

China bars Australian diplomats from final day of trial

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Australia has again chastised China for refusing to allow diplomats and media into the third and final day of the bribery and commercial espionage trial of Australian Rio Tinto executive Stern Hu and his three Chinese co-accused colleagues.

Australia's Foreign minister Stephen Smith says Australia regrets the lockout.

He also says it could be some days before a verdict and sentence are delivered.

Legal observers and Chinese law experts in Australia say the fate of the three is probably sealed, under a system which they say fails by all measures to meet international human rights and rule of law standards.

Radio Australia has sought comment from the Chinese embassy in Canberra and are awaiting a reply.

Presenter: Linda Mottram

Speakers: Richard Gilbert, C-E-O of the Rule of Law Association of Australia; Dr John Lee, foreign policy research fellow, Centre for Independent Studies

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MOTTRAM: Stemming from the Magna Carta, the Great Charter of Freedoms of 1215, and further encapsulated in the 1948 Universal Declaration of Human Rights, the rule of law is fundamental to the western tradition. And as demonstrated in the case of Stern Hu and the Rio Tinto executives on trial in Shanghai, it's also a point of cleavage between Australia and China. As defined by the World Justice Report there are four principles of the rule of law. Richard Gilbert is CEO of the Rule of Law Association of Australia.

GILBERT: The government and its officials and agents are accountable under the law, two, the laws are clear, publicised, stable and fair and protect fundamental rights, including the security of persons and property, the third one, the process by which the laws are enacted, administered and enforced is accessible fair and efficient and the fourth one is access to justice is provided by competent, independent and ethical adjudicators who are of sufficient number, have adequate resources and reflect the makeup of the communities they serve.

MOTTRAM: Richard Gilbert says where China's system and the case of Stern Hu are concerned, none of those principles is upheld not that Australia is perfect he says.

GILBERT: The Rule of Law Association was formed because we believe there are some threats to our rights and liberties in this country under the Rule of Law.

MOTTRAM: But the flaws in China, experts say, are an order of magnitude different. Doctor John Lee is a foreign policy research fellow at Australia's Centre for Independent Studies and a China expert, who says that while countries have a right to their own legal system, China doesn't come close to being a rule of law system on several counts.

LEE: The first thing is to look at the court system. Courts are explicitly under the jurisdiction of the Chinese Communist party, judges are appointed by the CCP, 90 per cent of the judges are actually CCP members and decisions of courts at every level have to be ratified by an appropriate committee of the Chinese Communist Party. So in every sense that doesn't really look like a rule of law system. Secondly if you look at the due process aspects, laws in China tend to be written so broadly that the decision to apply them tends to be a political decision not a legal decision.

MOTTRAM: Doctor Lee says the industrial espionage charge against the Rio executives is a case in point. What constitutes an industrial secret can be retrospectively defined by the State Assets Commission.

The Rio executives have had legal representatives and ambitious and well known ones by some accounts. But John Lee says that makes little difference.

LEE: Stern Hu's lawyers were denied regular access to their client, they were denied key documents that the prosecution are to put forward and in the due process itself, the lawyers are actually denied certain rights of cross-examining prosecution witnesses and have severe limitations in bringing up their own witnesses and putting forward their own documents. So that's the first reason. The second reason is that there's a pretty strong culture of disbaring or even jailing lawyers that fall foul of the Chinese Communist party and this has occurred in several high profile cases recently. So going against the state is not really a good career decision in China.

MOTTRAM: Is there any chance do you think that the Rio executives will have had a fair hearing and will get a fair outcome?

LEE: I don't think so. Senior members of the Chinese Communist Party including Premier Wen Jiabao himself have actually come out in public even prior to the case declaring the guilt of Stern Hu and the three other Rio executives. In this sort of political climate, and given China's legal system, I think Stern Hu's fate has pretty much been decided.

MOTTRAM: It's widely acknowledged that China has been reforming its legal system. In the last quarter century some 400 laws have been passed as a foundation in that process. But the progress experts say has slowed and the weaknesses remain glaring.

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