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HK pro-independence activists could trigger legal battle with China

By James Pomfret and Greg Torode

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The emergence of a new generation of activists seeking independence for Hong Kong could trigger a legal battle with China that undermines the independence of its judiciary, senior government, legal and diplomatic officials warn.

Six activists who support a much greater degree of self determination for Hong Kong are poised to enter Hong Kong's 70-seat Legislative Council (LegCo) after one in five voters backed so-called localists and young democrats in polls this month.

The former British colony returned to China in 1997, when Beijing signed agreements granting it extensive autonomy, an independent judiciary and rule of law for at least 50 years, but Hong Kong's younger generation has grown increasingly angry over stalled democratic progress and skeptical of China's commitment to local freedoms.

Now some top-level government and judicial officials fear a direct legal intervention to challenge legislators' rights even to mention independence.

Senior government and judicial sources say the standing committee of China's National People's Congress (NPC) might invoke its right to interpret Hong Kong's Basic Law – the mini

constitution that guides the territory's relationship to the mainland - to explicitly outlaw discussions of independence.

If Beijing and its local allies try to use the law to shut down the independence activists, the role of the judiciary will be critical, since it could be called upon to judge if government has acted within its power.

There was a "tangible risk" that the NPC might over-rule a finding in favor of the activists by Hong Kong's highest court, said one senior source with close ties to Beijing and Hong Kong officials.

"This would be very bad ... It would be like initiating the end of the independence of the judiciary," he said.

Hong Kong-based Chinese officials have made clear in private conversations that they don't believe exercising the little-used right would be so damaging.

PERFECT STORM

In late 2014, tens of thousands took to the streets for 79 days of protests against reforms that failed to deliver full democracy for leadership and LegCo elections, and since then some have gone on to advocate Hong Kong independence, anathema to China's Communist Party leaders.

A source in close touch with Chinese officials in the city said "nothing makes Beijing angrier" than talk of independence.

A second source close to Hong Kong officials and senior judicial officials warned that after the LegCo results a "perfect storm" was gathering over Hong Kong.

"The senior judges and government officials fear it is coming, but they can't stop it, or even get out of the way," that source said.

The past year has already raised concerns at China's creeping interference in Hong Kong affairs, with the abduction of local booksellers, allegations of the harassment of activists by pro-Beijing media, and sources claiming Beijing was behind the disqualification of six pro-independence candidates from the LegCo elections.

A spokesman for Hong Kong's Department of Justice told Reuters it believed legal differences could be resolved through Hong Kong's judicial system and it would not seek an interpretation of the Basic Law from the NPC.

The department repeated earlier statements that it was closely monitoring activities to advocate or promote Hong Kong independence, which is contrary to Hong Kong's Basic Law and interests, and would "take appropriate action in accordance with relevant law", the spokesman said.

The statement noted lawmakers take an oath to uphold the Basic Law, which declares Hong Kong an "inalienable" part of China. It did not say what action could be taken against them.

The NPC did not respond to questions from Reuters filed via the State Council Information Office.

RAISING THE TEMPERATURE

Some legal experts questioned whether Hong Kong authorities could mount a challenge under the Basic Law.

Professor Simon Young at the University of Hong Kong's law school said merely debating independence issues did not infringe local laws or the Basic Law, which also protects freedom of speech, with extra protections for legislators speaking in council.

It would be difficult to disqualify legislators after being sworn in, he said, as that would require the agreement of two-thirds of their peers.

But Young said Beijing might try to push again for Hong Kong to pass updated laws against subversion, secession and treason. "That is the most likely option now," he said. "But such a move will also raise the political temperature."

In 2003, an attempt to introduce such legislation provoked a half-million strong protest that eventually led the government to back down.

Edward Leung, a chain-smoking philosophy graduate and spokesman for localist group Hong Kong Indigenous, is in the vanguard of the battle.

He was one of the six disqualified from standing in the LegCo elections for his pro-independence views.

Leung, who spoke to Reuters in his campaign headquarters, where he and others were celebrating the victory of his replacement, Sixtus Leung, is preparing to challenge Hong Kong's government over his disqualification in court.

When asked whether his group would push an independence agenda in LegCo, Leung said he couldn't say much now as he didn't want to create problems for his victorious peers.

But, standing beneath a hand-drawn sign declaring "Mission Complete!", he was clear that the activists had not won their seats to sit in silence.

"The debate over the future of Hong Kong must be carried out within the legislature," he said.

"And now there is this environment to do so. There are six lawmakers who have said they support self determination. This is not a small number."

