

Art of the covenant

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Jerome A. Cohen

Taiwan celebrated International Human Rights Day on Thursday in the best possible fashion – by implementing the provisions of the world’s two most important human rights treaties as domestic law.

Because Taiwan is currently excluded from the United Nations, its recent ratification of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights could not gain formal recognition by the world community. Yet this does not prevent the “domestication” of these treaties to consolidate Taiwan’s evolving democracy and rule of law.

Now, the conduct of all levels of Taiwan’s government institutions must conform to the two covenants, not only by avoiding human rights violations but also by protecting people from infringements by others and by promoting the realisation of human rights.

This is not empty talk. A reporting system is being established to monitor progress, funds will be allocated to relevant activities on a priority basis and all laws, regulations, directives and administrative measures must be reviewed to assure their compatibility with the covenants. Any that are incompatible must be abolished, amended or replaced within the next two years.

The Ministry of Justice has been given the task of establishing human rights training programmes for all officials as well as prosecutors and judges. Scholars, lawyers, other experts and Taiwan’s dynamic civic organisations have also begun to submit proposals for reform. That’s quite a change from the

authoritarian rule of Chiang Kai-shek.

The situation in mainland China is more complex and less promising. Beijing has ratified over 20 international human rights documents, including the economic, social and cultural covenant, as well as the covenant against torture.

But the civil and political rights covenant presents a much higher mountain to climb, since it commits countries not only to democratic and religious freedoms but also to comprehensive guarantees of due process of law in the administration of criminal justice. Although Beijing signed this covenant 11 years ago, big gaps exist between mainland realities and this covenant’s demands. The Communist Party harshly suppresses the slightest sign of unauthorised political activity. Unapproved religious practitioners are harassed and frequently punished.

The police send tens of thousands to “re-education through labour” for up to four years without the approval of any prosecutor or judge. More serious offenders are subjected to longer, criminal punishment after procedures that often fail to meet minimal international standards.

Yet the situation is not hopeless. Certain legal reforms, such as the revision of appellate procedures for reviewing death penalty decisions, are under way.

Although Beijing failed to ratify the civil/political convention prior to last year’s Olympics, as some had expected, the leadership continues to support ratification in principle, and many devoted Chinese officials and scholars are drafting the legislative revisions required for implementing the covenant.

Optimists cite possible straws in the wind. After years of government denials, an official magazine recently acknowledged the existence of the “black jails” that have illegally punished many petitioners seeking to right various grievances. And, last week, the media emphasised that, in 2008, Premier Wen Jiabao (溫家寶) acknowledged the need to improve the legal system to reduce injustices.

The mainland can narrow the gaps between current conditions and international standards by ratifying the covenant with limited reservations that insulate certain defects from UN monitoring, at least temporarily, while it gradually makes the necessary reforms.

This is what the United States did, to an excessive extent, when it ratified the covenant in 1992, allowing it to enter the process for universalising basic values that should be observed by all states.

The UN is eager for China to accept the covenant and will undoubtedly offer the same patience, flexibility and assistance that it has granted many other states with human rights deficiencies. Now China is a world economic force, it wants to demonstrate its “soft” political power as well.

There is no better way to do so than by ratifying the civil/political covenant. Just as entry into the World Trade Organisation improved the country’s economic position at home and abroad, entry into the covenant will improve both its international and domestic political standing.

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