

EXTERNAL

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@EXECUTIONS AND ORGAN TRANSPLANTATION

£TAIWAN

Amnesty International is concerned by the continued use of executed prisoners as a source of organs for transplantation in Taiwan. The first such execution followed by removal of organs took place in Taiwan in December 1990 after legislation was introduced in October of that year to permit the practice. Prior to October 1990, the death penalty was carried out in Taiwan by a shot through the heart. Since the change in legislation, execution is carried out by a shot to the head where a prisoner has consented to organ donation.

Taiwan applies the death penalty for a range of crimes, including murder, armed robbery and kidnapping. Figures supplied by 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. More recent figures are not available to AI.

Amnesty International is concerned by this development, believing it to raise some very serious ethical issues, such as:

- the prisoners' capacity to consent freely in an inherently coercive environment
- the risk that the timing of a death sentence or the outcome of a prisoner's appeal could be influenced by pressure to use the organs of that prisoner
- the risk of death row prisoners becoming an accepted source of organs in Taiwan, impeding reform or abolition of death penalty laws
- the transformation of the execution into a quasi-medical operation

Once a death row prisoner has consented to organ donation the hospital which is to perform the transplant operation is informed and a medical team visits the place of detention to examine the prisoner and to take blood samples for tissue typing and other laboratory tests. The Minister of Justice, in response to an inquiry from a concerned doctor abroad, outlined the procedures followed in executions after which organs are to be taken:

"...the transplantation coordinator is informed twelve to twenty-four hours before the execution is to take place. The critical care team, the anesthesiologists and two qualified physicians (not from the transplantation team,) for brain-death judgement arrive on site in time of the execution. Before the execution, the anesthesiologist injects the individual with anesthetics and inserts an endotracheal tube. After shooting the brain stem by the law enforcement officer, the accompanying physicians would resuscitate the circulatory system by stopping the hemorrhage, performing artificial ventilation and blood volume replacement to prevent hypotension.... After the pronouncement of brain death by the attorney, the donor is then transferred to the organ transplantation hospital for organ procurement." (See full text of the Minister of Justice's letter in annexe.)

Diagnosis of brain stem death

When legislation was first introduced to allow the use of executed prisoner's organs, the Ministry of

Justice announced that certification of brain death could be made 12 hours after the shooting; a second certification of death was required to be made four hours later. Amendments made to death penalty procedural rules in May 1991 allow for the diagnosis of brain stem death to be made at the place of execution. This is reported to have followed cases where prisoners had not been successfully executed with one bullet before transfer to hospital.

It is unclear from information provided by the authorities how and precisely when diagnosis of brain stem death is indeed being made. Press reports from Taiwan indicate that the organs which are being taken from executed prisoners and used in transplantation include the heart, kidneys and liver.

Dr Hung Tsu-pei, director of academic affairs at the National Taiwan University College of Medicine was quoted in an article in the *British Medical Journal* (Parry J., Organ donation after execution. *BMJ*, Dec. 1991; **303**:1420) as having serious reservations about the ethics and legality of diagnosis of brain death as presently carried out in Taiwan at the place of execution. "At the place of execution there are no adequate facilities for the diagnosis of brain death, and at the same time the recipient may be in a hurry," he said.

Coercion and pressure for organs

On 30 September 1991, reporting on a symposium on brain death and transplantation in Asia held in Tokyo, the *Japan Times* quoted Professor Chun Jean-lee, a participant from Taiwan as saying that in Taiwan "the transplants were carried out by a surgeon also qualified as a clergyman, who visited jails and asked prisoners who were sentenced to death to donate their organs after execution so they could atone for their crimes". He said that the organs from 14 executed prisoners had been transplanted into 37 recipients. (These figures differ from those provided by the government which are given above.) The authorities in Taiwan have denied that there is any coercion on condemned prisoners to consent to organ donation and in December 1991 the *International Herald Tribune* reported that Taiwan's Minister of Justice had rejected Japanese reports that pressure was brought to persuade prisoners to consent.

One of the arguments advanced for the harvest of organs from executed prisoners is that there was a resistance to organ donation in Taiwan society for cultural and religious reasons. It is questionable whether the small number of organs procured through execution contributes significantly to overcoming the problem of shortage of organs for transplantation. According to Dr Chang Po-Ya, the Director General of the Taiwan Department of Health, "the organs obtained from prisoners are an extremely [small] proportion to all organs removed".

Dr Lin Yeon-feong, a member of the Taiwan Association for Human Rights was quoted (in the *BMJ* article cited above) as saying "I am strongly opposed to this kind of transplantation. In a totalitarian country like Taiwan a judge is not immune to political pressure. Those high up in the system may say that we need more transplant organs, and even those in the medical profession are subject to such political pressure."

On 27 November 1991, the Taiwanese English-language daily newspaper *The China Post* reported on the "Second Congress of Asian Society of Transplantation" which met in the capital Taipei that month. The article quoted Lee Chih-hsueh, a surgeon at the National Taiwan University Hospital as saying that a network for the supply of organs was "soon" to be set up in Taiwan, China, Japan, South Korea and the Philippines, with kidneys being the main organ transported. He is quoted as saying that about 7,000 patients a year required kidney transplants in Taiwan while only one to two hundred kidneys could be procured. The article referred to China as being the biggest expected supplier of kidneys and said that once the network was established China would be required to conduct tests on the donors before the organs could leave the country. According to this article "kidneys from the mainland's [China's] brain dead patients or death row convicts can be dangerous because mainland authorities do not test for AIDS or Hepatitis B and C for organ donors". (Organs are known to have been removed from executed prisoners in China where kidneys from executed prisoners have been used in transplantation operations. The practice, however, is not open and the Chinese Government has denied that it occurs.)

The response of the authorities and medical profession in Taiwan

It is the Minister of Justice, rather than the Department of Health or transplant surgeons themselves, who is most frequently cited in press reports about executions and the use of prisoners' organs.

The introduction of the practice in Taiwan provoked expressions of concern from many doctors abroad. In response to this concern, the Director-General of the Department of Health, while maintaining that prisoners gave consent freely, accepted that there was a need for discussion and stated that he had referred the matter to the Minister of Justice and to the Transplantation Society of the Republic of China.

Opinion among the medical profession in Taiwan is less easy to gauge. The Taiwan Medical Association has stated that, whereas the use of prisoners' organs for transplantation was a matter for personal ethical opinion, they would be opposed to the participation of any doctor in an execution and had written to the Ministry of Justice to express this view. They did not accept, however, that doctors in Taiwan had participated in executions. The same argument is used by the Minister of Justice. In the letter from the Minister of Justice appended, he outlines the medical procedures followed immediately before and after the execution (anaesthesia and intubation prior to the shooting; stemming of the haemorrhage, blood volume replacement and ventilation after the shot is fired). After explaining the role of doctors present at the execution, the Minister then goes on to state:

"Therefore, the physicians only do the necessary job for organ transplantation and the criminals are not executed by them. The only difference from usual organ donation is that the brain death is produced by execution."

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The Council of the Transplantation Society (an international body) voted unanimously in June 1991 to condemn the practice of transplanting organs from executed prisoners. (The Transplantation Society was founded in February 1966 at the 7th International Transplantation Conference.)