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Another Anniversary

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In Taiwan, June 4 marks another anniversary, namely the 185th day of Chen Shuibian’s detention without having been convicted of a crime. Chen was first ordered to be held in custody on the night of November 11, 2008, with actual detention beginning on November 12. Taking into account the few days during which he was released in December, Chen’s incarceration has lasted almost 200 days now, with no end in sight. In principle, he can be held in detention indefinitely due to the fact that he has been charged with a felony, and because prosecutors have expressed concerns that Chen might flee the country, engage in collusion with other suspects, or tamper with evidence and witnesses. If a judge agrees with these arguments, an extension can be granted every two months. Efforts by Chen and his legal team to challenge prosecutorial evidence in court have also served to lengthen the term of his detention.

Despite the fact that his detention started on November 12, the Supreme Prosecutors’ Office did not indict Chen until December 12, charging him with accepting bribes, laundering political donations, and looting public funds. The extent of Chen’s corruption (as well as that of his family members) is said to have extended to the tens of millions of U.S. dollars, and lasted throughout his 2000-2008 presidency. Legal proceedings are currently underway to determine the guilt or innocence of those accused. Chen’s wife has also been indicted, while just yesterday his son and daughter were listed as defendants and may be charged with perjury.

When the state decides to break an individual, it can draw on an array of weapons in its arsenal, including torture, imprisonment, harassment (often extending to loved ones and friends), confiscation of property, and the denial of citizen’s privileges, all of which involve the stripping away of an individual’s human rights. Another form of this abrogation is detention, with its resulting loss of freedom and daily humiliations.

This is not to deny the legitimacy of detention in democratic nations. It is certainly justified when suspects are hardened and violent criminals who threaten society, but this is clearly not an issue in Chen’s case. Detention can also be viewed as legitimate if it is regularly utilized in certain types of cases (such as corruption and tax-evasion). In Taiwan, however, detention of politicians on such charges is almost unprecedented. Over the years, numerous politicians of all stripes have been accused of corruption. Some have been found guilty and sent to prison, while others have been proven innocent. Only a small percentage has been subjected to detention (most are allowed the right to bail), although many suspects have fled the country and are currently living high on the hog (swine flu notwithstanding) in China and the U.S. Apart from Chen, however, no Taiwanese politician has been detained for such a long period of time on corruption charges without having first been convicted of a crime.

Regardless of whether Chen is found guilty as charged, Taiwan’s judiciary has come under considerable criticism for its handling of the detention process, and in particular the decision to change judges during Chen’s detention hearings. Following his indictment on December 12, the three-judge district court panel originally presiding over the case decided to order Chen’s release (without bail), something that is often allowed once suspects accused of non-violent crimes are indicted. In Chen’s case, however, this ruling prompted prosecutors to appeal twice to the Taiwan High Court. During the second appeal, the original panel was replaced (amidst rumors of pressure from ruling KMT lawmakers), and the new panel ruled on December 30 that Chen’s detention could continue.

The events described above have prompted questions about the circumstances and motivations underlying Chen’s on-going incarceration. Concerns have been raised about other aspects of Chen’s case as well, including a skit performed by prosecutors at a Justice Ministry party that appeared to mock Chen’s behavior when he was placed under arrest. As President Ma Ying-jeou’s Harvard Law School mentor, Professor Jerome Cohen, has observed, “At what point does the presumption of
innocence becoming meaningless and pre-conviction detention morph into punishment for a crime not finally proved?"

And that is the tragedy of the current situation, for having a top-ranking politician found guilty after a trial deemed fair and impartial would constitute an immense boost in prestige for Taiwan’s judicial system, while also sending a crystal-clear message to all politicians facing similar forms of temptation. However, a conviction following proceedings that suggest Chen is presumed guilty and likely to be found guilty as well would represent a major step backwards, and risk causing a reversion to traditional views of the law as being simply a tool to enhance state interests.

The other tragedy involves Taiwan’s human rights record. The detention of a former president who may have committed at least some of the crimes he stands accused of hardly compares to the violence that took place in Beijing 20 years ago, not to mention the horrific abuses of human rights (and especially those of women and children) that ravage our world every day. Nonetheless, the deprival of any individual’s liberty and dignity constitutes a challenge to the values that people hold dear. Understandably, Taiwan’s judicial trials rank rather low on most leaders’ “to do” lists, and after the Abu Ghraib and Guantánamo fiascos it is hardly our place to lecture others about human rights. Nonetheless, indifference would not seem to be the answer, for only when people effectively question the state’s authority does it grudgingly relinquish the assertion of its might over the rights of its citizens.

Tags: 1989, 6/4, Tiananmen