

How Many Protests Must Be Made Against the KMT Abuse of Justice in Taiwan?

Written by Jerome F. Keating Ph.D.
Sunday, 28 June 2009 13:21

Justice continues to be abused in Taiwan; human rights are ignored on a regular basis; transitional justice never happened; the Legislative Yuan has always been controlled by the Chinese Nationalist Party (KMT) and yet Ma Ying-jeou (whose reputation as the "phony pony" grows by leaps and bounds) wants us to believe that all is well in his lah-lah land. Ma preaches the deceit of "Peace in Our Time" with the rapacious country to the west of Taiwan; to cover his deceit he must distract and orchestrate the circus trial of Chen Shui-bian.

Why is the circus necessary? It is simple; to excuse himself and the sixty plus years of continuous corruption of his party, Ma needs a distraction and a whipping boy. He needs something that the gullible Taiwanese and gullible outside Taiwan can swallow. Despite the fact that the KMT has had continuous control of the Legislative Yuan for the past sixty years, Ma needs to say that they are not responsible the laws of the land, not responsible for the corrupt system they developed and not responsible for the garnered wealth of that corruption that even he has shared.

Just ask yourself one simple question, why have James Soong and all the other KMT and former KMT members convicted of corruption never spent one day in jail while Chen Shui-bian who is only indicted has been in jail for over a half a year and his efforts at a proper defense have been purposely and continuously blocked. Why did Ma's secretary do jail time for fattening Ma's bank account while Ma whistled Dixie outside the jailhouse. This is what the protests are about.

The long lists of protests are there, but the gullible who want only to hear the Neville Chamberlain refrain of "Peace in our Time" work hard to ignore them. Ma's mentor has publicly protested the abuse of justice in Taiwan three times. Numerous other human rights organizations, scholars, writers have done so from last November on; just scroll down these pages to those dates and you will find them all. They are there, page after page, protest after protest. So now another joint statement is added to the ever-growing list.

The following joint statement is calling for the reform of the detention system, implementation of human rights in the administration of justice and an immediate end to the detention of former President Chen Shui-bian

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We firmly believe that an independent, impartial judiciary is fundamental to the rule of law for any democratic country. The legal responsibility for anyone in the justice system must be determined through a fair procedure, without any prejudice. Only then will decisions made by the courts have any credibility in society.

Looking at our current "detention system," it is obvious that the prerequisites for detention are loose, and the period of each detention could last up to two months with the possibility of repeated extensions. This system has been abused to the extent that defendants are in actuality serving the penalty of incarceration prior to the trial. For a long time, this has caused irreparable damage to the personal freedom of defendants. Therefore, from a human rights perspective, there is an urgent necessity to launch a comprehensive reform and review of the shortcomings of the detention system. Since President Ma Ying-jeou has signed two international human rights conventions and related protocols, the administration should demonstrate its endorsement of human rights by the concrete action of implementing the spirit of those treaties in Taiwan's domestic law.

We believe that human rights are priceless. To minimize the possible violation of human rights, judicial officials should be allowed to execute the power of detention only when the strictest prerequisites are met. Constitutional interpretation No. 653 by the Council of Grand Justices states the following: Detaining and placing restriction on the personal freedom of the defendant under criminal charge will isolate him/her from his/her family, society and career and have a detrimental impact on his/her personal rights, such as reputation and credibility. This is the most severe form of intervention regarding personal freedom, thus it should be used with extreme caution and only as the last resort for protecting the procedure. Unless all the prerequisites stipulated by law have been met to verify its necessity, detention must not be lightly exercised. However, the case of former President Chen has clearly illustrated that the legal rights of our former head of state have not been protected. This being so, how we can ever ensure that the rights of ordinary citizens will not be violated?

We believe that the court decisions to repeatedly detain President Chen are unreasonable and unnecessary, and have severely damaged the credibility of our judicial system. The court has listed several actions by President Chen as reasons to extend his detention, such as: "Denying his guilt, publishing books, accepting visits from foreign press, reapplying for membership in the Democratic Progressive Party, and not feeling well." The court has also accused former President Chen of assaulting the justice system when he was simply exercising his litigation strategy of: "no confession, no plea, no summoning witnesses and cross-examinations." These reasons cited by the court are irrelevant to the legal prerequisites for detention: flight risk, destruction of evidence, alteration or fabrication of evidence, or conspiracy with any accomplice

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or witness. Besides, there were clear violations of the principle of *gesetzlicher Richter* regarding the changing of judges. (In this case, the Presiding Judge of the case Chou Chan-chun was replaced in the middle of the trial by Tsai Shou-hsun and as soon as Tsai became Presiding Judge, he immediately reversed Chou's original ruling that there was no longer a legal necessity to detain former President Chen, and announced the decision to extend his detention period.) These controversies have raised public doubts about the neutrality of the judiciary.

Indeed, President Chen has disappointed the society with his inability to handle the behavior of his family members, as well as his failure to manage separately his political contributions and his private property. His family members wired money abroad, thus failing his commitment to the people. However, no matter what verdict former President Chen receives or how history judges him, respecting his legal right to a fair trial should be fundamental value shared by our society. The mishandling of his case has highlighted the deficiencies of the system. The emotional likes or dislikes of the society toward the defendant should not be allowed to overwhelm our concerns about the system itself.

An independent and fair judicial system that is trusted by the public should be a source of strength for the judiciary. A fair trial of former President Chen will fortify Taiwan's democracy. This long-term detention of President Chen has already created tremendous damage to the image and credibility of our judicial system. It has also created more divisions, confrontations and tensions within our society which will seriously endanger the development of Taiwan's democracy.

Out of a need to cherish our democracy and protect justice, we call for the immediate release of former President Chen. The government should take immediate action to reform the detention system that has violated basic rights, as well as amend related laws, such as the Criminal Procedure Law. Before the laws are amended, the judiciary should execute its authority of detention with extreme caution to minimize the violation of the rights. We all hope that by starting from the point of protecting human rights, we will then promote judicial reform and thus the foundation of Taiwan's democracy will be strengthened.

This joint statement was signed by a group of 10 lawyers, scholars, and civil right activists listed below: (in alphabetical order)

Dr. Chen Chien-Jen, Professor, National Taiwan University

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Source: [Jerome F. Keating's writings](#)