

The National Human Rights Commission’s Opinions on the Ministry of Justice’s Amendments on Partial Articles of the “Regulations for Executing the Death Penalty”

The National Human Rights Commission (NHRC) is committed to upholding the constitutional protection of human rights, promoting and safeguarding human dignity, and realizing social justice in accordance with international human rights standards. In this context, the NHRC offers the following comments on the Ministry of Justice’s announcement, made on April 16th, 2025, of partial amendments to the *Regulations for Executing the Death Penalty* (hereafter referred to as “the Regulations”).

I. Concerning Limitations on Executability Due to Mental or Cognitive Impairments

1. Paragraph 9 of the Taiwan Constitutional Court (TCC) Judgment 113-Hsien-Pan-8 (2024) explicitly states, “Execution of the death penalty shall not be carried out if the individual sentenced to death is found to have a mental disorder or other cognitive impairment that undermines their capacity to undergo punishment.” Therefore, the Regulations should explicitly stipulate the provisions ensuring compliance with constitutional requirements to protect human dignity and due process.

2. Article 3 of the Regulations does not clearly define the circumstances under which a person lacks the capacity to undergo punishment. The absence of specificity may result in the executing authority lacking a legal basis to initiate a re-evaluation in practice. It is therefore recommended that the Regulations explicitly authorize the executing prosecutor, upon identifying signs of mental illness, cognitive disability, or other impairments affecting the inmate's executability, to promptly request a re-evaluation by the Ministry of Justice and suspend the execution. This would align with the intent of the Constitutional Court's judgment.

II. Concerning the Requirement for the Strictest Due Process

1. Paragraph 46 of *General Comment No. 36 on the ICCPR* states, "Any penalty of death can be carried out only pursuant to a final judgment, **after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person.**"¹ Therefore, states must ensure that individuals sentenced to death are granted full access to judicial remedies within the prescribed legal timeframe.
2. Paragraph 8 of ECOSOC Resolution 1984/50,

¹ United Nations Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, 3 September 2019, para. 46. 原文: "Any penalty of death can be carried out only pursuant to a final judgment, after an opportunity to resort to all judicial appeal procedures has been provided to the sentenced person."

“Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty,” further stipulates, **“Capital punishment shall not be carried out pending any appeal or other recourse procedures** or other proceedings relating to pardon or commutation of the sentence.”² It is evident that the death penalty must not be carried out as long as any remedy is in progress. This aligns with the Taiwan Constitutional Court (TCC) Judgment 113-Hsien-Pan-8 (2024), which requires the strictest constitutional due process.

3. The pre-amendment version of Article 2 of the Regulations properly provided that executions may not be carried out while extraordinary appeals, retrials, or constitutional interpretation procedures are pending. This is consistent with the procedural safeguards outlined in *General Comment No. 36 on the ICCPR*. Therefore:

- The provision in Article 2, Paragraph 1, Subparagraph 3, should remain unchanged.
- Subparagraph 4 should be revised to read, “Where a constitutional interpretation or constitutional review of judgment has been petitioned under the *Constitutional Court*

² United Nations Economic and Social Council (ECOSOC), *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, Resolution 1984/50, Annex, para.8. 原文：“Capital punishment shall not be carried out pending any appeal or other recourse procedures or other proceedings relating to pardon or commutation of the sentence.”

Procedure Act,” to reflect the current legal framework.

4. The amended version of Article 2 narrows the circumstances under which executions may be postponed, requiring a substantive review by judicial authorities before application. This contradicts the principle of strict due process. In practice, if a petition for retrial, extraordinary appeal, or constitutional litigation is pending but has not yet entered substantive review, and the state proceeds with the execution, any later finding of judicial error would be irrevocable. Such action violates the Constitution’s mandate for strict due process in capital punishment cases and undermines the procedural justice underpinning the death penalty system.

III. Concerning the Requirement for Timely Notification Under International Human Rights Laws

1. Paragraph 40 of *General Comment No. 36 on the ICCPR* states, “...**Failure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment**, which renders the subsequent execution contrary to article 7 of the Covenant.”³ This affirms

³ United Nations Human Rights Committee, *General Comment No. 36*, CCPR/C/GC/36, 3 September 2019, para. 40. 原文：“...**Failure to provide individuals on death row with timely notification about the date of their execution** constitutes, as a rule, a form of ill-treatment, which renders the subsequent

that the state bears a procedural obligation to provide timely notice before execution. “Timely” in this context does not mean “immediate” or “on the same day.” Instead, it refers to a timeframe that enables the condemned to prepare psychologically, contact relatives, and exercise any remaining legal remedies—an essential procedural safeguard against psychological ill-treatment and a measure to uphold human dignity.

2. Article 4, Paragraph 2 of the Regulations merely requires that the prosecutor notify the inmate on the day of execution. The absence of a clearly defined minimum period between notification and execution risks placing death row inmates in prolonged states of psychological distress and uncertainty, commonly referred to as the death row phenomenon. This may constitute a form of cruel, inhuman, or degrading treatment inconsistent with international human rights standards.

The death penalty, by its nature, constitutes the most severe deprivation of the right to life by the state’s exercise of public authority. Life is a fundamental constitutional right that cannot be restored once taken. The inherent human dignity and constitutional order that life embodies are simultaneously

execution contrary to article 7 of the Covenant.”

extinguished.

In light of this, the Ministry of Justice is urged to reassess the Regulations comprehensively and to consult widely with legal scholars, experts, and civil society groups. This will help ensure the amended provisions align with constitutional norms and applicable international human rights standards.