

Lest We Forget Human Rights in Constitutional Reform

Lo Cheng-chung

The bitter defeat of the Chinese Nationalist Party (KMT) in the 2014 nine-in-one local elections not only led to an embarrassed Ma Ying-jeou relinquishing his position as party chairman, but has also propelled the long-dormant issue of constitutional reform back into the news. According to newspaper reports, the constitutional reform that the KMT seeks focuses on changing government system, primarily the restoration of the parliament's power to vote on the appointment of a premier. Thinly veiled political machinations clearly form the impetus for this appeal. The question of how to overhaul chapter two of the constitution, "Rights and Duties of the People," which after 70 years has proved insufficient, has never appeared in plans laid out for constitutional reform by the upper echelons of the KMT. Fortunately, on January 6, 2015 Democratic Progressive Party Legislator Cheng Li-chun and thirty others submitted a motion to greatly expand the current constitutional bill of rights, compensating somewhat for the conspicuous absence of human rights in this wave of constitutional reform. Sadly, this proposal that could have genuinely moved Taiwan forward in its quest to "Respect, Protect and Fulfill Human Rights" was immediately quashed in late-January by the KMT, before it could proceed to the Constitution Amendment Committee for deliberation.

We learned from social studies textbooks in elementary school that the constitution was the basic law of the nation and the guarantee of human rights. We understand human rights to

be innate, and the safeguarding of human rights to be the central value of constitutionalism. Upholding the dignity of individuals and safeguarding human rights are the *raison d'être* of the state. With advances in Taiwan's liberal democratic constitutional system significant progress has been made in guaranteeing human rights, however, relevant constitutional articles are relics of the mid-Twentieth Century that long ago fell behind the times. Human rights not yet expressly stipulated in the constitution have, within the past decade, progressed by leaps and bounds thanks to interpretation by the Judicial Yuan. However, further development has been hindered by outmoded constitutional human rights provisions, which neither provide explicit support for nor reflect the fruits of the progress that has been made in the area. Only by reviewing interpretations of the Judicial Yuan can these developments be pieced together. These constitutional flaws not only present scholars of law and politics with difficulty in research, but, more importantly, hinder the development of legal awareness and the promotion of public legal education.

In a similar vein, the bill of rights of the existing constitution has been rendered inadequate by the passage of time. In the seven rounds of constitutional revisions that have occurred since 1991, with the exception of slight improvements to the Fundamental National Policies, the human rights provisions have been left untouched. In reflecting on the two power transitions that have occurred since 2000, the

lack of substantive progress in revising the constitutional bill of rights is especially jarring.

Former president Chen Shui-bian claimed establishing a “nation founded on human rights” as his policy priority. Upon assuming office in 2008, Ma Ying-jeou likewise clamored for “human rights advancements.” Later he hailed the passage of the Act Governing the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in December 2009 as a major political achievement and pressed on to produce related brochures and other promotional material, and include the Act in school curricula and organizational training programs to cultivate his reputation as a champion of human rights. Regrettably, however, when it came to the most basic issue of how to expand the constitutional bill of rights, neither of these two presidents showed any particular political interest. In short, in today’s urgency to reform the constitution, the long-delayed creation of a new constitutional bill of rights would be the litmus test for progressiveness, more so than the incessant discussion of issues related to the central government system such as changing it to a cabinet or presidential system, the parliament’s veto on the premier’s appointment, and legislators’ holding executive offices.

In this age of ubiquitous smart phones, how much longer must we suffer a bill of rights from the telegraph era? Safeguarding human rights is the ultimate aim of any constitution. As we draft our own human rights guarantee in this round of constitutional revision, we should consult the content of international human rights codes and the experiences of various nations. In addition to the first-generation human rights of liberty, we

should include the second-generation rights of economic, social and cultural equality, and third-generation collective rights based on solidarity and fraternity, so that the constitution may truly live up to its stated purpose of guaranteeing the people’s rights. As the basic law, the constitution should reflect Taiwan’s substantive achievements in safeguarding human rights since its democratization and lay down the foundation for more progressive developments in the future. **BT**

Lo Cheng-chung is Associate Professor at the Institute of Financial & Economic Law, Southern Taiwan University of Science & Technology.