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AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 17/5, 17/2 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the imminent execution of Mr. **Chiou Ho-shun**, a labourer, aged 51, who was sentenced to death on 28 July 2011 in a final judgment by the Supreme Court in Taipei. He is being held in Taipei Detention Centre where he has been detained for the past twenty-two years due to a lengthy judicial process of numerous trials, remands and appeals. We are also writing in connection to co-defendant, Ms. **Wu Shu-zhen**, a vendor, aged 43, who was sentenced to ten years by the Supreme Court in Taipei on 28 July 2011 and is currently serving that sentence in Taichung Women's Prison.

According to the information we have received:

Mr. Chiou and Ms. Wu were found guilty of kidnapping and murder when the Supreme Court in Taipei rejected their appeal on 28 July 2011.

In October 1988, Mr. Chiou and Ms. Wu, along with ten other co-defendants, were accused of kidnapping a nine year old school child, Lu Cheng, in Hsinchu City, in Taiwan, and later murdering him as well as robbing and murdering an insurance agent Ko Hung Yu-Ian.

On 1 October 1988, Mr. Chiou is reported to have been tortured by officers from the Taipei City Police Division in Hsinchu Detention Centre during a week-long interrogation. On 8 October, Mr. Chiou was taken to a remote police station, the Fenggang Station, in the Zhubei Township of Hsinchu County where he was blindfolded and subjected to sustained and intense torture. On this day Ms. Wu, who was Mr. Chiou's girlfriend, was arrested and tortured and humiliated in front of Mr. Chiou. Both Mr. Chiou and Ms. Wu say they confessed to crimes they had not committed in exchange for the police to stop torturing them.

On 13 October, the defendants were given access to their families and informed them that they had been tortured and asked their families to file a complaint. On 15 October the families collectively appealed to the Prosecutor's Office in Hsinchu City, accusing the police of torture and made a formal request for the defendants' injuries to be examined. The Prosecutor's Office ordered a medical examination by a medical expert; however, the report recorded no physical injuries caused by external force. The doctor was from the same unit as the Hsinchu's Prosecutor's Office, not an independent medical expert.

On 16 October, Public Prosecutors removed the two defendants to another remote police station, the Shu-lin-tou Police Station in Hsinchu City where they continued to be subjected to torture by Taipei City police officers and were held there until the start of their trial on 7 May 1989.

Mr. Chiou recalls that he was blindfolded and tied up, forced to sit on ice, subjected to electric shocks by an electric baton and had pepper water (water mixed with chili pepper) poured into his mouth and nose during interrogations that lasted up to 10 hours at a time with five or six people beating him to the point where he lost consciousness on a number of occasions.

Mr. Chiou says that as a result of the beatings the hearing in his left ear is severely impaired. He also suffers from migraines as a result of numerous beatings and having his head stepped on by police. He never received a medical examination during the time he was transferred between different detention centres and he has never received any medical treatment for his ailments.

Ms. Wu says that during interrogations she was tied up and handcuffed, a rough cloth covered her eyes and mouth and she was only wearing underwear. A number of persons beat her but since she was blindfolded she doesn't know who hit her but they were male as she could hear their voices. On one occasion, someone stabbed her in the genital area with a hard objet which caused her to bleed.

It is alleged that the Taipei City Police Division resorted to the use of torture and prosecutors in the Prosecutor's Office in Hsinchu City may have been compliant about the practice of torture since, despite receiving the defendants' claims of

torture, the Prosecutor's Office handed the defendants back to the same police officers after each court appearance.

The trial started in May 1989. After two trials the Supreme Court in Taipei remanded the case to the High Court eleven times. During this time Mr. Chiou remained in detention, for 23 years until 28 July 2011 when Mr. Chiou and Ms. Wu were finally found guilty. According to the information we have received, there was no direct evidence presented in court and the basis of their conviction was based solely on their confessions which were obtained by torture. During the entire investigation process up until the time of the trial, the defendants were denied access to defence counsel. Both defendants have always maintained that they were subjected to torture by the police in order to extort a confession.

In 1994, an investigation was conducted by the Control Yuan, an independent institution, which found some of the tapes from the interrogation sessions of this case and concluded that the police had resorted to torture during interrogation. A number of police officers were accordingly impeached and later convicted by a criminal court. Despite these findings, confessions made by the defendants were allowed to stand as evidence at their trial.

In 2003, the police reportedly revealed that Mr. Hu Kuan-pao, another death row inmate who was sentenced to death for a series of kidnapping, had confessed to the Lu murder just before his execution but his last-minute confession was never investigated.

Since his arrest in 1988, Mr. Chiou has been subjected to a lengthy number of judicial procedures as the Province's judicial system allows judges to send the case back and forth between the High Court and the Supreme Court in Taipei for numerous remands, trials and appeals. On 24 April 2010 the Fair and Speedy Criminal Trials Act was enacted in order to address cases such as Mr. Chiou's, which have been outstanding for years. The Act will enter into force in May 2012 and its impact on this case, if there had not been a final judgment, would have mandated the court to release Mr. Chiou, as his on-going detention would have no longer been legally permitted.

While we do not wish to prejudge the accuracy of the information provided to us, we would like to bring to the attention of your Excellency's Government our concerns relating to the continued imposition and implementation of the death penalty after trials that do not comply with international obligations undertaken by your Excellency's Government, including fair trial safeguards, which by definition violates international human rights standards (*e.g.* Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, para. 5).

We would like to draw the attention of your Excellency's Government to article 15 of the CAT, which provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

We also recall that paragraph 7c of Human Rights Council Resolution 16/23 urges States "To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

In respect of the alleged failure of prosecutors to address in a timely manner the defendants' claims of torture, we wish to stress that "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, ... especially involving torture ..., they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice." according principle 16 of the Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We deplore that in the present case, the trial has been pending since 1989. In this regard, we recall that the right to be tried without undue delay is an important element of the right to a fair trial in terms of article 10 of the Universal Declaration of Human Rights. However, we welcome the adoption of the Fair and Speedy Criminal Trials Act and note that it will enter into force in May 2012. We hope that the application of the provisions of said law will remedy shortcomings such as those identified in the present case and prevent lengthy trials, which violate the defendants' right to be tried without undue delay.

We urge your Excellency's Government to take all necessary measures to ensure that the rights under international law of Mr. Chiou, who is at imminent risk of execution, are respected. Considering the irremediable nature of capital punishment we therefore appeal on an urgent basis to your Excellency's Government not to proceed with this execution, which would, on the facts available to us, constitute a violation of international law for non-compliance with due process safeguards in the first case, and for serious doubts regarding the offender's guilt in respect of the second case.

We further urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Chiou and Ms. Wu and are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

It is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on this case to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations and judicial or other inquiries carried out in relation to this case. If they have been inconclusive, please explain why.
3. What legal safeguards exist in the judiciary to ensure that no statement made as a result of torture is invoked into evidence in any proceedings? In this case, why were findings from the Control Yuan not taken into consideration by the Court?
4. Please indicate what measures are being undertaken to ensure that all death penalty cases comply with fair trial guarantees as required under international law.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment