

Transcript of remarks of press conference on national security law

The Chief Executive, Mrs Carrie Lam, together with the Secretary for Justice (SJ), Ms Teresa Cheng, SC and the Secretary for Security, Mr John Lee, today (July 1) held a press conference on the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. Following is the transcript of remarks of the press conference.

Reporter: Hi, first question for Mrs Lam. According to the new law, you got the power to allow phone interception or surveillance, and you can even issue warrants. How could you respond to critics that you're not overriding judiciary power or infringing human rights? And what will you do if there's conflict of interest? And to what extent your failure in governance including the failure to introduce local legislation on the implementation of Article 23 has forced the Central Government to impose this security law? Are you somehow remorseful for your failure and harm for Hong Kong? And a question for SJ, so you're one of those sitting in the national security commission. How can you make sure you can uphold fairness and not to be interfered when you make prosecution decision, especially when there might be discussions in the commission? And on some serious cases, a suspect could be handed back to the Mainland. Does it mean that he will then be tried by the Chinese law and might reach death penalty? And my last question for Mr Lee. So Police has been already arresting people using the new law while your organisation is still setting up and is still finding the chair. So are you going to take forward these cases since the public may not be familiar with the new law? And in general, do the 48 hours of detention period still apply to these cases, because it's not mentioned in the law? Thank you.

Chief Executive: I think there are a lot of questions for the three of us to address, so I will confine myself to the first set of questions. First of all, as you have noticed, under Article 43 where we refer to additional measures for the Police to take in order to investigate into cases of offences under this law – and by the way, as the Secretary for Justice has emphasised, this law prohibits very, very serious offences, and as the Secretary for Security has explained, because of the severity of the offences, they attract very heavy penalties, so this is the starting position of our discussion on the individual articles in this piece of ordinance. Under Article 43, there is a power given to the Chief Executive to authorise interception of communication and surveillance by the Hong Kong Police Force. This is a very important power given to the executive, but as I said, this is because we are dealing with very serious offences and the Chief Executive, as I've repeatedly said, he or she has accountability and responsibility to the Hong Kong Special Administrative Region (SAR) and also to the Central People's Government, and we have been entrusted with the responsibility to implement a piece of law which safeguards not only Hong Kong people's interests but the 1.4 billion Mainland Chinese's interest. So to have this

power is very important and effective for us to ensure that we could discharge our function. I do not see how this executive power of the Chief Executive undermines the independence of the Judiciary. They are entirely two separate matters. The Judiciary will continue to adjudicate and conduct trials in accordance with the very important legal principles including the independence of the Judiciary, which we all embraced and put a lot of significance to.

You also mentioned about human rights. This piece of law has said at the very beginning that we will safeguard human rights as provided for under the Basic Law and the two international covenants on human rights. But if you go through the two international covenants, for example, the ICCPR (International Covenant on Civil and Political Rights), it does clearly specify that some of the rights to be exercised by the individuals could be restrained or regulated by law if it is for the purpose of protection of national security. You also mentioned about conflict of interest. I don't see what sort of conflict of interest I will have in protecting national security in Hong Kong and for the country. My only duty and commitment as the Chief Executive is to serve the country and serve the people of Hong Kong.

Finally, about the relationship between this piece of national security law and Basic Law 23, we have been deploying this explanation that somebody said we have been waiting for 23 years that the Hong Kong SAR still could not enact local legislation to prohibit the seven types of offences that will undermine national security under Article 23, so this is a time for some resolute action. But Article 23 will continue to be effective. The Government of the day will still have to enact local legislation on Basic Law Article 23, and this is clearly stated in Article 7 – in Article 7 in this piece of national security legalisation and also in the Decision passed by the National People's Congress on May 28. I wouldn't say that it is entirely because there isn't a Basic Law 23 that there is now this National Security Law. One should not jump to the conclusion that if we have Basic Law 23, then we don't need this law. We have included, I think, an explanation in this booklet that even if Article 23 was to be enacted in a future day, the National Security Law now passed by the NPCSC together with the local legislation passed by the Hong Kong Legislative Council will together form the complete regime for protecting national security in Hong Kong. Secretary for Justice.

Secretary for Security: Let me supplement the Chief Executive in regard to your question about executive authorisation in relation to interception of communications.

First of all, many many countries around the world including Western countries, they have executive authorisations to intercept communications in relation to protection of national security. This is not new. They are doing it. So now because we have this new law, we have to discharge this function and duty, so it is necessary that we have a regime to take care of this matter. Obviously different countries will have different ways to ensure sufficient safeguards are given, this is what we will be doing. What the law does say is, first of all, this has to be prescribed by law. Second thing is,

there should be sufficient safeguards. We will be looking at this method of executive authorisation to satisfy those requirements. The second thing is, we have to appreciate that in relation to national security matters, the targets that we are dealing with are likely to be of a state level opponents. Their abilities, their methods, and their experience in this regard is something that we must take good care of in order to ensure that we can sufficiently discharge our duty.

In regard to your other question about arrest having been made by the Police, when the law is promulgated, it becomes an effective law in Hong Kong. When it becomes an effective law in Hong Kong, everybody has to abide by it. That is always the law of Hong Kong, that is what the Basic Law says, and I think that should be our common sense and common knowledge. We will do education. But something that has been so outrageously broken the Hong Kong law, then the Police has a duty to take action. We have established this new department to deal with this piece of new legislation. The Police will handle it in accordance with the law. In regard to detention, there is no provision in this National Security Law to change the procedure or law regarding detention, so we'll handle it in the way as it is stated in the present law.

Secretary for Justice: The fact that I am on the national security commission (Committee for Safeguarding National Security) would not in any way interfere with my discharge of the role as the head of the Department of Justice under the Basic Law Article 63. What is important when one is to understand the independence of prosecutorial decision is that, Article 63 explicitly says that the Department of Justice is to control the prosecutorial decisions, conduct of the matters, etc, free from any interference. And therefore, anyone who attempts to "interfere" or says specifically "forget about the evidence and just proceed to prosecute", of course that would not be listened to. Any decisions that the Department of Justice is going to make in relation to prosecutorial decision, will and always be based on fact and evidence. The fact and evidence is something that will be provided to us through the law enforcement agencies, particularly here, the special branch set up under the Police Force. That will allow us to make the decisions independently, free from any interference.

You have also mentioned in your question about the situation regarding effectively the triggering or the carve-out part of the legislation which is within the jurisdiction of the Central Authorities. Insofar as that is concerned, that of course is already carved out and therefore no longer something that is within the jurisdiction of Hong Kong. Therefore, how that is to be dealt with will be something that will not be within the purview that we will be able to interfere in that sense.

Reporter: Two questions for you, first under this new law, is it legal or a crime to criticise the National Security Law? Second, you have repeatedly said that it will be a tiny minority of people who could be prosecuted and targeted by this law. You've already, the Police have already arrested one person- they've announced that- for violating the new law. Are you anticipating dozens of people being prosecuted? Hundreds? Thousands, which would still arguably, statistically, be a tiny minority?

Chief Executive: To answer your second question, first, I would rather not to arrest or prosecute anybody, if everybody abides by the law. The purpose of this piece of legislation is not just to punish but is also to deter people from committing such serious offences as secession, subverting the state power, terrorist activities and so on. Deterrence is very important and that's why the Secretary for Security has spent some time in his introductory remarks to highlight the penalty under this particular piece of law. But I still believe that the great, great majority of Hong Kong people are law-abiding citizens. They love the country, they love Hong Kong. They want to have stability and prosperity, especially at a time when we are affected by COVID-19, this become even more important to have stability for us to relaunch our economy and to preserve and create jobs for the people of Hong Kong.

Criticism- it comes under freedom of speech. There is a specific reference in the principle of this piece of law under the General Principles, Chapter I, Article 4, which provides for the Hong Kong SAR to safeguard national security, we should also safeguard human rights and so on in accordance with the Basic Law and the two international covenants as far as the relevant provisions that are applied to Hong Kong. But as I have just answered one question already, some of these human rights enjoyed by individuals under the international covenants are not absolute. As the covenant provisions specify, where it is for the protection of national security, then sometimes some of these rights could be restrained in accordance with the law. It is clearly stated in Article 4 that people of Hong Kong should be able to continue to enjoy the freedom of speech, freedom of press, of publications, protest, assembly and so on. If individuals including reporters from CNN are discharging their role and they feel that something is not right, they want to criticise, I don't see why that will become an offence under this piece of law. But of course, if there are more behind it – if you are involved in organising or colluding and so on, then it's another matter. But at the end of the day it's a question of evidence and the law.

Secretary for Security: I would like to add in regard to your question about number. It has been for 23 years that we have a vacuum in relation to protection of national security. It has been a vacuum in our law to tackle people who advocate independence. We will make it a small number, as small as possible, if we have this law long time ago. This is the time when we make this change. I have said that the law actually asked us to also do education. With education, with prevention, and with enforcement we can turn the tide to let people know that protection of national security is everybody's responsibility, that advocacy for independence of Hong Kong is against the law. That will make the number small. And it is time that we act now so that that number is capped to the minimum. We want to see a zero number at the end of the day. That is what we are now doing. We should all work together to educate people, to make them realise that, if you love this place, then protection of national security is an important thing for us all to do. So that the number will be the smallest and eventually we hope that we don't see any number that needs to be dealt with under this law.

(Please also refer to the Chinese portion of the transcript.)