

Report

International Fact-finding Mission

The Death Penalty in Taiwan: Towards Abolition?

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The opinions expressed in this document are those of the FIDH only and can not be attributed to the European Union.

Foreword: Why Mobilise Against the Death Penalty?

FIDH is strongly opposed to the death penalty. FIDH considers it to be contrary to the very notions of human dignity and liberty. Furthermore, the death penalty has been proved to be entirely ineffective as a deterrent. Consequently, neither principles nor utilitarian considerations can justify the use of capital punishment.

1. The death penalty is inconsistent with notions of human dignity and liberty

Human rights and human dignity are universally acknowledged as fundamental norms that form the basis of politically organised society. The death penalty directly contradicts this premise and is based on a misconception of justice.

Justice is based on freedom and dignity: a criminal can and should be punished only when he or she freely committed an act that disrupts the legal order. It is for this reason that minors and insane persons cannot be held responsible for their actions in a criminal justice system.

Because it is irreversible, the death penalty presents a contradiction between the premise of its imposition—freedom and conscience in acting—and the fundamental values of human dignity and liberty, which make human and social change possible.

Human freedom is indeed defined as the possibility to change and transcend a given life situation. In the case of the criminal justice system, this means there must be the redemptive opportunity for rehabilitation and re-socialisation. The irreversibility of the death penalty undermines this fundamental notion of freedom and dignity

The irreversibility of the death penalty presents another serious threat to justice and human dignity. Even in the most sophisticated legal system, with the strongest framework of judicial safeguards and guarantees of due process, the possibility of miscarriages of justice remains. Capital punishment can result in the execution of innocent people. It was for this reason that Governor Ryan of the state of Illinois in the United States, decided to impose a moratorium on death penalty, after having discovered that thirteen detainees awaiting execution were innocent of the crimes of which they had been convicted. In January 2003, Governor Ryan decided to commute 167 death sentences to life

imprisonment. The report of the Illinois Commission on Capital Punishment stressed that: ‘no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death’.

When innocent people are executed, “society as a whole - i.e. all of us - in whose name the verdict was reached, becomes collectively guilty because its justice system has made the supreme injustice possible” said Robert Badinter, French Minister of Justice, in 1981. For society as a whole, accepting the possibility of condemning innocent people to death is entirely contrary to the fundamental principles of human dignity and justice.

Justice is based on human rights guarantees: The existence of human rights guarantees is the distinctive character of a reliable and legitimate judicial system; notably, the right to a fair trial – including, for example, the rejection of evidence obtained through torture or other inhuman and degrading treatment. From this perspective, FIDH is convinced that the full respect of these human rights and the rejection of legally sanctioned violence are at the core of the legitimacy of any criminal justice system. Justice, particularly when it concerns the most serious crimes and the life of the accused is at stake, should not rely on chance and fortune. The life of an individual should not depend on contingent factors such as jury selection, media pressure and the competence of a defence attorney. The rejection of inhumane sentences, first and foremost the death penalty, clearly contributes to the building of a judicial system based on universally accepted principles, in which vengeance has no place and in which the population as a whole can trust.

The death row phenomenon refers to the conditions of detention of a person condemned to capital punishment while awaiting the execution of the sentence. The usual conditions of detention - notably its long duration, the total isolation in individual cells, uncertainty in relation to the moment of execution and deprivation of contact with the outside world, sometimes including family members and legal counsel – in many cases amount to cruel, inhuman and degrading treatment.

Furthermore, FIDH emphasises that the death penalty is often applied in a discriminatory manner, for example, in the USA, where it is applied disproportionately to people from ethnic minorities, or impecunious defendants, or in Saudi Arabia

where foreigners are more likely to be sentenced to the death penalty. Such practices violate the universal principle of non-discrimination, which at its base addresses the fundamental equality and human dignity of all persons, regardless of their background and personal attributes.

Justice is fundamentally different from vengeance. The death penalty is a remnant of an outmoded system of criminal justice based on vengeance: that he or she who has taken a life should suffer the same fate. If applied consistently, this would mean stealing from the stealer, torturing the torturer and raping the rapist. Justice has risen above such a traditional notion of punishment by adopting a principle of a symbolic, yet proportional sanction for the harm done, including fines, imprisonment and other disposals, which preserve the dignity of both victim and perpetrator.

Furthermore, FIDH does not believe in the supposed necessity of the death penalty as a means to vindicate victims and their relatives. FIDH reaffirms that the victim's right to justice and compensation is fundamental in a balanced and fair justice system. A solemn and public recognition by a criminal court of the suffering of the victim plays an important role in meeting the need for vengeance (through the pronouncement of 'judicial truth'). FIDH maintains that answering the call for justice by the death penalty serves only to relieve the basest emotional need for vengeance and does not serve the cause of justice and dignity (even that of the victims) as a whole. Paradoxically, the victims' dignity is itself better served by rising above vengeance. The recognition of the victim in the criminal procedure responds to his or her need to be acknowledged as an actor for whom the process has a particular and personal significance. Providing psychological support and financial compensation to victims also contributes to their feeling that justice has been done and that private vengeance is unnecessary and would result in no meaningful gain to the victim. If these issues are addressed, the argument that the death penalty is necessary to satisfy the victim's need for vengeance becomes largely irrelevant.

2. The death penalty is ineffective

Among the most common arguments in favour of the death penalty is that it reduces crime. The death penalty supposedly protects society from its most dangerous elements and acts as a deterrent for future criminals. These arguments have been empirically proven to be fallacious.

Does the death penalty protect a society from crime? It does not appear so: societies which apply capital punishment are

no less protected from crime than societies which do not, where other sanctions are available in order to protect society, notably imprisonment. Protection of society does not require the physical elimination of criminals. In addition, it can be argued that the precautions taken to avoid suicide by death row inmates demonstrate that the physical elimination of the criminal is not the main aim of imposition of the death penalty: what seems to matter is that the sanction is executed against the will of the prisoner.

The ineffectiveness of the death penalty and other cruel punishments has been substantiated by a number of studies. Systematic studies undertaken in a number of different countries show that adoption and imposition of the death penalty does not contribute to a reduction in the crime rate. In Canada, for example, the homicide rate per 100,000 people fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980. In 2000, whereas in the United States there were 5.5 homicides per 100,000 people, in Canada there were 1.8 per 100,000 people.

The most recent survey of research on this subject, conducted by Roger Hood for the United Nations (UN) in 1988 and updated in 2002, concluded that 'the fact that the statistics... continue to point in the same direction is persuasive evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty'¹.

This conclusion should not be unexpected: a criminal does not commit a crime by calculating the possible sanction, and by thinking that he will get a life sentence rather than the death penalty. Furthermore, as Cesare Beccaria noted in the 18th century, 'it seems absurd that the laws, which are the expression of the public will, and which hate and punish murder, should themselves commit one, and that to deter citizens from murder, they should decree a public murder'.

Finally, FIDH notes that the application of the death penalty is very often an important indicator of the lack of respect for human rights in the country concerned, including the situation of human rights defenders.

3. Arguments from international human rights law

The development of international law has tended towards the abolition of the death penalty: the Rome Statute of the International Criminal Court and the UN Security Council resolutions establishing the International Criminal Tribunals

for the Former Yugoslavia and for Rwanda do not provide for the death penalty in the range of possible sanctions even though those jurisdictions have been established to try the most serious crimes.

Specific international and regional instruments have been adopted which seek the abolition of the capital punishment: the UN Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the Protocol on the Abolition of the Death Penalty (Organization of American States), Protocol 6 and the new Protocol 13 to the European Convention on Human Rights (Council of Europe) require the abolition of the death penalty. The Guidelines to the European Union (EU) Policy towards Third Countries on the Death Penalty, adopted by the EU on 29 June 1998, stress that one objective of the EU is 'to work towards the universal abolition of the death penalty as a strongly held policy view agreed by all EU member States'. Moreover, 'the objectives of the European Union are, where the death penalty still exists, to call for its use to be progressively restricted and to insist that it be carried out according to minimum standards (...). The EU will make these objectives known as an integral part of its human rights policy'². The EU Charter of Fundamental Rights also states that 'no one shall be condemned to the death penalty, or executed'.

At the international level, even if the ICCPR expressly provides for the death penalty as an exception to the right to life

surrounded by a number of specific safeguards, the General Comment adopted by the Human Rights Committee clearly states that Article 6 on the right to life 'refers generally to abolition in terms which strongly suggest that abolition is desirable... all measures of abolition should be considered as progress in the enjoyment of the right to life'³.

Moreover, Resolution 1745 of 16 May 1973 of the United Nations Economic and Social Council (ECOSOC) invited the Secretary General to submit, at five-year intervals, periodic updated and analytical reports on capital punishment. In its Resolution 1995/57 of 28 July 1995, the Council recommended that the quinquennial reports of the Secretary-General should also deal with the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty⁴.

On 8 December 1977, the UN General Assembly also adopted a resolution on capital punishment stating, 'The main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment'⁵.

Each year since 1997, the UN Commission on Human Rights has called upon all States that still maintain the death penalty to 'abolish the death penalty completely and, in the meantime, to establish a moratorium on executions'⁶.

1. Roger Hood *The Death Penalty: A Worldwide Perspective* 3rd ed (Oxford University Press: London, 2002) 214.

2. <http://www.eurunion.org/legislat/DeathPenalty/Guidelines.htm>.

3. UN Human Rights Committee General Comment 6 on the right to life (art. 6), 30/04/1982, paragraph 6.

4. ECOSOC Resolution 1984/50 of 25 May 1984.

5. UN General Assembly Resolution 32/61, 8 December 1977, paragraph 1.

6. UN Human Rights Commission Resolution 2005/59, UN Doc. E/CN.4/2005/L.77, 15 April 2005, paragraph 5(a).

I. Introduction and Background to the FIDH Mission in Taiwan

1. Introduction

In the context of its involvement in the international campaign for the abolition of the death penalty, FIDH carries out international fact-finding missions in States where this inhumane penalty is still being applied.

The missions pursue four aims:

- (1) To stigmatise this inhumane punishment. 86 countries have abolished the death penalty in law, 11 have abolished it for all but exceptional crimes such as war crimes, and 25 countries can be considered abolitionist de facto: they retain the death penalty in law but have not carried out any executions for ten years or more;
- (2) To show that, in general, prisoners condemned or executed throughout the world did not benefit from the right to a fair trial, as enshrined in the 1948 Universal Declaration of Human Rights and the ICCPR. This makes their state-sanctioned executions all the more unacceptable and raises more general concerns regarding the justice system under investigation;
- (3) To shed light on and denounce the treatment of death row inmates from conviction to execution; the situation of these inmates often amounts to 'cruel, inhuman and degrading treatment', in violation of international human rights law; and
- (4) To formulate recommendations addressed to the relevant State authorities of the country concerned and other relevant actors, in a spirit of dialogue, in order to support local efforts towards the abolition of the death penalty or, as a first step, the adoption of a moratorium on executions.

The present report is the result of an international FIDH fact-finding mission that focused on the death penalty and the administration of criminal justice in Taiwan. The FIDH delegation was comprised of three human rights lawyers, Siobhan Ni Chulachain, of Ireland, Barrister-at-Law and FIDH Vice-President, Sharon Hom, of Hong Kong and the United States, Executive Director of Human Rights in China and Penny Martin, of Australia, Barrister and Solicitor, in Taiwan from 3 – 12 September 2005.

FIDH would like to sincerely thank the Taiwan Alliance to End

the Death Penalty (TAEDP) and particularly its members, the Judicial Reform Foundation (JRF) and the Taiwan Association for Human Rights (TAHR), for their outstanding support of this mission, which greatly contributed to its success. The mission was impressed by the vibrant civil society in Taiwan that is working in a concerted manner to achieve the abolition of the death penalty and reforms of the administration of justice.

FIDH would like to thank the Taiwanese authorities for their cooperation with the mission. The mission had the opportunity to meet with high-level actors, including the President, the Judicial Yuan, the Ministry of Justice and the Ministry of National Defense. The authorities approached the meetings in the spirit of openness, dialogue and cooperation. The mission was also authorised to visit the Taiwan Taipei Detention Center and Taiwan Kaohsiung Second Prison, where it was able to view the execution chambers and meet with death row inmates. The mission was not permitted to view the death row cells in these two facilities, apparently due to security concerns. The mission regrets that victims' groups who support the death penalty refused to meet with the mission, as it would have wished to express their views in this report. However, the mission met with members of two families of victims. The mission met with over 70 individuals, including authorities, members of the legal profession, academics, NGOs, religious leaders, media representatives, death row inmates and their families and victims and their families⁷. The views of the individuals range from support for the complete abolition of the death penalty to a demand for the retention and implementation of the death penalty. The general position of the persons met by the mission was that public opinion is still very much in favour of the death penalty (see below).

2. The history and overview of the death penalty in Taiwan

The application of the death penalty and the method of execution in Taiwan have varied according to the period. During the Martial Law period in Taiwan (pre 1987), the death penalty was frequently imposed. It was possible to be sentenced to death for the theft of \$4,000 (US). From 1982 to 1985, at least 102 individuals were sentenced to death; at least 32 people were actually executed⁸.

Executions increased dramatically after the lifting of martial law in 1987, with 69 people executed in 1989,⁹ three times

the number of the previous year. At least 19 people were executed by firing squad in 1998 alone and the death penalty remained mandatory for 65 different offences. The timing of executions appeared to be arbitrary - they were carried out sporadically, on the orders of the Minister of Justice who signed an execution warrant. Families, lawyers and victims were not informed in advance and the Ministry of Justice did not generally publicize the fact that an execution had occurred¹⁰.

In late April 2000, president-elect Chen Shui-bian took action on the abolition of the death penalty for the first time in Taiwan's history, in response to the Pope's call for its abolition. President Chen Shui-bian has since repeatedly attempted to turn the death penalty into a public issue.

Some moves have been made by the government to reduce the number of offences carrying the death penalty, or at least the mandatory death penalty. The Ministry of Justice proposed abolition of the controversial Act for the Control and Punishment of Banditry that mandates the death sentence for several crimes, and at the same time drafted relevant amendments to the criminal code. After its review by and passage through the Legislative Yuan, the Act was formally abolished and the amendments promulgated on January 30, 2002; life imprisonment thereby replaced the mandatory death penalty for the offence of kidnapping leading to murder¹¹.

In 2003, Taiwan unveiled its draft of the Human Rights Basic Law, which includes provisions calling for the gradual abolition of the death penalty. Since 70% of the Taiwanese public is reportedly against the abolition of the death penalty,

it was argued that there would need to be a transition period during which the death penalty would remain in law, but no executions would be carried out¹². In 2004, the government made no move to introduce such a moratorium on executions. Amendments to the Criminal Code were passed by the Legislative Yuan on 7 January 2005, which will take effect on 1 July 2006. These amendments have reduced the number of offences carrying the death penalty¹³.

The Taiwan Criminal Code retains harsh penalties for many crimes, including the illegal use or possession of a wide range of drugs, with sentences ranging from long prison terms to life imprisonment to death. However, on January 7th, 2005, the death penalty for individuals under the age of 18 was abolished. Neither the death penalty, nor life imprisonment are allowed for individuals over the age of 80.

During 2005, three persons were executed, including a pair of brothers, Lin Shin Hong and Lin Meng Kai, who were executed in December, and 8 persons had their death sentences confirmed.

A total of 195 executions were carried out in Taiwan between the years 1994 - 2004. According to official statistics cited by the Ministry of Justice, there were 32 executions in 1998, 24 in 1999, 17 in 2000, 10 in 2001, 9 in 2002, 7 in 2003, 3 in 2004, and 3 in 2005. In 2006, as of the end of April, no inmate had been executed yet.

At the time of the FIDH mission, the number of death row inmates was - and still is - unknown, while 14 of them had their sentences confirmed.

7. See Appendix 1.

8. International Committee for Human Rights in Taiwan, "Taiwan Communiqué no. 22", October 1985, <http://www.taiwandc.org/twcom/tc22-int.pdf>

9. International Committee for Human Rights in Taiwan, "Taiwan Communiqué no. 45", August 1990, <http://www.taiwandc.org/twcom/tc45-int.pdf>

10. Amnesty International, "Taiwan (Republic of China) The death penalty and use of lethal injection" Nov 1, 1998,

<http://web.amnesty.org/library/Index/ENGASA380031998?open&of=ENG-TWN>

11. "The policy of the Ministry of Justice, Taiwan with regard to abolition of the death penalty," <http://www.moj.gov.tw/english/file/execution.pdf>.

12. The Peking Duck, "Taiwan moves to abolish the death penalty", Nov 8, 2003, <http://pekingduck.org/archives/000660.php>.

13. See below.

II. Perspectives Regarding the Death Penalty in Taiwan

The views of the individuals met by the Mission range from support for the complete abolition of the death penalty, to a demand for the retention and implementation of the death penalty. Public opinion in favour of the death penalty was cited by many of the individuals the mission met with. However, in these discussions, the mission emphasised that the protection of human dignity and freedom is not contingent upon public opinion. The education of the public is an important leadership challenge.

1. Public opinion

Public opinion was cited as strongly against the abolition of the death penalty. However, a significant number of people also approve the replacement of the death penalty with life imprisonment.

Elites and decision-makers frequently refer to public opinion surveys as a gauge of public views on the death penalty. Notable amongst these is the survey carried out by Professor Ben Chang Shia of Fu Jen University in 2001,¹⁴ in which 79.7% of respondents said they support the death penalty¹⁵. 68.1% of respondents said that they would be willing to carry out an execution or sentence a person to death themselves. However, 50.1% said they believe that life imprisonment can replace the death penalty (48% of respondents believed it cannot). Approximately 60% of people support the death penalty because they believe it maintains the social order and because serious crime must be severely punished. 80% of respondents said they are not satisfied with public order in Taiwan.

A wide range of individuals who met with the mission ascribed the level of public support for the death penalty to a cultural belief in retribution and an 'instinctive desire for vengeance'¹⁶. There is a belief that human nature can be fundamentally evil and irredeemable, that serious criminals should pay for their crimes with their lives (particularly where their crime has resulted in a loss of life) and that extreme punishment is needed to curb behaviour (expressed by the concept that 'harsh punishment is a must to rule in chaotic times')¹⁷. There is a fear that if the death penalty is removed, the social order will disintegrate. These beliefs are seen to stem from a combination of Chinese cultural values and historical experience in Taiwan.

Opponents argue that the death penalty is not a necessary part of 'Chinese culture', rather a product of an agrarian

society which no longer exists¹⁸. Furthermore, opponents of the death penalty point out that forgiveness and redemption are also a part of Chinese culture, and has roots in Buddhism, Islam, and Christianity. One scholar pointed out that where the Koran states an eye for an eye, the victim's family can also forgive.

However, there have also been circumstances where public opposition to the death penalty has been apparent, particularly when questions have arisen as to the innocence of persons convicted. For example, the case of the Hsih-chi Trio has raised public awareness of the weaknesses of the criminal justice system and begun to raise the death penalty as a question for public debate. Distrust of the police and the judiciary is particularly prevalent, which, paradoxically has sometimes resulted in both greater and lesser support for the death penalty. Nevertheless, debate on the fundamental acceptability of the death penalty is extremely limited. Despite distrust of the police and the courts, a belief still exists that the system is capable of identifying the guilty and that the guilty must be executed.

A number of people ascribed the support for the death penalty to an 'apathetic mass of ordinary people'¹⁹. The mission was told that the existence of the death penalty is generally taken for granted but that few people have really thought about it. There is very little information available about the death penalty and human rights education has, until recently, been virtually non-existent.

Furthermore, the mission was also told that it is generally not socially acceptable to express views against the death penalty. This could be seen, in part, to reflect the recent history of Taiwan where it was simply dangerous to question government policy and raise human rights issues. In addition to general methodological issues presented by opinion polls, these factors could influence public opinion polls, which, indeed, may not reflect the full extent of the opposition to the death penalty in Taiwan.

2. Prisoners and their relatives

The mission had the opportunity of meeting prisoners who were on death row and their families, as well as the families of persons who had already been executed. The mission also met with the "Hsih-chi Trio", whose experiences on death row and with the Court system constituted a valuable source of information for the mission.

Without exception, the prisoners and families who spoke to the mission were opposed to the death penalty. All felt that the punishment was inhumane and should be replaced by long prison sentences. Worryingly, all of the persons who spoke to the mission expressed dissatisfaction with the police, investigation, and judicial processes which led to the imposition of the death penalty and many complained about inadequate service from lawyers appointed by the Court. All hoped that the system could be improved so that others would not have similar experiences.

The concerns expressed by the prisoners and their families were consistent with opinions expressed by professionals working within the system and by academic commentators met by the mission.

3. Victims and their relatives

Respect for victims' rights is an important aspect of the criminal justice system. The mission was told that in the past, victim's rights were neglected while the perception was that the rights of an accused person were prioritised. Obviously, the rights of a person accused of a crime and confronted with the mechanisms of the State are very important, but this does not minimise the importance of respecting the rights of victims. In Taiwan, an association for the protection of victims and their families was established about 7 years ago by the Government, and its work on behalf of victims is funded from Government coffers, as well as by individual donations.

The Association's work focuses on the needs of victims and their families for legal representation, speedy and adequate compensation, and for counselling. The Association itself does not take a position on the death penalty.

The mission is aware of the existence of a non-governmental organization working for the protection and promotion of the rights of the police and their families, especially children of deceased police, but regrettably that organization did not wish to meet with the mission delegates, and it was therefore not possible to ascertain their views on the death penalty. The organization was founded by Ms. Bai Bing-Bing after her daughter's death of kidnapping and murder.

4. The influence of the media

There are four main newspapers in Taiwan, Liberty Times (published by the Liberty Times Group which also publishes the Taipei Times), Apple Daily, China Times and United Daily News. Taiwan has seven main cable television stations and

four terrestrial television stations. The mission met with journalists from China Times, United Daily News, The Public Television Service, The Central News Agency and Radio Taiwan International.

The media in Taiwan has developed significantly in recent years. All major newspapers have court and justice reporters. Until recently, executions were only reported after the event, but as there are now fewer executions, the media coverage of these cases has increased. Media reporting plays an important role, as the public and NGOs are often unaware that a case is pending and media reports on the confirmation of death penalty cases by the Supreme Court can often alert NGOs to a particular case. Furthermore, journalists often hear first about executions, through prison staff contacts.

The journalists met by the mission said that although the media is now willing to criticise the criminal justice system, it does not enter into a broader debate on the death penalty and whether it should be abolished. Rather, reports have been confined to fair trial or judicial conduct issues raised by a particular case, or they have simply reported on government announcements on the move towards abolition. The mission was told that there is very occasionally discussion of the issue on television political programmes.

The journalists said that they are under no pressure from the government, but rather that there is a financial pressure to sell newspapers and the public supports the death penalty. This can result in a type of 'commercial censorship' and undermining of the media's role to inform public debate on important issues of the day.

Families of victims and of death row inmates strongly criticised the conduct of the media in reporting on crime. They said that the media is intrusive and sensationalist and, in reporting on pending cases, often conducts 'trial by media'. Journalists often obtain information about suspects directly from police contacts and report on the identity of these persons and the evidence from the police perspective, even before suspects are charged or brought before a court. Furthermore, in high profile cases, police sometimes hold press conferences when a suspect is identified. The mission was told that the representation of suspects in the media is highly influential in forming public opinion, which can jeopardise the right to a fair trial. As a result, many perceive that a judge needs courage to acquit an accused when he or she has already been tried and convicted by the public and in the media.

5. The position of the legal profession

The mission met with the members of the Taiwan bar, including the Taipei Bar Association. The official position of the Taipei Bar Association supports abolition of the death penalty. Before the Legal Aid Foundation was established, the Taipei Bar Association was the major organization that provided voluntary legal assistance to death row inmates. Since its formation, the Legal Aid Foundation has taken on this defence role. The Taipei Bar's anti-death penalty position remains the same.

Many members of the TAEDP and the Judicial Reform Foundation are lawyers and are working actively to abolish the death penalty as well as working on the drafting of legislation to form a national human rights commission. The mission also met with individual lawyers who have been working on death row cases, in the case of the Hsih-chi Trio, Mr. Su has been committed to their defense for almost 15 years.

6. The Authorities

a. The President

President Chen Shui-bian has publicly expressed his personal opposition to the death penalty and told the mission of his commitment to abolish it in practice in Taiwan. It has been an important part of the policy on human rights announced shortly after he took power in 2000. The President told the mission that he has had many years of involvement in the death penalty issue during his time as a legislator.

However, the President also cited the survey that found that 80% of respondents were against the abolition of the death penalty. Yet, he also acknowledged that this level of opposition would be likely to decrease if alternative or complementary measures were enacted. The President aims to reduce the number of death sentences pronounced and executions carried out and to gradually replace the death penalty with long sentences of life imprisonment. Progress has been made on this issue with amendments to the Criminal Code that were passed by the Legislative Yuan on 7 January 2005 and which will take effect on 1 July 2006; those amendments have reduced the number of offences with the death penalty and provided alternative sanctions. The President also plans to strengthen the regime for victim's compensation and to improve human rights education.

The President said that he felt that a strong stance by Taiwan on the abolition of the death penalty could assist its

neighbours, particularly Mainland China, in dealing with human rights issues, encourage a lifting of standards and also establish Taiwan as a 'beacon of democracy' in the region. It would also mean that Taiwan would join the global abolitionist movement.

On 27 October 2003, the President and Cabinet announced that legislation would be drafted to abolish the death penalty. These proposals have not progressed. The President told the mission that he believes Constitutional reform could incorporate provisions relating to the death penalty, international human rights and the national human rights commission as part of its second phase. Discussions are underway as to whether the provision relating to the abolition of the death penalty should be maintained in the final version of the Basic Human Rights Law, but no progress for the passage of that Law had been achieved by the end of April 2006. The President did not clearly indicate when abolition de jure will take place and what role there may be for a general moratorium or the use of his power of amnesty in this process.

The President also said that, at present, the opposition controlled Legislative Yuan is proving to be a significant barrier to reform. The Legislative Yuan has twice rejected the draft Basic Human Rights Law that incorporates international human rights norms into domestic law and the bills to establish a national human rights commission. For substantial structural change to take place, the support of the Legislative Yuan will be crucial.

The mission expressed the intention that this report be used by the government and by supporters of abolition in Taiwan as a tool to garner support, from both the Legislative Yuan and the public at large.

b. The Ministry of Justice

The Minister of Justice plays an important role in the administration of the death penalty. The Ministry initiates and conducts criminal prosecutions, it proposes amendments to the criminal law, it drafts and promulgates the administrative guidelines relating to appeals in death penalty matters and executions, it is responsible for assessing cases for amnesty and making recommendations on these cases to the President and it administers prisons (through the Department of Corrections) and regulates prosecutors and Public Defenders. Importantly, the Minister of Justice has an unfettered discretion to sign the execution order that is the final step before execution. In deciding whether to sign an execution order, the Minister can play a crucial role in the

debate on the death penalty and the move towards abolition. Furthermore, in performing its functions, the Ministry holds significant information on the death penalty and the criminal justice system.

Minister Shin Mao-Lin told the mission that the culture of retribution in Taiwan is a significant obstacle to abolition. Nevertheless, he acknowledged that the time has now come for significant legal change and public education on the death penalty. In May 2001, his predecessor, Minister Chen Ding-nan, stated his intention to abolish the death penalty by 2004. Yet, as noted in the Ministry's paper 'The Policy of Gradual Abolishment of Death Penalty', the Ministry considers that popular consensus on abolition must be established before it will propose significant legislative change²⁰. The paper cites the various legal amendments that have been made to prepare the way for abolition and the education and policy measures that are accompanying these changes²¹.

The Minister said he has declined to sign nine execution orders since he became Minister, which has led to these cases being considered for further appeal or a grant of amnesty. He did not state whether this approach has or will be adopted as policy. It was suggested to the Minister that the death penalty should, as a first step, be repealed for crimes that do not involve killing. The Minister said that this suggestion is currently being studied but that in any case the death penalty is rarely sought for crimes that do not involve killing.

The Minister also said that he is attempting to address issues relating to prison conditions and overcrowding. The latter issue will be of particular significance as penalties are increased overall and the death penalty is phased out. He said that at present, there are few resources to provide further prison places (although a former military building was supposed to be adapted for this purpose later in 2005). He acknowledged that, apart from being pressing and distinct human rights issues, ameliorating prison conditions and overcrowding will be an important part of the abolition process.

c. Prison Authorities

The mission met with prison authorities at Taiwan Taipei Detention Center and Taiwan Kaohsiung Second Prison. As might be expected, officials at these facilities consider themselves to be simply carrying out the law. They expressed the belief that if these functions are carried out 'properly',

they should feel no shame. At the Taiwan Taipei Detention Center, the mission was told that the prison staff were pleased to be able to show us that the execution chamber was a bright and clean place, so that the public will understand that executions are not carried out in 'dark and horrible' circumstances.

The Vice Warden of Taiwan Kaohsiung Second Prison did intimate to the mission that witnessing executions did have an impact upon him at a personal level. However, he said that no counselling is available for individuals involved in executions but that to his awareness no such individuals had expressed that they suffered lasting psychological effects as a result.

d. The Ministry of National Defense

The Mission was pleased to be able to have an open and frank meeting with the Minister for Defence and members of the defence forces involved in military law. Two military offences retain a mandatory death penalty, namely defiance of orders and false reporting during wartime causing detrimental results. The Minister expressed reservations about the abolition of the death penalty, as his view was that the offences for which it has been retained are extremely serious offences which affect the security of the State. With regard to any move towards abolition, the Minister reiterated public opposition to such a move and indicated that any changes would have to be gradual.

e. The Judicial Yuan

The Judicial Yuan (Judiciary) is the highest judicial organization of the state, with the Council of Grand Justices as its main body. According to Article 3 of the *Organic Law of the Judicial Yuan*, there shall be 17 grand justices. However, Article 5 of the *Additional Articles of the Constitution* reduced the number to 15, including the president and the vice president of the Judicial Yuan to be selected from among the members. The 15 grand justices are nominated and appointed by the President of the Republic, with the consent of the Legislative Yuan. The subordinate units of the Judicial Yuan are the Supreme Court, the high courts, the district courts, the Supreme Administrative Court, the high administrative courts, and the Commission on the Disciplinary Sanctions of Public Functionaries. The judiciary is responsible for civil, criminal, and administrative litigation, and also constitutional interpretation. It also has the power to discipline public functionaries.

The Judiciary exercises administrative supervision of the Republic of China (ROC, ie. Taiwan) court system, while enforcing compliance by ROC court personnel with constitutionally mandated judicial independence²².

The Mission met with members of the Supreme Court, which is the court of final appeal in the ROC judicial system. The Supreme Court has a president, who is responsible for the administrative work of the Court and is concurrently a judge. The Supreme Court is divided into 8 civil divisions and 12 criminal divisions. An appeal may be made to the Supreme Court only on grounds that a decision of a lower court violates a law or ordinance. Since the Supreme Court does not decide questions of fact, documentary proceedings are the rule, while oral arguments are the exception. Cases before the Supreme Court are tried by five judges.

The Supreme Court exercises jurisdiction over the following kinds of cases:

- appeals against judgments in civil and criminal cases by high courts or their branches as court of second instance;
- appeals against judgments of high courts or their branches in criminal cases as court of first instance;
- motions to set aside rulings of high courts or their branches in civil and criminal cases;
- appeals against or motions to set aside rulings of district courts or their branches as the court of second instance in civil summary proceedings; and cases of extraordinary appeal²³.

In conjunction with an announced policy to develop a “refined adversarial system” in September 2003, the Legislative Yuan passed the Legal Aid Act on December 23, 2003 (effective as of January 7, 2004, implemented on June 20, 2004). Legal aid is new to the judicial system and is designed to provide necessary legal services to persons who have limited or no financial means or who need legal help in connection with felony or other charges of serious offences or who are unable to fully represent themselves due to mental disabilities.

Under the Legal Aid Act, the Judicial Yuan is responsible for the establishment and fundraising for a foundation to implement legal aid. At the initial stage, five branches were officially opened in July 2004 in Taipei, Taichung, Tainan, Kaohsiung, and Hualien. On January 1, 2005, five more branches were opened simultaneously in Yilan, Taoyuan,

Hsinchu, Changhua, and Taitung. Branch offices of the Legal Aid Foundation had been established in all 25 counties in Taiwan by the end of April 2006.

The mission met with a number of judges of the higher courts. Views on the death penalty amongst judges varied. The mission met with one District Court judge, Justice Chen, who is strongly against the death penalty and has sought to persuade his fellow judges not to impose the death penalty, particularly in less serious cases, eg. drug cases. However, in cases where the majority of the bench decided to impose the death penalty, he said that a judge is required to follow the law. Other judges met by the mission expressed general scepticism about human rights principles and their application to domestic law, but did not express a clear view on the appropriateness of the death penalty. Judges were careful not to strongly express views against the death penalty, however, some judges implied that they did not personally support this punishment.

f. The Control Yuan

The Control Yuan is the branch of government charged with investigating allegations of abuse of power by government organizations and civil servants. After investigation, the Control Yuan may impeach, censure, fine or propose corrective measures if it finds that there has been an infringement of proper procedures. Its role in relation to the death penalty is restricted to assessment of procedures used during trials and to the correct deportment of the civil servants (i.e. the prosecutors and judges) involved in the trial. However, the Yuan may also recommend the taking of extraordinary appeals and the enhancement of human rights protections. The protection and promotion of human rights is a declared objective of the Control Yuan²⁴.

At the time of the mission, the Control Yuan was not functioning, due to the failure to finalise the nomination list of Control Yuan members. For this reason, the mission was not able to obtain the views of current Control Yuan members.

g. The Opposition

The mission met with Mayor Ma Ying-Jeou of Taipei City who is also Chairman of the Kuomintang (KMT). KMT is the leader of the Pan-Blue Coalition that it has formed with the People First Party. The Pan-Blue Coalition forms the majority in the Legislative Yuan. Mayor Ma was previously the Minister for Justice and during his time as Minister, refused to sign three execution orders (The Hsih-chi Trio), because he believed there had been flaws in the prosecution process.

The Chairman said that the statistics demonstrate that the population would feel insecure without the death penalty and that the level of support for it is high. He said that there is political consensus that the scope of application of the death penalty should be narrowed, particularly in the case of crimes for which the death penalty is mandatory. However, he said that in dealing with more serious crimes such as murder and rape, it will be more difficult to win public support. Therefore, KMT policy currently only envisages limiting the use of the mandatory death penalty. The party would like to see abolition in the future, but considers that this would only be possible once interim measures are put in place, crime prevention policies are implemented and when abolition would not adversely affect the public's support of the criminal justice system.

7. Abolitionist movements/NGOs

In Taiwan, one needs to take into account that civil society groups such as religious groups have long fulfilled an important social welfare and services function in Taiwan society. The relatively recent emergence of specific human rights groups has seen major progress in the past decade. In 2003, the Taiwan Alliance to End the Death Penalty (TAEDP) was formed by a large number of Taiwanese interest groups, including the Judicial Reform Foundation, the Taiwan Association for Human Rights, and Chang Fo-Chuan Center for the Study of Human Rights of Soochow University.

Prior to TAEDP's formation, the efforts to end the death penalty were limited and did not generate sustaining influences. In addition to TAEDP's efforts to promote a more just and humane criminal system, and abolish the death penalty, it is also trying to expand public understanding and discussion of the issues.

8. Religious authorities

Buddhism is the predominant religion in Taiwan. Three of the four most influential figures in Buddhism remain firmly opposed to the abolition of the death penalty. Master Cheng Yen, the leader of the Buddhist Compassion Relief Tzu Chi Foundation (Tzu Chi Foundation) expressed her compassion towards Liu Huan-Rong, an executed death row inmate when she was visited by then Legislator Hsieh Chi-Da in 1993. Meanwhile she said it took time and collective efforts of every citizen to make the society better.

Master Hsing Yun, the leader of Fo Guang Shan, which is based in Kaohsiung, considers that the death penalty conforms to Buddhist doctrines.

Master Sheng Yun has expressed personal support for the ending of the death penalty but does not believe that Taiwanese society is ready yet for it to be abolished. However, he holds the opposite opinion to Master Hsing Yun, considering that the death penalty is against Buddhist doctrines.

The fourth figure, Master Chaohui, is a nun and a professor who is involved in many social movements and has worked to improve and save the life of death penalty inmates. She has spoken publicly against the death penalty.

A number of Christian organisations have been involved in the campaign for the abolition of the death penalty and participate in prison visiting programmes with prisoners on death row. There is also a small number of Muslims in Taiwan, approximately 50,000 (of a total population of approximately 23 million), who are active on issues of minority rights and anti-discrimination. However, they have not been actively involved in the campaign against the death penalty.

14. The survey was conducted by telephone and was based on a sample of 1,381 respondents. It has been noted that phone surveys can sometimes not be entirely effective, as many people may refuse to accept the call, which may influence the results of the survey: Ben Chang Shia 'Survey on Abolition of the Death Penalty' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 77.

15. Broadly, supporters of the death penalty were most likely to be aged between 30-49 and educated to a middle school or technical school level. The largest group undecided on the question of the replacement of the death penalty with life imprisonment were those who had completed primary school or less: Ben Chang Shia 'Survey on Abolition of the Death Penalty' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 69.

16. Henry K M Chuang My Opinion Concerning Abolition of the Death Penalty 7 September 2005 (Paper provided to mission) 1.

17. Lee Yang-Huann *Taiwan's movement to end death penalty* (Soochow University Human Rights Research Center, Paper provided to mission) 1.

18. Edmund Ryden SJ 'Preface' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 7.

19. Edmund Ryden SJ 'Preface' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 13.

20. The Ministry of Justice *The Policy of Gradual Abolishment of Death Penalty* September 2005 (Paper provided to mission) 1.

21. The Ministry of Justice *The Policy of Gradual Abolishment of Death Penalty* September 2005 (Paper provided to mission) 3-7.

22. See <http://www.taiwan.com.au/Polieco/Government/Judicial/report01.html>.

23. <http://english.www.gov.tw/e-Gov/index.jsp?categid=30&recordid=52760>

24. See for example A General Report on the Work of the Human Rights Protection of the Control Yuan (1995 - 2005).

III. The International Legal Framework

1. The history of Taiwan's engagement with the international human rights community

Taiwan has been isolated from the international human rights community since it was excluded from the UN in 1971 due to the recognition of the People's Republic of China as the sole legitimate representative of China at the UN²⁵. Until 1971, Taiwan (under the name of the 'Republic of China') had represented the whole of China. It had been involved in the drafting of the International Bill of Rights and, notably, had, in 1967, signed but not ratified the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Taiwan maintains diplomatic ties with 25 States, but otherwise it is not recognised by other States that accept the 'One China' policy of the People's Republic of China.

Due to its exclusion from the UN and 38 years of military rule marked by severe violations of human rights, Taiwan became increasingly isolated from developments in the international human rights community. The level of awareness of human rights in Taiwan is extremely low²⁶. This has affected the development of the rule of law and the administration of justice in Taiwan and has had an impact on the beliefs and demands of its people. International human rights law is not referred to in judicial decisions and nor has it, until very recently, been taken into account in policy formulation.

However, in the process of democratization since the end of military rule in 1987, it has become increasingly apparent that Taiwan must re-engage with the international human rights community. Primarily, because governance and democracy can only be improved when human rights are respected and, secondarily, because it will demonstrate to the international community Taiwan's seriousness about rejoining the human rights movement that may lead to greater international recognition, if this is sought. Furthermore, Taiwan has obligations arising from its signature of the ICCPR and the ICESCR that must be respected²⁷.

There has been significant debate at the national level as to how this re-engagement might occur. Since 2000, the government has developed a human rights policy that resulted in the 2002 Human Rights Policy White Paper of the Republic of China (Taiwan)²⁸. The President has made a commitment to the 'building of a human rights state' through the strengthening of national human rights infrastructure and

re-engaging with international norms. The policy foresees the completion of ratification procedures at the national level for the ICCPR and the ICESCR (due to its international status, Taiwan is not currently able to formally ratify and bind itself to international treaties at the international level), enactment of a Basic Law on Human Rights incorporating the provisions of the Covenants and establishment of a national human rights commission, intended to be in accordance with the UN Paris Principles²⁹. There is also the more prospective goal of incorporating the provisions of the ICCPR and the ICESCR into the Constitution, to expand the existing human rights provisions (discussed further in the next chapter).

On 24 October 2000, the President established a Presidential Advisory Group of which the Vice-President is the Chairperson, to provide him with advice on human rights issues and work towards the establishment of a national human rights commission. In July 2001, a Human Rights Protection and Promotion Committee was established, headed by the Vice-Premier and comprised of Cabinet members, academics, lawyers, and human rights activists.

Yet progress on human rights has been slow. Many experts that met with the mission said that government enthusiasm for human rights reform has waned since 2004. There has also been debate in 2000 on whether a declaration or a reservation should be made to Article 1 (right to self-determination) and whether reservations should be made to Article 6 (on the right to life)³⁰ and 12 (freedom of movement) of the ICCPR. The Legislative Yuan approved ratification of the ICCPR on 31 December 2002 with a declaration to Article 1 of the ICCPR and reservations to Articles 6 and 12 of the ICCPR and Article 8 of the ICESCR. The Democratic Progressive Party had pushed for abolishing the declaration to Article 1 of the ICCPR and has submitted a reconsideration motion in accordance with Article 42 of the Legislative Yuan Rules of Procedure but it has not been discussed to date. The Bills to establish the national human rights commission and the Basic Law on Human Rights have been rejected several times by the Legislative Yuan.

It is also unclear what impact a Basic Law on Human Rights will have in domestic law. If the Law is to have no actionable provisions, it would rather work as an interpretative tool. This would be even more so if the Basic Law enjoys only equal status with domestic law, as suggested by Interpretation No. 329 of the Constitutional Court. However, it has been argued

that the Basic Law may have superior status as a 'special law' and hence take precedence over domestic law³¹. Evidently, constitutional amendment would be desirable to avoid these issues and give the Covenants direct precedence in domestic law. Whichever is the case, education on human rights will evidently be crucial to the success of domestic ratification and the building of an active human rights culture.

The enactment of the ICCPR in any form would be extremely important in the movement towards abolition, provided, particularly, that provisions relating to Article 6 are included. It would be a useful tool to limit the use of the death penalty (particularly for crimes that are not the 'most serious') and to strengthen the administration of justice on the basis of international norms, particularly as the Constitution is largely inadequate for this purpose. The current draft of the Basic Human Rights law includes provisions calling for the gradual abolition of the death penalty. The Law will also encourage moves towards enshrining abolition in the Constitution. Enactment would also be hoped to result in much needed improvements in the administration of justice.

2. The United Nations

As discussed above, Taiwan signed the ICCPR in 1967 when it was recognised at the international level as the Republic of China. It is generally accepted that, lacking recognition as a State in international law, Taiwan is unable to become a party to the Covenant. However, it can of course elect to implement these standards at the domestic level, and develop their domestic interpretation in accordance with international law.

Article 6 of the ICCPR recalls the inherent right to life for every human being. It provides that in countries that have not abolished the death penalty, it should be imposed only in relation to the most serious crimes. The General Comment on Article 6 of the ICCPR, issued by the monitoring and interpretative body established by the Covenant, the Human Rights Committee, clearly states that States Parties must move towards the abolition of the death penalty: 'the article also refers generally to abolition in terms which strongly suggest that abolition is desirable'. The Committee concludes that all measures of abolition should be considered as 'progress in the enjoyment of the right to life'³².

States Parties are obliged to implement the terms of the ICCPR in national law and policy and to make periodic reports to the supervisory mechanism for the Covenant, the Human Rights Committee, reporting on their progress. States Parties may also elect to ratify the First Optional Protocol to the

ICCPR, to allow individual communications to the Committee by persons alleging a violation of their rights under the Covenant by that State.

The Second Optional Protocol to the ICCPR further indicates the international normative movement towards abolition. It requires States to cease executions and to take all necessary measures to abolish the death penalty within their jurisdiction.

Further, the UN Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty specify a number of procedural guarantees to be applied in proceedings that may lead to the pronouncement of the death penalty. Notably, it states that 'Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts'³³ and that 'Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings'³⁴. Other UN instruments are relevant with regard to the conditions of detention of inmates, and also apply to death row inmates³⁵.

3. Regional standards

Asia is the only region in the world that has not established a regional or sub-regional human rights mechanism. The principal sub-regional intergovernmental organization, the Association of South East Asian Nations (ASEAN³⁶) has not developed a regional human rights strategy and the issue of the death penalty has not been raised in this forum. FIDH deeply regrets this lack of involvement on human rights issues at the sub-regional level, all the more so because 8 ASEAN countries out of 10 practise the death penalty.

The Asia Pacific Forum of National Human Rights Institutions³⁷ is the only regional organization that has tackled the issue of the death penalty. In December 2000, it published a reference report on the death penalty that made three central recommendations³⁸:

1. States should abolish the death penalty; the Council urged States to move towards *de facto*, and eventual *de jure* abolition of the death penalty.

2. Until then the death penalty should only be applied for the most serious crimes.

3. Safeguards surrounding its administration should rely on the provisions developed on the international level, notably in the ICCPR and its Second Optional Protocol, the Convention on the Rights of the Child and the Convention Against Torture.

The Asian Human Rights Charter, adopted by a range of Asian NGOs in 1998, states in Article 3.7 that 'All States must abolish the death penalty. Where it exists, it may be imposed only rarely for the most serious crimes. Before a person can be deprived of life by the imposition of the death penalty, he or she must be ensured a fair trial before an independent and impartial tribunal with full opportunity of legal representation of his or her choice, adequate time for preparation of defence, presumption of innocence and the right to review by higher tribunal. Execution should never be carried out in public or otherwise exhibited in public'.

4. The European Union

The EU follows a 'One China' policy and does not have any diplomatic ties with Taiwan. However, it maintains relations with Taiwan in the 'non-political' areas of economic relations, science, research and education and culture³⁹. The European Commission holds annual EC-Taiwan Consultations with Taiwan that cover all aspects of EU-Taiwan relations. The 17th consultation was held in Taipei on 28 June 2005⁴⁰. On 10th March 2003, the Commission established the European Economic and Trade Office in Taipei.

The Guidelines to the European Union (EU) Policy towards Third Countries on the Death Penalty, adopted by the EU on 29 June 1998⁴¹, stress that one objective of the EU is 'to work towards the universal abolition of the death penalty as a strongly held policy view agreed by all EU member States'. Even in light of the limited relations between Taiwan and the EU, the EU should be encouraged to raise this issue with Taiwan. The EU may also be able to offer technical assistance support for judicial reform and the abolition of the death penalty, as well as financial support for local NGOs active in those fields.

Although not directly relevant to Taiwan, the EU is engaged in a multilateral dialogue with a number of South-East Asian countries through the EU and ASEAN partnership. Political dialogue between the EU and ASEAN takes place at regular Ministerial Meetings. During the 14th EU-ASEAN Ministerial Meeting, held in Brussels on 27-28 January 2003, the

participants agreed to 'develop a comprehensive and balanced agenda for the future', among which the 'promotion of dialogue on issues of common concern, such as democracy, good governance, human rights and the rule of law' were considered priorities⁴². FIDH deeply regrets that, despite the fact that as mentioned above, eight ASEAN countries out of ten practise the death penalty, no public mention was made of this issue in the Joint Chair Statement of the subsequent EU/ASEAN Ministerial Meetings. This does not accord with the EU Guidelines on the Death Penalty adopted by the EU in June 1998 which state that 'where relevant, the European Union will raise the issue of the death penalty in its dialogue with third countries'⁴³.

Similarly, the EU is engaged in a multilateral dialogue with a number of Asian countries through the ASEM process. The ASEM process began in 1996 with the first Asia-Europe Summit in Bangkok, which brought together the Heads of State and Government of ten Asian countries (Brunei Darussalam, China, Indonesia, Japan, South Korea, Malaysia, the Philippines, Singapore, Thailand, and Vietnam) and of the fifteen Member States of the EU. The summit established an ongoing process, based notably on summit-level meetings every second year and regular ministerial meetings. The ASEM 5 Summit was held in Hanoi in October 2004 with the participation of 39 partners. Again on this occasion, the final Chairman's Statement resulting from the Summit does not make any reference to the death penalty.

Even where the EU is not in a position to raise the issue of the death penalty within the framework of its limited relations with Taiwan, a robust approach by the EU throughout the region will encourage Taiwan to take action.

5. The International Criminal Court (ICC)

The Rome Statute of the International Criminal Court (ICC), which entered into force on 1 July 2002, does not include the death penalty in its list of applicable penalties, consistent with the recent evolution in international criminal law (see, in particular, the Statutes of the Ad Hoc international criminal tribunals).

As discussed, as matter of international law, Taiwan is unable to sign and ratify the Rome Statute. However, Taiwan should be encouraged, wherever possible, to cooperate with the ICC and take any measures in domestic law to assist the work of the Court. Furthermore, although in relation to sentences handed down in a national jurisdiction, the ICC Statute does not affect the application by States of penalties prescribed by

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their national law (Article 80), the Rome Statute clearly indicates the strong impetus behind global movement towards abolition and current views on the acceptability of the death penalty at the international level. Indeed, while the death penalty is not provided for even the most serious crimes

covered by the ICC Statute - crimes against humanity, war crimes and genocide (as well as crime of aggression once a definition has been adopted) - it seems logical that steps be taken in Taiwan, as in other places, in order to repeal that penalty for lesser crimes at the domestic level.

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25. UN General Assembly Resolution 2758, 25 October 1971. Since exclusion, Taiwan has undertaken numerous of campaigns to regain membership: see, for example: <http://www.taiwandc.org/un-2001.htm>.
 26. The Research, Development and Evaluation Commission of the Executive Yuan 2002 *Human Rights Policy White Paper of the Republic of China (Taiwan)* (The Executive Yuan: Taipei, 2002), Summary.
 27. Signature of a treaty represents an undertaking to refrain from acts that would defeat the object and purpose of a treaty, according to Article 18 of the Vienna Convention on the Law of Treaties, which is widely considered to be customary international law: Fort Fu-Te Liao 'Plugging the Gaps: Death Penalty, Taiwan and International Law' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 212-213. See also Article 141 of the Constitution. However, loss of international recognition may possibly affect this result.
 28. The Research, Development and Evaluation Commission of the Executive Yuan 2002 *Human Rights Policy White Paper of the Republic of China (Taiwan)* (The Executive Yuan: Taipei, 2002).
 29. 'Principles Relating to the Status of National Institutions', UN General Assembly Resolution 48/134 of 20 December 2003.
 30. A reservation to Article 6 was made by Taiwan (as the Republic of China) when it signed the ICCPR in 1967.
 31. Fort Fu-Te Liao 'Plugging the Gaps: Death Penalty, Taiwan and International Law' in Edmund Ryden SJ (ed) *Taiwan Opposes the Death Penalty* (John Paul II Peace Institute: Taipei, 2001) 214-215.
 32. UN Human Rights Committee General Comment 6 on the right to life (art. 6), 30/04/1982, paragraphs 6 and 7.
 33. ECOSOC Resolution 1984/50 of 25 May 1984, paragraph 4.
 34. ECOSOC Resolution 1984/50 of 25 May 1984, paragraph 5.
 35. *UN Basic Principles for the Treatment of Prisoners* (UN General Assembly Resolution 45/111 of 14 December 1990), *UN Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment* (UN General Assembly Resolution 43/173 of 9 December 1988) and *Standard Minimum Rules for the Treatment of Prisoners* (ECOSOC Resolution 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). See also Articles 7 and 10.1 of the ICCPR.
 36. The members of ASEAN are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.
 37. The Asia Pacific Forum of National Human Rights Institutions is composed of 12 full member institutions from Australia, Fiji, India, Indonesia, Malaysia, Mongolia, Nepal, New Zealand, the Philippines, Republic of Korea, Sri Lanka and Thailand. See <http://www.asiapacificforum.net>.
 38. http://www.asiapacificforum.net/jurists/death_penalty/final.htm.
 39. Taiwan Representative Office in Belgium *Taiwan and the European Union: A Partnership into 2005* (Taiwan Representative Office in Belgium: Brussels, 2005) 19.
 40. http://europa.eu.int/comm/external_relations/taiwan/intro/.
 41. <http://www.eurunion.org/legislat/DeathPenalty/Guidelines.htm>. See also the EU Guidelines on the Death Penalty and the Communication on The EU's Role in Promoting Human Rights and Democratisation in Third Countries of May 2001 at http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm and http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf.
 42. 14th EU-ASEAN Ministerial Meeting, Joint Co-Chairman's Statement, paragraph 26, at http://europa.eu.int/comm/external_relations/asean/intro/14mmstat.htm.
 43. <http://www.eurunion.org/legislat/DeathPenalty/Guidelines.htm>.

IV. The Constitution and Domestic Legislation in Taiwan

1. The death penalty and the Taiwanese Constitution

The Taiwanese Constitution is entitled 'The Constitution of the Republic of China (1947)'. It establishes the five arms of government known as 'Yuan': Executive Yuan, Judicial Yuan, Legislative Yuan, Control Yuan and Examinations Yuan.

Article 78 of Chapter VII of the Constitution empowers the Judicial Yuan to interpret the Constitution and unify interpretations of laws and orders. Article 79 provides that the Grand Justices shall exercise the functions set out in Article 78. A law that is contrary to the Constitution is null and void (Articles 171 and 172).

Limited human rights provisions were introduced into the Constitution in 1991⁴⁴. The Constitution does not explicitly protect the right to life⁴⁵. However, Article 22, which has not been extensively explored, may provide wider protection guaranteeing 'all other freedoms and rights,' qualified by the phrase 'that are not detrimental to social order or public welfare'. Generally, the Constitution is considered to be neutral on the question of the death penalty.

An individual can file a petition with the Constitutional Court (formerly known as the 'Council of Grand Justices') once all judicial remedies have been exhausted⁴⁶. A petitioner can challenge the constitutionality of law or order applied by court of last resort and call also seek a unified interpretation of a law or order if decision does not accord with earlier jurisprudence. Two thirds of the 15 Grand Justices must vote in favour of an Interpretation. Constitutional arguments are not accepted in lower courts.

Constitutional Court interpretations have generally been conservative and literalist on the question of human rights. International norms are not used to interpret the Constitution. Until recently, the right of individual petition was not used in a dynamic manner⁴⁷ and constitutional education avoided questions of human rights.

Constitutional interpretations relating to the death penalty have not held that the death penalty is contrary to the Constitution.

In Interpretation No. 476 (1999), an interpretation was sought of the law providing for the death penalty for purchasers of

drugs. The reference did not challenge the death penalty itself, rather whether the relevant statute, which provided for the death penalty as a discretionary sentence, included purchasers of drugs. It was argued that a purchaser of drugs should not be punished for self-harm. The Court held that the petitioner's motions were not appropriate subject matter for judicial interpretation. However, it did hold that physical freedom and the right to life are expressly guaranteed by Articles 8 and 15 respectively of the Constitution but that those rights can be infringed upon by a criminal law without violating the principle of proportionality, if that law has 'due purposes, necessary means, and proper restrictions required by Article 23 of the Constitution'. The objective of preventing the ill-effects of narcotics was deemed important enough to justify the death penalty for anyone who engages in their sale.

Interpretation No. 512 (2000) reiterated this position, stating that it is settled law that the death penalty is available for drug trafficking. Both decisions also reflect the approach taken in Interpretation No. 194 (1985).

Interpretation No. 582 (2004,7.23) held that a defendant has a right to cross-examine co-defendants and witnesses. The failure to allow cross-examination violated the right to a fair trial set down by the Constitution.

2. Crimes punishable by the death penalty under domestic legislation

In Taiwan, 3 offences currently carry a mandatory sentence of the death penalty and a further 50 offences carry a discretionary death penalty. However, in accordance with its commitment to abolish the death penalty, the government has begun to repeal the death penalty for certain offences, replacing it with long life sentences.

On 7 January 2005, the Legislative Yuan approved amendments to the Criminal Code, which will take effect on 1 July 2006. Under these amendments, the present concurrent sentencing regime (capped at 20 years imprisonment) is abolished and replaced by cumulative sentencing to a maximum of 30 years imprisonment. A prisoner must serve 25 years of a life sentence before becoming eligible for parole (previously the non-parole period was 15 years). Repeat offenders are to be denied the right to parole in particular circumstances. The death penalty will only be reduced to life imprisonment if a reduction is merited. The

additional alternative of a sentence of between 30-40 years has been removed. The amendments also make changes in relation to the rights of suspects during investigations⁴⁸.

a. Offences for which the death penalty is mandatory

In Taiwan, 3 crimes carry a mandatory sentence of the death penalty. Article 3(2) of the Statute Governing the Punishment for Damaging National Currency provides the mandatory death penalty for the offence of 'causing major disturbance of the financial order or counterfeiting'.

Until reforms in 2001, 45 military crimes carried the mandatory death penalty. 43 of these crimes have now been repealed⁴⁹.

The Criminal Code of the Armed Forces now sets down two offences that apply specifically to the military during times of war and carry a mandatory death penalty. These are:

- Defiance of orders (Article 27);
- False reporting during wartime causing detrimental results (Article 66).

These offences are considered to be particularly serious because of the threat they pose to military interests. It is considered that their application is quite limited due to the fact they can only be committed in times of war.

On 8 January 2002, the Legislative Yuan repealed the Act for the Control and Punishment of Banditry 1944. This Act included ten offences that carried the mandatory death penalty. The Criminal Code was then amended to remove the mandatory death penalty for abduction and killing of the victim, permitting a sentence of the death penalty, life sentence or twelve years imprisonment⁵⁰.

It should also be noted that Articles 333 and 334 of the Criminal Code (piracy), which initially provided for a mandatory death sentence, were amended to discretionary death penalty on April 25, 2006⁵¹. Article 26 of the Anti-Sexual Business Provisions for Children and Teenagers (sexual assault of child or juvenile and deliberate killing of the victim) was also changed to discretionary death penalty on February 5, 2005.

In Interpretation No. 263 (1990), the Constitutional Court was asked to whether the mandatory death penalty in the Robbery Punishment Act (now repealed) violated the Constitution. The Court's decision implied that the mandatory death penalty may, in certain circumstances, be contrary to the Constitution if the

judge does not retain a discretion to reduce the penalty according to the particular circumstances. This discretion is contained in Article 59 of the Criminal Code⁵². However, this case may be particular due to the nature of the crime (kidnapping with the intention of receiving a ransom) and the fact that the statute itself provided for recourse to Article 59. As a result, that ruling does not mean that all mandatory death penalties would be ruled unconstitutional, particularly those relating to more serious crimes. Nor does the decision imply that Article 59 must always be used in mandatory death penalty cases.

As noted by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in his 2005 annual report, 'the legislation of a significant number of States provides for the death penalty to be mandatory in certain circumstances. The result is that a judge is unable to take account of even the most compelling circumstances to sentence an offender to a lesser punishment, even including life imprisonment. Nor is it possible for the sentence to reflect dramatically differing degrees of moral reprehensibility of such capital crimes'⁵³.

The most recent resolution on the question of the death penalty adopted by the UN Commission on Human Rights urges all States that still maintain the death penalty to ensure that it is not imposed as a mandatory sentence⁵⁴.

The Human Rights Committee stated in *Eversley Thompson v. St-Vincent and the Grenadines*⁵⁵ that 'such system of mandatory capital punishment would deprive the author of the most fundamental of rights, the right to life, without considering whether this exceptional form of punishment is appropriate in the circumstances of his or her case'. The Committee pointed out that the possibility of a pardon or a commutation of sentence would not change this result, so that 'the existence of a right to pardon or commutation...does not secure adequate protection to the right to life, as these discretionary measures by the Executive are subject to a large range of other considerations compared to judicial review in all aspects of a criminal case'.

In *Edwards and Others v. The Bahamas*,⁵⁶ the Inter-American Commission found that the imposition of the mandatory death penalty violated numerous provisions of the American Declaration on the Rights and Duties of Man.

The Eastern Caribbean Court of Appeal, in the case *Peter Hugues and Newton Spence v. The Queen*,⁵⁷ held that the mandatory imposition of the death penalty was unconstitutional, as it amounted to inhuman and degrading punishment.

The existence of the mandatory death penalty in Taiwanese criminal law is contrary to international human rights law. Furthermore, a number of the crimes would appear to fall short of the requirement that the death penalty be imposed for the most 'serious crimes' (see further in the following section), for example, crimes relating to the financial order, kidnapping, rape and arson. The mandatory death penalty is unacceptable even for the gravest of crimes, hence it is all the more unacceptable when the crimes for which it is pronounced are less than 'serious crimes'. Taiwan is strongly urged to repeal the 3 remaining crimes carrying the mandatory death penalty.

b. Offences for which the death penalty is discretionary

50 crimes carry the discretionary death penalty under Taiwanese law (see Appendix).

The Bill on Anti-Terrorism has not been approved yet. Both the versions drafted by Executive Yuan and Legislators are still in the legislative procedure. However, it might provide for the death sentence in certain circumstances.

In its resolutions 2004/67 and 2005/59, the UN Commission on Human Rights called upon all States that still maintained the death penalty "to progressively restrict the number of offences for which it could be imposed and, at least, not to extend its application to crimes to which it did not at present apply"⁵⁸. If the Anti-Terrorism Law eventually includes the death penalty as a sentence, it would be in clear contradiction with those resolutions.

It should be recalled that the General Comment on Article 6 of the ICCPR adopted by the UN Human Rights Committee clearly states that this provision "refers generally to abolition in terms which strongly suggest that abolition is desirable." As a signatory to this instrument, Taiwan should pursue the way to abolition, and at a minimum refrain from adopting new provisions imposing the death penalty.

Under Criminal Law of the Armed Forces, 19 crimes carry the death penalty as a discretionary sentence. These crimes only apply to members of the armed forces, and include:

- Theft and sale of ammunition
- Intent to destroy the organization of the State, seize State territory, change the Constitution, or overthrow the Government.
- Surrender to an enemy, espionage for an enemy, render any military aids or help to invade the military places or structures to an enemy, or discloses or delivers to an enemy the military

secrets.

- A commander that starts wars without cause.
- A commander who leaves the subordinate, leaves the assigned defensive place, or moves the post without authorization and causing detrimental results.
- Discards a document, plan, information, or electromagnetic record.
- Takes out military armaments, ammunition or other materials and leaves the position in service without reasons during wartime.
- Disobeys the military orders during wartime.
- Uses violence, threat to a commander during wartime.
- Kidnaps military vessel, aircraft or controls its navigation.
- Destruction of military airport, military vessel, aircraft, equipments, or other important military facilities during wartime.

The fact that Taiwanese legislation provides for the death penalty for a large number of crimes, including non-violent crimes, is contrary to international human rights standards.

According to paragraph 1 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 'capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences'⁵⁹.

In its General Comment to Article 6 of the ICCPR, the UN Human Rights Committee states that 'While it follows from Article 6 (2) to (6) that States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the "most serious crimes". Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the application of the death penalty to the "most serious crimes"'. The Article also refers generally to abolition in terms which strongly suggest (paragraphs. 2 (2) and (6)) that abolition is desirable ...The Committee 'is of the opinion that the expression "most serious crimes" must be read restrictively to mean that the death penalty should be a quite exceptional measure'⁶⁰.

In 2002, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions said that these restrictions exclude the possibility of imposing the death sentence for economic and other so-called victimless offences, actions relating to prevailing moral values, or activities of a religious or *political nature - including acts of treason, espionage or other vaguely defined acts usually described as "crimes against the State"*⁶¹. (emphasis added).

FIDH considers some of the offences for which the death penalty is mandated or discretionary under Taiwanese law, for example, drug offences, do not meet the threshold of 'lethal or other extremely grave consequences' and, hence, may not be among the most serious crimes according to the UN Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty and the ICCPR.

The mission considers that Taiwan should repeal the death penalty for all crimes and replace it by life sentences with a higher threshold for parole (with the eventual aim of moving towards the possibility of earlier parole where the prisoner displays signs of rehabilitation). If this is not currently possible, all steps should be taken to drastically reduce the number of death penalty offences to those representing the most 'serious crimes', and in the case of judges, to actively use Article 59 to avoid pronouncing the death penalty (that article confers sentencing discretion on judges, enabling them to, amongst other things, reduce the death penalty to life imprisonment – see above).

3. Imposition of the death penalty on vulnerable people

The mission was told that in Taiwan, the death penalty is not imposed on pregnant women, minors, elders over the age of 80 or mentally ill persons, which is in compliance with Article 6(5) of the ICCPR, according to which 'sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women', and paragraph 3 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, which provides that 'persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane'.

However, it is understood that, with the exception of minors and those over 80 of age, the protection of vulnerable people from the death penalty is not set down in law, but is simply a matter of practice. In practice, it seems that no vulnerable people were executed since ten years, although one has to note that certain local experts suspect that some executed inmates were mentally unsound. To meet international standards, Taiwan is urged to enact law to this effect as soon as possible.

a. Pregnant prisoners

To the knowledge of the mission, there is no prohibition on the execution of pregnant prisoners in Taiwanese law. It is not

known whether the possibility of pregnancy is checked before a woman is executed. However, it appears that late term pregnant women and new mothers are not held in prison, and presumably could not be executed. At Taiwan Kaohsiung Second Prison, the mission was told that women are provisionally released if they are more than 5 months pregnant and for a period of two months after the birth⁶².

b. Minors (under 18 years of age)

On 9 October 2002, the death penalty was removed for people under 18 who murder family members. The maximum penalty is now life imprisonment with the possibility of parole. This was confirmed in the amendments to the Criminal Code passed on 7 January 2005, with the repeal of the death penalty for persons under 18 who murder direct lineal relatives. As a result of these amendments, persons under 18 are no longer subject to the death penalty for these offences, in accordance with Article 37(a) of the CRC⁶³. According to the amendment of Criminal Code, Article 63, persons who are under 18 and over 80 years of age, are not allowed to be sentenced to the death penalty or life imprisonment (approved on 7 January 2005, will be in force from July 2006). It appears that already in practice persons under 18 are not subjected to the death penalty.

c. Mentally unsound prisoners

There appears to be a number of problems with the manner in which the Taiwanese criminal justice system deals with those suffering from mental illness. Although, as a matter of practice, persons who are mentally unsound are not executed and this is assessed immediately prior to execution, it is not clear whether this practice is adhered to.

The case of the Lin brothers (Lin Shin Hong, Lin Meng Kai) is instructive. The Lin brothers were convicted of murder of the son of their neighbours in 2001, also by the name of Lin. The crime arose from a neighbourhood dispute between the two Lin families. The Lin brothers attacked the victim and his brother with a knife, but the older brother escaped with injuries. Both brothers were sentenced to the death penalty. The TAEDP became aware of this case only after the confirmation of the death penalty by the Supreme Court. The younger brother expressed no remorse for the crime and asked to be executed, saying that if he were released he would murder the victim's brother. Both lawyers felt that the younger brother was mentally ill, but they were not permitted to raise this issue in court or seek psychological assessment. The other brother was remorseful but asked that he also be executed, to follow his younger brother. The judge said neither

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of them deserved to live. Both of the brothers were executed in December 2005.

The management of mental health issues in Taiwanese prisons is also of particular concern. The mission was told that often prisoners are considered to be 'faking it', they receive little or no psychological counselling and the medications they are given are inadequate. Prisoners who

are considered to be at risk of suicide are routinely shackled for 24 hours per day⁶⁴. A former prisoner told the mission that prison staff are happy when a prisoner goes 'quietly insane' as it lessens the burden of prisoner management. In these circumstances, it would appear unlikely that proper assessment of mental illness and the exemption of the mentally ill from execution would be reliably carried out.

44. See Appendix 4.

45. However, note that it has been argued that Article 15 relating to the 'right of existence' may have this effect: see Interpretation No. 476 (1999).

46. There has been a significant increase in the number of petitions filed by individuals between 1 July 1948 to 30 September 2003, rising from 34.35% of all petitions filed to 89.33% of all petitions filed: The Judicial Yuan *Justices of the Constitutional Court – The Guardians of the Constitution, The Republic of China* (The Judicial Yuan: Taipei, July 2004) 57.

47. The Research, Development and Evaluation Commission of the Executive Yuan 2002 *Human Rights Policy White Paper of the Republic of China (Taiwan)* (The Executive Yuan: Taipei, 2002) 'Consolidation and Deepening of Democratic Constitutionalism and the Infrastructure of Human Rights'.

48. See Hands Off Cain website: <http://www.handsoffcain.org/bancadati/schedastato.php?idstato=6000232&idcontinente+23>.

49. The Ministry of National Defense R.O.C *The Examination and Evolution on Death Penalty Policy of The Ministry of National Defense R.O.C* (Paper provided to mission) 2.

50. See Hands Off Cain website: <http://www.handsoffcain.org/news/index.php?iddocumento=7000020>.

51. In conformity with the proposal made in: the Ministry of Justice *The Policy of Gradual Abolishment of Death Penalty* September 2005 (Paper provided to mission) 3.

52. Article 59 of the Criminal Code permits the judge to reduce a sentence if there are 'extenuating circumstances' and when the minimum sentence would still be too harsh. The death penalty can be reduced to life imprisonment. If the prescribed punishment is a life sentence, it can be reduced to between seven and fifteen years imprisonment and a fixed term sentence can reduce by up to half. Justice Chen, of the District Court, who met with the mission, said that he believes the conditions attaching to Article 59 to be too restrictive. The judge should be able to freely decide whether it is appropriate in the circumstances. He believes that Article 59 should be used to correct overly harsh laws and to ensure proportionality between the crime and its punishment.

53. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Mr. Philip Alston), UN Doc. E/CN.4/2005/7, paragraph 63.

54. UN Commission on Human Rights Resolution 2005/59, 20 April 2005.

55. *Eversley Thompson v. St-Vincent and the Grenadines*, Communication No. 806/1998, U.N. Doc. CCPR/C/70/D/806/1998 (2000).

56. Report No. 48/01 (4th April 2001), *Annual Report of the Inter-American Commission on Human Rights* (IACHR) 2000.

57. *Peter Hugues and Newton Spence v. The Queen*, 2nd April 2001, Eastern Caribbean Court of Appeal, Criminal Appeals 17/1997 and 20/1998.

58. The UN Commission on Human Rights adopted Resolution 2004/67 on the question of death penalty on 21 April 2004, and resolution 2005/59 on 20 April 2005.

59. ECOSOC Resolution 1984/50 of 25 May 1984, paragraph 1.

60. UN Human Rights Committee General Comment 6 on the right to life (art. 6), 30/04/1982, paragraphs 6 and 7.

61. Report of Ms. Asma Jahangir, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, E/CN.4/2002/74, 9 January 2002.

62. See also Article 11 of the Prison Serving Act and Article 7-1 of the Detention Act.

63. 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment or nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age'.

64. Article 22 of the Prison Serving Act and Article 5 of the Detention Act.

V. The Right to a Fair Trial

The Constitution provides for an independent judiciary and judges are prohibited from taking part in political activities. Cases are tried in public, although in practice, notification practices are somewhat deficient, families of victims and of accused persons reported inadequate notification of trials in which they had an interest. Judges, rather than juries, decide cases and deliver verdicts. In the past, witnesses were interrogated by the judges rather than by defence or prosecution counsel but recent changes have resulted in the introduction of an adversarial system and consequently, the role of the judges has become less proactive during trials. Defendants are not required to testify at their own trial.

Penal reform in Taiwan began just six years ago. Although the formal criminal justice system which leads to the imposition of the death penalty may appear to theoretically meet international human rights standards, the manner in which it functions raises serious possibilities of grave miscarriages of justice, and consequently, the execution of the innocent. Indeed, discrimination, difficulty in accessing lawyers, and the lack of training for players within the legal system, including the police, may lead to serious violations of human rights.

By way of example, the law in relation to arrest and interrogation of suspects in Taiwan is quite complete but in practice, these essential links in the criminal justice chain are in the hands of the police, who are not well-trained in relation to the respect of human rights. Indeed, the mission was told by various people it met, that the police is still perceived as the tool of the authoritarian martial law regime. There is little public confidence in the police who are widely perceived as badly trained, violators of the rights of citizens, and as failing to serve the public interest in the enforcement of the law in general. Indeed, the mission received reports of citizens being ignored or not taken seriously when they tried to report crimes. This is a matter of grave concern which will require considerable resources in terms of time and finance for re-training and education of the police and thereafter, for a public education campaign in relation to the rights of persons coming into contact with the police (including victims, victim's families, suspects and lawyers) and reassurance that those rights will be protected and vindicated by the police. An effective complaints mechanism is an essential component to improving both the quality of the force and the level of public confidence in the force.

Martial law ended in 1987, but cultural practices that were characteristic of that period continue to impact upon the investigation and prosecution of criminal matters. The mission was told by a number of interviewees that during this period, police, prosecutors and judges were merely the instruments of the State and carried out their functions to satisfy the demands of the KMT (Kuomintang). The end of military rule and the continuation of the KMT as the ruling party of Taiwan until 2000 when there was a sudden shift of power to the Democratic Progressive Party, meant that many of the prevailing attitudes and practices were able to continue. Furthermore, as discussed above, the isolation of Taiwan from the international human rights community since 1971 has meant that the level of human rights knowledge and practice in the criminal justice sector is relatively low.

These cultural and historical factors have combined, in the present day, with poor training and supervision, limited access for the accused to skilled legal professionals, partially implemented reforms to criminal procedure and problematic appeals procedures, to create a volatile environment that can result in grave miscarriages of justice.

Three points in the process are of particular concern: first, at the charge stage, the police 'performance assessment system' that rewards according to the number and gravity of the crimes charged and, consequently, encourages exaggeration of successes, the use of torture and other forms of coercion, inadequate evidence gathering and reluctance to accept reports of crimes; second, the decision of the prosecutor whether to proceed with a prosecution, which, in many cases presented to the mission, involved a direct adoption of the police evidence, without further inquiry; and, third, the decision of the primary judge to convict and sentence to the death penalty, which in many cases similarly involved the adoption of evidence, in many cases a confession or statements of co-accused, as the sole piece of evidence to warrant conviction (which is now prohibited by law but still occurs in practice). Subsequently, other judges are reportedly unwilling to 'second guess' their colleagues.

Furthermore, many people met by the mission, particularly death row inmates, acquitted persons and families of inmates, shared the belief that the poor are more likely to be executed in Taiwan. The prevailing belief is that if an accused has money or contacts, he or she will not receive the same sentence as an indigent and unrepresented accused.

Overall, there is also an absence of information about the death penalty in the public domain. Comprehensive statistics are not readily available. Little information about the administration of justice and the execution of death penalty is available to the public. NGOs often cannot obtain timely access to information about pending cases, which hampers their ability to arrange legal representation for accused and observe trials. However, the mission was happy to note public undertakings from the Corrections Department and the Department of Justice to allow NGOs access to files and statistics and welcomes the fact that most statistics requested from the authorities were furnished in a timely fashion.

1. The Hsih-chi Trio – a case study of the deficiencies in the Taiwanese criminal justice system

“The biggest mistake I made was not dying under police torture and having to go through 12 years of hell. What I have lost can never be compensated, I just want back the life I had before but it will never come back again and I am frustrated, I can’t even seem to do normal work”, Chuang Lin-hsun told the mission. He is one of three men known as the Hsih-chi trio, whose case is well-documented.

Liu Bing-lang, Su Chien-ho and Chuang Lin-hsun were convicted of stabbing to death a married couple in the town of Hsih-chi on the 23-24 March 1991. Forensic evidence including blood and fingerprints was found at the crime scene but none of it can be linked to the trio. Five months after the murder, the police identified a fingerprint from the scene and arrested a man (Wang Wen-hsiao) who implicated his own brother and three of his classmates (the trio) whose names he did not know. He was executed for murder on 11 January 1992. Before his execution, he withdrew his statement nominating other people as accomplices.

His brother, Wang Wen-chung, was detained without an arrest warrant and was allegedly tortured by police. He named his three classmates as Liu Bing-lang, Su Chien-ho and Chuang Lin-hsun. He was convicted of complicity in a crime and served more than two years in prison. After his release he retracted his statement evidence and stated publicly that the police had forced him to implicate his classmates.

The Hsih-chi trio were arrested, detained and allegedly severely tortured by police, including being hung upside down and having water and urine poured into their mouths, being beaten, having to sit on ice, their genitals being subjected to

electric shocks and then chemical compounds put onto those wounds. The case against them is based almost entirely on confessions allegedly obtained under this torture, all of which differ on crucial aspects such as the timing of the offence, the weapons used and the motive for the crime. Other evidence relied on is the statement of Wang Wen-hsiao, the veracity and weight of which is now beyond testing by cross-examination or other method.

These allegations of torture, the apparent lack of material evidence, and the extensive irregularities in the investigative process, including unlawful detentions and an illegal search, give grave cause for concern that there has been a miscarriage of justice in this case, which illustrates many flaws in the Taiwanese criminal justice system. A full and impartial investigation of these allegations should take place before any further criminal trials proceed. The trio have now undergone 10 trials for the same murder charge. It is now 15 years since that case started and they are now on remand awaiting a retrial for murder. They were 19 years old when it all started and they were 23 when first condemned to death. They are now 33 years old. Their case has been in the District Court, the High Court and the Supreme Court and has been the subject of three extra-ordinary appeals to the Grand Justices, listing over 20 questionable aspects of the convictions. None of the extra-ordinary appeals against the convictions, filed by the former Prosecutor-General, Chen Han, have been upheld. They spent a total of 7 years on death row and over 4,000 days in prison in total.

The men have suffered severe emotional distress arising from their time on death row and particularly because of the fear of execution. Liu Bing-lang was shackled for 12 years and is partially physically disabled as a consequence of damage to the bones caused by shackling, while Chuang Lin-hsun has been suffering from mental illness arising from his time in police custody. The constant lack of finality in their case exacerbates the stress for the men and the distress for their families and is in itself a form of torture, or at least of inhuman treatment. If ever there was a case in which President Chen Shui-bian should exercise his powers of clemency, this is it.

The improvements in Taiwan's justice system since the early 1990s have not availed the three men in this case as the irregular investigation and alleged torture took place before them in time and the reform has not had a retrospective effect such as to protect the men from further retrials based on the original flawed investigation.

2. Arrest

Under Taiwanese law, arrest is governed by Articles 75-93 of the Criminal Procedure Code and pre-trial detention is governed by Articles 101 to 121. Arrests can occur in two situations. The first is in accordance with Article 88 of the Criminal Procedure Code, which provides for arrest without a warrant where a person is caught in the act of committing a crime and Article 88.1 specifies the type of urgent circumstances under which police can make an arrest, such as when there is a risk of flight.

Secondly, arrests can occur on foot of a complaint received by the police or referred to the prosecutors. The police take a statement from the victim of the crime and then issue a notice for the suspect to come to the station to make a statement. If the suspect co-operates and attends to make a statement, the case is referred onwards to the prosecutor's office and the suspect is usually released pending charges. If not, Article 71.1.1 of the Criminal Procedure Code states "for the purpose of crime investigation and evidence collection, police may apply for an arrest warrant with a prosecutor when a suspect fails to show up without a good cause after written notices served".

The attitude of police towards complaints of crimes is of particular concern. The existence and operation of the 'performance assessment system' for police requires a quota of crimes to be solved (i.e. referred to prosecutors) as against the number of reported crimes. The 'performance assessment system' is the basis for informing public opinion and the media of progress in combating crime; it rewards police according to the number and gravity of the crimes charged. The mission received reports of police rejecting complaints from the public in an effort to reduce the number of crimes reported, of police exaggerating the type of offence solved in order to obtain more 'points' - for example recording a simple robbery as a burglary. The mission also received reports of the police coercing suspects to confess to several crimes in order to increase the number of 'solved' crimes. This is a direct consequence of this system. The common perception is that prosecutors are more likely to take complaints seriously and pursue them.

It is a matter of grave concern that the policing system institutionalises a mechanism which effectively encourages the use of torture and other forms of coercion by police, as well as giving them an incentive to falsify crime statistics and records.

The quality of the investigation depends on the person who files the complaint. Generally, the first approach is to try and appease the complainant rather than attribute blame.

Under the Code of Criminal Procedure, people can be held by the police for a maximum of 16 hours, after which they must be transferred to the prosecutor's office, where they can be held for a further 8 hours. This 24 hour period of detention is the maximum period of detention allowed in all cases. However, after 24 hours, in certain circumstances specified in Article 101 of the Code of Criminal Procedure, prosecutors can apply to the Court for an extension of the period of detention. These circumstances include: where the judge believes the defendant is involved in a serious crime and is likely to escape or perjure evidence; or where the judge believes the defendant is involved in a serious crime, such as rape, arson, interference with freedom, etc. and is likely to offend again.

3. Collation of Evidence

At the expiry of this 24 hour period, a suspect must either be released or charged. If he is charged, Article 8 of the Constitution provides that "a suspect's case shall be referred to the court within 24 hours after the arrest" unless there are delays caused by transportation obstacles or special circumstances. However, this period cannot be extended unless falling into the circumstances specified in Article 93.1 of the Criminal Procedure Code, namely force majeure, such as transportation difficulties or a typhoon, or a sudden physical condition preventing the suspect from being interrogated during the 24 hour period.

With regard to the collection of evidence, the mission is concerned about the failure to train police in correct procedures and best practices. The risk of violations of human rights is higher where there are misconceptions of criminal procedure law, including the risk of evidence not being preserved or actively being destroyed. This affects later steps involving judges and prosecutors and constitutes a weak link in the protection of suspects' human rights.

In particular, concerns were expressed to the mission that the 16 hour time period available to police for interrogation of suspects in serious crime leads to over-reliance on confessions and discourages other methods of collating evidence. However, practitioners have reported a decrease in the number of allegations of police coercion and torture in recent times.

Persons who are abused physically or tortured have the right to sue the police, and confessions obtained through torture are inadmissible at trial, in theory. There are inspectors (also members of the police force) who investigate complaints but many difficulties are reported with the system. Those inspectors are indeed also members of the police force, which gives rise to mistrust and lack of public confidence.

The FIDH mission was told that public opinion is fiercely opposed to any extension of the time period for which police may detain suspects, due to the widely-held perception that the police routinely torture suspects of crime to obtain confessions.

During this detention period, the only compulsory samples which can be taken are blood samples where there is a suspicion of drink driving and urine samples for drug cases. Article 205.2 of the Criminal Procedure Code specifically permits the police to take photographs, fingerprints or bio-samples only when both of the following conditions are met: for crime investigation and for evidence collection. However, the mission learned that in reality, police tend to give these conditions very broad interpretation. Furthermore, the public in general are unaware of the limitations on police with regard to samples and so they tend to co-operate with the police when asked. As a result, almost all suspects are photographed and fingerprinted and the police often try to compel suspects by threatening longer detention periods if suspects refuse to co-operate. Fingerprints are kept in a database of convicts and of suspects, which is maintained by the criminal bureau.

Article 100.1 stipulates that all police interrogation must be audio-recorded in the case of minor offences and video-recorded for offences attracting penalties of five year's imprisonment or more. Since September 2003, two police officers are required to be present at interviews with suspects. A number of difficulties were reported to the mission. First, not all stations have the facilities required to record interviews, although the situation is improving, notably in Taipei. Secondly, there is no obligation to use recording facilities and no penalty for failing to. Thirdly, the mission received reports of suspects being told that recording facilities were broken or already in use, and of interrogations taking place without such recording. The mission also received reports of persons who believed their interviews were being recorded, only to discover later that the tapes were blank.

Forensic evidence is normally taken by low-ranking officers. The mission was told that the top forensic officers are only

involved in high profile cases. Recently improvements have been noted, in particular the new chief of the criminal police bureau, Mr. Hou, places emphasis on forensic science. However, the forensic science bureau is reportedly overwhelmed with requests for testing urine samples in drug cases alone. Forensic evidence collected nationally all goes to the central bureau where there are experts in fingerprinting, ballistics and other branches of forensic science, including pathologists and coroners.

Lie detection tests are used in Taiwan. However, a guilty verdict cannot be made merely based on the test result. The judge needs other supporting evidence to find the defendant guilty. The reliability of such tests is highly questionable and the mission considers that the use of such tests should be discontinued.

4. Prosecution procedures

Once the police investigation is complete, the case is transferred to the prosecutor's office, where the evidence collated is considered by an investigating prosecutor. The prosecutor screens everything done by the police. Investigating prosecutors have authority to carry out independent investigations in theory, but in practice, many practitioners report that this does not occur and that some prosecutors are inclined to "rubber stamp" police findings. They report a lack of sensitivity to human rights issues in general and say that prosecutors are disinclined to take allegations of torture resulting in confessions seriously, in particular. The mission raised this criticism with the Attorney General, who felt that in order to address that there is a need to reduce the very heavy work load of the prosecutors and to increase the amount of resources to avoid such oversights, as well as a requirement for specialized human rights training for prosecutors. He pointed out that specialist teams of prosecutors do exist for different types of crime, including crimes against women and children.

During the investigation, if the prosecutor considers that the evidence is insufficient he may decide not to prosecute. However, if the complainant (the victim) is not satisfied with the prosecutor's ruling not to indict, the complainant may assign a lawyer to have the case tried in court and overthrow the prosecutor's decision. Nevertheless, only on very rare occasions will the court overrule the prosecutor's decision. The work of the Victim's Association includes legal aid for this purpose. Between January and August 2005 there were 2,700 appeals against decisions not to prosecute.

Unless there is a cause justifying detention, suspects are released with or without bail after 24 hours. Charges are submitted only after the prosecutor has prepared an indictment.

5. Legal assistance

a. Access to legal representation while detained in a police station before charge

Persons detained for questioning in police stations are entitled to ask a lawyer to attend from the moment they arrive in custody. Indeed, under Article 95 of the Criminal Procedure Code, police are required to inform suspects of their right to nominate a lawyer to attend the station. The mission was told that high-ranking officers generally require police officers to inform suspects of this right but that reports have been received of officers misleading suspects and telling them that they will be detained for longer periods if they have to wait for lawyers to attend. Practitioners explained to the mission that in practice, the presence of the lawyer only serves to prevent the suspect from being tortured.

However, there is no corollary right in law to consult with that lawyer. This is a matter of grave concern to the mission, which recommends that the right to consult with a lawyer and to have a lawyer present during questioning in police stations and at the prosecutor's office, be afforded by legislation immediately and that such rights be widely advertised.

The Legal Aid Law (which was promulgated in January 2004) stipulates the appointment of a legal aid lawyer to assist the suspect during police interrogation. However, this scheme has yet to be implemented due to current manpower shortage and other priorities at the newly inaugurated Legal Aid Foundation. Such deficiencies require to be addressed as a matter of urgency. An attempt to establish a pro bono system for attendance at police stations by lawyers was not successful, partly due to the view among practitioners that they could not influence the detention process in any way. As a consequence, discrimination exists between the rich and the poor, as poorer people cannot afford to pay lawyers to attend at police stations.

b. Access to legal representation after charge

Prosecutors may apply to the Courts to detain persons suspected of criminal offences. However, pre-trial detention is limited to two months, with the possibility of one further extension of time for two months. Persons who are detained in prison are entitled, in law, to access to a lawyer. However, in

practice, it appears that such access is not easy. A legal aid scheme is being put in place to remunerate lawyers for attendance at prisons, but as of the writing of the report, such visits are not remunerated. Furthermore, legal visits are closely supervised by prison officials and detainees reported not feeling confident about the confidentiality of such visits being respected. All mail into prisons is opened, but as a consequence of staff shortages, not all mail is actually read by prison staff. The mission is aware that some death row prisoners received only one or two visits from their lawyers prior to their trials and sentencing to death.

This is an aspect which requires some reform in order to conform with international standards. First, all prison visits by lawyers should take place out of the hearing of prison staff, as requested by the UN Standard Minimum Rules for the Treatment of Prisoners (para. 93: 'Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official'). Secondly, correspondence between detainees and lawyers should not be opened: confidentiality of legal communications is a basic requirement to ensure fair trials of accused persons (according to the UN Standard Minimum Rules for the Treatment of Prisoners, para. 93, 'For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him *confidential* instructions' – emphasis added). Thirdly, visits by lawyers to prisons ought to be remunerated, to ensure that lawyers are not constrained for financial reasons, from visiting their clients.

6. The criminal trial

Criminal trials in Taiwan take place before judges only: there are no juries in the criminal trial system in Taiwan. In December 2003, an overhaul of the criminal trial procedure resulted in trials becoming adversarial as opposed to inquisitorial. The mission received reports of trials prior to that time where the prosecutor did not attend Court and where the trial judge performed the task of prosecution counsel. Recent reform has been partially aimed at removing this task from judges in an effort to ensure their impartiality.

Article 154 of the Criminal Procedure Code now enshrines the presumption of innocence while Article 161 has been revised to place the burden of proof on the prosecution. Prosecutors are required to "present to the Court a convincing plan for proving a defendant's guilt"⁶⁵. Article 161 sets down time limits for the presentation of cases to the Courts and provides

that a trial may be struck out for failure to meet those deadlines. These reforms are aimed at preventing prosecutors from laying indictments where there was no substantial evidence of guilt.

The introduction of legal aid in 2003 (see below) has had a beneficial effect on trial procedures as it has ensured that persons who cannot afford to pay lawyers are nonetheless represented by lawyers who are adequately remunerated for their professional expertise. The overhaul of the legal system has resulted in cross-examination of witnesses playing a central role at trials and it is absolutely essential that accused persons are afforded legal counsel for this purpose. Article 31 of the Criminal Procedure Code requires that where any person is at trial for a criminal offence and is at risk of receiving a sentence of three years or more, or is mentally disabled, then that person must be represented by Counsel at the trial.

7. Remedies available against the death penalty

a. Appeal and retrial

In Taiwan, offences which potentially attract the death penalty may be heard by the District Court or the High Court.

Decisions of the District Court can be appealed to the High Court and must be filed within 10 days of judgment being given. Decisions of the High Court can be appealed to the Supreme Court, and must also be filed within 10 days of judgment. Defendants can submit appeals against conviction or sentence. The prosecutor can also appeal against an acquittal or sentence.

However, in cases in which the death penalty has been ordered, under Article 344 of the Code of Criminal Procedure, after judgment is given the court will automatically forward the case to the court above for confirmation without requiring an appeal by the defendant.

If the Supreme Court rejects the appeal, the judgment becomes finalized, and no further appeals are permitted. If the appeal to the Supreme Court succeeds, the case will be sent back to the High Court, which must deliver a new decision within one month. The High Court may or may not make the same decision, but in either case, the prosecutor and the defendant can appeal the result again. Until final confirmation by the Supreme Court, a conviction or sentence can be appealed by the prosecution or the defence an unlimited number of times. One case was sent back and forth between the High Court and the Supreme Court 18 times⁶⁶.

As a result of this system, a defendant who has been acquitted can be subject to multiple retrials. Defendants can remain in a state of uncertainty regarding the outcome of their cases, for an indefinite period of time, whilst the case is bounced back and forth between the High Court and Supreme Court, until the judgment is eventually approved by the Supreme Court.

b. Extraordinary Appeal

According to the Code of Criminal Procedure, Article 441, "In the case where it is discovered that the trial procedure is unlawful after a judgment is finalized," the Supreme Prosecutor General may file an extraordinary appeal to the Supreme Court. The filing of the extraordinary appeal, in accordance with the "Guidelines for Reviewing Death Sentence Execution," can suspend the signing of execution order.

c. Appeal to the Constitutional Court (Grand Justices) on a question of law

Petition for the interpretation of the Constitution may be submitted to the Grand Justices Council. Based on the "Guidelines for Reviewing Death Sentence Execution," the petition may serve as a stay of execution. Grand Justices Interpretation No. 194, 476, 582 are the three interpretations made in relation to the death penalty in Taiwan. However, these interpretations fail to declare the death penalty unconstitutional. TAEDP is going to file a petition for interpretation aiming at declaring the death penalty anti-constitutional.

d. Application for review by the Control Yuan

The Control Yuan may take personal applications and examine if the relevant judicial professionals have made any mistakes in the investigation or trial procedures, under the circumstances that judgments are finalized. Although it is not stated in the law that the application may serve as a stay of execution, all the documents related to the case will be transferred to the Control Yuan. As a result, without the documents, the Ministry of Justice will be unable to carry out execution.

However, at the end of 2004, the Pan-Blue Coalition boycotted the approval of President Chen's nominees for positions in the Control Yuan during the Procedure Committee of the Legislative Yuan. In consequence, the approval of the nominees has been excluded from the agenda since then and results in the vacancy of the President, Vice-President and members of the Control Yuan up to now (May 2006).

e. Amnesty Law

Article 6 (4) of the International Covenant on Civil and Political Rights requires that any person sentenced to death shall have the right to seek a pardon or commutation of the sentence. Taiwan has not ratified the Covenant, although it is a signatory and persons met by the mission expressed a willingness to be bound by the standards in the Covenant. There is an Amnesty Law in Taiwan amended on September 20, 1991 but it is far from perfect and needs to be amended so that persons sentenced to death may seek such pardon or commutation of sentence and so that the President is required to convene a Commission to consider such a request for an amnesty immediately upon receipt. The death penalty should not be imposed during the Commission's period of deliberation.

8. Victim support and compensation

The mission is pleased to note that there are specific organizations in Taiwan focusing on the rights of victims. The respect of the rights of victims is an important part of a mature society. Neglect of their concerns fuels vengeance and leads to support for severe penalties, including the death penalty. The mission met with the Association for the Protection of Families of Victims and discussed with them, the mechanisms in place to protect and vindicate the rights of victims and their families. The Association was established seven years ago and it works with victims with severe injuries and families of victims who are killed or severely injured, by offering material and financial support, legal aid and emergency protection programmes. Recently, the Association has been running campaigns to sensitize public opinion to its role and to the rights of victims. The Association relies heavily on volunteers and in particular, requires volunteers with medical and psychiatric expertise.

The Association highlighted the difficulties faced by victims in Taiwan. They point to difficulties in obtaining legal aid and say that the financial threshold set for eligibility for legal aid is too high and as a consequence, many families of victims do not qualify under the current means tested system. The second problem highlighted is the length of time it takes for the state to pay compensation to families of victims as well as the low level of compensation available: The maximum award is \$ 400,000,

(about €10,000) which compensates for vouched medical expenses only. The third problem highlighted is passivity on the part of victims when it comes to asking for counseling and the local branches have to really reach out.

9. Procedure for prosecutions under military law

Two military offences retain a mandatory death penalty: defiance of orders⁶⁷ and false reporting during wartime causing detrimental results.⁶⁸ However, other offences retain a discretionary death penalty. The Ministry expressed reluctance to abolish the mandatory death penalty for the enduring offences, citing public opinion and the unpredictable situation in the field during wartime.

Military Courts operate in accordance with "The Guidelines for Conducting Court Martial Trials of Felonies". All relevant evidence is adduced to the Court Martial for fact-finding, the military prosecutor is required to attend, and accused persons are entitled to be legally represented. The right to silence is respected. Since 1999, one person was executed under military law, his sentence having been affirmed by the Supreme Court, for the offence of robbery and homicide. Prior to 1999, the military Courts could pass final death sentences but the Supreme Court ruled in 1999 that military justice was subject to review by the civilian Courts and since then, all death sentences passed by military courts must be affirmed by the Supreme Court.

The structure of the Military Courts includes a District Court, which hears cases involving offences committed by company officers, non-commissioned officers (NCOs), enlisted persons and other service personnel. One judge sits for ordinary offences and three judges sit to judge an alleged felony. Accused persons are afforded the right to silence and are entitled to be legally represented. The High Court tries offences committed by general officers and field officers, as well as appeals against decisions of the District Court. It is possible to appeal judgments of the High Court to the Civil High Court or to the Civil Supreme Court. The Supreme Court of Military Justice hears appeals against judgments of the High Court and its judgements can in turn be appealed to the Civil Supreme Court.

65. *In Pursuit of Justice, Recent Judicial Reforms in Taiwan*, by Dr Yueh-Sheng Weng (at p.11).

66. Hua Ding Guo Case [1952-2004]: the case lasted 15 years with the participation of more than 100 judges. Including the trial at first instance, the defendant was sentenced to the death penalty 12 times, acquitted 7 times, before finally being sentenced to life imprisonment.

67. Article 27 of the Military Code.

68. Article 66 of the Military Code.

VI. Conditions of Detention and Execution

1. Conditions in prisons

a. General conditions of detention

The mission received positive reports regarding prison conditions in Taiwan. According to prisoners, staff and experts on prison law, conditions have greatly improved in recent years. The prisons visited appeared to be clean and in good condition. The general consensus was that the prison food was of reasonably good quality and provided balanced nutrition for detainees. Previously, the quality of the food was very bad and prisoners brought their own food into prison but this is no longer a common practice due to improvements in diet and kitchen facilities. The food budget for remand prisoners and convicted prisoners is supplemented by money received for work carried out by prisoners for local industry.

However, three problems subsist in the prison system in Taiwan - overcrowding, inadequacy of medical treatment and shackling of prisoners - which affect the health and safety of prisoners and the problem of overcrowding also impacts on the health and safety of prison staff.

With regard to overcrowding, the mission noted that both of the centers visited were operating over their capacities. Obvious problems result from overcrowding: unhealthy conditions of detention for prisoners, lower standards of working conditions for staff, and inadequate exercise, recreational and occupational facilities for prisoners as a consequence of staff shortages. Eight people sleep in the bigger prison cells and members of staff try to ensure that every prisoner gets 0.7 of a ping (1 ping - 37 square feet, or approx. 10 square meters). The mission received reports of particularly bad overcrowding in detention centers for illegal immigrants. The mission expressed its concern regarding the overcrowding with the Minister for Justice, who acknowledged that overcrowding was a problem and pointed to a need for additional prisons to be built.

There was a general consensus among prisoners, prison visitors and lawyers that the standard of medical care in prisons is extremely inadequate. One of the causes identified for this is the low level of remuneration for prison medical staff and the consequent difficulty in recruiting qualified personnel to work in the prisons. The prisons generally have arrangements with nearby hospitals and can send prisoners out for medical treatment but prison officers tend to be

suspicious of prisoners feigning illness and are reluctant to bring them to the hospitals. Presumably, staff shortages also play a role in the reluctance of the officials to allow prisoners be brought to hospitals for treatment. In general, the prisons in Taiwan are located in areas where land is not expensive, and consequently, they are remote from urban centers and from hospitals. Where there is no hospital nearby, prisoners may be brought to the nearest local doctor, for example, in Green Island, there is no secondary medical expertise available for prisoners. Formerly, prisoners were brought to hospital from Green Island by helicopter but it appears that this is no longer the practice. There are only two regular boat services a day to Green Island so if a prisoner falls ill, the prison may charter a yacht to bring prisoners to hospital but as this must be paid for out of the prison budget, it is only in cases of obviously serious illness that those prisoners are brought to hospital.

A second problem identified to mission related to the medicines available in prisons: the mission was told that most prisoners are prescribed the same generic painkillers and sedatives regardless of their ailments. The mission also received reports of prisoners who had medical backgrounds, such as pharmacy, nursing or even health administration, prescribing medication. The doctors working in the prisons were reported to be unprofessional and inadequate, prisoners told the mission they had to keep bothering the medical staff in order to get the better quality medication. They reported being given anti-inflammatories for colds and not being given prescription medication but only over-the-counter medication being available for all ailments.

Medical care for specialized needs was reported to be particularly inadequate, for example access to dentists and to psychiatrists. One prisoner, who developed schizophrenia in prison, saw a counselor and psychologist for one minute once every two weeks. He told the mission that the counselor would ask him, "are you sick or are you better?" and would prescribe more or less pills accordingly. He started on one pill and increased it to seven. There was a general consensus that in order to obtain any psychiatric attention in prison, there had to be a risk of violence or suicide by a prisoner.

Finally, shackles are openly used in Taiwan. In other words, prisoners wear leg chains 24 hours a day, their ankles are chained to each other, allowing prisoners to walk. The authorities maintain that the use of shackles is restricted to

cases where prisoners are considered to be at risk of escape or of using violence or committing suicide. The authorities say that shackles are not used for all death row prisoners, only death row prisoners falling into the aforementioned categories. However, the death row prisoner met by the mission had ulcerations and lacerations clearly visible around his ankles consistent with regular use of shackles, despite his efforts to hide them. Furthermore, the mission received reports of widespread use of shackles for ordinary prisoners and regular shackling of all death row prisoners. The mission expressed its concern regarding the use of shackles with the Minister for Justice, who expressed a commitment to modify practice to conform to international human rights standards.

The use of shackles for 24 hours a day clearly contravenes paragraph 33 of the UN Standard Minimum Rules for the Treatment of Prisoners, according to which “chains or irons shall not be used as restraints”. Para. 34 further states that, “the patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary”. Moreover, the chains restrict prisoners from undertaking proper exercise and sport, in contravention of paragraph 21 (2) of the UN Standard Minimum Rules for the Treatment of Prisoners, which states, “young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise”.

FIDH and TAEDP believe that the use of shackles 24 hours a day amounts to cruel, degrading and inhuman treatment, forbidden by article 7 of the ICCPR. The Human Rights Committee General Comment no. 20 on article 7 specifies that, “the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure”. Principle 6 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment recalls that, “no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.”

b. Taiwan Taipei Detention Center

This is the largest detention centre in Taiwan. It was built in 1975 with an original capacity for 2,134 prisoners. On the date of the visit by the mission, there were 3,226 prisoners and the centre was operating 51% over capacity. The

detention center consists of eight dormitories on three stories and two dormitories on two stories. There are two workshops and the women’s centre which includes a dormitory and a workshop. In total, the centre occupies a space of more than eight hectares.

In total there are 320 members of staff, but there were also some young people who were on military service who were assisting the staff, making about 380 people altogether. Staff receive on-going training regarding prison policy, operational matters and emergency responses for fire, earthquake and other emergencies. There are 260 uniformed guards in the center; normally there would be 60 on duty on the day shift and the rest are rotated around other shifts. Usually there are 111 members of staff on duty during the day, and at night only 50. There is normally a guard on duty and one on standby so there are always 25 in active duty and the same again on standby. In the women’s centre there are 16 uniformed guards, three are on the day shift and the others rotate. There were 260 inmates in the women’s centre on the day the mission visited. Two of them were pregnant and there was one baby in the prison who was just over two years. The child was a baby when its mother was sent to prison and consequently, the child also came to prison. Once women are more than five months pregnant, they are generally given temporary release from prison for the birth of the baby.

The oldest inmate in the center at the time of the mission’s visit was 74. He was the defendant in an impending case. Nobody under the age of 18 years is detained in the Centre. On death row, the oldest prisoner was 61 and the youngest was 25. The longest serving inmate in the centre had served 17 years. He was on death row but his case is still under appeal.

There are 3 categories of detainees in the center: remand prisoners, convicted inmates, and persons in short custody for their debt nonfeasance. Persons receiving drug rehabilitation were detained in the Rehabilitation Center, which is accessional to the detention center. Up to eight detainees are held in cells. The trustee prisoners were in cells for four people. They are not involved in any discipline or supervision within the prison but act as the liaison with the prison officials. Generally, the cells seen by the mission were clean and tidy, with wooden floors, windows, fans and lighting. Each cell contained a corner with buckets of water for sanitation. Prisoners’ clothes, clearly washed, were hanging up to dry and prisoners had boxes for their own belongings.

The prison runs workshops which take outside contracts. In

the workshops, prisoners make toys, stationery, electric wires and bags for department stores. There are also educational classes in the prison regarding food, computers, pottery, hairdressing, printing, plumbing, and metal work. Payments received for such work complements the prison budget.

There are three full time doctors in the hospital wing and two part-time doctors come in from the local hospital. There are also dentists and gynecologists. In the medical centre there are 66 beds and there is also access to an outside hospital for serious cases. Urine and AIDS tests are taken regularly.

In the detoxification centre there are doctors, psychologists, nurses and training volunteers. Emphasis is placed on helping prisoners understand the nature of crime and adjusting their attitudes towards crime. The prison staff carry out behavioural assessments and keep data files, which form the basis for evaluating prisoners. However, expert commentators who met the mission expressed concern about the quality of such assessments. The center caters for religious and recreational aspects of the detention and the mission was told that there is a joint monthly birthday party to encourage prisoners to treasure life and to love their parents and appreciate the gift they gave them in life. However, the mission is aware that the detoxification centers suffer badly as a consequence of difficulties in recruiting medical staff and that standards could be improved in the center, if investments were made in staffing.

There is a reception centre which is open from 8am to 4pm which facilitates family visits and deals with their questions and information. It also facilitates money transfers and provision of food.

c. Taiwan Kaohsiung Second Prison

The prison was started on 1st January 2002; it was previously a detention centre. The prison includes a High Court prosecutor's office, male and female wards, and an execution chamber. There is a juvenile detention centre in the same grounds but in separate buildings, its administration facilities are in the same building as the prison's administration. Drug rehabilitation facilities are also available on-site. The prison has a capacity for 1,722 prisoners but there were 2,400 inmates at the time of the mission's visit, most of whom were convicted and serving sentences. There were 140 women in prison at the time of the mission's visit.

The staff in the prison was 246, a ratio of 10:1, which seems insufficient. In 2006 there will be even more inmates if the death penalty is ended and as a result of the new policies on

longer sentences. They have one superintendent and one deputy superintendent in that prison and they also have in that prison people serving less than five-year sentences and people on remand.

There is a control and discipline system for wardens and they are trained to handle all kinds of situations, including risk management. The prison staff research every prisoners personal information about themselves and their families in order to try and help them reform. There is an emphasis in the prison on counseling and they try to accommodate prisoners with prisoners of similar characteristics.

External lecturers come in to give prisoners classes and there is a library in the prison. Religious and spiritual advisors are also allowed access to prisoners. There are facilities for volleyball, table tennis, badminton, and painting, although access to such facilities is restricted due to staffing shortages. There is audio visual equipment and prisoners make handcrafts from recycled materials. There are literary skills classes and karaoke contests and prisoners are allowed TVs and radios in their cells.

Every three months the staff has meetings with the workshop staff to try and improve the situation. There are nine workshops, one of which is for women. The workshops do electronics assembly and so on. There is a kitchen run by an ex-convict reintegration programme and participants receive certificates for the work done there. There is a garden nursery. There is a medical service and they have doctors and full time medical staff. They have 15 beds. There is also a standby ambulance to the regular hospital. Every three months they spray the prison with pesticide and they do have a clean environment contest and they give flags to the winners.

The meal budget is set by law but as the prison has an income from outsourcing work they give 20% of that income also to the meal budget. The menu is changed frequently. They also provide for vegetarians, of whom there were 98 in the prison. Dishes are sterilized. Storage appeared to be indoors and in containers. Prisoners can nominate representatives to participate in the meals committee. The prison also had a suggestions box of prisoners' use.

There is a visiting service for families. It is possible to telephone in emergency situations. Visits are behind glass screens over telephones. In the visitors' centre there are TV programmes and publications and magazines to read. There is also the possibility of using video-link facilities for Court

purposes and also for long distance visitations, families can go into prisons in other areas and visit their inmates by video-link.

d. Prisoners on death row

At the time of the FIDH mission, there were 49 inmates on death row; six of those sentenced to death had had their sentences confirmed. There were no women or foreigners on death row. The mission received reports of high levels of mental illness and was told that doctors do attend to such prisoners. No information was given however on whether or not mentally insane convicts have been executed in the past.

In both centers visited, the mission was allowed to meet with one death row prisoner. However, the mission's meetings with those prisoners were recorded on video. The mission was also informed by a prisoner's family that he had requested to meet us but was not allowed to. It is of utmost importance that NGO Human Rights monitors be allowed free access to prisoners, including death row prisoners. Such meetings ought not to be recorded or held in the hearing of prison officers.

Death row prisoners are usually detained in cells with one other long-term prisoner. The mission was told by the authorities that solitary confinement is not used, but received at least one report of it being used to stop a prisoner "contaminating others by his behaviour". However, in practice, all death row prisoners are shackled, as outlined above. Apart from 30 minutes outdoor recreation daily, death row prisoners are confined to their cells.

One death row prisoner told the mission that he had been in prison for more than eight years and that he shared his cell with one other person who was also on death row. He described an average day as follows: 6.50am, everybody gets up, breakfast is served in the cell, there is a roll call at 8am and then there is 30 minutes exercise from 9.30 to 10am outdoors. Prisoners can play basketball, or anything they like, it's a free activity time. Then prisoners are returned to their cells. After lunch there is another roll call. He naps, then he takes a shower, there is hot water every second day in the winter. In his cell he has books and a radio and a portable TV and he has access to newspapers. There is also access to religious and spiritual advisors. Lights go out at 9pm.

e. Prison Discipline

The Ministry of Justice sends prosecutors to visit the prisons every ten days. Inspections are unannounced from each

department. There are inspections one to three times a month. The Head of the Complaint Review Board is appointed by the Chief of the Institution (usually the Deputy Chief). The Board consists of directors of every department, the correction officer of the complainant, ethnic officers and impartial citizens. The Board is required to evaluate the complaint, report to the Chief and notify the prisoner of the results in writing. If the Chief of the Institution believes the complaint is founded, he or she will revoke the original decision and ensure proper handling of the case. The Board will also forward their evaluation to the Ministry of Justice. The Ministry of Justice has the right to make the last call on the complaint. Prisoner complaints often relate to the loss of privileges. Once complaints have been filed, they are reviewed by the Minister for Justice. No statistics are available in this regard.

There are written regulations for the disciplining of prisoners. The first disciplinary level is a verbal warning, followed by suspension of visits, and suspension of outdoor recreation. The final level of discipline is to withdraw prisoners' purchasing privileges.

2. The execution procedure

In the visits and discussions at both the Taipei Detention Center and the Kaoshiung Prison, the mission raised questions about the method, supervision, notice, and the degree of transparency in the carrying out of executions. The last execution carried out in the Taipei Detention Center was on the 6th February 2004.

Executions are carried out after three days of the notice of final judgment from the Minister of Justice. Executions usually take place about 9pm. The prisoner is given a last meal with wine and cigarettes at the execution site. No notice is given to the family of the prisoner prior to the execution. Families are not notified until the execution is completed.

The mission was told that the records of the execution are maintained by the Prosecutor and kept at the High Court for 15 years. However, the personal archives of the death inmates will be kept forever. During the mission visit, the prison authorities promised to grant TAEDP access to those archives. If this undertaking is complied with, it should improve the amount of information generally available about the implementation of the death penalty in Taiwan.

a. Execution location or site

The mission visited the execution chamber in the Taipei

Detention Center, which is a large room with windows high in the walls and an earth floor. In the execution chamber the mission were shown a typical last meal for a prisoner and also a glass of alcohol. There is a picture of Buddha on the wall. In a room adjacent to the chamber, a final hearing takes place, to establish the identity of the person being executed.

b. Persons present

There are between 10-20 witnesses in the room, including prison officials, members of the High Court and Prosecutor's office, and a medical team consisting of a psychiatrist, anaesthesiologist, and a doctor. No media or independent observers are present. When asked about the reaction of those involved in carrying out or witnessing the executions, the Warden insisted that he was simply carrying out the law and did not feel any pressure or stress from this responsibility.

c. Methods and procedures of execution and organ removal

The standard method of execution is by lethal injection or a shot in the heart from the back. Where execution is by shot, the detainee is on a mattress on the floor, and a medical practitioner marks on his clothing where his heart is. The prisoner is then shot by a gunman at close range.

An anaesthetic is given before a death-row inmate is executed by a shot. For inmates with drug addictions, the dose of anaesthetic is increased. It is likely in such circumstances that the prisoner dies of an overdose, even before the shot is fired. The Mission inquired extensively about the exact order of the procedure regarding the injection of anaesthesia prior to the shot, however it remained unclear what exact safeguards were in place to prevent greater suffering, terror, and pain.

The method of execution is different if the prisoner is to donate his organs. In principle, organ donation is with the prisoner's consent and with the agreement of his family. Most death row prisoners sign an Organ Donation Agreement, authorising organ donation, soon after they arrive in custody, considering this as a form of redemption for their crimes.

If the organs of an executed prisoner are to be used, the

method of execution is by a shot in the back of the head into the brain stem and not in the heart. The prisoner lies in a plastic bath so that the organs will not be contaminated and medical personnel are on site at the time of the execution. These prisoners are put on a gurney and attached to a life support machine in order to preserve the organs, until they have been removed by a medical team.

According to international human rights standards and guidelines on human organ procurement and transplantation the removal and use of organs requires the voluntary and informed consent of the individual⁶⁹. The removal of organs without full and free consent is a clear violation of human dignity and integrity.

FIDH and TAEDP consider that given the coercive nature of the death penalty, in most if not all circumstances it will be impossible for prisoners on death row, facing imminent execution, to give genuinely full and free consent to the removal of their organs for transplants. The World Medical Association's Statement on Human Organ and Tissue Donation and Transplantation provides: "Free and informed decision making is a process requiring the exchange and understanding of information and the absence of coercion. Because prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion, their organs and tissues must not be used for transplantation except for members of their immediate family"⁷⁰.

The removal and use of the organs of executed prisoners contravenes international medical ethics standards. Under Principle 3 of the *United Nations' Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* of 1982, "it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health". The Policy Statement on the Ethics of the Transplantation Society states: "Transplantation Society members must not be involved in obtaining or transplanting organs from executed prisoners"⁷¹.

69. See for example Universal Declaration on Bioethics and Human Rights, adopted by acclamation on 19 October 2005 by the 33rd session of the General Conference of UNESCO, articles 5 -11; World Medical Association Statement on Human Organ & Tissue Donation and Transplantation, 2000, adopted by the 52nd WMA General Assembly in Edinburgh, Scotland during October 2000, section F. *Free and Informed Decision Making About Organ Donation* (available at: <http://www.wma.net/e/policy/wma.htm>).

70. At § 19.

71. Policy Statement: Ethics of the Transplantation Society, The Transplantation Society, available at: www.transplantation-soc.org.

VII. Human Rights Education and Judicial Training

1. Introduction

As set forth in the United Nations Decade for Human Rights Education (1995-2004), Human Rights Education includes the “training, dissemination, and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes which are directed to:

- the strengthening of respect for human rights and fundamental freedoms;
- the full development of the human personality and the sense of its dignity;
- the promotion of understanding, respect, gender equality, and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- the enabling of all persons to participate effectively in a free society; and
- the furtherance of the activities of the United Nations for the Maintenance of Peace.”

Human rights education should aim to reach as wide an audience as possible, through both formal and non-formal education. In reviewing the current state of human rights education, as discussed below, it appears that general and professional human rights education is quite rudimentary in Taiwan. FIDH and TAEDP believe it would be useful for a four-stage process to be clearly adopted by relevant government Ministries, academic and professional institutions, with an active input and participation of civil society. Reflecting United Nations World Programme for Human Rights Education recommendations, these four stages are: Analysis of the current situation of human rights education; Setting priorities and developing a national implementation strategy; Implementing and monitoring; and Evaluating.

2. Human rights education for the public

In addition to developing and integrating more comprehensive and systematic human rights training for legal professionals and criminal justice actors, there is a need to develop and promote human rights education for the public. Greater public awareness and understanding of international human rights norms and processes through expanded human rights education initiatives directed at the general public will strengthen Taiwan’s democratic system and growing civil society. The UN’s Database on Human Rights Education and Training contains extensive information sheets, summary of

programs and campaigns, as well as information on international NGOs and academic institutions involved in human rights and human rights education which may be drawn upon as resources for developing materials and approaches.

Many government officials and others that the Mission met with cited the role of public opinion and support for the death penalty as an obstacle to abolition of the death penalty. By providing a human rights framework and raising awareness of international trends towards abolition and international debates, human rights education would help to inform and shape public opinion in Taiwan.

a. School-based programmes

In developing school-based programs, the Taiwan government should reference and build upon the goals, and measures of progress set forth in the United Nations World Programme for Human Rights Education, launched on July 14, 2005 by the General Assembly at the conclusion of the UN Decade for Human Right Education⁷².

For the development of school-based programmes, the First Phase of Action (2005 to 2007) with its main goal of achieving comprehensive human rights education in the primary and secondary school systems is especially relevant. The specific goals also provide an international framework, including supporting the development, adoption and implementation of comprehensive, effective and sustainable national human rights education strategies in school systems, and/or the review and improvement of existing initiatives; and providing guidelines on key components of human rights education in the school system.

The measures of the First phase reference the importance of multiple stakeholders, the development of a learning environment that itself respects and promotes human rights and fundamental freedoms, enabling children to express their views freely and participate, rights-based teaching and learning processes, materials, and methodologies, and the education and professional development of teachers.

b. Adult education and awareness-raising programmes

Taiwan has an active civil society sector of religious and community organizations and groups that can be a strong

center for developing adult education and awareness-raising programmes. The activist and advocacy work of TAEDP and new justice groups have already demonstrated the vital role that civil society can play in raising awareness. These groups need to be given the resources and institutional support for developing new relevant materials and methodologies for integrating adult human rights education into their work.

3. Human rights education for legal professionals and criminal justice actors

As has been demonstrated in the sections on fair trial and conditions of detention and execution, there is an urgent need for human rights education for legal professional and criminal justice actors (such as police and corrections officers) in Taiwan. Legal reform cannot be effective when its key actors lack the basic skills and knowledge to ensure human rights are protected. Such training needs to be adapted to the particular function performed and should address three key areas: knowledge, skills and ethics. They should be compulsory, ongoing courses that develop skills over a period of time.

The police and corrections officers currently do not receive any human rights training. Members of the Taiwanese police force attend the Police Academy for two years while officers go university and undertake a four-year degree in policing or a six-year master's degree. No specialized training is provided for police, specialization is developed on the ground by working on particular types of cases. The FIDH mission received reports of poor training in relation to the collation of evidence (leading to over-reliance on confession evidence), allegations of police coercion and torture, failures to respect the right of access to legal advice for detainees, failures to record interviews with suspects, and abuses of powers to take samples from suspects.

Indeed, the mission was told by various people it met, that the police suffers from its historic role as the enforcer of the authoritarian martial law regime. Public confidence in the police is extremely low; the force is generally perceived as containing low-level personnel, who are badly trained; as having failed to modernise; as violators of the rights of suspects; and as failing to serve the public interest in the enforcement of the law in general. This is particularly the case in the South of Taiwan, where the level of police and public education is generally regarded as low. This is of particular concern, as the police are the first link in the law enforcement chain and all subsequent steps depend on the police having carried out their duties effectively and fairly.

Legal practitioners (from whom Public Defenders are drawn) undertake a Bachelor of Laws degree of four to five years. Very few universities offer courses in human rights law. To become qualified, lawyers must undertake six months pre-job training including one month of fundamental training and five months of practical training. This training has been running for thirteen years and only in the past two years has the syllabus included a human rights course. This course, which is a single two hour seminar, is taught by Professor Hei-yuan Chui. As 2000 of the approximately 4000 practising lawyers in Taiwan are registered to undertake Legal Aid work, it may be possible for the Legal Aid Foundation to offer human rights training courses that could act as a prerequisite to registration.

Judges and prosecutors do not receive any human rights training during the studies at the Institute for Judges and Prosecutors of the Judicial Yuan (see further in the following section). However, Professor Liao gives lecture on human rights each year to the new judges. Two years ago, an optional course on human rights was introduced into the judicial continuing programme managed by the Judicial Personnel Study Center of the Judicial Yuan. Prosecutors can also undertake ongoing education seminars on human rights.

The level of human rights awareness amongst judges is of particular concern. One judge that met with the mission expressed the view that human rights are merely 'slogans' that are covered adequately in more concrete continuing education courses on legal developments. Other judges expressed a genuine desire to find out more about international human rights law, acknowledging that their knowledge of the field is rudimentary.

The Ministry of Justice is planning to hold education classes on the policy of gradual abolition for prosecutors and other law enforcement officers. It will also ask experts and NGOs to write papers on the death penalty for reference in policy formulation⁷³. FIDH strongly encourages the Ministry to undertake this training. The Judicial Yuan should also undertake similar training for the judiciary. According to surveys, judges and prosecutors are the strongest supporters of the death penalty, with 90% reportedly supporting it (but see also above, Chapter II, 5 and 6 (e)). Effective training of legal actors in the issues relating to the abolition of the death penalty will be crucial to effective progress towards abolition.

4. Judicial and prosecutorial training

The chapter on the right to a fair trial demonstrated the numerous deficiencies in the administration of justice in

Taiwan. It has been widely acknowledged by the authorities that comprehensive judicial reform is needed, particularly in terms of judicial capacity and training. FIDH and TAEDP believe that effective training of judges and prosecutors in general legal and curial skills can play a significant role in ensuring the protection of human rights in Taiwan. More effective prosecutors and judges will force law enforcement officials to investigate crime properly and will ensure that the law is applied fairly and fully.

A number of problems have been identified: weaknesses in prosecutorial investigatory skills, independence and ethics; weaknesses in the judicial capacity to assess evidence, apply burdens of proof, manage cross-examination and investigate allegations of torture by law enforcement officials. Furthermore, in some cases, which are becoming less common, there may be said to be lingering attitudes from the past, when the prosecutor and judiciary were merely instruments of the State.

The education of judges and prosecutors in Taiwan follows the civil law model. Judges and prosecutors are drawn directly from university graduates, selected through a competitive examination (in which 3-4% of applicants are successful). At the end of training, a graduate can pursue a career as a judge and/or a prosecutor. A prosecutor must work in that capacity for four years before he or she can apply to be a judge.

However, since 1999, practising attorneys can also apply to be judges⁷⁴. The draft Judges Law, currently under consideration by the Legislative Yuan, proposes to remove the system of competitive examination by 1 July 2008 and expand the pool of potential judges to include practitioners, prosecutors and legal scholars. It is essential that a compulsory, substantive and ongoing human rights and judicial capacities training programme accompany these reforms, particularly as judges will be drawn from practitioners who are already inculcated with the practices of the current system.

At present, judges and prosecutors are trained together at the Institute for Judges and Prosecutors of the Judicial Yuan. The training course runs for two years, with six months in the training school, one year in court and a further six months in the

training school. The training involves learning about substantive and procedural law and acquiring professional skills. Concrete cases are discussed and students are asked to identify errors in prosecution or judgment. However, judges told the mission that they needed to teach themselves most of the curial skills required to be an effective judge, and are responsible for ensuring they are up to date with legal developments.

Judges can take four weeks annually for further study or training. Much of this training is provided by the Judicial Personnel Study Center of the Judicial Yuan which was established in 2002 and in 2005 offered 47 research camps to train over 2095 incumbent judges⁷⁵. The Center visits regional parts of Taiwan. Prosecutors also have access to ongoing training and education. If an optional 40 hours per year of training is completed, a positive note is put on the prosecutor's file, which can be valuable for career advancement. However, there is no obligatory component included in the ongoing training, courses taken are chosen by the prosecutors themselves. Furthermore, training is not an integral part of promotions for prosecutors.

The mission has observed that judges need further training in dealing with victims and defendants, as many people who come into contact with the judicial system feel alienated and do not understand the judicial role.

Furthermore, there appears to be a corporate mentality amongst judges that makes them unwilling to question the decisions of their colleagues. New judges need to be equipped with the skills to enable them to view critically the work of other judges and assess evidence effectively. Similarly, prosecutors need to be equipped with skills to enable them to independently assess the evidence presented by the police and prosecute cases effectively with regard to the interests of all parties.

Academics and other experts told the mission that effective judicial and prosecutorial training must start in the universities. Courses need to place a greater emphasis on jurisprudence, international human rights law and legal skills such as assessment of evidence and writing of decisions.

72. OHCHR, *Revised draft plan of action for the first phase (2005-2007) of the World Programme for Human Rights Education*, available at <http://www.ohchr.org/english/issues/education/docs/A.59.525.Rev.1.pdf>

73. The Ministry of Justice *The Policy of Gradual Abolishment of Death Penalty September 2005* (Paper provided to mission) 5.

74. Dr Yueh-Sheng Weng *In Pursuit of Justice: Recent Judicial Reforms in Taiwan* (The Judicial Yuan: Taipei, 2005) 35.

75. Dr Yueh-Sheng Weng *In Pursuit of Justice: Recent Judicial Reforms in Taiwan* (The Judicial Yuan: Taipei, 2005) 22.

Conclusions and Recommendations

Conclusions

The present report demonstrates that there is a commitment in Taiwan to ensure the meaningful protection of human rights, and as a central aspect of this, to abolish the death penalty. The reduction of the number of offences for which the death penalty can be pronounced, the cessation of executions and eventually, abolition in law, either by legislative or constitutional means, has been a stated government policy since 2000.

Although the human rights situation in Taiwan has improved since the end of Martial Law in 1987, progress towards abolition has been slow. Key actors constantly rely on the apparent public support for the death penalty, reflected through public surveys that found that almost 80% of the population is against the abolition of the death penalty. Cultural viewpoints, the rights of victims to 'justice', and public concerns regarding the impact of abolition on the crime rate are relied upon by the authorities to justify a cautious approach.

Yet, the authorities have recognised that opposition to abolition would decrease if alternative measures such as long life sentences were substituted for the death penalty. As a result, a 'transitional' approach has been adopted, with recent amendments to the Criminal Code to remove the death penalty for certain offences or to substitute mandatory for discretionary death penalty for specified offences. Life sentences with longer non-parole periods and the removal of concurrent sentencing have also been introduced. These amendments are intended to build public confidence in a criminal justice system that operates without the use of the death penalty.

Despite these moves in the right direction, the government has made no commitment to a timetable for abolition, nor has it expressed views on the adoption of a moratorium.

Critically, for a 'transitional' approach to be effective, it must be underpinned by effective human rights education. Similarly, sufficient resources must be allocated to ensure that the penal system can dispense punishment in a manner that accords with international human rights law and effective crime prevention policies must be implemented.

Furthermore, this report has documented the serious shortcomings of the criminal justice system. These shortcomings derive mainly from a lack of forensic skills,

inadequate training and supervision and lack of awareness of international human rights norms. The problems are often compounded by inadequate legal representation. Structural aspects also further contribute to the problems observed, for example, the serious weaknesses in the appeal system.

Reforms have been made to the criminal justice system, for example, the introduction of the adversarial system and a prohibition on the use of illegally obtained evidence in September 2003. However, the interface with the existing system based largely on civil law practice and the prevailing legal culture has not been effectively managed. Lack of curial skills and the persistence of outdated beliefs and practices have meant that these changes have not been fully assimilated into Taiwanese legal culture. This is exemplified by the frequent failure to obtain sufficient evidence, failure to respond adequately to allegations of torture of suspects in custody and poor management of the trial process, in particular, cross-examination.

The serious problems in the administration of criminal justice, it has been observed, have led to grave miscarriages of justice. A system has become entrenched that can effectively 'inculcate' the innocent. A sense of insecurity caused by lack of public trust in the police, prosecution and the judiciary has perhaps, ironically, led to even greater support for the death penalty.

The present report has also demonstrated that the conditions of detention in Taiwan sometimes amount to 'cruel, inhuman and degrading treatment', particularly the practice of shackling prisoners. Overcrowding and inadequate medical care must also be urgently addressed.

The Taiwanese authorities appear to be already aware of many of these problems and the inadequacy of domestic law and policy in light of international human rights standards. A meaningful commitment to human rights has been demonstrated in the publication of a White Paper on Human Rights,⁷⁶ the drafting of the Basic Law on Human Rights and a Bill to establish a National Human Rights Commission, the establishment of the Legal Aid Foundation and the development of a statutory victim's compensation scheme. Public human rights education programmes have been introduced and Taiwan has sought ways to engage with the international human rights community. These efforts must be redoubled.

Momentum has already gathered for the abolition of the death penalty and reform of the criminal justice system.

However, it is for the government and particularly, the Legislative Yuan (currently controlled by an opposition coalition led by the KMT), to take a bold step to abolish the death penalty, or as an incremental measure, adopt a moratorium on executions. The Legislative Yuan is the most significant obstacle to abolition and the development of human rights in Taiwan. Executions cannot continue where a clear policy has been announced to abolish the death penalty, and while discussions are underway to determine the modalities for abolition. Non-governmental organizations, the legal profession, the media, religious authorities and international actors can continue play a crucial role in encouraging these efforts.

Legal and policy changes that address fundamental human rights cannot be dependent on popular opinion and cannot wait for change from the ‘bottom up’. It is often up to the authorities to challenge public beliefs that are contrary to fundamental human rights, particularly, in the case of the death penalty, where public opinion is not based on a comprehensive understanding of the weaknesses in the administration of justice and the conditions and nature of executions. Public education, decisive policies and legislative measures play a key role. To fail to act is to endorse these beliefs, to the detriment of society as a whole.

Abolition is both an obligation and an opportunity for Taiwan. To meet the standards set by international human rights law will mean that Taiwan can continue to constitute itself and gain recognition as a modern democratic State that is a ‘beacon for democracy’ throughout the region.

Recommendations to the Taiwanese Government and the Legislative Yuan

Specific recommendations on the death penalty

1. To publicly adopt a clear timetable for the abolition of the death penalty.
2. To adopt a moratorium *de facto*, or preferably, *de jure*, on the execution of the death penalty, as an incremental step towards the abolition of the death penalty. This could be brought about by the President commuting the existing death penalty sentences to life imprisonment, and then systemically granting commutation for all future condemnations, until the formal abolition of the death penalty takes place. The Minister of Justice could also refuse to sign execution orders.
3. To clarify the requirements and procedures for applying for a commutation of the sentence under the Amnesty Law.
4. To abolish, as a transitional measure, the mandatory death penalty for all three crimes for which it currently exists and reduce offences carrying a discretionary death penalty to those that represent ‘serious crimes’ that are intentional in nature and result in loss of life or other extremely grave consequences. These latter amendments should be applied retrospectively to prisoners who were condemned to the death penalty on the basis of the prior legislation (in conformity with paragraph 2 of the UN Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty).
5. To enshrine in legislation “the Ministry of Justice Implementation Guidelines for Review of Death Penalty Cases”; and in accordance with paragraph 8 of the UN Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty, make amendments preventing the Prosecutor-General’s Office of the Supreme Court from reporting a death penalty case to the Ministry of Justice where the decision is on further appeal after a first appeal initiated by or for the defendant has been rejected, an application has been made on constitutional grounds to the Constitutional Court, the decision is the subject of a complaint to the Control Yuan or before the defendant has been informed by the Prosecutor General’s Office of the Supreme Court of the possibility of seeking an amnesty.
6. The “Ministry of Justice Guidelines for the Implementation of Executions” should also be enshrined in legislation and should be amended to require that the prisoner and his or her family be notified when the Minister of Justice has signed the execution order and of the date and time of the execution as soon as it is fixed and to require that the prisoner be given an opportunity to contact his or her family before the execution is carried out.
7. To ensure that the Ministry of Justice maintains and makes publicly available comprehensive statistics on the use of the death penalty including the numbers sentenced to death, and that, with the consent of the prisoners concerned, it provides access to prisoner’s files to non-governmental organizations to ensure that prisoners have access to effective legal representation.
8. In view of the inherently coercive situation in which prisoners facing imminent execution are placed, and international guidelines on medical ethics prohibiting such practice, the Taiwanese government should take immediate

steps to adopt legislation banning the removal of prisoners' organs for transplants.

9. To strengthen and broaden public education programmes on human rights, with specific components addressing the arguments against the death penalty and the function of punishment in a criminal justice system.

Recommendations regarding the administration of criminal justice

1. To abolish the police 'performance assessment system'.

2. To strengthen police training by establishing basic police training courses in universities and by establishing Police Standard Operating Procedures.

3. To train new and existing police in the effective gathering of real evidence and in forensic skills.

4. To establish an effective complaints mechanism, which is an essential component to improving both the quality of the force and the level of public confidence in the force.

5. To improve the supervision and discipline of police officers, preferably through the establishment of an independent police complaints commission, or, in the alternative, effective internal discipline procedures.

6. Police identification should be clearly embroidered on police uniforms to encourage police accountability. Police anonymity is a relic of the authoritarian regime and at present police have a number on their sleeve which is not obvious and is difficult to read.

7. To improve the access to legal representation from the time of arrest and extend the provision of legal aid to the pre-charge stage.

8. Ensure public education and standard operation procedure films for the TV and for schools so that people know their rights in police stations.

9. To cease the practice of accused paying money to the fund for victim's compensation in exchange for the discontinuation of criminal proceedings or a sentence of community service, to avoid discrimination against indigent accused.

10. To radically reform the system of Public Defenders to ensure that legal counsel are of sufficient quality to represent their clients competently.

11. To establish a programme of compulsory foundational and ongoing international human rights law training for police, corrections officers, legal practitioners, prosecutors and judges. Such training should focus on the development of knowledge, relevant skills and ethics and be adapted to the particular function performed.

12. To improve the training of judges and prosecutors, in particular, to develop skills relating to the assessment of evidence, management of cross-examination, legislative interpretation and the treatment of the accused, victims and witnesses.

13. To improve judicial leadership to protect judicial independence and ensure that judges do not feel compelled to confirm the decisions of their colleagues.

14. To abolish the right of appeal by the prosecutor against an acquittal, or, in the alternative, to ensure that prosecutors only exercise the right to appeal in exceptional circumstances, to ensure that persons who have been acquitted are not subject to multiple retrials.

15. To strengthen the Victim's Support regime, notably by allocating legal aid to victims, the streamlining of compensation application procedures, raising of the financial threshold for compensation eligibility and increasing the statutory maximum for compensation and the maximum compensation available from The Association for Protection of Victims of Criminal Acts.

16. To implement and publicise comprehensive crime prevention policies.

17. The death sentence should not be pronounced when only two of the three judges of the court approve, it should be established when all of them approve.

Recommendations regarding the conditions of detention

1. To immediately cease the practice of shackling prisoners.

2. To allocate resources to address the issue of prison overcrowding as a matter of urgency and increase the prison

staff/prisoner ratio to meet the actual needs.

3. To allocate resources to ensure adequately trained medical personnel and good quality medicine are available in all prisons as a matter of urgency.

4. To establish an independent Prison Complaints Commission

Other recommendations

1. To incorporate the ICCPR (without reservations to Article 6), ICESCR and, where possible, the Second Optional Protocol to the ICCPR into domestic law.

2. To establish a National Human Rights Commission that is in full compliance with the UN Paris Principles.

3. To reach agreement as soon as possible on nominations to the Control Yuan, to enable this constitutionally-enshrined arm of government to perform its functions of supervising government conduct.

Recommendations to civil society

1. In the case of non-governmental organizations, to continue to exert pressure on the government and members of the Legislative Yuan to take concrete steps towards the abolition of the death penalty.

2. To undertake public education campaigns to further sensitise the public to the problems in the administration of criminal justice, to international human rights law and to the arguments against the death penalty. Where possible, the non-governmental sector should also seek to undertake training in human rights and the death penalty for judges, prosecutors, lawyers and other criminal justice actors.

3. To lodge information with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and/or the

UN Working Group on Arbitrary Detention regarding condemnations that raise serious issues of miscarriage of justice and to widely publish the results of any investigations.

4. In the case of the Law Society and religious authorities, to take a clear public stance in relation to the abolition of the death penalty.

5. In the case of the Law Society, to take swift and comprehensive action to investigate and seek the revocation of the practising certificates of legal practitioners who have failed to meet ethical standards or who have demonstrated an incapacity to adequately represent their clients.

6. In the case of the media, to promote balanced discussion of the death penalty issue, promote critical discussion of the administration of justice and refrain from presenting accused persons as guilty of the crimes of which they have been accused ('trial by media') by respecting the principle of 'innocent until proven guilty'.

7. In the case of universities, to introduce courses on jurisprudence, international human rights law and legal skills into the law degree curriculum.

Recommendations to the European Union

1. To raise the issue of the death penalty in the framework of its limited engagement with Taiwan, in accordance with the EU Guidelines on the death penalty.

2. To provide technical assistance and share information, where requested by the Taiwanese government, to encourage moves towards abolition and to support efforts to develop professional and public human rights education and judicial and prosecutorial training.

76. The Research, Development and Evaluation Commission of the Executive Yuan 2002 *Human Rights Policy White Paper of the Republic of China (Taiwan)* (The Executive Yuan: Taipei, 2002).

Appendix 1: Persons met by the mission

1. Authorities

President CHEN Shui-bian

Mr SHIH Mao-Lin, Minister of Justice
Hon. Justice Yueh-Sheng WENG, President, Judicial Yuan, Chief Justice, Constitutional Court

Mr TSAI Ming-Hsien, Vice-Minister (Policy), Ministry of National Defense

Mr LIU Kuai-Tung, Head of Legal Affairs Department, Ministry of National Defense

Colonel LIPIN Tien, Judge Advocate, Ministry of National Defense, Bureau of Military Justice

Ms Pei-Yu SU, Prosecutor, Ministry of Justice

Mr TSAI Ching-Shiang, Head of Prosecutions Department, Ministry of Justice

Mayor MA Ying-Jeou of Taipei City, Chairman of KMT

Mr CHIU Wen-Jen, Deputy Superintendent, Taiwan Taipei Detention Center

Ms TSAI Huei-Jiuan, Head of Women's Detention Center, Taiwan Taipei Detention Center

Mr WU Rung-Ruei, Head of Field Production Section, Taiwan Taipei Detention Center

Mr LIU Shing-Guo, Head of Counselling Section, Taiwan Taipei Detention Center

Mr WU Yung-Shan, Head of Guard and Security Section, Taiwan Taipei Detention Center

Mr FENG Jau-Ting, Head of Hygiene Section, Taiwan Taipei Detention Center

Mr YA Bi-Ren, Secretary, Taiwan Taipei Detention Center

Mr CHEN Shih-Jyh, Warden, Taiwan Kaohsiung Second Prison

Mr HUANG Fang-Jin, Vice Warden, Taiwan Kaohsiung Second Prison

Mr LI Jin-Ying, Secretary, Taiwan Kaohsiung Second Prison

Mr LIU Yan-Liang, Head of Department of Investigation and Classification, Taiwan Kaohsiung Second Prison

Mr SHE Chuen-Dian, Head of Rehabilitation Department, Taiwan Kaohsiung Second Prison

Mr HUANG Guo-Sheng, Head of Work Department, Taiwan Kaohsiung Second Prison

Mr WENG Yung-Fang, Head of Guard Department, Taiwan Kaohsiung Second Prison

Mr CHANG Chi-Cheng, Head of General Affairs Department, Taiwan Kaohsiung Second Prison

Mr YANG Jing-Man, Head of Office of Internal Affairs, Taiwan Kaohsiung Second Prison

Hon. Justice Chung-Mo CHEN, Justice, Constitutional Court, Vice-President, Judicial Yuan

Mr Kuang-Chiun FAN, Secretary-General, Judicial Yuan

Hon. Justice Yu-Tien TSENG, Justice, Constitutional Court, Judicial Yuan

Hon. Justice Yu-Hsiu HSU, Justice, Constitutional Court, Judicial Yuan

Hon. Justice Tzu-Yi LIN, Justice, Constitutional Court, Judicial Yuan

Hon. Justice Chin-Chuen LIN, Justice, Supreme Court

Hon. Justice Tsai-Jen TSAI, Justice, Supreme Court

Hon. Justice Chin-Ming FEN, Justice, Supreme Court

Mr Ling-Chi LIU, Director-General, Criminal Department, Judicial Yuan

Hon. Justice Chih-Shyang CHEN, Justice, District Court

Mr Wen-Ting HSIEH, Attorney-General, Public Prosecutor's Office Taiwan High Court and President, Association for Protection of Victims of Criminal Acts

Mr Hong Da CHEN, Prosecutor, The Prosecutor's Office for the Taiwan High Court

Ms. Wen-Ling Hong, Coordinator, Association for Protection of Victims of Criminal Acts

2. Civil Society

Professor Hei-yuan CHIU, Research Fellow, Institute of Sociology, Academia Sinica and Professor, Department of Sociology, National Taiwan University, Director, Judicial Reform Foundation and Convenor of TAEDP

Mr Chih-Kuang Wu, Professor, School of Law, Fu Jen University, Vice-Convenor of TAEDP

Mr Hao Jen Wu, Professor, School of Law, Fu Jen University, Vice-Convenor of TAEDP

Mr LIN Yung-Sung, Chairman, Legal Aid Foundation and Member of the Standing Committee of the Judicial Reform Foundation

Mr CHENG Wen-Lung, Secretary-General, Legal Aid Foundation

Ms I-Ching KUO, Executive Secretary, Legal Aid Foundation

Professor Mab HUANG, Joseph K Twanmoh Chair, Director of Chang Fo-Chuan Center for the Study of Human Rights at Soochow University

Professor LIAO Fort Fu-Te, Adjunct Professor of Law, Taiwan National University, Assistant Research Fellow, Academia Sinica

Mr Thomas S K CHAN, attorney

Mr Henry K M CHUANG, attorney and Chairperson of Human Rights Protection Committee of the Taipei Bar Association and Human Rights Consultant to the President of Taiwan

SHEIK Ma Hsiao-Chi, Iman of Taipei Mosque

Mr WEN Jin-ke, researcher on Buddhist religion

Professor LI Mau-Sheng, Professor of Law, Vice Dean, Taiwan National University

Ms LIU Feng-Chin, Journalist, China Times

Mr LIN Ho-Min, Reporter, United Daily News

Ms HSIAO Bai-Shiue, Reporter, United Daily News

Mr WU Dong-Mu, Reporter, Public Television Service

Ms Christine KUO, Reporter, The Central News Agency

Mr WEN Chin-Ko, Radio Taiwan International

Professor LI Nigel Nian-Tzu, attorney, Professor of Law and Member of the Standing Committee of the Judicial Reform Foundation

Mr MA Tzai-Chin, attorney and the spokesman of the Police Reform Union, Member of the Standing Committee of the Judicial Reform Foundation

Mr SU Yu-Chen, attorney and Secretary-General of the Taipei Bar Association

Mr LIAO Jian-Nan, former member of Control Yuan

Mr Yung-Cheng KAO, Executive Director, Judicial Reform Foundation

Ms Hsin-yi LIN, Office Manager, Judicial Reform Foundation

Ms WU Jiazhen, Secretary-General, Taiwan Association for Human Rights

Mr Wen Siong HUANG, Adviser and former Chairperson, Taiwan Association for Human Rights

Ms Serena CHUNG, Director of International Affairs, Taiwan Association for Human Rights

Ms Yen Ting CHUN, Executive Secretary, Judicial Reform Foundation

Mr Yang Huan LI, Assistant, Chang Fo-Chuan Center for the Study of Human Rights, Soochow University, Taipei

Ms KANG Yu-Cheng, attorney and Councillor of Kaohsiung City Council

Mr SU Jing-Ho, Mr LIU Bing-Long and Mr CHUANG LING-Shi acquitted in a death penalty case, currently awaiting retrial

3. Prisoners and their families

Mr XU Zi-Chiang, death row inmate, Taiwan Taipei Detention Center

Mr CHEN Shih-Jyh, Warden,

Mrs XU CHAN Hsou Chin, mother of Mr XU Zi-Chiang

Mr CHENG Wu-Sung, death row inmate, Taiwan Kaohsiung Second Prison

Mr CHANG Guo Liang, father of Chang Chia-Yao, death row inmate

Ms HAO Pi, step-mother of Chang Chia-Yao, death row inmate

Ms LU Jing, sister of Mr LU Jeng, who has been executed

4. Victims and their families

Ms TU Hua-Ming, sister of victim

Ms Cindy CHENG, wife of victim

Appendix 2: Provisions of the Taiwanese legislation carrying the death penalty

- Criminal Code, Articles 101, 103, 104, 105, 107, 120, 185-1, 185-2, 226-1, 261, 271, 272, 328, 332, 333, 334, 347, 348
- The Anti-Sexual Business Provisions for Children and Teenagers, Article 26
- Water Act, Article 91
- Civil Aviation Law, Articles 100, 101, 110
- Punishment Act for Violation to Military Service System, Articles 16, 17
- Smuggling Punishment Act, Article 4
- Drug Control Act, Articles 4, 6, 15
- Law on Punishment of Genocide, Article 2
- Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife, Article 7
- Criminal Law of the Armed Forces, Articles 14, 15, 17, 18, 19, 20, 24, 26, 31, 41, 42, 47, 48, 49, 50, 53, 58, 65, 66

Appendix 3: Provisions of the Constitution relating to human rights

Constitution of the Republic of China (1947), Chapter II

Rights and Duties of the People

Article 7. All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.

Article 8. Personal freedom shall be guaranteed to the people. Except in case of flagrante delicto as provided by law, no person shall be arrested or detained otherwise than by a judicial or a police organ in accordance with the procedure prescribed by law. No person shall be tried or punished otherwise than by a law court in accordance with the procedure prescribed by law. Any arrest, detention, trial, or punishment which is not in accordance with the procedure prescribed by law may be resisted.

When a person is arrested or detained on suspicion of having committed a crime, the organ making the arrest or detention shall in writing inform the said person, and his designated relative or friend, of the grounds for his arrest or detention, and shall, within 24 hours, turn him over to a competent court for trial. The said person, or any other person, may petition the competent court that a writ be served within 24 hours on the organ making the arrest for the surrender of the said person for trial.

The court shall not reject the petition mentioned in the preceding paragraph, nor shall it order the organ concerned to make an investigation and report first. The organ concerned shall not refuse to execute, or delay in executing, the writ of the court for the surrender of the said person for trial.

When a person is unlawfully arrested or detained by any organ, he or any other person may petition the court for an investigation. The court shall not reject such a petition, and shall, within 24 hours, investigate the action of the organ concerned and deal with the matter in accordance with law.

Article 9. Except those in active military service, no person shall be subject to trial by a military tribunal.

Article 10. The people shall have freedom of residence and of change of residence.

Article 11. The people shall have freedom of speech, teaching,

writing and publication.

Article 12. The people shall have freedom of privacy of correspondence.

Article 13. The people shall have freedom of religious belief.

Article 14. The people shall have freedom of assembly and association.

Article 15. The right of existence, the right to work and the right of property shall be guaranteed to the people.

Article 16. The people shall have the right of presenting petitions, lodging complaints, or instituting legal proceedings.

Article 17. The people shall have the right of election, recall, initiative and referendum.

Article 18. The people shall have the right of taking public examinations and of holding public offices.

Article 19. The people shall have the duty of paying taxes in accordance with law.

Article 20. The people shall have the duty of performing military service in accordance with law.

Article 21. The people shall have the right and the duty of receiving citizens' education.

Article 22. All other freedoms and rights of the people that are not detrimental to social order or public welfare shall be guaranteed under the Constitution.

Article 23. All the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare.

Article 24. Any public functionary who, in violation of law, infringes upon the freedom or right of any person shall, in addition to being subject to disciplinary measures in accordance with law, be held responsible under criminal and civil laws. The injured person may, in accordance with law, claim compensation from the State for damage sustained.

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Appendix 5: Abbreviations

| | |
|--------|--|
| DPP | Democratic Progressive Party |
| ECOSOC | United Nations Economic and Social Council |
| EU | European Union |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| JRF | Judicial Reform Foundation |
| KMT | Kuomintang (or Nationalist Party) |
| TAEDP | Taiwan Alliance to End the Death Penalty |
| TAHR | Taiwan Association for Human Rights |
| UN | United Nations |

The **International Federation for Human Rights (FIDH)** is an international non-governmental organisation for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, FIDH brings together 141 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations, and trainings in more than one hundred countries. It provides its members with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations. The works to:

- a) Mobilise the international community
- b) Prevent violations, and support civil society
- c) Observe and alert
- d) Inform, denounce, and protect

FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights.

FIDH has observer or consultative status with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Steering Committee for Human Rights of the Council of Europe, the International Labour Organisation (ILO), the Commonwealth, the African Commission on Human and Peoples' Rights, the Organisation of American States (OAS) and the Organisation Internationale de la Francophonie (OIF).

FIDH is represented at the United Nations and the European Union through its permanent delegations in Geneva, New York and Brussels. FIDH also has an office in the Hague, with permanent representation before the International Criminal Court.

Taiwan Alliance To End the Death Penalty

廢除死刑推動聯盟

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Taiwan Alliance to End the Death Penalty (TAEDP) is a coalition of various local abolitionist non-governmental organizations (NGOs) and research institutes.

Launched by the Taiwan Association for Human Rights (TAHR), the Judicial Reform Foundation (JRF), Fujen University John Paul II Peace Institute, the Chang Fo-chuan Center for the Study of Human Rights, the Taipei Bar Association (TBA) and the Peacetime Foundation in September 2003, the alliance promotes the reform of Taiwan's penal system in addition to advocating the abolition of the death penalty.

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