countries for sanctions against China and the HKSAR. Scores of saboteurs attempted "mutual destruction", with the intention of "jumping off the cliff" with Hong Kong and pushing Hong Kong residents into the abyss. Some even plotted subversion against State power, posing grave threat to national security. The implementation of the Hong Kong National Security Law has delivered immediate results: Hong Kong has emerged from chaos into stability, with a significant reduction in violent acts; activists endangering national security have either fled or announced their withdrawal; advocacy of "Hong Kong independence" has subsided substantially; the community has largely returned normal, and people's lawful rights are protected. Our economy and people's livelihood could revive. This fully testifies why legislation for safeguarding national security is important and necessary. However, law-abiding awareness among the public has been greatly weakened, and advocates of "Hong Kong independence" have not given up entirely; as such, national security risks remain and we must remain highly vigilant. Hence, the legislation on BL23 to be enacted must enable comprehensive and effective tackling of various serious and extreme circumstances which may arise and endanger national security.

Secondly, the Hong Kong National Security Law has stipulated four categories of offences, namely secession, subversion, terrorist activities, and collusion with a foreign country or with external elements to endanger national security; thus, two of the seven categories of offences or activities stipulated by BL23 (i.e. secession and subversion against the CPG) are already covered by the Law. When examining the enactment of legislation on BL23, we have to determine whether it is no longer necessary for the HKSAR

to legislate on secession and subversion against the CPG, or we have to review if there are other acts involving these two categories of offences which are not prohibited under the Hong Kong National Security Law, and would need to be dealt with in the legislation on BL23. At the same time, we have to ensure that the relevant details of the legislation must not conflict with 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 and the Hong Kong National Security Law.

Besides, the Police have arrested 100 persons suspected of having committed offences endangering national security since the Hong Kong National Security Law took effect. The Department of Justice has also instituted prosecution against five cases for offences under the Hong Kong National Security Law, including "secession", "inciting secession", "terrorist activities", "collusion with a foreign country or with external elements to endanger national security" and "conspiracy to commit subversion". Court hearings are also underway, and the implementation process, in particular court decisions, interpretation of legal provisions and their application, the procedures and experience of which could provide valuable references for the legislation on BL23.

Thirdly, safeguarding national security is of the top priority in every country, and hence different countries have in place effective laws to safeguard national security. The relevant laws of these countries and their experience in implementing such laws are also worthy of our reference. Considerable efforts are involved in these tasks, which include examining the content of the relevant laws, measures adopted and approaches used. The expanse of the scope and complexity of such work should not be underestimated.

Fourthly, looking back on the past experience of introducing the legislative proposal on BL23 in 2003, the Government at that time prepared a detailed consultation paper and conducted a three-month public consultation during which diverse views were received. Some considered certain provisions too stringent, whereas others considered that the provisions should have greater deterrent effect. I believe that the scenario of diverse public views will arise again. Hence, apart from the need to draw up effective and pragmatic proposals and provisions, the HKSAR Government also has to conduct public consultation properly, formulate appropriate publicity and explanation strategies, as well as communicate more with members of the public, with a view to explaining clearly the legislative principles and details and avoiding misunderstanding. We also have to guard against "demonisation" and malicious smear of BL23 by people with ulterior motives again.

Although work on various fronts for the legislation on BL23 is already underway, we will not underestimate the complexity involved. As for the legislative timetable mentioned in the question, we have to make objective judgment on the legislative work in a pragmatic manner. In light of the work and scope involved which I have described just now, the relevant considerations and complexity, and the requirements under the Basic Law and the Hong Kong National Security Law, the HKSAR Government will complete the

legislation on BL23 as early as possible, but it would be difficult to complete in the remaining term of the current Legislative Council.

Thank you, President.