

POLITICAL DEMOCRATIZATION AND CONSTITUTIONAL REFORM IN TAIWAN

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I. INTRODUCTION

On January 23, 1997, the Executive Yuan (the Cabinet) of the Republic of China (ROC) on Taiwan formally approved and adopted a very important blueprint for the ROC's national development that will lead the nation into the twenty-first century, the National Development Plan (NDP). The NDP was drafted and proposed by the Council for Economic Planning and Development (CEPD) of the Executive Yuan. The ultimate purpose of this national development plan is to make Taiwan a fully developed and completely modernized nation economically, socially and politically. A particular objective of the NDP is to ensure rule by law in Taiwan, thereby creating a more just and harmonious society. In other words, politically speaking, we fervently desire our society to function in an efficient and democratic way by means of a sound constitutional, legal and judicial system and a strong framework for a multi-party democracy.¹ This has been an on-going process in Taiwan

¹ For details of The National Development Plan see Council for Economic Planning and Development (CEPD), Executive Yuan, *Plan for National Development into the next*

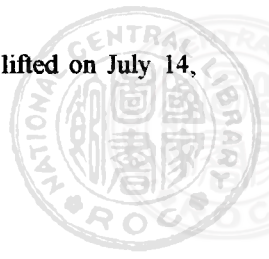
for the past ten years, and in that time Taiwan has gone through a very profound and wide-ranging process of democratization.

For over three decades now, Taiwan has enjoyed rapid economic growth, stable prices, a low rate of unemployment and its people have benefited from a relatively equitable distribution of wealth. Furthermore, the people of Taiwan have achieved higher levels of education, while at the same time they have experienced an easing in cold-war tensions and a greater sense of peace and security. Consequently, the people of Taiwan have become more assertive in pursuing personal freedom and basic political rights, especially since the second half of the 1980s. During this same period political opposition parties have gained increasing popular support and are now playing an active role in Taiwan's political life. The political developments stem from the vision of the late President Chiang Ching-kuo, who formally initiated the democratization process in 1987 by lifting martial law and making it possible for citizens of the ROC to travel to the Chinese mainland to visit relatives.² Since then a series of reforms have been adopted to further the cause of democratization in Taiwan. The following represents a brief review and evaluation of the political reforms and the democratic measures that have been carried out in Taiwan over the past decade.

II. Constitutional Reform and Reorganization of Legislative Bodies

Century, A Briefing, Taiwan 2006, (Taipei, 1997).

² Martial law decree was imposed in Taiwan on May 20, 1949 and lifted on July 14, 1987.



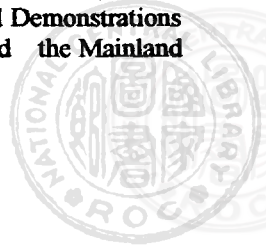
The Constitution of the Republic of China was approved in December of 1946, promulgated in January 1947 and went into effect on December 25, 1947. Due to the ongoing civil war between the Nationalist Government and the Chinese Communists, the ROC Constitution was not fully implemented at that time. In May of 1948, the ROC Government declared a Temporary Mobilization for the Suppression of the Communist Rebellion (TMS) and imposed a state of martial law. A constitutional amendment, which provided for the addition of Provisional Articles for the TMS to the Constitution, was approved in 1947.

The prosperity and great educational achievements the Taiwanese people have experienced since the 1970s brought in its wake an enactment of a set of new laws guaranteeing freedom of speech, association and public assembly.³

In January 1988, Dr. Lee Teng-hui became the President of the ROC upon the death of President Chiang Ching-kuo. At his first press conference after assuming the presidency, Dr. Lee vowed to end the TMS and martial law within a twelve-month period. At the same time, he pledged to initiate a series of sweeping constitutional reforms over a two-year period.

Since 1949 when they first arrived in Taiwan, under the pretext of maintaining the legitimacy of the ROC government, members of the National Assembly, the Legislative Yuan and the Control Yuan who had

³ Since the late 1980s, the following important laws regarding political freedom and rights have been enacted and promulgated: National Security Law (1987), Law Governing Associations (1988), Law Governing Public Assembly and Demonstrations (1988), and Law Governing Relations between the People of Taiwan and the Mainland (1992).



been elected in 1947 in the mainland, were given a special right. They had been allowed to continue to hold office for an indeterminate period through a decision made by the Supreme Court Council of the Judiciary Yuan. The Judiciary Yuan is the only governing body invested with the authority to interpret the Constitution of the ROC.⁴ This decision created a unique, but, what is more, a very awkward situation in the history of parliamentary politics. As a direct result of this decision, practically all of the members of parliament, with the exception of a handful who had been elected in Taiwan, had been granted the right to hold their office for life without regard for the will of the people they governed.⁵ By the 1970s this situation had become a subject of national controversy. By the 1980s, as the country was priming itself for democratic change, this state of affairs was subjected to ever harsher criticism and even ridicule by the people of Taiwan. Voters of all political persuasions viewed these “lifers” as serious obstacles to the cause of national democratization.⁶ As a result of unrelenting public pressure, in June 1980, the Supreme Court Council of the Judiciary Yuan ruled that all mainland-elected members of parliament were eligible to remain in office until December 31, 1991.⁷

⁴ On January 29, 1954, in accord with Interpretation No. 31, the Council of the Grand Justices of the Judiciary Yuan held that those members of the Legislative Yuan and Control Yuan who had been elected in 1947 in the mainland might continue to carry out their offices until a re-election would be held in the mainland.

⁵ This is so because the mainland has been under the control of the Government of the People's Republic of China since 1949 and it has been impossible for the government of the Republic of China (which has moved to Taiwan since 1949) to hold a re-election of the members of these parliamentary bodies.

⁶ Since the 1950's, the fact that the mainland-elected parliamentary members continued to carry out offices without having to be reelected had been a focus of criticism by the opposition. This criticism became much more severe and stronger in the 1980s whenever the issue was raised either in a political campaign, a public rally or in parliamentary debate.

⁷ The interpretation was made on June 21, 1980, for detailed contents and reasoning see

This ruling paved the way for the citizens of Taiwan to elect all members of parliament. This was without doubt a very significant step toward democratization.

In April of 1991, the National Assembly voted to repeal the Provisional Articles of the Constitution and shortly thereafter President Lee formally declared an end to the TMS, lifting the state of emergency after forty-four years. National Assembly elections were held in December of 1991, while Legislative Yuan elections were held a year later. These events marked the first time since 1949 that all members of parliament had been elected by the people of Taiwan and that all would serve for a term of office as stipulated by the Constitution and relevant elections laws.⁸

Commentators and scholars have attached great significance to the 1992 Legislative Yuan elections.⁹ First of all, this event marked the first time that Taiwanese voters had elected all members of parliament. As such, it was considered a necessary first step on the road to democracy; consequently, it has been referred to as the “founding election.” It also marked the first time that the ruling Kuomintang (KMT) loosened its grip on the reins of national government since the installation of one-party rule on Taiwan shortly after World War II.¹⁰

Secondly, the elections initiated a new stage of democratic consolidation. They ushered in a new era of assertiveness on the part of

Interpretation No. 261 of the Council of Grand Justices of the Judiciary Yuan.

⁸ The December 1991 elections of the members of the National Assembly elected 325 members to a four-year term; the December 1992 elections of the members of the Legislative Yuan elected 161 members to a three-year term.

⁹ Tien, Hung-mao, and Chu, Yun-han, “Building Democracy in Taiwan”, *The China Quarterly*, No. 148 (December 1996), pp. 1140-1170.

¹⁰ *Ibid.*



the legislators in vying with the executive branch of government. This in turn led to an adjustment in the power relationship between the KMT parliamentary party caucus and its central leadership. Thirdly, it set the stage for Lee Teng-hui to implement his final round of cabinet reshuffling since his accession into office in 1988. In 1991 President Lee's nomination of Lien Chan as premier was confirmed by the newly elected members of the Legislative Yuan. This act of confirmation of the first-ever native-born Taiwanese premier, coupled with the retirement of all mainland-elected members serving in the Legislative Yuan, symbolized the end of the old generation's dominance of the KMT.¹¹

Finally, election outcomes prompted some members of the non-mainstream faction to break away from the Kuomintang and form what came to be known as the New Party. All of the above changes led to the creation of partisan politics among the voters, the reshaping the political strategies and the forging of coalitions of the nation's major political parties and factions.

The ROC's First Direct Presidential Elections

During the period of martial law organizing political opposition parties and publishing non-KMT newspapers were prohibited. After the lifting of martial law, all such prohibitions were soon to be abolished. Numerous new political parties have since been organized. So far over eighty political parties have since registered with the Ministry of the

¹¹ *Ibid.*



Interior; among them, the most powerful ones are, of course, the ruling party Kuomintang (KMT), and two relatively strong opposition parties, the Democratic Progressive Party (DPP) and the New Party (NP). A political alliance promoting an independent Taiwan has recently developed into a new political party.

Freedom of the press has led to a flourishing of the political culture in Taiwan. Coming up with an exact figure for the number of newspapers, magazines, and radio and television stations is pointless since the number constantly increases. On September 24, 1998, the Executive Yuan took a very significant step to further democratize Taiwanese society by moving to formally rescind the Publication Law. Although this law had never been fully implemented, it nonetheless was a source of much controversy since it could provide the government with a legal mechanism to censor the media.

Since the 1950s the voters of Taiwan have been electing county magistrates, the mayors of the cities under the direct jurisdiction of the Taiwan Provincial Government, the chiefs of townships and villages, county and city council members, and the representatives of township and village boards. They also elect the members of the Taiwan Provincial Assembly and the City Councils of Taipei and Kaohsiung, the two largest cities under the direct jurisdiction of the Executive Yuan. Members of the National Assembly and the Legislative Yuan have all been elected by the people of Taiwan since the early 1990s. Beginning in 1994, through the passage of a constitutional amendment and the enactment of the Law Governing the Self-government of the Municipalities under the Direct Jurisdiction of the Executive Yuan, the governor of Taiwan Province and the mayors of Taipei and Kaohsiung, all of whom had been previously

appointed by the premier, were to be directly elected by the people.¹² This was yet one more step deemed essential for the implementation of political democracy in Taiwan.

In 1996, the ROC made political history by holding the first direct popular elections of a head of state in the long history of China. This was made possible by a constitutional amendment.¹³ The president and the vice president of the ROC had previously been elected by the members of the National Assembly. After a very heated and exciting debate involving many party heavyweights, the KMT now paved the way for direct presidential elections by the Taiwanese people. No longer would the president be elected by the indirect vote of the National Assembly.¹⁴ The Constitution was revised to implement this decision.

The 1996 presidential election attracted even greater worldwide attention than anticipated due to the military exercises undertaken by the PRC. The launching of missiles in the Taiwan Strait near the Taiwan mainland was apparently an attempt to intimidate the people and the government of the ROC and to influence the election outcome.¹⁵ However, the election process was implemented smoothly and without any delays. Lee Teng-hui and Lien Chan won the presidency and vice

¹² See also Amendments to the Constitution of the Republic of China (ROC). Article 8 as promulgated in August 1994.

¹³ *Ibid.* Article 2.

¹⁴ The debate occurred in the third plenary session of the KMT 13th Congress in March 1992 and resulted in the adoption of direct presidential elections in Taiwan.

¹⁵ The PRC held military exercises, including the launching of missiles, from March 8 to 15, 1996 in the Taiwan Strait near the Taiwan island. The PRC continued to hold military exercises deploying army, air force and navy units in the Fukien area during the period March 18-25. Virtually all commentaries in the media in Taiwan and abroad were of the opinion that such military exercises were intended to affect the presidential election held on March 23.

presidency, respectively, by amassing 54% of the votes.

The presidential election, as affirmed by numerous commentators throughout the world, represented a very successful and important culmination of the long process of political democratization in Taiwan that had been initiated in 1987.¹⁶

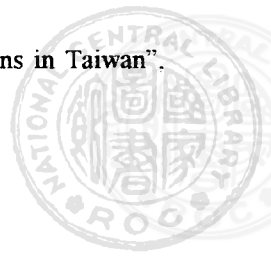
Constitutional Reform, 1991-1994

Implementation of political democracy in Taiwan has been made possible and easier through constitutional reform. Four series of reforms have taken place since 1991. In other words, from 1991 up to the present, the Constitution of the ROC has been amended in four separate phases. In addition to the initiatives providing for the popular election of all members of the National Assembly and the Legislative Yuan, and direct popular presidential elections, three constitutional reforms dating from the period 1991-1994 have resulted in the following changes in the way the government functions and in national policy.

1. The Expansion of the Functions of the National Assembly

According to the original provisions of the Constitution, the National Assembly's major functions were to elect and recall the president and the vice president of the Republic, to amend the Constitution and to vote on proposed constitutional amendments submitted by the Legislative Yuan by way of referendum. In the light of constitutional revision, the powers of

¹⁶ Tien, Hung-mao and Cheng, Fun-jen, "Crafting Democratic Institutions in Taiwan".



the National Assembly have now been expanded although it can no longer elect or recall the ROC president and vice president. The National Assembly now has been empowered in the following areas:

- (1) to vote on a proposal by the Control Yuan to impeach the president or the vice president of the Republic; the right of proposal was transferred to the Legislative Yuan by the constitutional reforms made in July of 1997;¹⁷
- (2) to confirm the nomination by the president of the Republic of:
(A) the president, vice president and supreme justices of the Judiciary Yuan; (B) the president, vice president and members of the Examination Yuan and (C) the president, vice president and members of the Control Yuan;¹⁸
- (3) to be informed of the state of the nation in a report made by the president of the Republic; to discuss national affairs and offer counsel.¹⁹

2. The Presidency and the Vice Presidency

The term of the presidency and the vice presidency of the Republic has been reduced from six years to four years. The president, in determining major policies for national security, has been authorized to establish the National Security Council and its subsidiary organ, the National Security Bureau.²⁰

3. The Control Yuan

The China Journal, No. 37, (January 1997), pp. 1-27.

¹⁷ See Amendments to the Constitution of the ROC, Article I, as promulgated in August 1994.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.* Article 2, Paragraphs 5 & 6.



The Control Yuan has undergone a change in status from a Parliamentary Body to a Quasi-judiciary Watchdog Body. The Control Yuan used to be the nation's highest watchdog body with powers to impeach, censure, audit and confirm the nomination by the ROC president of the supreme justices, president, vice president of the Judiciary Yuan and the members, president and vice president of the Examination Yuan. Its members had previously been elected by representatives of the nation's provincial assemblies and city (province-level municipality) councils. The members themselves had then elected the Yuan's president and vice president. This body had been compared to the lower chamber of parliaments in Western countries. As a result of the 1994 constitutional revision, the Control Yuan has been transformed into a quasi-judiciary body. Its power of confirmation has been transferred to the National Assembly and the number of its members has been greatly reduced. No longer elective representatives, its members, president and vice president are now governmental appointees nominated by the ROC president and confirmed by the National Assembly.²¹

4. The Judiciary Yuan

The Supreme Justices of the Judiciary Yuan have been authorized to establish a Constitutional Court to adjudicate matters relating to the dissolution of unconstitutional political parties.²²

5. Economic, Technological and Financial Guidelines

A new constitutional amendment now stipulates that the State shall encourage development of and investment in science and technology, facilitate the upgrading of industry, promote the modernization of

²¹ *Ibid.* Article 6.



agriculture and fisheries, strengthen the proper exploitation and utilization of water resources and intensify international economic cooperation. It also stipulates that environmental and ecological protection shall be given equal consideration with economic and technological development and that government-owned public financial institutions shall be managed according to the principles of enterprise administration and there shall be special legal provisions for such management.²³

6. Social Welfare

According to the newly amended constitutional provisions, the State shall inaugurate a universal national health insurance scheme and shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination and further substantive equality between the sexes. The State shall also safeguard the rights of the handicapped and disabled to obtain the necessary insurance, medical care, education, vocational training, employment, and support for their daily living needs and well-being. It shall accord to the aborigines legal protection of their status and the right to participate in all aspects of the political life of the nation and to provide assistance and encouragement for their education, cultural preservation, social welfare and business undertakings.²⁴

7. Overseas Chinese and Cross-Strait Relations

A constitutional amendment also stipulates that Chinese nationals residing overseas shall be accorded by the State the protection of their rights to political participation at home. It further prescribes that the rights and obligations governing the people of Mainland China and those of

²² *Ibid.* Article 4, Paragraph 2.

²³ *Ibid.* Article 9, Paragraphs 1, 2 and 3.

²⁴ *Ibid.* Article 9, Paragraphs 4 through 7.



Taiwan and the disposition of other related matters shall be specifically regulated by law. The wording of this amendment marks the first time that our Constitution has formally acknowledged that China now is a divided country featuring two distinct political entities.²⁵

V. The National Development Conference and Political Reform

In December 1996, President Lee Teng-hui carried out the promise he had made in his inaugural speech six months earlier in May by inviting representatives from all walks of life, including those from both the ruling and opposition parties, to discuss and reach agreement on major issues and come up with solutions regarding the national development of Taiwan. He convened the first National Development Conference. Three major areas were covered by the Conference: (1) constitutional government and multiparty politics, (2) issues involving cross-Straits relations and (3) economic development. With regard to constitutional government, consensus was reached to modify the relationship between the president, the premier and the Legislative Yuan by establishing a constitutional democracy based on the French model. A decision was also made to suspend elections for provincial governor and provincial Assembly members and to streamline the functions, operations and organization of the Taiwan Provincial Government. The reasons behind such a consensus

²⁵ *Ibid.* Article 9, Paragraph 8 and Article 10.



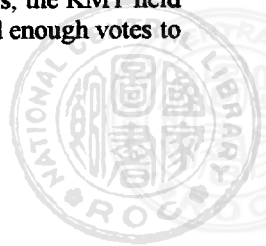
were to maintain the political stability of the central government and to enhance governmental efficiency.²⁶

A new round of constitutional reform, the fourth since 1991, ensued. The National Assembly initiated revision of the Constitution in May 1997 and completed it in July of the same year. A very unusual and noteworthy phenomenon occurred during this most recent period of constitutional reform: reform was accomplished through the close cooperation of the Kuomintang and the DPP; only the New Party remained in opposition. This was made possible because the Kuomintang lacked the two-thirds majority in the National Assembly required to amend the Constitution on its own. Such had been the case in each of the preceding phases of constitutional reform. This time both the Kuomintang and the DPP were able to reach a compromise both during and after the National Development Conference on each of the major issues of the fourth round of constitutional reform.²⁷

The new constitution now abolishes the right of the Legislative Yuan to confirm the president's nominee for premier. In the future, the president of the Republic may appoint anyone he deems qualified to be premier.²⁸ The Legislative Yuan may initiate a no-confidence vote against the premier. If the vote of no-confidence is passed, the premier must resign and at the same time may request the president of the Republic to dissolve

²⁶ National Development Conference Secretariat, *National Development Conference Resolutions*, (Taipei, 1997)

²⁷ According to Article 174 of the Constitution of the ROC, the National Assembly, in order to amend the Constitution two-thirds of its members present and three-fourths of those present must vote in favor of the amendment. When the Assembly convened in July 1997 for constitutional reform, the Assembly had a total of 338 members, the KMT held 185 seats and the DPP held 100 seats; neither the KMT nor the DPP had enough votes to amend the Constitution on its own.



the Legislative Yuan. If the no-confidence vote is turned down, no such vote can be proposed again against the same premier within a one-year period. This change is intended to develop a feasible check and balance relationship between the executive and the legislative branches. The president is empowered to serve as arbiter, if necessary, and to break down any political impasse that may arise to maintain political stability. Whether or not this new reform proves feasible and is capable of achieving its intended purpose remains to be seen. It has been in effect for a relatively short period of time. Since then a new premier has been nominated and approved in September of last year according to this new constitutional provision.

An additional constitutional amendment led to the suspension of the elections for the governor and assembly members of the Province of Taiwan and the streamlining and reorganization of the functions, operations and organization of the Taiwan Provincial Government. This amendment aroused great controversy and encountered the strong opposition of the current governor. It continues to place the ruling party in danger of a major split.²⁹ There has been some suspicion that the real motivation for this amendment was an insidious promotion of Taiwanese independence—and the Taiwanese Independence movement—since the

²⁸ Amendments to the Constitution of the ROC, Article 3, as promulgated in July 1997.

²⁹ In the aftermath of the National Development Conference (NDC), Governor James C. Y. Soong of the Taiwan Province expressed great reservations about the NDC proposal to reorganize and downsize the Taiwan Provincial Government (TPG) and even tendered his resignation to the Executive Yuan only to be dissuaded by the Premier after intensive consultations. During the July 1997 constitutional reform, some KMT members of the National Assembly were publicly opposed to or expressed strong reservations about the constitutional amendment proposal to downsize and reorganize the Taiwan Provincial Government, some suspected that high-ranking officials of the TPG were behind such opposition and reservations.

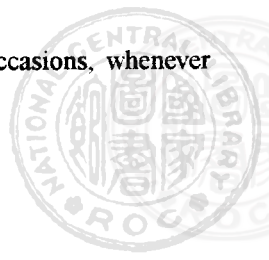
suspension of the Taiwan Provincial Government effectively removes Taiwan's status as a province of China.³⁰ In fact, such suspicions proved groundless. The real and original intentions had been to eliminate the overlapping functions and powers of the central and the provincial governments so as to enhance the efficiency of overall governmental operations.³¹ It has also served to flatten the whole governmental structure. The jurisdiction of the central and the provincial governments overlaps for 90% of the nation in terms of both population and space, and the four-level governmental hierarchy now in operation – including central, provincial, county (city) and township levels – has long been considered unnecessarily wasteful and extremely inefficient. In light of the latest round of constitutional reform, most of the functions and powers of the Taiwan Provincial Government are to be transferred to either the central government or county and municipal governments. Eventually, the Taiwan Provincial Government will maintain only a minimum staff with very limited functions. With respect to this situation, a new law entitled “The Provisional Statute Concerning the Adjustment of the Functions, Jurisdiction and Organization of the Taiwan Provincial Government” has recently been passed by the Legislative Yuan.

Conclusion

The political reforms that have been implemented over the past

³⁰ This is a position most strongly taken by the New Party.

³¹ The Executive Yuan has expressed such a viewpoint on many occasions, whenever such an issue is raised.

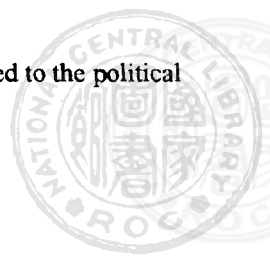


decade in Taiwan have resulted in momentous changes and transformations throughout the country. By means of these reforms, Taiwan, together with its great prosperity, has become a strong and vibrant democracy within the international community. These reforms have enabled the people of the ROC to elect directly the head of the state for the first time in the history of China; they have served as the basis for the reorganization of the nation's parliamentary bodies, and have transformed the functions and status of the National Assembly, the Legislative Yuan and the Control Yuan; they have also resulted in the restructuring of the Taiwan Provincial Government. It should be pointed out, however, that all these political changes have been achieved at a minimum cost to the society and have largely come about through constitutional revision. Taiwan has undergone what has widely been viewed as a "quiet revolution."³²

When the democratization process was first initiated in Taiwan, the following objectives were widely proposed for its proper implementation: (1) the maintenance of political stability, (2) the improvement of governmental efficiency, (3) the establishment of a more effective, open and democratic process regarding public policy and decision-making and, (4) the creation of a political system which would be capable of fulfilling the will, desire and needs of the people as effectively as possible. In retrospect, one can say that the process of democratization has brought Taiwan much closer to accomplishing all of the above objectives.

Of course, democratization is Taiwan's only viable path to total modernization. Additional reform of the nation's parliamentary bodies is

³² The Asian Wall Street Journal in a November 11, 1992 editorial referred to the political



needed to enhance their legislative efficiency. Structural reform and the strengthening of rule by law must proceed unabated for the ROC to increase its competitive strengths in the global community into the next century. The process of democratization in Taiwan shall continue. At the same time, every possible effort should be undertaken to maintain the economic growth and to enhance the well being, social justice and stability of a Taiwanese society based on the rule of law now and in the twenty-first century.

reforms here in Taiwan as “a quiet revolution.”

