

Tsai must address judicial reform

Written by Huang Yu-zhe 黃宇哲
Saturday, 02 May 2020 06:02

President Tsai Ing-wen (蔡英文) is to reaffirm the importance of judicial reform in her inaugural address on May 20, a promise she gave on March 27 when meeting with Judicial Reform Foundation (JRF) chairman Lin Yong-song (林永豐) and other members of the Alliance of Non-Governmental Supervision on the Resolution Implementation of the National Congress on Judicial Reform.

Yet, another Tsai promise — more communication with the public — failed to materialize when the Judicial Yuan announced that it would only recommend a trial participation system, which completely reneged on a joint agreement with non-governmental organizations that a trial participation system and jury system should proceed in parallel on a trial basis for six years.

Such an arbitrary act has seriously undermined the trust that has been built up between the government and the public since the National Congress on Judicial Reform was held in 2016.

The legislative process for a bill for a lay judge system has been set in motion. The government should think twice before it is too late.

In her first inaugural address on May 20, 2016, Tsai announced that by actively promoting judicial reform, winning back the trust of the public on the judiciary was her primary goal. The Presidential Office in November that year set up the preparatory committee of the National Congress on Judicial Reform. Its almost year-long preparations culminated in a summary meeting.

On the one hand, we should give credit to Tsai for leading the preparations and the all-rivers-run-into-sea atmosphere of the congress made up of mostly non-experts; while, on the other hand, the implementation of 87 resolutions was deeply concerning and, more importantly, discouraging.

Although there have been three significant achievements — the Labor Incident Act (勞資爭議處理法), the Constitutional Court Procedure Act (憲法訴訟法) and the Court Organization Act (法院組織法) — there has been much slower progress in implementing some of the more important resolutions.

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Critics say that the National Congress on Judicial Reform was political pageantry, given that the Judicial Yuan and the Ministry of Justice have failed to implement reforms that would have an immediate impact on the public.

Introducing lay judges is one of them.

The National Congress on Judicial Reform was divided into five sub-committees and due to it being charged with examining public participation and transparency, the fourth sub-committee was given the most attention, and yet it was the most divisive when it came to reaching a consensus on the specific reform recommendations.

In terms of whether to adopt a jury system or a trial participation system, the votes were evenly split.

Apparently, owing to the multifaceted complexity of this systemic overhaul, legal and non-legal academics had serious disagreements. Needless to say, it is even more difficult for the public to understand the pros and cons of each.

As such, a stop-gap measure — proceeding with the two systems in parallel for six years — was proposed as it would give the public sufficient time to adapt to the new models and, after an adequate implementation period, the public could ultimately decide which system was the best fit for the nation.

Now it is clear that the Democratic Progressive Party (DPP) and the Chinese Nationalist Party (KMT) supported the trial participation system, both considering it a more pragmatic approach. The Judicial Yuan said that it would cost less to adopt it.

That ruled out the possibility of society having a chance to experience the jury system.

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More importantly, the cost would be much higher if the trial participation system is found not to be suitable and the whole legislative process would need to be repeated.

Non-governmental organizations, some lawyers and smaller political parties favored a combination of the two systems to democratize the judiciary based on the principle of popular sovereignty.

“The Judicial Yuan proposed a bill for a lay judge system which adopted a Japanese-style trial participation system and excluded the US-style jury system. The Judicial Yuan claimed that it never discussed with the non-governmental organizations a combination of these two systems, also known as the ‘two-tier system.’ Is that really true?” Lin said.

The JRF, Taiwan People’s Party and New Power Party on Monday held a joint news conference demanding that two systems proceed in parallel, a proposal supported by more than 70 percent of the public, Taiwan People’s Party Legislator Lai Hsiang-ling (賴香菱) said.

New Power Party Legislator Chiu Hsien-chi (邱顯奇) expressed concern that the current bill is nothing more than a ‘communist-style show window’ if the trial participation system proposed by the Judicial Yuan is adopted, as it would apply to only 500 to 600 criminal cases.

Considering the socially and politically divisive situation, deliberation of this bill in the Legislative Yuan should not begin until a consensus can be reached.

If the Judicial Yuan insists on having its own way and the government unwisely decides to take its side, it would show that Tsai’s words on building and enhancing trust between the judiciary and the public were worthless.

What is more frustrating is that tireless efforts made by non-governmental organizations for years have proved to be in vain and Tsai seems to have turned a blind eye to developments.

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Insisting on passing the current bill would not win the backing of civil society and respond to the real needs of the public, but rather leave the public wondering where the DPP and Tsai are leading them.

If Tsai is serious about communicating with the public, she cannot afford to look the other way.

Huang Yu-zhe is a political science undergraduate at Soochow University and has been accepted to National Chengchi University's Graduate Institute of Law and Interdisciplinary Studies.

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