

TAIWAN

@III-Treatment on "Death Row"

The death penalty continues to be widely used in the Taiwan (the Republic of China). According to unofficial sources there were at least 78 executions in 1990, 59 in 1991 and 35 in 1992.

Amnesty International is concerned that the treatment of prisoners on death row in Taiwan, who are kept permanently chained, is degrading and inhuman. It is also concerned that current practices involving the administration of lethal injections, authorized since 1992 as a method of execution, are a breach of international standards of medical ethics. Amnesty International is further concerned that executed prisoners continue to be used as a source of organs for transplantations despite opposition to this practice by medical associations and despite the ethical and practical questions it raises.

Death Row Shackles

Prisoners sentenced to death await execution in detention centres in cells separate from those holding other prisoners. They spend months in these "death row" cells, awaiting the outcome of their appeals and the final confirmation of their sentence by the Supreme Court. During that period, they are made to wear foot shackles – these consist of a chain, about 50 cm long, fixed at both ends to metal cuffs around the prisoner's ankles. Both prisoners and guards have told Amnesty International that the foot shackles are worn permanently by "death row" prisoners, inside as well as outside the cell, including during exercise periods. The use of foot shackles is justified by officials as a measure to prevent escape. However, this does not justify keeping the shackles on at all times, particularly when the prisoner is within a cell.

To Amnesty International's knowledge, the treatment of prisoners sentenced to death is decided by individual detention centre authorities; there is no formal legislation regarding the use of shackles. Permanent foot shackling of prisoners under sentence of death is a long-standing practice in Taiwan. Rather than serving any real functional purpose, it appears to have primarily a symbolic value as a formal, visible mark of the punishment awaiting the prisoners.

Amnesty International believes permanent shackling to be inhuman and degrading. It is a mark of the prisoner's "death row" status; it is used no matter what the real risk of escape is; the weight and friction of the shackles causes permanent discomfort and physical pain. It amounts to an additional punishment arbitrarily imposed on prisoners merely on the basis of

the fact that they have been sentenced to death. It constitutes ill-treatment prohibited under international human rights standards.

Amnesty International urges the Taiwan authorities to immediately end the shackling of prisoners sentenced to death, and to use other instruments of restraint only in accordance with relevant international standards, including the following:

The *Universal Declaration of Human Rights* states (Article 5):

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

The United Nations *Standard Minimum Rules for the Treatment of Prisoners* state (Articles 33 and 34):

"33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the [prison's] medical officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority."

"34. 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."

Organ Transplants from Executed Prisoners: A Moral Quagmire

It was announced in August 1990 that the Justice Ministry approved a change in the method of execution to that of shooting in the brain stem to preserve the executed prisoner's vital organs for transplant provided that the prisoner had given consent. Prisoners who did not give consent were to be executed by a shot through the heart as previously.

According to sources in Taiwan, the idea for prisoners sentenced to death to donate their organs came initially from a group of condemned men who wished to make a "contribution to society". In 1990 following a conference between the then Minister of Justice and medical and legal professionals, it was finally agreed that those who wished to volunteer could do so and that these prisoners would be executed by being shot through the brain rather than the heart. The main argument given in favour of this policy was that a prisoner should have the same right as other citizens to donate his/her organs.

According to the Ministry of Justice, the following procedures apply for organ donation:

Consent to donate organs must be given in writing by both the prisoner and his or her immediate family (spouse, father, mother, etc.) and it is also possible at any stage thereafter for the condemned prisoner to withdraw consent. After the consent of the condemned prisoner is obtained, the hospital which will do the organ transplantation is informed and a medical team is sent to the individual to carry out the necessary examination and other laboratory tests connected with organ donation.

The critical care team – an anesthesiologist and two qualified physicians (not from the transplantation team) who will carry out brain death judgment – arrive at the site of the execution in time for the execution. Before the execution, the anesthesiologist injects the prisoner with anaesthetics and inserts an endotracheal tube. After the shooting takes place, the accompanying physicians resuscitate the circulatory system by stopping haemorrhage, performing artificial ventilation and blood volume replacement to prevent hypotension.

After the pronouncement of brain death, the executed prisoner is transferred to hospital. The medical team conducting the transplantation must not have been involved in the execution. The procedures for prisoners to donate their organs for transplantation are the same as those applied to non-prisoners under the regulations prescribed in the Human Organ Donation and Transplantation Act.

Amnesty International understands that until 1991 brain death was judged according to the criteria set forth in the *Statute Law of Procedure of Brain Death Judgment* passed in September 1987. However, according to a press report of 3 May 1991, the Justice Ministry

abolished the requirement that the bodies of executed prisoners be examined twice to independently determine brain death, and that in future one determination of death will suffice. The Ministry of Justice was reported to have made the decision in order to avoid controversy in response to reports that many organ donors had to be shot as many as five times when they were found by doctors to be still alive during the second examination. Such a procedure does not meet accepted practice in transplantation surgery where two doctors who are independent of the transplantation team must separately determine death before any surgery commences.

On 17 April 1991 an "executed" prisoner was found not to be dead on arrival at the hospital where his organs were to be removed. He had received a single shot to the head and had been declared dead at the place of execution and his body transferred to the Veterans General Hospital in Taipei where the organs were to be removed. Hospital doctors, however, found that he had a heart beat, could breathe unaided and showed other vital signs, including a weak pupil response. He was transferred to an intensive care unit by hospital doctors. Thirty-four hours after the attempted execution, the Ministry of Justice ordered that he be taken from the hospital back to the place of execution to receive a second bullet in the head.

Figures from the Ministry of Justice indicate that between October 1990, when organ transplantation from executed prisoners began, and the end of July 1991, there were 51 executions and in 22 of these instances prisoners had donated organs. Since then, medical societies and hospitals have stated their opposition to using the organs of executed prisoners for transplantation purposes. The Chinese-Taipei Medical Association and the Transplantation Society of the Republic of China in December 1991 stated that organs from executed prisoners would no longer be accepted. But the practice continues despite these declarations.

Amnesty International is concerned that the use of organs from executed prisoners raises serious ethical questions, including the following:

- ◆ The freedom of the "consent" to have organs removed, given by a prisoner facing certain death within weeks or months, cannot be compared to the free consent given by people not under a death sentence. Prisoners sentenced to death, and their relatives, are particularly vulnerable. They are under pressure because of the impending execution and also because they are expected by officials and others to show repentance, to "atone" for a crime. In this context it is doubtful whether genuinely *free* consent to removal of organs can be genuinely given by them.

- ◆ Executions may not result in immediate brain death. Experience in Taiwan proves that execution procedures may have to be repeated if the prisoner shows basic vital signs. The use of resuscitation equipment immediately after execution, and the transportation of an

executed prisoner from prison to hospital may lengthen the period during which a prisoner may remain alive after the execution is carried out. This may reinforce the inhumanity of the execution.

◆ The very close relationship between medical and execution personnel which such transplants involve also leads to *de facto* participation of medical personnel in the actual execution process, since some medical procedures, including insertion of an endotracheal tube, start before the execution. This participation would be even more evident if organs were to be transplanted from prisoners executed by lethal injections, as allowed by law in Taiwan since October 1992 because lethal injections themselves require medical preparation. Among other aspects of the procedure, the timing of executions risks being influenced by the need for organs.

◆ Executed prisoners should not be seen as an acceptable source of organs for transplants. Internationally accepted procedures for the use of organs from other donors (such as victims of accidents) should be encouraged but, in Amnesty International's view, reliance on executed prisoners for donated organs introduces a major flaw in the transplantation process.

In that context, Amnesty International believes that the use of organs from executed prisoners should not take place under the procedures currently in force. The practice of harvesting organs from executed prisoners should be suspended and the government should review all aspects of the procedure in the light of expert professional opinion. Amnesty International urges all medical personnel and their associations in Taiwan to make clear or reaffirm their opposition to the use of organs from executed prisoners.

Lethal Injections

Prisoners sentenced to death in Taiwan have in the past generally been executed by shooting. However, on 19 October 1992 Taiwan's Legislative *Yuan* (assembly) introduced execution by injection of lethal chemicals as an alternative method of execution. Other methods, including hanging, electrocution and use of poisonous gas, were considered by the parliamentarians but rejected. Newspapers reported that the then Justice Minister Lu You-wen had commented during the parliamentary discussions that, because of ethical reasons, it would be difficult to find suppliers to provide the equipment and build the facilities to kill prisoners by electrocution or poisonous gas. He was also reported as commenting that lethal injection was a "humane way" to execute prisoners.

The Ministry of Justice stated that prison officers would be trained to carry out executions by lethal injection but omitted to state who would carry out this training. It is

against international standards of medical ethics for doctors and other medical professionals to be involved in any way in executions (except to certify death).

The only country where lethal injection is known to have been used for judicial executions is the United States of America. Executions by lethal injections as carried out in the USA involve the continuous intravenous injection of a lethal quantity of a short-acting barbiturate in combination with a chemical paralytic agent. The prisoner is fastened to a stretcher and intravenous lines are implanted in the prisoner by medically trained technicians. The technicians (or, in some states of the United States of America where lethal injections are used, an automatic machine) inject a combination of chemicals into the lines. Death may occur within minutes but the installation of the lines can be a long and stressful process and any significant imbalance in the dosage of chemicals can cause the prisoner extreme pain. In several cases known to Amnesty International, execution by lethal injection in the USA resulted in the prisoner being subject to such a prolonged pain.

Lethal injections involve the radical misuse of medical skills. Amnesty International opposes all executions without reservation and is concerned about the decision to introduce in Taiwan an execution method which in effect involves medical personnel in executions. It urges the Taiwan authorities not to use lethal injections as a method of execution, and urges medical personnel to take no part in executions, whatever the method used.

Amnesty International's recommendations

Amnesty International opposes the death penalty because it is the ultimate form of torture and inhuman punishment, and because it is a violation of the right to life. Amnesty International also considers that the death penalty has no unique deterrent effect against crime.

Amnesty International believes that the Government of the Republic of China should abolish the death penalty immediately and unconditionally.

As a **temporary measure** until such abolition takes place, the government should **stop carrying out any executions and systematically commute all death sentences**. The government should also, as outlined above:

- ◆ **Immediately end the foot shackling of prisoners sentenced to death**, and to use other instruments of restraint only in accordance with relevant international standards.
- ◆ **Abstain from introducing lethal injections as a method of execution.**

- ◆ Ensure that the practice of using executed prisoners as a source of organs for transplants is suspended pending a comprehensive revision of the relevant procedures.