

Give democracy a chance

October 23, 2013

On October 14, 2013, two domestic newspapers published a joint statement by a group of international scholars claiming that Taiwan is experiencing a “constitutional crisis.” The statement contains a significant number of factual errors, so the government of the Republic of China (Taiwan) feels obliged to set the record straight so as to clarify any misunderstandings, prevent the circulation of false rumors, and protect the democratic system and rule of law established in our country following many years of effort.

I. Procedural errors in wiretapping, not surveillance of the Legislative Yuan (National Parliament)

The joint statement’s claim that the Special Investigation Division (SID) of the Supreme Prosecutors Office under the ROC Ministry of Justice was used for political purposes, by wiretapping the Legislative Yuan (LY, i.e., the National Parliament), is completely unfounded. Since President Ma Ying-jeou assumed office five years ago, he has strictly demanded that law enforcement agencies should never wiretap illegally, and if illegal wiretapping does occur, that the violators be investigated and prosecuted pursuant to law.

As President Ma has no authority to instruct the SID, he has never

ordered it to wiretap the legislature. The opposition Democratic Progressive Party (DPP) so far has produced no evidence to back up its accusations in this regard. Moreover, on October 1 the Ministry of Justice (MOJ) had already set up a task force to investigate the allegations of wiretapping of the LY. The task force, convened by the MOJ Deputy Minister, consisted of 11 members, including six impartial members of the public—lawyers, criminal law professors and human rights workers—as well as four prosecutors and anti-corruption officials from the MOJ.

The task force issued its report on October 11, stating that all wiretapping operations had been conducted based on communications surveillance warrants issued by the courts, and that no illegal acts had occurred during wiretapping procedures. The report concluded that there had been no intention on the part of prosecutors to wiretap the LY, but due to technical errors surveillance was erroneously conducted on LY switchboard number 0972-xxx-xxx, which was mistakenly believed to be a suspect's cell phone number.

However, additional technical settings would have been required to successfully record conversations on this switchboard number; as a result, no information was actually recorded. The case, therefore, involved not wiretapping of the LY, but errors in wiretapping procedures.

The task force also discovered that between 2007 (when the DPP was in power) and 2009, seven prosecutor's offices nationwide had made the

same mistake in believing that the legislature's switchboard number was a suspect's cell phone number, as a result of which the number had been wiretapped 13 times.

Based on the task force report, the MOJ has referred the prosecutor general and two other prosecutors responsible for the administrative errors in the present case to the Prosecutors Evaluation Commission. In addition, the MOJ requested that the Taiwan High Prosecutors Office investigate the details of the errors in the other 13 instances of wiretapping.

The Executive Yuan (i.e., Cabinet) respects the conclusions reached by the task force, and has initiated a review of the legal procedures for and implementation of wiretapping. It is patently obvious that the errors made in wiretapping procedures have been purely administrative. The government has not used the SID for political purposes, and has not engaged in wiretapping directed at the LY.

Consequently, the operations of the governmental system of the ROC have not been subjected to improper political manipulation as a result of these wiretapping errors.

II. Not a “political struggle”: LY Speaker's conduct to influence the judiciary raises concerns over breach of separation of powers

The joint statement alleges that the SID has been used as a tool against

political opponents and there has been violation of the principle of checks and balances. These claims deliberately overlook the underlying illegal abuse of authority that is the basis of the case, and thus, are distracting and specious. The case arose in 2010 when the SID was investigating collective corruption among a group of Taiwan High Court judges, and in a related legal wiretap on the DPP whip's cell phone, it was discovered that he asked the LY Speaker to influence the judiciary in a case in which he, the DPP whip, was involved, resulting in his not guilty verdict being confirmed. It is not a case of struggle between individuals or political parties.

In most democratic countries, attempting to influence the judiciary constitutes the felony of obstruction of justice. However, Taiwan's Criminal Code does not yet contain stipulations against such a crime. Although Article 17 of the Legislators' Conduct Act prohibits such behavior, it specifies no penalties; thus, the Kuomintang (KMT, the ruling party) used the cancellation of party membership to discipline the violation of party bylaws by the LY Speaker, who is an at-large member of the LY.

Since 1999, three political parties—the KMT, DPP and Taiwan Solidarity Union—have rescinded or cancelled the party membership of at-large members of the National Assembly (including the speaker of the National Assembly at the time) and LY. This, according to Article 73 of the Public Officials and Representatives Election and Recall Act, caused them to forfeit their credentials as elected representatives.

This disciplinary method is based in law and has been exercised in years past. Since it pertains to internal party discipline, it cannot be construed as a tool used against another political party or a breach of the separation of powers. On the contrary, this case involving a legislator attempting to influence the judiciary and affect the results of a judicial verdict raises concern of a breach of the separation of powers. Since the onset of this case, the government has operated in due process pursuant to the Constitution and the law, striving to uphold the independence of the judiciary and prevent interference, in defense of the constitutional spirit of the separation of powers.

III. The case is about judicial influence peddling and interference with the judicial process

The joint statement's claim of executive interference in the judicial process is unfounded. Had it referred to influence peddling and interference in the judicial process by legislators, it would have been accurate. As stated above, this case arose when the DPP whip asked the LY Speaker to exert his influence in a case involving the whip, so that his not guilty verdict would be confirmed. This conduct clearly constitutes interference in the judicial process, which is why the SID disclosed the case on September 6. The MOJ has repeatedly provided exhaustive explanations of the pertinent facts and legal bases of these cases.

A considerable portion of the joint statement refers to the charges brought

against former President Chen Shui-bian and resulting verdicts. Chen is an inmate sentenced to 20 years incarceration by a court of law for several acts of corruption, and is not a political prisoner or prisoner of conscience. On many occasions, the government has released online updates of his health care and treatment while in prison. Therefore, the joint statement's references to Chen have no connection with any "constitutional crisis," but instead reveal that some foreign observers lack both understanding of the ROC judicial system and respect for the verdicts of the courts arrived at through strict judicial procedures. This state of affairs is most regrettable.

IV. Dedicated to judicial reform, President Ma has never interfered in an individual case

The joint statement alleges that President Ma openly criticized the verdict when the Taipei District Court found former President Chen not guilty of corruption on November 4, 2010, in a case related to the government's second financial reform. The statement further interprets the president's dinner invitation a few days later to heads of judicial agencies as influence peddling. This is a gross, malicious twisting of the facts.

In September 2010, civic organizations launched the White Rose campaign in response to lenient sentences for child molesters, attracting widespread public attention; in November of that year when the Taipei District Court handed down Chen's not guilty verdict, it also raised doubts in the mind of the public.

Responding to society's dissatisfaction with the judiciary, in his remarks at the dinner November 9 President Ma explained his views on overall judicial reform to the president and vice president of the Judicial Yuan (the highest branch of the judiciary), premier and vice premier of the Executive Yuan (Cabinet), minister of justice, and prosecutor general.

He especially pointed out the need for speedy enactment of the Judges Act and Organic Act of the Ministry of Justice Agency Against Corruption (both were enacted in 2011) which the government had been strongly promoting, in response to public expectations. He stressed that as president he had to strictly uphold the constitutional separation of powers and thus could not interfere in any individual case under judicial review.

President Ma added that the judiciary must maintain its independence, but without being isolated from society; nor could it depart from the people's reasonable expectations for justice under the law.

Thus President Ma has never wavered in his respect for the judiciary and refusal to interfere in any individual case. The joint statement's allegation of influence peddling by President Ma is clearly a deliberate misinterpretation of his remarks in an attempt to mislead public opinion.

The government once again urges concerned foreign observers to accord the ROC's democracy and rule of law the same respect they accord to other democracies. They should honor the principle that "it is up to the people and political system of Taiwan to resolve" the situation, as

espoused by the joint statement itself. Everyone should cherish the democracy long upheld by the government and people of the ROC and protect the human rights achievements so arduously won.