

## SUNDAY FEATURES

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## No end in sight



ON Jan. 17 of last year, Wang Kuo-hua (王國華) lost his third and final trial, sending him to death row on a charge of premeditated murder with rape.

The verdict, however, states that the survivor among Wang's two victims told the court Wang had not raped her or her friend, and her testimony did not indicate that he had planned the murder.

The case illustrates systemic problems with the nation's death penalty system that the Taiwan Alliance to End the Death Penalty (廢除死刑推動聯盟) has long campaigned to change.

It is not clear why Wang received the severest sentence, Taiwan Alliance director Lin Hsin-yi (林欣怡) said in a recent interview.

Furthermore, the judge said in the ruling that Wang was apparently mentally ill.

Yet none of these points was taken into account for the sentencing, Lin said.

## A MATTER OF INTERPRETATION

Wang met two junior high students over the Internet and arranged a meeting. The girls went with Wang to his apartment, where he offered them money for sex, according to the survivor. When the pair turned down his offer, Wang began groping them, she testified, and they tried to leave the apartment.

Wang assaulted the girls, tied them up and put a plastic bag over one's head and taped the other's mouth up. He put them in the trunk of his car, where the victim with the bag over her head died of suffocation, drove to a river and threw both girls in.

Wang had thrown the two students into shallow water and when the survivor managed to untie the rope, he attempted to help her out of the river, which does not seem to indicate premeditation, Lin said.

According to Article 19 of the Criminal Code (刑法), if a defendant is found to have had "psychological problems or other mental deficiencies" when the crime was committed, which prevented the guilty from understanding the full meaning of his or her actions, the court can choose not to impose a punishment. If the defendant's judgment was "impaired" by psychological problems, the court "may impose a milder sentence."

The Article is sometimes ignored by prosecutors and judges, or interpreted in different ways.

Lin consulted Legal Aid Foundation (法律扶助基金會) Secretary-General Kuo Chi-jen (郭吉仁) regarding the case, who examined the verdict and identified several irregularities.

The foundation, a member of the Taiwan Alliance, is a nonprofit organization independent of, but funded by, the Judicial Yuan. With branches across the country, it provides pro bono legal aid to defendants who cannot afford a private attorney, but who are unsatisfied with the public defender supplied by the courts.

The Taiwan Alliance hopes to convince Wang to allow a foundation lawyer to file one or more appeals on his behalf. Last week, Lin wrote to Wang, whom she has visited in prison, sending him Kuo's point-by-point explanation on

the grounds to appeal the court's verdict.

Wang has previously said he does not wish to appeal his sentence, and wants only to be executed swiftly to relieve his family of the financial burden and shame of having a relative on death row. (Families pay for some daily needs of prisoners.)

At his final trial, in front of the Supreme Court, Wang had no lawyer. In addition, by his own account, the public defender assigned to Wang urged him to confess to the charges, rather than mount a defense.

Wang's case is far from unique and is indicative of several flaws in the judicial system, Lin said.

In another recent death penalty sentencing, that of Kuang De-chiang (廣德強), the presiding judge ruled that Kuang was mentally ill and should be treated first, then executed.

On Dec. 1, 2006, the Ministry of Justice (MOJ) signed an execution order for convicted murderer Chong De-shu (鍾德樹). According to Article 461 of the Code of Criminal Procedure (刑事訴訟) an execution order must be carried out within three days.

Like Wang, Chong, who was found guilty of setting a fire that killed three people, was not represented at his Supreme Court trial.

"There is no right to a public defender at the Supreme Court," said Kao Jung-Chih (高榮志), the foundation's staff attorney in charge of monitoring death row cases for the Taiwan Alliance.

The Supreme Court comprises the final trial in all death penalty cases and hears arguments about any potential violations of judicial and criminal procedure. A defendant's right to a public defender only applies to trials in front of the district and high courts, meaning that defendants who cannot afford a private attorney will not have a lawyer at the third trial.

The foundation has filed for a judicial review by the Council of Grand Justices on behalf of 14 death row inmates — out of a current total of 31 — who were not represented by lawyers at their Supreme Court trials, arguing that a lack of legal representation is unconstitutional. The appeal is in progress, Kao said.

Even if the Grand Justices rule in favor of the foundation's argument, which would force legislators to amend the law and could result

*Faced with public intransigence and what they say is a flawed system, activists support an unofficial moratorium on capital punishment*

BY CELIA LLOPIS-JEPSEN  
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in the 14 cases being sent back to court with lawyers, this would only be one small change, Kao said. "We cannot be very optimistic."

Chong, whose execution order was never carried out, is included in that appeal. His is the first and only case in which an execution order was not completed within the mandatory three-day period.

Within three days of the Ministry of Justice signing Chong's execution order, the foundation and the alliance learned through a leak to the media of the impending execution — a process that is usually kept secret until after the sentence is carried out.

The news came as a shock to Lin, who had previously reached an agreement with the Ministry of Justice that lawyers at the foundation would be allowed to examine all death row cases for problems with the verdicts or judicial procedures.

But the lawyers had been denied access to the relevant files. After six months of trying to review Chong's case came the news of his impending execution.

"So we said [to the Ministry of Justice]: 'You said we could help him, but didn't give us his files. And then you signed his death warrant, which is wrong,'" Lin said.

Kao said the foundation believes the ministry did not carry out the order because of the likelihood of negative publicity.

"We had talked to the Ministry of Justice and discussed the problem of access to the files ... and were told that it wasn't a problem. Finally ... the lawyers got the files. But at the same time [then-minister of justice Shih Mao-lin (施茂林)] signed Chong's death warrant," he said. "If

we had told the press our lawyers had nagged for six months to get these files but Chong was executed ... I believe this [scenario] was why the sentence was not carried out."

The ministry has not signed an execution order since Chong's case and Taiwan has not executed any death row prisoners since 2005.

Kao said, however, that the unofficial moratorium offers little hope for judicial reform, because the appeal that the foundation filed on addresses only one of many perceived flaws with the death penalty system.

## HELP AND HINDRANCE

Poor quality public defenders are a particularly grave deficiency, Lin and Kao said.

"When most of the public defenders assigned by the court meet the prisoner, they just tell them to confess. They are not there to help the defendant, they are there to help the judge and prosecutor," Lin said.

Kao concurs. "Each public defender gets 25 new cases every month at least," he said. That workload is unacceptable, especially when the stakes are so high.



A member of the Taiwan Alliance to End the Death Penalty participates in a candlelight vigil outside the Ministry of Justice in Taipei on Dec. 30, 2005. PHOTO: LIU HSIIN-DE, TAIPEI TIMES

In addition, many public defenders believe that as public servants, their job is to ensure a smooth trial at court, Kao said. "They are very familiar with the judge and meet every day, and maybe have dinner together. Their attitude is not that of a lawyer ready to help the defendant; they just want to close the case as fast as possible."

The example most often cited by opponents of the death penalty is the Hsichih Trio murder case, now in its 18th year.

Su Chien-ho (蘇建和), Liu Bing-lang (劉秉郎) and Chuang Lin-hsun (莊林勳) have bounced repeatedly from court to court. The forensic evidence from the scene of the double stabbing of which they were convicted does not tie any of them to the crime scene.

The crux of the prosecutor's case against them is their confessions, which do not correspond on details of the crime and which were allegedly extracted by torture.

After the 1991 murder in Sijih (汐止), Taipei County, the police arrested Wang Wen-hsiao (王文孝) based on a fingerprint found at the scene half a year after the crime was committed. Wang was convicted and executed within months. He was allegedly coerced into naming accomplices — his brother and brother's friends — but later retracted his testimony. His brother, Wang Wen-chung (王文忠), also allegedly under torture,

named Su, Liu and Chuang as the murderers and received a lighter sentence. He, too, later retracted his statement.

According to Article 156 of the Criminal Procedure Law, allegations that testimony has been extracted through torture must be investigated, Kao said.

The resulting investigation found bruises on all three men, who sought to press charges against the six police officers they said were responsible. But, Kao said, the public prosecutor dropped the case, saying it would be difficult to implicate the police, who claimed the three detainees had fallen down.

In 2003, the three defendants were acquitted in their 10th trial. The prosecution appealed and the men were resentenced to death last year. They now await another retrial.

The system for retrials, however, is open to question, Kao said, as the Supreme Court sends cases back to the High Court, which handed down the ruling under review.

Su, Liu and Chuang, who were both aged 19 when arrested, have spent years living under the specter of execution. Chuang is now mentally ill and Lin is partially disabled after being shackled for 12 years — a practice that was standard on death row until 2006.

"Keeping prisoners shackled was illegal," Kao said. But the government showed no interest in listening to the foundation's complaints about shackled prisoners until the Paris-based International Federation for Human Rights held a press conference on June 12, 2006, condemning the Ministry of Justice for routinely shackling death row prisoners, a practice which violates international law.

Kao said the shackles were removed within about a month of the press conference.

The Taiwan Alliance and foundation hope their work prevents the Ministry of Justice from signing execution warrants, even if more prisoners are sentenced to death. A moratorium does not require legislation, Kao said.

The prospects for this strategy look promising: Minister of Justice Wang Ching-feng (王清峰) has publicly voiced disapproval of capital punishment, and reaffirmed that stance in an interview with the *Taipei Times* on Nov. 3.

"Everyone — the legislature and the public, knows I am for abolishing the death penalty," she said.

Wang is the nation's third justice minister to take that position, following her two predecessors under the previous administration, Shih Mao-lin (施茂林) and Chen Ding-nan (陳定南). Under them, the number of executions fell from 17 in 2000 to three in 2005.

But, Wang says, changing public opinion is the key to abolishing the death penalty.

"The public believes that having the death penalty will keep society safer," Wang said, adding that she believes there is no definite link between the two.

"You cannot avoid the fact that the death penalty concerns the whole public," Wang said, but at the same time, "the matter of [abolishing] the death penalty is one of respecting human rights."



Inset: An anti-death penalty activist holds up a sign reading "no death penalty" at a protest outside of the Ministry of Justice in Taipei on Oct. 11, 2006.

PHOTO: TSORNG CHANG-JIN, TAIPEI TIMES

Left: Lawyers representing the Hsichih Trio stage a sit-in with their court robes inside out on June 29 of last year in Taipei after the Taiwan High Court resented the three defendants to death.

PHOTO: FANG PIN-CHAO, TAIPEI TIMES