Survey BL Transition Legislation

HONG KONG STANDARD
17 APR 1994

HK's new constitution could ban groups like Greenpeace

A Basic Law courts trouble

Legal experts fear China's catch-all definition of "state secrets" could be extended to the territory after the transfer of sovereignty in 1997, writes ***Jeanette O'Shea***

SHALL. This is a sticky little word in the Basic Law that could put any reporter behind bars for the duration when the Special Administration Region (SAR) government bursts into action following Hong Kong's reunification with China in 1997.

Legal minds in the territory still reeling from the sentence and secret trial of *Ming Pao* journalist Xi Yang by the mainland judiciary this month, warn that such draconian legislature will duly be introduced here.

Hong Kong University senior lecturer Nihal Jayawickrama says contrary to Joint Declaration promises that laws previously in force in the territory shall be maintained after 1997, an objective look at Article 23 of the Basic Law reveals the SAR "shall" criminalise the "theft of state secrets".

State secrets

State secrets in the mainland, as Xi's case has indicated, can mean anything from a pre-empt of gold prices to a tomorrow's lunch menu at some government cafeteria.

A constitutional lawyer said: "Whether such a law could be enacted depends on how free the legislature will be, but it is strange that the Basic Law has worded it in such mandatory terms. It begs the question whether the power will continue to belong to the legislature."

Currently, both the Security Branch and the Legal Department are looking to amend some 300 Hong Kong laws which will become redundant after 1 July 1997.

The theft of "official secrets" in Britain's Official Secrets Act extended to Hong Kong has a clearly defined list of what constitutes an "official secret".

It seeks to protect from "damaging disclosure" information relating to "defence, security, intelligence and international relations".

"From recent events we gather that apart from relatively trivial information relating to interest rate movements and the sale of gold in the international market, the Chinese judiciary also regards an embargoed public speech of a senior party official as a "state secret", said Dr Jayawickrama.

Article 23 also demands the SAR government enacts laws to prohibit foreign political organisations from conducting political activities in the SAR and to prohibit local political organisations from establishing foreign political ties.

"This would presumably ban most green groups such as Greenpeace, Friends of the Earth and Asia Watch, a human rights watchdog," said Dr Jayawickrama.

"Anything related to human rights is considered political to Beijing."

The Official Secrets Act Review Committee is about to present legislators with the option of localising the bill with simple removal of all reference to the British Crown replaced with "the SAR government".

Or new legislation to cover secrets, treason and sedition to be enacted before June 1997.

"We have to consult China first and so far we have not," said Security Branch spokesman Rebecca Wong.

Subversion

"The administration is looking at other countries for (role) models not including China's laws."

Localisation of the laws has also included bringing them into line with the Bill of Rights which was enacted in 1991.

"Localisation should not require consultation with China," said Dr Jayawickrama.

"But (the administration) has got into referring everything to the JLG (Joint Liaison Group conducting the Sino-British reunification talks).

"Article 23 is telling the SAR to enact laws relating to subversion, treason, sedition and succession which is not an offence here yet. They want a law to make it a serious offence.

"They want subversion (attempt to change or agitate for change to the established government in China) which is unique to the government established by the revolution. These things are meekly accepted here."

Xi's closed trial has also cast doubts on the future impartiality of Hong Kong's judiciary. The mainland judiciary's willingness to proceed in secret, to deny Xi his basic right to a defence and the hefty sentence leave little doubt the role Chinese judges play in support of the dictatorship of the proletariat. Says Dr Jayawickrama: "To enact a law in Hong Kong to criminalise the 'theft of state secrets' is to alter significantly the existing Hong Kong system."