

Topic Report “Introduction to Capital Punishment and Policies in Taiwan” by the Ministry of Justice

1. Preamble

The Ministry of Justice hereby submits this Topic Report regarding “Introduction to Capital Punishment and Policies in Taiwan” based on the decisions made at the 33rd Conference of the Presidential Office Human Rights Consultative Committee.

2. Remedy after Conviction of Capital Punishment

(1) In addition to remedies as retrial, extraordinary appeal, interpretation by Grand Justices of the Constitutional Court and amnesty, on December 12, 2016, MOJ also promulgated “Directions of Supreme Prosecutors Office for Procedures of Review and Investigation of Disputed Convicted Crimes Punishable by Death Penalty” by Supreme Prosecutors Office in which the Supreme Prosecutors Office has established “Committee for Review of Disputed Convicted Crimes Punishable by Death Penalty” with Prosecutor-General as the Chairman, and may case-by case, designate Head Prosecutors, Prosecutors, Forensic Medical Examiner and experts, scholars of criminal laws or representatives of attorneys to review the feasibility of filing retrial or extraordinary appeal

for disputed convicted crimes punishable by death penalty.

(2) The MOJ had promulgated the amended “Directions of Procedures for Trial and Investigation of Crimes Punishable by Death Penalty on September 1, 2016, which requires the Supreme Prosecutors Office shall prudently confirm that a. no false identification of the inmates; b. no unreliable and improper expert examination; c. no inconsistent standards of forensic science; d. no illegal or improper interrogation; e. no inefficient or unqualified defense, and f. no unreliable testimony of secret witness in the case prior to reporting execution to MOJ.

(3) The “Regulations Governing DNA Profiling for Criminal Cases” promulgated by the President on November 16, 2016: The defendants who face unjust judgement may have prosecutors file retrial, and also apply for reopen of the case by adopting the most advanced DNA profiling technology to the evidence.

(4) In March, 2016, the Taiwan High Prosecutors Office Taichung Branch proactively discovered disputed case of “defendant Zheng” and filed retrial to the Court. On October 26, 2017, Taiwan High Court Taichung Branch announced the defendant Zheng not

guilty and the judgement was affirmed on November 21, 2017. This Case is the model example which exhibits the prudent capital punishment execution, human life respect and human rights protection by MOJ.

3. Status of Convicted Offenders

(1) As of December 31, 2018, Taipei Detention Center accommodates 23 out of the 42, with 1 female and 22 male. The longest accommodation duration is 22 years, 3 inmates are over 60 years old who they are 83, 66 and 62 years old, respectively. For convicted crimes, 33 (78%) of the 42 were convicted of homicide crimes, followed by crimes of felony murder during robbery (5 inmates) and crimes of felony murder during kidnapping for ransom (4 inmates).

(2) Disobedience by Inmates Convicted of Capital Punishment: As of December 31, 2018, 13 out of the of 42 inmates have accommodation records with no disobedience, 12 have 1 piece of record of disobedience, followed by 8 with 2 pieces, and 9 with 3 or more pieces. There is one inmate who has the most pieces of records as 8 times of disobedience. Disobedience types are: Order interference (24 cases),

violent assault (19 cases) and possession of prohibited articles (18 cases).

(3) Application for Execution of Capital Punishment by Inmates: 10 inmates have applied for execution of Capital Punishment to MOJ, with 5 applied for over three times and the highest is 7 times.

(4) Accommodation: The Concentric Circular Management Model of Inmates Correction has features of both carrot and stick, where the inner circle as guard and control of safety and the exterior as humanistic management. It is expected the risks of disobedience may be reduced while ensuring the guard and control of safety by utilizing such two-tier management model. The descriptions of this Model are as following:

a. Renovation to Hardware in Wards: The policy of “one bed for one inmate” is implemented. At Taipei Detention Center, inmates can choose the painted colors of the ward to replace the heavy-dark atmosphere with bright colors and warming environment.

b. Proper Deregulations of Inmates Living Restrictions

(a) Visiting and Communication: Twice visits a week and 30 minutes each time for relatives and the duration or visit frequency may be extended or increased if necessary. Telephone or video visiting are also available. From January to April, 2018, Agency of Corrections, MOJ has completed a statistical survey of visiting of the 43 inmates convicted of the Capital Punishment. The result shows that inmates with 0 time of visiting per week account for the most portion (69.3%), followed by 1 per week (24.0%), 2 per week (6.1%) and more than 2 per week as the minimum portion (0.6%).

(b) Inmates convicted of the Capital Punishment are allowed to possess, use portable appliances (including handheld TVs, radios and game consoles) and may apply for purchase of latex-texture mattresses and pillows, and duvets to improve accommodation quality and lower anxiety.

c. Customized Correction and Education Programs: Humanistic Correction and Education including family support, counseling, religious education,

courses of artistic and life respect with aims to correct inmate's life perspectives.

d. Working at Workshops: The accommodation institutions would select inmates to workshops working based on their personal interests, guard and control of safety and living management, and the works shall be in principles, simple and tool-free. According to the survey of May 2018 to all 43 inmates convicted of Capital Punishment, only one inmate participated works at workshops and wards while the rest did not. 13 (30.2%) out of the 43 inmates had personal interests in working at workshops working, 29 (67.4%) had no interests and 1 had no comments, which obviously indicated that most inmates convicted of Capital Punishment had low level of interest in working at workshops.

e. Medical Caring for Mentally-illed Inmates: As of December 31, 2018, 9 (accounting for 21%) out of the 42 inmates convicted of Capital Punishment are diagnosed of mental illness and under medication. Immediate health checkup would be conducted by the correction institutions upon the reception of new inmates. Any suspected

mentally-illed inmates will be officially registered for Mental Status Examination (MSE) by professional physicians, and sent to medical treatment in the Institution or rehabilitative measure Institutions.

f. Restorative Justice for Crimes Punishable by Capital Punishment: Restoration facilitators in charge of District Prosecutors Offices and Associations of Victims Support are invited to be as voluntarily workers in the arrangement of all kinds of counseling programs for further formularization of relevant administration. Long-term cooperation for counseling will be established and adequate Restorative Justice for Crimes practice will be implemented at proper timing.

4. The Convicted Crimes, Number of Execution and Sentenced of Death Penalty Execution, 2009-2018:

(1) Number of Executed Offenders and the Convicted Crimes Punishable by Death Penalty:

Based on statistics by MOJ, from 2009 to 2018, there were no females among the executed offenders (all males). The convicted crime with the maximum portion was homicide (50%), followed by felony

murder during robbery and murder during rape (please refer to Appendix 1). Though the Capital Punishment has not been abolished in Taiwan, the judicial judgement and execution of Capital Punishment had been significantly reduced in recent years (please refer to Appendix 2 and 3), and those convicted of Capital Punishment were offenders committed brutal crimes and intentionally killed human lives, was consistent with the legislative purpose of the term “the most serious crime” specified in Paragraph 2 of Article 6 of International Covenant on Civil and Political Rights (ICCPR).

(2) Legal Basis for Review and Execution of Capital Punishment

The Ministry of Justice (MOJ) conducts review and execution of the Capital Punishment based on the Code of Criminal Procedure, Directions of Procedures for Trial and Investigation of Crimes Punishable by Death Penalty and Directions of Procedures for Execution of Death Penalty. Upon the execution of death penalty, the relevant authorities shall prudently review whether any of the following items exists: (a) exhaustion of all remedies: no retrial, extraordinary appeal, interpretation by Grand Justices

of the Constitutional Court, amnesty or any remedies are being pending; (b) restriction of subjects punishable by Capital Punishment: the offenders have no status applicable to Article 465 of the Code of Criminal Procedure prior to his/her execution; and (c) restriction of measures for execution of Capital Punishment:

(3) Comprehensive and Thorough Review as well as Execution Ruled by Law:

The annually execution to offenders by MOJ matches the protection of rights to life specified in Articles 6 and 7 of ICCPR and prior to execution, the motive and level of brutality (such as arson and body dismember) of offenders, the number of victims, whether there was any underprivileged victims or the relationships between victims and offenders (such as women, children, spouses and direct blood relatives), the damage caused to victims and victims' families, were the crimes committed on a random or discrimination basis, etc. shall all be prudently reviewed and considered in order to protect social justice as well as ensuring human rights.

5. Future Vision

Besides the initial effort of promotion of “reducing

execution” and “prudent execution”, MOJ also proposes the “Fundamental Programs for Gradual Abolishment of Capital Punishment” combined with one core value, three basic pillars and five key focuses (please refer to Appendix 4) in order to achieve the long-term goal of gradual abolishment of Capital Punishment.

(1) Core Value and Basic Pillars

a. “Protect and Guard Right to Life” as Core Value: Paragraph 1 of Article 6 of ICCPR states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” This Regulation indicates the priority of human rights as the right to life. The life of offenders and victims shall be equally valued and protected regardless of their social status, and shall not be deprived of without “just and reasonable” causes. Therefore, “Protect and Guard Right to Life” shall be the Core Value for the policies of promotion of gradual abolishment of Capital Punishment.

b. “Prudent Prosecution and Trial Process”, “Prudent Execution of Punishment” and “Enhancement of Protection of Victims and Their Relatives” as Basic Pillars: the principles of “prohibiting torture and

other cruel, inhuman or degrading treatment or punishment” and “fair judgement” are specified in Paragraphs 2 and 5 of Article 6 and Article 5, and Article 7, respectively, which form restrictions and limitations to substantive (standards for conviction and judgement) and procedural (standards for execution) regulations of Capital Punishment to avoid “unjust and unreasonable” causes. In addition, for the promotion of death penalty abolishment, the guarantee of offenders’ human rights and enhancement of protection of those of victims shall be equally valued on an unbiased basis, and simultaneous promotion of “Prudent Prosecution and Judgement Process”, “Prudent Execution of Punishment” and “Enhance Protection of Victims and Their Relatives” shall be the major three Basic Pillars.

(2) Key Focuses

MOJ plans to propose the following five key focuses and jointly discuss any feasible measures by applying experiences abolishment of Capital Punishment from foreign states at the conferences held by “Group for Research and Promotion of Gradual Abolishment of Capital Punishment”.¹

¹ The measures specified by “Fundamental Programs for Gradual Abolishment of Capital Punishment”

a. Dedicated to Minimizing the Execution of Capital Punishment

The Court judgements and Paragraph 2 of Article 6 of ICCPR have limited the sentence of death to only “the most serious crimes” in accordance with the law in force at the time of the commission of the crime. The definition of term “the most serious crimes” shall be limited to “intention to kill which resulted in the loss of life” according to the interpretation of ECOSOC and United Nations Human Rights Committee. Therefore, our substantive criminal laws shall be prudently and thoroughly reviewed and limit the crimes punishable by Capital Punishment to those with “intention to kill which resulted in the loss of life” to match the legislative purpose of ICCPR.

b. Dedicated to Implementing Prudent Prosecution and Trial Process

To implement prudent sentencing procedures of Capital Punishment, better protection of human rights and correctness of judgement, the following

may be categorized as priority tasks of “short-term” (two years) and mid-term (two to four years) and recommended measures (including relevant tasks requiring cooperation by other agencies) may be presented at the discussion of “Group for Research and Promotion of Gradual Abolishment of Capital Punishment”. The five “Key Focuses” are the draft version of “Fundamental Programs for Gradual Abolishment of Capital Punishment”, the final version would be completed after joint discussion with “Group for Research and Promotion of Gradual Abolishment of Capital Punishment”

aspects shall be properly considered: (a) establish objective sentence standards and abide by proportionality; (b) adopt the “pre-sentence investigation” from Common Law Systems; (c) legalize and institutionalize the sentence debate and discussion procedures; (d) adopt bifurcated trial proceeding; (e) decision of Capital Punishment shall only be determined based on the principles of unanimity; (f) mandatory defense for the accused crimes punishable by Capital Punishment shall be implemented to guarantee the rights to be heard; and (g) inquisitorial investigation and mandatory assessment on mental status of the accused.

c. Dedicated to Implementing Prudent Execution of Punishment

In International Human Rights Laws², the principles of “no punishment is allowed when insanity exists after conviction” is equivalent to the principles that no punishment shall be imposed to anyone who was unable to judge his/her act or lack the ability to act according to his/her judgment during the commission of such acts. Upon the promulgation of the Criminal Code on July 1, 1935, Paragraph 1 of

² Lin, Hui-huang (2015), “The Just Death: The Legitimate Legal Procedures for Conviction of Death Penalty in the Perspective of International Human Rights Laws (Part 2)”, *The Legal Monthly*, 66(1): 1-35.

Article 19 of such Act had specified that “An offense is not punishable if it is committed by a person who is mentally insane.” Paragraph 1 and 3 of Article 465 of the Code of Criminal Procedure amended and promulgated on January 28, 1967 had specified that “The Ministry of Justice may order to suspend the execution if it is found the one whom death penalty is pronounced is insane.” However, the uniformed standard for determination of “insane” is difficult to be established. Therefore, on February 2, 2005, Paragraph 1 of Article 19 of the Criminal Code was amended and promulgated with the content as “An offense is not punishable if it is committed by a person who is mentally disorder or defects and, as a result, is unable or less able to judge his act or lack the ability to act according to his judgment.” However, the term “insane” specified in Article 465 of the Code of Criminal Procedure has not been amended. MOJ hereby plans to study and amend the restrictions to subjects punishable by Capital Punishment specified in Article 465 of the Criminal Code after the official release of ICCPR General Comment No. 36 and MSE for offenders convicted of Capital Punishment shall be studied and

conducted to complete the mechanism of current criminal law system.

d. Dedicated to Improving the Efficiency of Victims Protection System

MOJ would implement victims protection system based on “Programs for Improving Victims Protection Systems” approved by Executive Yuan and improve the following tasks: (a) Legalize and institutionalize the procedures of Restorative Justice for Crimes: Promote the maximum opportunities of mutual conversation between the victims and the relatives and the offenders to allow any offenders' sincere apologies and understanding of victims' suffering and relatives' trauma and provide mental comfort to victims. By doing so, it is expected that the offenders could sincerely repent and receive forgiveness from victims to achieve the goals of life respect education and correction which are pursued by criminal punishments. (b) Guarantee and improve the rights of victims' legal proceedings: Research and promote the mechanism of victim participation in criminal proceeding with the cooperation of Judicial Yuan to improve the level of participation and discourse of victims and the relatives during

criminal proceeding.

e. Dedicated to Promoting Education of Human Rights and Life Respect: (a) MOJ has invited personnel from human rights NGOs to be the members of “Group for Research and Promotion of Gradual Abolishment of Capital Punishment” to hold meetings on random basis and invite representatives of relevant NGOs to participate for collecting various opinions. In addition, MOJ has jointly held “Let’s Discuss the Alternatives to the Death Penalty: A Public Deliberation” with Taiwan Alliance to End the Death Penalty. Such grand seminar had been held at facilities of Taipei and Taichung Prisons as of 2019 and further planning is ongoing. MOJ will keep improving the current operation model functions and participation and cooperation of human right NGOs to enhance the public understanding of the right to life and Capital Punishment to reach social consensus. (b) Representatives of EETO, members of British Parliament and representatives from German Institute in Taipei had visited MOJ in September, October and November, 2018, respectively. All of them are willing to offer assistance and share

experiences of Capital Punishment abolishment.

5. Conclusion

The Ministry of Justice will continue the policy of abolishment of Capital Punishment gradually, and educate and persuade the public by sharing the experience of death penalty abolishment in Europe and other countries. MOJ will also focus on related issues and promote “Fundamental Programs for Gradual Abolishment of Capital Punishment” with proper supporting measures that balance human rights and victims protection and ease public concerns.