

Chapter IV: Human Rights Developments in Taiwan: 1987 - 2002

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Chapter VI

Human Rights Developments in Taiwan: 1987-2002

4.1. Introduction

As a result of Japanese defeat in August 1945, China, then governed by the Republic of China (ROC) government, took over Taiwan on behalf of the Allied, pursuant to an order issued by General Douglas MacArthur. Two months later, China unilaterally proclaimed Taiwan a province. When China began writing its new constitution, which took effect in December 1947, it intentionally excluded Taiwan from its constitutional rule. It was not until the outbreak of the “228 Massacre,”¹⁶⁶ which occurred on 28 February 1947 and many people were killed, that China changed its mind to allow Taiwan a primitive degree of constitutional rule.¹⁶⁷

The ROC Constitution, of which Chapter 2, Articles 7 to 24, enshrined the individual rights and obligations. However, the ROC government promulgated the “Temporary Provisions” in May 1948 and further issued martial law decree in May 1949. Both the “Temporary Provisions” and martial law decree tremendously limited most of the rights guaranteed by the Constitution. In essence, these two laws triggered

¹⁶⁶ On 28 February 1947, about two thousand people gathered in front of the Bureau of Monopoly in Taipei to protest the brutal beating of a woman cigarette peddler and the killing of a bystander by the police the previous evening. The Chinese Governor, Chen Yi, responded with machine guns, killing several people on the spot. Uprisings erupted. What ensued were a series of massacres on the island by the troops sent from China by Chiang Kai-Shek that resulted in the deaths of more than 30,000 Taiwanese people.

¹⁶⁷ See Fort Fu-Te Liao and Jau-Yuan Hwang, “Think Globally, Do Locally — Internationalizing Taiwan’s Human Rights Regime,” in Peter C.Y. Chow (ed.), *Taiwan’s Modernization in Global Perspective* (Praeger, 2002), pp. 79-102, at. p. 80.

three major legal consequences: (1) military rule and control over administrative and judicial matters, (2) military trial of civilians and brutal punishment of political offenses, and (3) comprehensive state surveillance and infringement of individual rights, for example, freedoms of speech, assembly, association and movement.¹⁶⁸

The subsequent period has been named as the “White Terror Period,” which ran from 1949, when the KMT lost the Chinese Civil War to the Communists, to 1987, when martial law was lifted.¹⁶⁹ During the period, thousands of Taiwan’s most prominent citizens and leading intellectuals were dragged from their homes to be killed or vanish without explanation. Furthermore, there were also a series of cases of governmental crackdown on dissenting voices, such as the Formosa Incident (1979), the Lin family murders (1980), and the murder of Chen Wen-cheng (1981). These tragedies however only strengthened the resolve of the people to speak out and press for the realization of human rights, the rule of law, and democracy.

There were extensive violations of human rights from 1948 to 1991 when the “Temporary Provisions” and “Martial Law” order superceded the Constitution. With the end of martial law order and the ushering in of democracy in 1987, Taiwan entered a new era. Government offices were opened to public elections and the rights to free expression, assembly, and association were gradually restored. It is certainly true that the human rights situation Taiwan has improved markedly over the past 15 years. There are no more prisoners of conscience, no more extra-judicial killings, the civil liberties of freedom of the press and freedom of assemblage are, by and large,

¹⁶⁸ *Ibid.*, at 80-81.

¹⁶⁹ Fort Fu-Te Liao, “Establishing a National Human Rights Commission in Taiwan: Role of NGOs and Challenges Ahead”, *Asia-Pacific Journal on Human Rights and the Law*, Vol. 2, No. 2, 2001, pp. 90-109, at pp. 90-91.

respected.¹⁷⁰ However, Taiwan's diplomatic isolation constitutes another significant obstacle in the promotion of human rights, insulating the government from external human rights monitoring and hindering exchanges with the international human rights community.

It was not until the year 2000 that democratic transfer of power from one political party to another happened in Taiwan. Human rights have been accorded even higher priority by the new administration lead by President Chen Shui-bian. Most of his human rights policies focus on internationalizing Taiwan's human rights regime.

As far as the period is concerned, it is therefore proper to divide human rights developments in Taiwan into two periods: one is the developments after 1987 when martial law order was lifted; the other is those new human rights policies proposed by Chen's administration since 2000. Following analyses will accordingly include two parts.

4.2. Developments of Rights and Freedoms

Democratization has been a very important foundation for human rights development in Taiwan after 1987. Such democratization process greatly enhanced human rights protections, particularly those of political rights. It is therefore necessary to put a brief history of democratization in Taiwan after 1987 in the first section before we review developments of individual rights and freedoms in the next section.

4.2.1. Democratization and Human Rights Protection

On 28 September 1986, even that under martial law order no new political party was allowed, the Democratic Progressive Party (DPP) was formally established, marking the beginning of multiparty democracy in Taiwan. In November 1986, the

¹⁷⁰ Brian Kennedy, "Human Rights in Taiwan: Is the Battle Won?", Taipei Times, January 4, 2000.

DPP held its first Representative Assembly, and released a draft of its charter and platform. Other important democratic processes began in 1987 when martial law order was lifted in Taiwan and Penghu on 15 July 1987.¹⁷¹ More than two hundred people, who were tried by martial courts, had their penalties reduced and restored their political rights. It also means that no citizen will be subjected to a trial by martial court.

However, the National Security Law during the Period of National Mobilization for Suppression of the Communist Rebellion became effective at the same day when martial law order was lifted. Its Paragraph 1 Article 2 ruled that people, when assembled or associated, should not claim communism or separation of territory. Paragraph 2 of the same Article delegated that another law will be made for further regulation. Therefore, on 20 January 1988, the Law on Assembly and Parades during the Period of National Mobilization for Suppression of the Communist Rebellion was enacted, in which its Article 4 was the same as that of Paragraph 1 Article 2 of the National Security Law. After the “Temporary Provisions” was abolished in 1991 the above two laws were renamed the National Security Law and the Law on Assembly and Parades with few amendments. It was not until July 1992 the Legislative Yuan passed a revision of the National Security Law, which would reduce the number of blacklisted “*persona non grata*” from 282 to five.

In January 1988, President Chiang Ching-kuo died, and Mr. Lee Teng-hui was to complete the late President Chiang’s second six-year term, which ran from 1984 to 1990. Mr. Lee is Taiwan’s first native-born president. He was re-elected as president

¹⁷¹ Martial law order on Kinmon, Matsu, Tungsha and Nansha was not lifted until November 1992. These areas were in fact under martial law rule from 10 December 1948 to 6 November 1992.

in 1990 by indirect election. In May 1990, President Lee Teng-hui, when he inaugurated, announced a special amnesty, which includes the pardoning of dissidents Hsu Hsin-liang and Shih Ming-teh. In 1994, a new constitutional amendment ruled that president and vice-president would be elected by popular vote of all the people in free area since the ninth term from 1996. The Legislature therefore approved the Presidential and Vice Presidential Election and Recall Law, setting ground rules for the 23 March 1996, popular election of the president and vice president. Mr. Lee became the first popular elected president in Taiwan, and being as the president from 1988 to 2000. He was therefore a very important person in Taiwan's democratization process.

It was also in January 1988 that registrations for new newspapers were opened, and restrictions on the number of pages per issue were relaxed. In January 1989 two important laws were passed. First, the Law on Civic Organizations was to allow new NGOs to be formed. Secondly, the Law on the Voluntary Retirement of Senior Parliamentarians was to allow those members to be retired with fund in order to hold a full election. In March 1990, thousands of university students staged a sit-down protest at the Chiang Kai-shek Memorial Hall Plaza to express opposition to the National Assembly's attempt to expand its authority. The Council of Grand Justices, in June 1990, announced that senior parliamentarians should terminate their responsibilities by 31 December 1991. It was therefore that the eighth plenum of the National Assembly also approved a motion to force members who failed to attend the plenary session to retire by the end of July 1990. Ultimately all senior delegates to the First National Assembly, Control Yuan, and Legislative Yuan retired from office on 31 December 1991. There were therefore the first full re-elections since 1947 of the National Assembly in 1991 and Legislative Yuan in 1992. In July 1994, the Legislative Yuan passed the Self-Governance Law for Provinces and Counties,

explicitly stipulating that provincial governors be chosen by direct election. The Self-governance Law for Special Municipalities was also passed the next day. Therefore, in December 1994, the first popular elections for the governor of Taiwan Province and mayors of Taipei and Kaohsiung municipalities were held. It should be recalled that popular election of the president and vice president in Taiwan has been held since 1996.

On 22 April 1991, the National Assembly, at its sixth plenary meeting, passed the Additional Articles of the Constitution (constitutional amendments), the first since 1947, and approved the abolishment of the “Temporary Provisions.” Therefore, President Lee Teng-hui declared the termination of the Period of National Mobilization for Suppression of the Communist Rebellion, effective on 1 May 1991. He abolished the “Temporary Provisions,” and promulgated the constitutional amendments, also effective on 1 May 1991. The Legislative Yuan, also in May 1991, approved the abolishment of the Statutes for the Purging of Communist Agents.

It was not until February 1995 President Lee Teng-hui expressed an apology to families of the victims of the “228 Massacre” of 1947 at the Taipei New Park, where a monument commemorating the tragedy was built with government sponsorship. In May 1995 Regulations Governing the Management and Compensation for Victims of the “228 Massacre” passed by the Legislative Yuan. According to the regulations, a foundation was established to manage affairs concerned, and 28 February was designated a national commemoration day. The Legislative Yuan, in February 1997, passed the amendment to the fourth article of the Regulations Governing the Management and Compensation for Victims of the “228 Massacre”, stipulating that February 28, also named “Peace Memorial Day,” be a national holiday.

Tragedies resulted by martial law order were not even dealt with until the Law of Restoring People’s Rights Lost during Martial Law Period was enacted in January

1995. This Law provided compensation to victims, and restored their rights to professional practicing, civil service, pension or insurance. They could also regain their property and documents. Another law, the Compensation Law for the Improper Trials of Rebellion and Communists during Martial Law Period was enacted in June 1998. As well, the government established a foundation to compensate those victims. It has to be noted that no truth and reconciliation commission has ever been set up in Taiwan. Furthermore, the Green Island¹⁷² Human Rights Monument was completed in December 1999. In his speech at the opening, President Lee Teng-hui solemnly declared, “On the government’s behalf, let me convey to the foundation the highest of respect, and to the victims of repression let me offer the deepest of apologies!” In February 2001, President Chen Shui-bian urged: “Academia Historica should immediately set up a complete archive to preserve these documents about the White Terror era and the Kaohsiung Incident, which will help historians learn about the real face of that age.”¹⁷³ It was in May 2001, half a century after they were wrongfully imprisoned, 15 victims of the Luku Incident¹⁷⁴, which is regarded as the biggest political incident of the White Terror Period, were awarded a total of NT\$117,876,000

¹⁷² In the early years of ROC rule in Taiwan, the government sent political prisoners to Green Island.

¹⁷³ See Taipei Times, 28 February 2001.

¹⁷⁴ The incident took place in 1952, in the mountain village of Luku, located between Shihting and Hsichih in northern Taiwan. At the time, the Kuomintang authorities were in the process of “cleansing the countryside,” and some people living in Shihting noticed the five-starred Communist Chinese flag flying in Luku. The government dispatched troops to encircle the communists. They imposed full martial law, and any persons found without personal identification documents were arrested. During this action, 183 people in the Shihting, Hsichih and Juifang areas were accused of “organizing a military base and secretly conspiring to dispose of Taiwan,” and arrested. Of these, 36 were executed by firing squad.

(about US\$3.5 million) in compensation by the Taipei District Court.¹⁷⁵

Apart from the first constitutional amendments in 1991, five more constitutional amendments were further added in 1992, 1994, 1997, 1999, and 2000, respectively. However, it has to be noted that most of constitutional amendments focus on the adjustment of governmental structure and democratic procedure. Constitutional amendments adopted in 1991 and 2000 did not even focus on issues related human rights protections.

After 1992, some amendments, which enhanced the rights of dignity, security and equality of women and disability, and the racial status and political participation of indigenous people, had been inserted into constitutional amendments. In 1992 three paragraphs concerning rights of women, disabled and indigenous people were included into then Article 18 of the Constitutional Amendments. One paragraph stated: “The State should maintain women’s dignity, protect women’s security and liberty, eliminate sexual discrimination, and promote equality between sexes.” The second said: “The State should guarantee disable persons’ insurance, medical care, educational training, employment, and living maintenance and remedy.” A third paragraph articulated: “The State should guarantee the status and political participation of ‘mountain people in free area’¹⁷⁶.” It was not until 1996 that the title “mountain people” was amended by a constitutional amendment to indigenous people, as they deserve. In 1996 constitutional amendments further required the State to guarantee indigenous people’s education, culture, transportation, medical care, land, social welfare. It also demanded the State ensuring cultural diversities and positively

¹⁷⁵ See China Times, 22 May 2001.

¹⁷⁶ In the past indigenous people was called “mountain people.” In Taiwan’s laws, when deal with the relationship between two sides of the Taiwan Strait, Taiwan is referred as “free area” and China is named “mainland area.”

maintaining and promoting indigenous people's culture and language. In 1999 one paragraph was adopted to protect soldiers, which read: "The State should respect soldiers' social contribution, and guarantee their education, employment, and medical care."

As we have seen all the above-mentioned paragraphs in constitutional amendments began with words of "the State should." It was therefore mainly to put obligation on the State, but it did not directly grant rights to people. Provisions as such are in fact more like national policies than human rights or freedoms. Furthermore, no constitutional amendments have ever incorporated international human rights norms. It is true that many pieces of outdated legislation have been repealed or revised in order to provide more effective protection of human rights. The obvious gap between the international and domestic human rights regimes is still either unaware or not taken seriously at home. Consequently, in terms of human rights developments in Taiwan after 1987, we should focus more on other new laws and amendments.

4.2.2. Individual Rights and Freedoms

This section focuses on the developments of several rights and freedoms including women's rights, rights of aborigine people, freedom of expression, and the abolishment of death penalty.

4.2.2.1. Women's Rights

Article 7 of the Constitution guarantees that all citizens, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law. Some developments of the protection of women's rights are important in Taiwan. It is ruled by a constitutional amendment: "The State should maintain women's dignity, protect women's security and liberty, eliminate sexual discrimination, and promote equality between sexes." Since 1984 abortion in certain conditions has been allowed, although

it needs consent from one's spouse. The Law to Eliminate Sexual Intercourse of Children and Junior was adopted in 1995. It is to punish those who, by paying money, have sexual intercourse with young people under 18. It also provides shelter and hot lines to child prostitutes. In 1996 Civil Law was amended to allow both parents, during or after marriage, to custody their children jointly or by one of the parties according to their agreement. If an agreement cannot be reached anyone of them may apply for a court decision. It was a rule before 1996 if no agreement existed a father gain the right of custody of children. In January 1997 the Law of Preventing Crime of Sex Encroachment was passed. Therefore, the Committee for Preventing Crime of Sex Encroachment was established in Ministry of Interior, and a Center for Preventing Crime of Sex Encroachment was established in every county.¹⁷⁷ This Law further requires primary and junior high schools to include education on equality between two sexes.¹⁷⁸ In 1999 the crime of rape was amended to include one's spouse. The Domestic Violence Prevention Law went into effect in June 1999. The Committee for Preventing Domestic Violence was therefore established in Ministry of Interior. Current and ex-spouses and relatives are all protected. Those who suffered from domestic violence may apply for injunctions. The Law of Equal Employment between Two Sexes came to effect on 8 March 2002. It prevents sexual harassment in working places. It also provides women one day per month for physiology leave and eight weeks for maternity leave.¹⁷⁹ Anyone one who has worked for more than one year may apply for suspending salary but retain position for not more than two years if he or she wishes to nourish a bay less than three.¹⁸⁰ Committees of Equal Employment

¹⁷⁷ Articles 5 and 6 of the Law of Preventing Crime of Sex Encroachment.

¹⁷⁸ Article 8 of the Law of Preventing Crime of Sex Encroachment.

¹⁷⁹ Articles 14 and 15 of the Law of Equal Employment between Two Sexes.

¹⁸⁰ Article 16 of the Law of Equal Employment between Two Sexes.

between Two Sexes are established in the Commission of Labor Affairs and counties to implement with the Law.

4.2.2.2. Rights of Aborigine People

On 1 November 1996, the Legislative Yuan, in order to carry out the national policy enshrined in a constitutional amendment, passed the Organic Law of the Council for Indigenous Affairs. On December 10 of the same year, the Council of Indigenous Affairs was established for the purpose of organizing aborigine related matters under one general organization.

According to Aborigine Status Act, the term “aborigine” includes native aborigines of the mountain and lowland regions. Aborigine status recognition is divided into two parts. Mountain aborigine means permanent residents of the mountain administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of aborigine descent. On the other hand, lowland aborigine includes permanent residents of the lowland administrative zone before the recovery of Taiwan, moreover census registration records show individual or an immediate kin of individual is of aborigine descent. Aborigines, according to Article 1 of the Full Name Registration Law, should be allowed to register under their customary full names. Aborigines registered under a Han’s full name may apply for restitution of traditional full name.

In Taiwan, municipality councilors, county councilors, and village representatives are independently elected in their respective municipalities, counties, and villages. It is required by the Local Administrative Law that a municipality having an aborigine population of four thousand or more should have aborigine-elected aborigine city councilors. A county or village having a lowland aborigine population of one thousand five hundred or more should have aborigine-elected lowland aborigine city councilors among the aforementioned county council or village

representative quota. The presence of mountain aborigine population would also require the presence of aborigine-elected mountain aborigine councilor or representative.

The Aborigine Education Act explicitly states that the aborigine is the core of the aborigine education; hence the government should promote aborigine education with versatility, equality, and reverence. Aborigine education should uphold the dignity of the people, continue the ethnic lifeline, foster aborigine welfare, and enhance aborigine prosperity. It is required by the law that every department of the government should provide active assistance as well as ensure the equal education opportunity for the aborigines and the establishment of an education system suitable to the demands of the aborigine people. Educational establishments in senior high schools or higher should safeguard the admission and schooling opportunities of aborigine students; as well as reserve a quota for aborigine students in their overseas education grants/subsidies to ensure the cultivation of aborigine talents. The government should urge universities to establish colleges/ departments or establish aborigine university campuses for the development of ethnic academics, education of higher aborigine talents, and cultivation of potential aborigine educators and teachers, thereby fostering the political, economic, educational, cultural, and social development of aborigines.

The government authorities concerned are required by the Employment Service Act that they should formulate a plan for and earnestly foster the job placement of the following individuals voluntarily seeking employment from aborigines. Any corporation employing a total of 100 employees in Taiwan is obliged to employ aborigine employees amounting to a minimum of 2% of total employees during the contract fulfillment period. Otherwise, this company is liable to pay a penalty. The Aborigine Employment Rights Protection Act provides further protections. All government establishments, public schools and state-owned enterprises, except for

those establishments located in the counties of Penghu, Kinmon and Matsu, are required to employ one aborigine employee for every 100 persons employed in the following positions: contract worker, police, technician, driver, janitor, cleaner, toll/fee collector, and other non-technical positions where civil service eligibility is not required. Government establishments, public schools, and state-owned enterprises located in aborigine regions are required to fulfill the aborigine employment quota amounting to at least one-third of the total employees. Government establishments, public schools, and state-owned enterprises employing between 50 and 100 persons for the foregoing positions are required to employ one aborigine employee. The government should assist aborigine communities in establishing aborigine cooperative centers catering to the characteristic work habits of aborigines for the development of various employment opportunities.

It is enshrined in the Mountain Slope Conservation and Utilization Law that aborigines of reservation lands located within the mountain region should be taught to develop land, and have cultivation rights, land surface rights, and lease rights. Individuals continuing to operate their cultivation and land surface rights for a period of five years are entitled to acquire gratis ownership of said land, except for land designated for special purposes. Land ownership transfer is limited to aborigines.

4.2.2.3. Freedom of Expression

Media diversity has become one important development of freedom of expression in Taiwan after 1987. It was in January 1988 that registrations for new newspapers were opened, and restrictions on the number of pages per issue were relaxed. In November 1988, the Executive Yuan approved the private installation of small satellite dish antennas, which will allow viewers to tune into the KU-band and receive television programming from Japan's NHK station. In August 1993, the Cable Television Law went into effect. In December 1993, the Government Information

Office lifted the ban on radio stations, and approved the applications of 13 broadcasting companies for operation licenses. In January 1996, the Legislature passed three telecommunications laws, which were the Telecommunications Act, the Organizational Statute of the Directorate General of Telecommunications, Ministry of Transportation and Communications, and the Statute of Chunghwa Telecom Co., Ltd. These laws relieved the DGT of the function of providing telecommunications services, making it a regulatory agency only; opened the telecommunications sector to private and foreign investment; and strengthened controls on transmission frequencies. The Legislative Yuan, in May 1997, passed the third reading of the Public Television Bill, which will enable the public television station to begin broadcasting in 1998. It is of importance that the Legislative Yuan unanimously abolished the Publication Law in January 1999.

It has to be noted that the Legislative Yuan, in April 1992, revised Article 100, the sedition clause of the Criminal Code, to apply only to those who support violent action against the government. Non-violent advocacy of Communism or Taiwan independence was thereby decriminalized. In December 1993, moreover, the Legislative Yuan approved a revision of the University Law, which gave more autonomy to colleges and allows students to participate in meetings related to school affairs.

4.2.2.4. Death Penalty

The attitude of Taiwanese law to abolition may be set out under three headings.¹⁸¹ First of all, the Constitution does not clearly uphold the right to life.

¹⁸¹ Fort Fu-Te Liao, "Plugging the Gaps: Death Penalty, Taiwan and International Law", in Edmund Ryden SJ (ed.), *Taiwan Opposes the Death Penalty* (Fujen Catholic University Publisher, 2002), pp. 203-220, at p. 215.

However most scholars hold that although the Constitution does not explicitly state the right to life, it does guarantee this right; different scholars argue the point from different points of view.

Secondly, in ROC Criminal Law there are 7 crimes for which the death penalty is mandatory and 23 for which it is discretionary. In the area of special criminal laws there are 13 laws mentioning 58 crimes carrying a mandatory death sentence and a further 69 where the death sentence is discretionary. In all 157 crimes may be punished by the death penalty.¹⁸²

Finally, we can look at the Interpretations offered by the Council of Grand Justices. Interpretations No. 194 and No. 263 state that in time of unrest Articles on drug peddling and crimes of banditry, which carry mandatory death sentences, are not against Articles 23 and 7 of the Constitution.¹⁸³ Interpretation No. 476 holds that the discretionary death sentence for drug peddling is not against Articles 23 and 15 of the Constitution.¹⁸⁴

From the above it can be seen that in the ROC legal system, the Constitution does not explicitly guarantee the right to life nor does it call for abolition of the death penalty, whilst on the level of laws there are many and broad laws which allow for capital punishment, and the interpretations note that even those laws carrying

¹⁸² See Gen-Gi Chen, "Debate on retaining or abolishing the death penalty from a human rights view", *New Century forum*, No. 4, December 1998, p.69.

¹⁸³ Article 23: "All the freedoms and rights enumerated in the preceding articles shall not be abridged by law except such as may be necessary to prevent infringement upon the freedoms of others, to avert an imminent danger, to maintain social order, or to promote public welfare." Article 7: "All citizens of the Republic of China, irrespective of sex, religion, ethnic origin, class, or party affiliation, shall be equal before the law."

¹⁸⁴ Article 15: "The right to live, the right to work, and the right to own property shall be guaranteed to the people."

mandatory death sentences are not against the Constitution. We can say that Taiwan is not only supportive of the death penalty, but seeks to expand its use.

However, it has to be noted that Chen's administration wishes to put forward, whose policy objectives are to replace mandatory death sentences in various statutes with discretionary death sentences while reducing the overall number of crimes calling for death sentences.¹⁸⁵ Several achievements have in fact been completed. First, the series of amendments to the Criminal Code in recent years have already replaced most articles, which prescribe mandatory death sentences to allow discretionary adoption of either death or life sentences. Secondly, the Legislative Yuan has officially terminated the controversial Bandit Law, which included mandatory death sentences for a wide range of offenses. Thirdly, it is promised by the current government that it will continue to re-examine and revise related laws to replace remaining mandatory death penalties with discretionary death penalties in the future. It will then reduce the overall scope of the death penalty and move in stages toward achievement of total abolition. It is however too early to expect how many years will it take.

4.3. New Government, New Human Rights Policies

On 18 March 2000, Mr. Chen Shui-bian, the candidate of the then opposition party, DPP, won the presidential election, which ended KMT's ruling over Taiwan since 1945. Immediately after he knew his winning of the election, Mr. Chen spoke: "The government lead by Annette Lu and I will take advantage of Taiwan's developmental experience to assist the promotion of democracy and preservation of

¹⁸⁵ See 2002 Human Rights Policy White Paper of the Republic of China (Taiwan) Human Rights Infrastructure-building for a Human Rights State, February 2002, p. 60.

human rights in international societies.”¹⁸⁶ On 20 May 2002, Mr. Chen Shui-bian, in his inaugural speech, “Taiwan Stands Up: Toward the Dawn of a Rising Era,” accentuated:

[W]e are also willing to promise a more active contribution in safeguarding international human rights. The Republic of China cannot and will not remain outside global human rights trends. We will abide by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Vienna Declaration and Program of Action. We will bring the Republic of China back into the international human rights system. The new government will request the Legislative Yuan to pass and ratify the International Bill of Rights as a domestic law of Taiwan, so that it will formally become the “Taiwan Bill of Rights.” We hope to set up an independent national human rights commission in Taiwan, thereby realizing an action long advocated by the United Nations.¹⁸⁷

Such speech triggered new government’s new human rights policies in Taiwan in the new millennium. In order to carry out such policies the government has created mechanisms in order to deliberate related policies and laws, as well as coordinate and promote related measures taken by various agencies. The Executive Yuan has established the inter-ministerial Human Rights Protection and Promotion Committee as the primary policymaking and coordination body in the field. In addition, the Presidential Office has created the Human Rights Advisory Group to serve as advisors to the President on realizing his announced ideal of “building a human rights state.”

The Presidential Human Rights Advisory Group was established on 24 October 2000. With Vice President Hsiu-lien Annette Lu as convener, the Group consists of 21

¹⁸⁶ Chen Shui-bian, Victory speech after the 10th Republic of China Presidential and Vice Presidential Election, 18 March 2000.

¹⁸⁷ President Chen Shui-bian, Inaugural Speech, “Taiwan Stands Up: Toward the Dawn of a Rising Era,” 20 May 2000.

scholars and experts brought together to advise the President. According to Article 1 of the “Guidelines for the Establishment of the Presidential Human Rights Advisory Group,” the main function of the Group is “to provide advice and recommendations to the President at appropriate times ... in order to protect and improve the domestic human rights conditions, promote participation in international human rights activities, propagate human rights consciousness....” To realize this objective, the Group has organized six working groups, on domestication of the International Bill of Rights, the National Human Rights Commission, human rights policy, international human rights activities, human rights consciousness and education, and evaluation of current human rights conditions.

The Executive Yuan Human Rights Protection and Promotion Committee was established in July 2001, with then Vice Premier Lai In-jaw as convener, Minister without portfolio Hsu Chih-hsiung and Research, Development, and Evaluation Commission Chairman Lin Chia-cheng as co-conveners. The current convener is Premier Yu Shyi-kun. Members of the Committee include the Secretary-General of the Executive Yuan, the Minister of the Interior, the Minister of Foreign Affairs, the Minister of Defense, the Minister of Education, the Minister of Justice, the Director-General of the Government Information Office, the Director-General of the Department of Health, the Administrator of the Environmental Protection Administration, the Chairman of the Council of Labor Affairs, and the Chairman of the Council of Indigenous Peoples’ Affairs, as well as thirteen scholars and experts from the private sector. In order to achieve the function of coordination of the human rights policies of the various agencies, the Committee also invites other relevant agencies to attend its sessions. Furthermore, it has established an advisory committee composed of additional scholars and experts to broaden its sources of information. The Committee is also responsible for coordination and supervision of the

administrative practices, policies, and measures of the Executive Yuan's various ministries and commissions.

As expressed by President Chen himself, initially new human rights policies include two main fields. Firstly, the government wishes to set up an independent national human rights commission. Secondly, it is wished that the International Bill of Rights could be brought home into the land of Taiwan. Under this topic, one thing should be done is the ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) by the Legislation Yuan (Parliament). The other issue is to enact a "Taiwan Bill of Rights."

4.3.1. National Human Rights Commission

In Taiwan, the idea of creating a national human rights commission is in fact coming from the bottom up. It originated in civil society, particularly in the Taiwan Association for Human Rights, and was adopted by the new government on 20 May 2000.

As Taiwan has long been isolated from the international human rights regime, few discussions on and promotions of the issue of establishing a national human rights commission in Taiwan have been presented. It was not until the end of 1999 that there was a stir in the air when some non-governmental organisations, lead by the Taiwan Association for Human Rights, set out to mobilise public opinion. In that meeting, a "Coalition for the Promotion of a national human rights commission in Taiwan"¹⁸⁸ was organised. It was stated that the "Paris Principles"¹⁸⁹ and the

¹⁸⁸ Feng-Jeng Lin, "The Role of NGOs in setting up a National Human Rights Commission in Taiwan", paper presented at the *International Conference on National Human Rights Commissions: Promoting and Protecting Human Rights*, Taipei, Taiwan, 2-4 January 2001.

experiences of other countries would be consulted in designing a national human rights commission. Its functions would include investigation of violations of human rights, writing and revision of laws to conform to international standards, as well as human rights education. The principles of independence, effectiveness and reflection of the diversity of society were also affirmed.¹⁹⁰

The Coalition in turn established two task forces in January 2000. One of the task forces was charged with winning the endorsement for a national human rights commission of each of the candidates in the presidential race, while the other had the responsibility of drafting the NGO proposed organic law. By early October 2000, “The National Human Rights Commission Bill” and its “general explanatory notes” were agreed upon by the Coalition.¹⁹¹ The bill was sent to the Legislative Yuan in 2001. However, new members of the Legislative Yuan were elected in December 2001. Because the Legislative Yuan has a rule that all bills must be re-read by new members, the bill has to start over again when the new members take office in February 2002. The bill is still pending before the Legislative Yuan.

¹⁸⁹ Principles concerning the status of national institutions for the defence and promotion of human rights, which are also known as the “Paris Principles,” were adopted during the first international meeting of national human rights institutions in Paris in 1991. They were adopted by the General Assembly of the United Nations on 20 December 1993 by resolution 48/134. The Paris Principles include three main sections on national institutions’ competencies and attributes, composition and guarantee of independence and pluralism, and methods of operation. The Paris Principles also include principles concerning national institutions having quasi-judicial power.

¹⁹⁰ Press Release of the Coalition on 9 December 1999.

¹⁹¹ For the whole process of drafting the “NGO HRC Act,” please see Mab Huang, “Drafting a Bill for a National Human Rights Commission: Taiwan, 2000”, paper presented at the *International Conference on National Human Rights Commissions: Promoting and Protecting Human Rights*, Taipei, Taiwan, 2-4 January 2001.

On the other hand, the task force that was charged with winning the endorsement for a national human rights commission of each of the candidates in the presidential race in 2000 did a good job. Major presidential candidates, including Lien Chan, Chen Shui-bian and Hsu Hsin-liang, all endorsed the idea. Upon winning the election, the DPP's Chen Shui-bian made it one of the new government's human rights policies. To carry out the policy pledge of President Chen, in 2001 the current administration began preparing a draft bill for the National Human Rights Commission, which after several rounds of revision has reached its final form. That bill has been submitted to the Legislative Yuan for its deliberation.

Therefore, there are currently two bills for the National Human Rights Commission before the Legislative Yuan. The bill from the Coalition includes a new paragraph to Article 17 of the "Law of the Structure of the Office of President" and "The National Human Rights Commission Act." ("NGO HRC Act") The bill from the government contains three parts: a new Article 17-1 of the "Law of the Structure of the Office of President," "The National Human Rights Commission Act" ("Governmental HRC Act") and "The Law of Exercising Power of the National Human Rights Commission." ("Governmental HRC Power Act")

4.3.1.1. Where

The Paris Principles stress that a national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text. In Taiwan, the Coalition, in fact, wishes to set up a Taiwanese national human rights commission in addition to and independent from, the executive, legislative, judiciary and other branches. To achieve this goal there would need to be a constitutional amendment permitting the potential Taiwanese national human rights commission to hold a constitutional status. However, because it has proven quite difficult to pass such a constitutional amendment, the Coalition chose to put the

Taiwanese national human rights commission under the Presidential Office. The manner chosen was to insert a new paragraph into Article 17 of the “Law of the Structure of the Office of President”, which will provide the commission with its legal status. With this new paragraph, the commission’s independence was explicitly guaranteed.

On the other hand the government adopted the idea from the Coalition, and proposed no constitutional amendment. As well, the government decided to establish the National Human rights Commission under the Presidential Office, while guaranteeing it as an independent commission. However, the government proposed a new Article 17-1 of the “Organic Law of the Presidential Office” in order to differentiate the National Human Rights Commission from other institutions and agencies originally included in Article 17, such as the Academia Historica, an official documents agency, and the Academia Sinica, a national research institute. It is also explicitly stated in Article 17-1 that the National Human Rights Commission exercises its powers independently.

4.3.1.2 Functions

The Paris Principles state that a national institution shall be given as broad a mandate as possible. A national institution shall have the following responsibilities:

(1) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights.

(2) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation.

(3) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation.

(4) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;

(5) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(6) To assist in the formulation of programs for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles; and

(7) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

In Taiwan both the Coalition and the government wish to adopt the mandates stressed by the Paris Principles as far as possible. The “NGO HRC Act” from the Coalition includes 21 Articles. Article 1 of the bill states that the aims of the National Human Rights Commission Act are to fulfil the Constitutional protection of human rights, to establish an infrastructure for promoting and protecting human rights, to ensure social fairness and justice, and to comply with universal human rights values and standards. According to Article 2 of the “NGO HRC Act,” the functions of the commission are as broad as to include the following:

(1) To investigate significant human rights violations and present reports with remedial measures, and whenever necessary, provide assistance;

(2) To review the Constitution, laws and regulations, and propose constitutional or legal amendments or legislative bills to ensure that all comply with international human rights standards;

(3) To work out national human rights policies;

(4) To undertake and promote research and education in the field of human rights;

(5) To prepare reports on human rights issues;

(6) To co-operate with civil society, international organisations, national human rights institutions and non-governmental organisations to promote human rights protection; and

(7) Other functions authorised by the National Human Rights Commission Act or other laws.

On the other hand, according to Article 2 of the “Governmental HRC Act”, the National Human Rights Commission’s functions include:

(1) To review laws, regulations and policies relating to human rights promotion and protection.

(2) To prepare annual reports on human rights issues.

(3) To promote human rights education and to spread human rights ideas.

(4) To ensure the complement with international human rights standards and to promote cooperation among domestic and international human rights organizations.

(5) To investigate significant human rights violations.

(6) To visit relevant places that significant human rights violations may occur.

And

(7) Other related issues concerning human rights promotion and protection.

We can see that, although expressed in different words, both Bills have the same idea of adopting the context of the Paris Principles in order to comply with

international standards.

Both of the “NGO HRC Act” the “Governmental HRC Act” grant the commission a power to investigate cases of significant violations of human rights. According to both of the Bills, the commission may receive petitions from individuals or group of individuals complaining of significant violations of human rights, for which the commission will provide rules. In addition, the commission itself may initiate investigations of significant human rights violations.¹⁹² However, while the “NGO HRC Act” defines a significant human rights case as a collective, controversial or international violation of human rights, the “Governmental HRC Power Act” focuses on the existing or lack of laws, regulations and measures that may violate human rights protection, and cases that are not belong to the mandate of the Control Yuan (Ombudsmen) or are not currently examined by the judiciary.¹⁹³ Therefore, in the “NGO HRC Act,” the commission, to avoid conflicts of jurisdiction, when a relevant agency, especially the Control Yuan, has been dealing with the same case, may temporarily cease its own investigation and provide assistance to that agency. The agency is required to report its results to the commission.¹⁹⁴ When it discovers criminal acts or civil servants having violated the law, the commission, being a subsidiary to but not replacing the judiciary, shall refer those cases to the Prosecution or the Committee on the Discipline of Public Functionaries.¹⁹⁵ However, in the “Governmental HRC Power Act,” the commission should refer cases to the Control

¹⁹² Article 3 Paragraph 1 of the “NGO HRC Act” and Article 6 of the “Governmental HRC Power Act.”

¹⁹³ Article 6 of the “Governmental HRC Power Act.”

¹⁹⁴ Article 5 of the “NGO HRC Act.”

¹⁹⁵ Article 4 of the “NGO HRC Act.”

Yuan whenever it finds that those belong to the mandate of the Control Yuan.¹⁹⁶ The commission should also dismiss any case that is currently examined by the courts.¹⁹⁷

Both bills grant the commission, when exercising its investigative function, the power to enter any building or place where the commission has reasons to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies of them. The commission also has the power to require any person or governmental agency to furnish information on such points or matters as, in the opinion of the commission, may be useful for, or relevant to, the subject matter of the inquiry. Any person so required shall be legally bound to furnish such information.¹⁹⁸ The commission, by written notice, may summon persons concerned to give statements of facts or opinions.¹⁹⁹ Persons without proper reasons shall not refuse to attend. If compensation is involved, the commission may engage in friendly settlement or arbitration. The commission may refer the conclusions of friendly settlement or arbitration in which payments or certain acts are included, to the courts for execution.²⁰⁰

However, the two Bills disagree with two issues. The first issue concerns the delegation of power. In the “NGO HRC Act,” the commission may delegate investigative power to specific agencies or groups, scholars or experts.²⁰¹ However, according to the “Governmental HRC Power Act,” human rights commissioners may delegate power only to human rights investigators, who are staffs of the commission.

¹⁹⁶ Article 17 of the “Governmental HRC Power Act.”

¹⁹⁷ Article 6 of the “Governmental HRC Power Act.”

¹⁹⁸ Article 7 Paragraph 1 of the “NGO HRC Act” and Article 11 of the “Governmental HRC Power Act.”

¹⁹⁹ Article 8 of the “NGO HRC Act” and Article 11 of the “Governmental HRC Power Act.”

²⁰⁰ Article 3 Paragraphs 3 and 4 of the “NGO HRC Act.”

²⁰¹ Article 7 Paragraph 3 of the “NGO HRC Act.”

Secondly, the two Bills impose different amount of fine. While both Bills agree if fines have not been paid the commission may refer the orders to the courts for their execution, they have different views on amount. In the “NGO HRC Act,” the commission has the power to impose fines ranging from NT\$ 10,000 to NT\$ 10,000,000 on those who violate the commission’s orders.²⁰² But, in the “Governmental HRC Power Act,” the commission may impose fines ranging from NT\$ 30,000 to NT\$ 300,000.

Both Bills require that the commission, if it finds human rights violation, shall present reports on all cases, whether petitions received or by its own initiation, and send them to the relevant agencies or institutions for remedy. The agencies or institutions are obligated to notify the commission in details the manner and content of their handling of the cases.²⁰³

It is in the both Bills that the commission has to present its annual report on the national human rights status to the President and the Legislative Yuan. The commission may also produce thematic reports on specific human rights issues from time to time. All the reports and recommendations of the commission must be published, and made available and promoted to the public.²⁰⁴

4.3.1.3. Structure

The Paris Principles assert that the composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in

²⁰² Article 9 of the “NGO HRC Act.”

²⁰³ Article 3 Paragraph 2 of the “NGO HRC Act” and Article 20 of the “Governmental HRC Power Act.”

²⁰⁴ Article 6 of the “NGO HRC Act.”

the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists; trends in philosophical or religious thought; universities and qualified experts; Parliament; government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

Related issues have been included into both the Bills. First issue is the number of commissioner and the method of appointment. According to the “NGO HRC Act,” there will be 15 commissioners, of whom the President appoints eight and the Legislative Yuan elects seven. The commissioners themselves elect one chairperson and two deputy chairpersons, so as to avoid direct administrative appointments. The chairperson is the chair of commission meetings, and bears responsibility for the general affairs of the commission. Two deputy chairpersons are to assist the chairperson in the performance of functions.²⁰⁵ On the other hand, according to the “Governmental HRC Act,” there will be 11 commissioners, of whom the President appoints all the members. The President also appoints one chairperson and one deputy chairperson.²⁰⁶

The second issue is the qualification of commissioner. The “NGO HRC Act” emphasizes that commissioners shall be appointed from three groups: (a) those who have made particular efforts for or contributions to the activities of protection and promotion of human rights or minority rights in particular; (b) those who have written

²⁰⁵ Article 10 of the “NGO HRC Act.”

²⁰⁶ Article 3 of the “Governmental HRC Act.”

works on or made special contributions to human rights research or education; and (c) those who have served as a judge, prosecutor, lawyer or have participated in other judicious works contributing significantly to human rights protection. It is also explicitly required that the appointment of commissioners shall take notice of the diversity of society.²⁰⁷ On the other hand, the “Governmental HRC Act” focuses on the first two criteria, i.e. those who have made particular contributions to protection and promotion of human rights and those who have written works on or made special contributions to human rights research or education. The “Governmental HRC Act” deletes the third criterion, and does not include a paragraph emphasizing the diversity of society either.²⁰⁸ Both the “NGO HRC Act” and the “Governmental HRC Act” explicitly require the commissioners should exercise their powers independently, and shall not participate in activities of political parties.²⁰⁹

The third issue concerns the rank and term of commissioners. In the “NGO HRC Act,” commissioners are defined as officers of “special appointment rank,” who are not classified as general civil servants. Commissioners have the terms of six years. However, at the first appointment, the President and the Legislative Yuan shall respectively appoint three commissioners for terms of three years²¹⁰ to, as far as possible, avoid political influence and to maintain continuity. Commissioners may be re-elected or re-appointed once. Commissioners shall not serve in other civil services nor engage in professional practices. On the other hand, in the “Governmental HRC Act,” commissioners are defined as officers of highest general civil servants.

²⁰⁷ Article 11 of the “NGO HRC Act.”

²⁰⁸ Article 4 of the “Governmental HRC Act.”

²⁰⁹ Article 13 of the “NGO HRC Act” and Article 4 of the “Governmental HRC Act.”

²¹⁰ Article 10 of the “NGO HRC Act.”

Commissioners have the terms of four years.²¹¹ No special rule was designed for the first appointment; neither a paragraph was included to prevent commissioners from serving in civil services or engaging in professional practices. Commissioners are not limited as re-appointed once; therefore they can always be re-appointed.

A fourth issue is the ways of maintaining the independence of the National Human Rights Commission. In the “NGO HRC Act,” several ways have been provided. First, the Executive Yuan has no power to cut the annual budget of the commission,²¹² which means that the Legislative Yuan is the only branch that can arrange the commission’s budget. Second, no commissioner will be removed from office unless he or she has been guilty of a criminal offence or declared to be under interdiction. Third, commissioners’ expressions or votes within commission meetings will not be charged.²¹³ Fourth, the “NGO HRC Act” delegates to the commission the power to enact its own rules for meetings and procedures.²¹⁴ However, the “Governmental HRC Act” does not include any of these measures.

Fifthly, some mechanisms to help the National Human Rights Commission are also of importance. The “NGO HRC Act” includes several ways. First, the commission may establish specialised committees as it sees necessary.²¹⁵ Second, the commission may appoint domestic and foreign consultative advisors, and the commission has the power to make such regulations.²¹⁶ Third, commissioners, as their own initiation, may appoint four to six persons as assistants, specialists or

²¹¹ Article 3 of the “Governmental HRC Act.”

²¹² Article 12 of the “NGO HRC Act.”

²¹³ Article 14 of the “NGO HRC Act.”

²¹⁴ Articles 20 and 21 of the “NGO HRC Act.”

²¹⁵ Article 15 of the “NGO HRC Act.”

²¹⁶ Article 16 of the “NGO HRC Act.”

researchers.²¹⁷ Fourth, administrative staffs divided into five departments, while not to become a bloated bureaucracy, will assist the commission.²¹⁸ The “Governmental HRC Act” adopts some similar provisions concerning appointments of domestic and foreign consultative advisors and administrative staffs.²¹⁹ It is explicitly stated that the commission may establish specialised committees in the “Governmental HRC Act.” Neither the “Governmental HRC Act includes the appointments of four to six assistants for individual commissioner. However, the “Governmental HRC Act” empowers the commission to appoint several human rights investigators and researchers.²²⁰

4.3.2. Bringing International Human Rights Home

Regarding the topic of bringing international human rights home, as mentioned above, the Chen Shui-bian administration focus on two issues. One is the ratification of the two International Covenants; the other is to enact a “Taiwan Bill of Rights.” The Executive Yuan, on 14 February 2001, asked the Ministry of Foreign Affairs and the Ministry of Justice to be in charge of these two issues respectively. Before we discuss these two issues it may be help to include a brief history of the inter-relationship between Taiwan and international human rights regime.

4.3.2.1. Taiwan and International Human Rights Regime

One major purpose of the United Nations is to promote and encourage respect for human rights for *all*. The UN and its members, in pursuit of this purpose, shall act in accordance with the principle that all persons are endowed with fundamental human rights, *regardless of the country in which they live*. The Universal Declaration

²¹⁷ Article 17 of the “NGO HRC Act.”

²¹⁸ Article 18 of the “NGO HRC Act.”

²¹⁹ Articles 7-12 and 14 of the “Governmental HRC Act.”

²²⁰ Article 13 of the “Governmental HRC Act.”

of Human Rights, which the General Assembly adopted on 10 December 1948, has been proclaimed as a common standard of achievement for *all peoples and all nations*. Therefore, *no* distinction shall be made on the basis of *the international status* of the country or territory to which a person belongs.

On 16 December 1966, both ICCPR and the ICESCR were concluded. Since then, these three documents have been regarded as the International Bill of Rights. In addition, two Optional Protocols to the ICCPR were further adopted to allow individual petitions against their home states and to abolish the death penalty. Meanwhile, by 1971, the UN also concluded many other international human rights instruments such as the Convention on the Prevention and Punishment of the Genocide, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women, and the International Convention on the Elimination of All Forms of Racial Discrimination.

In the 1970s and 1980s, the international human rights regime continued to advance, leaving the then-martial-ruled Taiwan further behind. In 1976, the said two International Covenants and the Optional Protocol to the ICCPR came into force. The Convention on the Elimination of all Forms of Discrimination against Women took effect in 1981. Another important piece of human rights treaty, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted in 1984 and went into force in 1987, respectively. Between 1988 and 2000, the international human rights regime went even further on. A series of major instruments were adopted and implemented. The list includes: the Second Optional Protocol to the ICCPR, aiming at abolition of the death penalty (adopted in 1989 and entering into force in 1991), the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (adopted in 2000), the Convention on the Rights of the Child (adopted in 1989 and entering into force in 1990), and the Rome

Statute of the International Criminal Court (adopted in 1998 and entering into force in 2002).

The ROC was a permanent member of the Security Council of the UN between 1946 and 1971. Therefore, it has often been argued that the ROC positively participated in drafting the International Bill of Rights. The positive participant nonetheless merely signed the two International Covenants and the Optional Protocol to the ICCPR; no ratification ever followed. The ROC ratified some other international human rights instruments, such as the Convention on the Prevention and Punishment of Genocide, the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women, and the International Convention on the Elimination of All Forms of Racial Discrimination. The Convention on the Prevention and Punishment of Genocide was further incorporated into domestic law. It can be argued that during the period between 1946 and 1971 the ROC had opportunities to, but did not fully join the international human rights regime.

Situations have changed dramatically since 1971. Since then, the UN and most States in the world no longer recognized the ROC government as the Chinese government, and even not a *de jure* State or government at all. Consequently, the above signatures and ratification of international treaties by the ROC government were not recognized by the UN, either. Furthermore, Taiwan (and its government) has practically lost almost all of the available opportunities to participate in the evolution of the international human rights regime thereafter.

Taiwan and international human rights instruments by 1971

Instrument	Status of signature and/or ratification	
	Signature	Ratification or Accession
United Nations Charter	26 June 1945	28 Sept 1945
Convention on the Prevention and Punishment of the Crime of Genocide	20 July 1949	5 May 1951
Convention on the Political Rights of Women	9 June 1953	27 Nov 1953
Slavery Convention	7 Dec 1953	14 Dec 1955
Protocol amending the Slavery Convention	7 Dec 1953	14 Dec 1955
Equal Remuneration Convention (ILO No. 100)	1 Mar 1958	1 May 1958
Convention on the Nationality of Married Women	20 Feb 1957	12 Aug 1958
Abolition of Forced Labour Convention (ILO No. 105)	Signature not required	23 Jan 1959
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	23 May 1957	28 May 1959
Discrimination (Employment and Occupation) Convention (ILO No. 111)	Signature not required	31 Aug 1961
Labour Inspection Convention (ILO No. 81)	Signature not required	26 Sept 1961
Indigenous and Tribal Populations Convention (ILO No. 107)	Signature not required	10 Sept 1962
Right to Organise and Collective Bargaining Convention (ILO No. 98)	Signature not required	10 Sept 1962
Protection of Wages Convention (ILO No. 95)	Signature not required	22 Oct 1962
Convention against Discrimination in Education	Signature not required	16 Nov 1964
Maximum Weight Convention (ILO No. 127)	Signature not required	23 Dec 1969
International Convention on the Elimination of All Forms of Racial Discrimination	31 March 1966	14 Nov 1970
Accommodation of Crews Convention (Revised) (ILO No. 92)	Signature not required	23 Dec 1970
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	10 Dec 1949	Not yet ratified
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces	10 Dec 1949	Not yet ratified

Instrument	Status of signature and/or ratification	
	Signature	Ratification or Accession
at Sea		
Geneva Convention relative to the Treatment of Prisoners of War	10 Dec 1949	Not yet ratified
Geneva Convention relative to the Protection of Civilian Persons in Time of War	10 Dec 1949	Not yet ratified
Convention on the Reduction of Statelessness	30 Aug 1961	Not yet ratified
Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages	4 Apr 1963	Not yet ratified
International Covenant on Civil and Political Rights	5 Oct 1967	Not yet ratified
(First) Optional Protocol to the International Covenant on Civil and Political Rights	5 Oct 1967	Not yet ratified
International Covenant on Economic, Social and Cultural Rights	5 Oct 1967	Not yet ratified

Source: Ministry of Foreign Affairs, Document No. 09101164450

It may be argued that although Taiwan became more democratic, she was still an “orphan” of the international human rights regime. On the one hand, Taiwan had no opportunity to access international human rights instruments; on the other, Taiwan did not incorporate international human rights norms into its domestic legal system. There was a new start to return to the international human rights regime after Chen Shui-bian administration took power. Now the situation is that Taiwan has strong commitment to join the international human rights regime, while the reality is that the international community does not give she any opportunity. The UN system has been treating Taiwan as part of China. However, it is not reasonable to say that the PRC, who never rules Taiwan for a single day after its creation, has a legal right to represent Taiwan in the international human rights regime.

In fact, we all know that the pressure comes from Beijing. When the subject is a sovereign State, the PRC blocks Taiwan’s ways to the international community, even

though in international human rights regime, which should be universal regardless one's international status. Still the PRC tries to prevent President Chen Shui-bian, who received a freedom prize awarded by Liberal International, from going to Denmark to receive the award. It can be argued that it would be ironic if the recipient of the 2001 Prize of Freedom would be stripped of the freedom to receive the honour because of pressure from Beijing.

International human rights treaties are for *all peoples and all nations regardless of the country in which they live* and without distinction of *the international status of the country*. International human rights monitoring mechanism has been urging states to participate in as many international human right treaties as possible. It is obviously unfair to turn she down when Taiwan wishes to be abided by international human rights regime. If the international community takes universal human rights seriously, it shall make Taiwan's accession available. There will be no universal human rights without Taiwan.

4.3.2.2. Ratification of the two Covenants

The UDHR, the ICCPR, and ICESCR are collectively known as the "International Bill of Rights." Together they represent the most basic set of international human rights standards. Similar to the status of parent law, this set of international human rights regulations is the basis for so many other human rights treaties. The 1993 "Vienna Declaration and Programme of Action" (VDPA) reaffirmed the universality of the human rights guarantees of the International Bill of Rights as well as their indivisibility.

The two Covenants legally bind their contracting parties. Not only does the ICCPR require that the signatory nations submit periodic human rights status reports, but it establishes a mechanism to accept appeals from any country concerning human rights violations. Moreover, the Optional Protocol to the ICCPR confers on individual

citizens of states parties to the Protocol the right to bring complaints against governments for rights violations. The two Covenants are the most representative of international human rights treaties. As of the year 2002, 148 states had ratified the ICCPR, while another seven have signed but have yet to ratify. The ICESCR has been ratified by 145 states, with another seven having signed but not yet ratified.

Taiwan signed the ICCPR, the Optional Protocol to the ICCPR and the ICESCR in 1967. But Taiwan did not ratify any of these three important international human rights instruments by 1971. As Taiwan was under decades of authoritarian rule which had a taboo on human rights, coupled with international isolation, the importance of the international human rights treaties, as well as the related international legal issues of accession, were not given weight.

Since 20 May 2000 President Chen Shui-bian has put forth the ideal of “building a human rights state,” and has stressed the importance of catching up with international human rights standards through this process. Ratification of the ICCPR and the ICESCR is therefore an important beginning for realizing this objective. President Chen reiterated this ideal again in his remarks when he attended the founding ceremony for the Presidential Human Rights Advisory Group, in his remarks when he went to Green Island to participate in anniversary ceremony for the human rights commemorative plaque, in his January 2001 New Year’s remarks, and in his address to the eighth full meeting of the committee and first-year anniversary of the founding of the Presidential Human Rights Advisory Group.

On 18 April 2001, the 2730th meeting of the cabinet passed a proposal by the Ministry of Foreign Affairs (MOFA) to submit to the Legislative Yuan to ratify and present to the President for signature the ICCPR and the ICESCR. The Executive Yuan further stressed that “the ICCPR and the ICESCR are, of all the international human rights standards, the ones which provided fundamental guidance, and,

moreover, since our government had signed them in 1967, that they should be assigned top priority, so that they might go through the ratification procedures as quickly as possible.”²²¹

In Taiwan the ratification of the ICCPR and the ICESCR faces three problems. The first question is whether or not Taiwan should register any reservations, as allowed for in the Covenants, to any of the Covenants’ provisions. The majority of scholars on the issue advocated registering no reservations whatever. The Executive Yuan, after having its ministries and agencies survey the laws and measures that come under their purview, believed that regulations currently not conforming to the Covenants could be dealt with through revisions in the law, and thus no reservations were required. However, there was an enormous debate in the Legislative Yuan. As a result the Legislative Yuan, on 31 December 2002, passed the ratification procedure, but with reservations to Article 6 (death penalty) and Article 12 (right to liberty of movement and freedom to choose residence) of the ICCPR and Article 8 (right to form trade union) of the ICESCR. It further included a declaration to Article 1 of the ICCPR stating that “self-determination is applied to colonies or non self-governing territories only, and the ROC is a sovereignty state, therefore does not subject to self-determination.” The DPP was of the view that such declaration did not comply with common Article 1 of the two Covenants. Therefore, the DPP, on 7 January 2003, applied for repealing such declaration. Whether the DPP will be successful is still unknown by 15 January 2003.

The second problem concerns the legal status of international human rights treaties. Common practice and academic discourse holds that all treaties ratified pursuant to Article 38, Article 58 (2), and Article 63 of the Constitution share equal

²²¹ Record of the 2730th meeting of the cabinet of the Executive Yuan.

status with domestic law. However, if the deposit of the ratification instrument of a treaty or convention has yet to be consummated, when international legal binding force was not yet in effect on our country, would the treaty then have any domestic legal effect? The answer was not clear in Taiwan. However, it should be noted that the Judicial Yuan Interpretation No. 329²²² has hold:

According to the Constitution the President has the power to conclude treaties. The Premier and Ministers shall refer those treaties that should be sent to the Legislation Yuan for deliberation to the Committee of the Executive Yuan. The Legislative Yuan has the power to review those treaties. All these are explicitly enshrined in Article 38, Article 58 Paragraph 2 and Article 63 of the Constitution respectively. Treaties concluded in according to above procedures hold the same status as laws.

Since Interpretation No. 329 does not refer to deposit procedure, it is believed that once an international human rights treaty has been passed by the Legislative Yuan and signed by the President it has domestic legal status, and the same status as laws. However, there is still no law in Taiwan that makes this issue clear as a special law on ratification of treaties is under consideration by the Legislative Yuan. Such related issues are currently regulated by the Standards for Handling of Treaties and Agreements, which is enacted by the Ministry of Foreign Affairs. In order to clarify the issue of domestic legal status MOFA called a meeting to revise Article 11, Section 2 of the Standards for Handling of Treaties and Agreements on 10 April 2002. According to such provision a human rights treaty, if it has been passed by the Legislation Yuan and signed by the President, gains domestic legal status, even without deposit the ratification to the Secretary-General of the United Nations.

²²² 24 December 1993.

The third problem is: must the procedures for depositing the ratification document be immediately carried out? As called for by the stipulations of the Covenants themselves, completion of the ratification process by depositing it with the Secretary-General of the United Nations is to formally declare before the international community Taiwan's commitment to be bound by the Covenants. By completing the deposit process, it will make Taiwan a contracting state to the two Covenants, so by legal principle Taiwan should waste no time in completing the procedures. However, since both Covenants stipulate that they may be ratified or acceded to by "any State Member of the United Nations or member of any of its specialized agencies ... and by any other state which has been invited by the General Assembly..." which are conditions that Taiwan cannot presently fulfill. Moreover, under the political situation in which Taiwan presently finds itself, with the People's Republic of China interfering, in practice completion of the deposit procedure may still be problematic.

Whether to deposit the instruments of ratification or not is still a controversial issue in Taiwan. Those in support believe that by ratifying, the government will achieve rendering of the human rights Covenants into domestic law, not only bring strengthening human rights guarantees but also getting our country back on track internationally; whereas deposition, necessarily implicating our country's sovereignty and independence, would be opposed by the PRC, but whether the UN accepted it or not would not be important. Those opposed believe that there is no urgency to ratifying, and questioned whether or not they could be respected, as well as whether a failed attempt at deposition could damage national dignity and cross-Strait relations, and moreover draw criticism about the human rights standards of our diplomatic allies and the direction of our foreign relations. It seems that the approach adopted by Chen's administration is to "keep an open attitude, and, while surveying the changes

in the international situation to seize the right opportunity to act.”²²³

Taiwan’s involvement with the ICCPR and the ICESCR

Date	Event
16 December 1966	21 st session of the UN General Assembly passes both Covenants (the ROC is a participant and votes in favor).
19 December 1966	Covenants open for signatures in New York.
5 October 1967	Permanent ambassador to the UN, Liu Kai, signs the two Covenants and the Optional Protocol to the ICCPR.
25 October 1971	ROC leaves the UN; ratification work on the two Covenants shelved.
3 January 1976	ICESCR goes into effect.
23 March 1976	ICCPR goes into effect.
28 Oct 1998, 18 Dec 1998, 7 April 1999	Inviting human rights experts, scholars and representatives from government agencies, MOFA conducts three conferences to deliberate on how to promote the two Covenants. On the agenda are such questions as: (1) whether our country should promote ratification work on the Covenants; (2) whether it would be possible to file the ratification instrument with the UN Secretary-General; (3) whether our country’s related laws are in accord with the regulations set forth in the Covenants; (4) whether at time of ratification our country should register reservations. The result of its research is that the implications of the proposal are so broad and its influence so far-reaching that after being reported to the EY permission was granted to postpone implementation.
10 December 1998	50 th anniversary of the UDHR’s passage. The government issues a statement that while we are unable to accede to the Covenants, we still respect human rights, and we are making efforts to legislate related domestic laws and thereby implement the standards in the Covenants incrementally.
20 May 2000	At his inauguration, President Chen formally declares that Taiwan will respect the UDHR, the ICCPR, and the Vienna Declaration and Programme of Action, that Taiwan will reenter the international human rights regime, that the government will call on the LY to ratify the International Bill of Rights.
22 August 2000	MOFA convenes meeting of scholars, experts, and representatives from related government agencies and NGOs, in order to discuss the timing and method of ratification and accession into the Covenants, as well as alternative proposals,

²²³ See 2002 Human Rights Policy White Paper of the Republic of China (Taiwan) Human Rights Infrastructure-building for a Human Rights State, February 2002, p. 34.

Date	Event
	and domestic, international, and cross-Strait impacts.
28 November 2000	MOFA Vice Minister Wu Tzu-tan leads advisory committee made up of related personnel and legislators from the LY's Foreign and Overseas Affairs Committee, in which members affirm their support for the government policy of elevating human rights; however, there is disagreement over whether the government should try to ratify the Covenants and deposit our ratifications with the UN.
12 April 2001	EY receives recommendation that the Covenants be sent to the LY for deliberation. On 18 April the cabinet meets in its 2730 th session, and on the 25 th the two Covenants are sent to the LY.
25 April 2001	In a communication to MOFA, the EY says that if the Covenants complete the domestic ratification process, the question of deposition will arise. In order to show our government's earnestness in promoting human rights guarantees, the EY directs MOFA to make an active effort, despite the practical difficulties resulting from not being a member of the UN.
20 June 2001	MOFA calls the first supra-ministerial meeting this year to discuss questions related to the Covenants' ratification. It is resolved that the various ministries will determine which laws they administer may have conflicts with the Covenants. The several ministries will then establish channels with the respective legislators to coordinate and cooperate in enacting necessary legal revisions.
24 June 2001	The EY's newly established Human Rights Protection and Promotion Committee formally presents varied responses and measures for entering into the two Covenants, with promotional emphasis given to the fact that although the Covenants were signed in 1967, they have yet to be ratified, so we must study the ways in which domestic law needs to be revised in order to match the current unique international standing of our country.
6 August 2001	MOFA calls a meeting to deliberate on the questions of procedure and effectiveness relating to ratification of the Covenants. Views differ regarding the legal effect of treaties, which have been signed but not yet ratified and included within domestic law.
3 September 2001	MOFA holds its second supra-ministerial conference this year.
9 October 2001	With Vice Foreign Minister Chiu Jung-nan presiding, related officials and members of the LY's Foreign and Overseas Affairs Committee confer and report briefly on ratification-related problems. The legislators are asked to cooperate with the various ministries in identifying the domestic laws that might be in conflict and rectifying them.
14 December 2001	In response to the difficulty anticipated in depositing ratification instruments with the UN, MOFA calls a meeting to revise Article 11, Section 2 of the Standards for Handling of Treaties and Agreements.

Date	Event
31 December 2002	The LY passes the ratification procedure, but with declaration to Article 1 of the ICCPR and reservations to Articles 6 and 12 of the ICCPR and Article 8 of the ICESCR.
7 January 2003	The DPP applies for reconsidering of declaration to Article 1 of the ICCPR.

Source: 2002 *Human Rights Policy White Paper of the Republic of China (Taiwan) Human Rights Infrastructure-building for a Human Rights State*, February 2002, pp. 35-36. (with supplement information by the authors)

4.3.2.3. Taiwan Bill of Rights

In his inauguration speech, President Chen declared that we would be rendering the International Bill of Rights into domestic law, making them a formal “Taiwan Bill of Rights.” However, the problem is, from a legal point of view, how to achieve this goal? There are, from comparative law perspective, two directions that can be taken in rendering international human rights standards into domestic law. The first is to incorporate the international human rights standards into constitutions. Since 1990 many countries have introduced international human rights treaty or standards into their constitutional law. For example, the constitution might stipulate that international human rights treaties must be recognized and respected. Or the constitution might mandate that interpretation and application of the constitutional human rights provisions accord with international human rights treaties and standards. Or the constitution might stipulate that the agencies of the state must guarantee implementation of basic human rights and international human rights.

The other direction would be to establish a law that would give international human rights conventions the status of domestic law, what is known as incorporation of international human rights standards. One example is a recent law enacted by Norway: “Act of 21 May 1999 No. 30 Relating to the Strengthening of the Status of Human Rights in Norwegian Law” (the Human Rights Act). This law clearly stipulates that the European Convention on Human Rights (ECHR), the ICESCR, and

the ICCPR (including the two protocols) carry the full effect of domestic law. It further stipulates that should domestic law come into conflict with any of the above-mentioned treaties and protocols, then the international treaties and protocols take precedence.

Latvia, upon regaining its independence in 1990, issued its “Declaration on the Accession of the Republic of Latvia to International Instruments Relating to Human Rights.” The Declaration announced Latvia’s intention to put into effect some 53 of the United Nations international human rights instruments, including the UDHR, the ICESCR and the ICCPR. At the same time, Latvia said that it would go one better by passing legislation to implement them. In 1997 Latvia enacted its “Law on the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its Protocols No. 1, 2, 4, 7 and 11”. The primary effect of this law was to bring the ECHR into domestic law, as well as to recognize the jurisdiction of the European Commission of Human Rights and the European Court of Human Rights.

Ireland drafted its 2001 “European Convention on the Human Rights Bill”. The purpose of this bill was also to render the ECHR into domestic law. Its principal provisions were (1) judicial interpretation and application of the law must be in accord with Ireland’s national obligations under the ECHR, regardless of when the domestic law was enacted, in other words all of Ireland’s domestic law must come into accord with the standards set by the ECHR; (2) when the high court or supreme court of Ireland is weighing a case on appeal, it may at its own initiative or on by request of one of the parties, when there is no other legal relief available, declare that any law of Ireland is not in accordance with the obligations under the ECHR, and when the high court or supreme court so declares, it must forward the declaration to Ireland’s parliament; (3) all of Ireland’s government agencies must carry out the

exercise of their authority in accordance with Ireland's national obligations to the ECHR, so that all of Ireland's state behavior will be in accordance with its regulatory mandate; (4) should people believe that their rights are being violated by the behavior of any state institution, and when there is no other path of legal remedy, then they may bring suit before the high court demanding compensation for injury.

As for countries without written constitutions, the more typical model is that of passing special legislation to introduce the International Bill of Rights into domestic law. The purpose of New Zealand's "Bill of Rights Act" of 1990 and Hong Kong's 1991 "Bill of Rights Ordinance" was to put the standards in the ICCPR into effect. The preamble to New Zealand's "Bill of Rights Act" states that the purpose is to confirm New Zealand's obligations under the ICCPR, while the preamble to Hong Kong's Bill of Rights Ordinance likewise states that it intends to introduce the Covenant into Hong Kong domestic law. At the same time, these human rights statutes in New Zealand and Hong Kong have higher legal status than ordinary domestic laws. For example, Article 3 of Hong Kong's "Bill of Rights Ordinance" says that all laws passed prior to the ordinance and which are in conflict with it are no longer in effect, while Article 4 says that those which pass into law subsequent to it must accord with the regulations of the ICCPR.

The UK's 1998 Human Rights Act is also a special case, which domesticates the standards of the ECHR. It also demands that the judiciary must take account into the opinions of the various institutions created under the ECHR to interpret the Convention, including the European Court of Human Rights, the European Commission of Human Rights, and the Committee of Ministers, no matter whether the organization issued a finding, a decision, an advisory opinion or a resolution. When a higher court finds that any domestic legislation cannot be construed in a way, which is compatible with the human rights protection provisions of the ECHR, they

may make a declaration that the legislation is “incompatible” with the ECHR. The Act also provides the individual with a path of relief should his or her rights as guaranteed by the convention be violated by any public authority. The courts must also decide about providing compensation to the injured party, and such decision must accord with the standards established in Article 41 of the ECHR. As far as new legislation is concerned, the Act demands that new legislation as well as the legal interpretations must accord with the ECHR. In addition, before the second reading of any bill the government minister in charge of the bill must issue a “statement of compatibility” in which it is declared that the law accords with European human rights standards. Furthermore, with regards to public authorities, the Act renders illegal any behavior by any public authority, which violates European human rights standards.²²⁴

The problem remains: which way should Taiwan go? The most ideal and most suited to the principles of the functioning of the legal system is to make sweeping changes to the articles of the Constitution regarding human rights protection according to the spirit and content of the major international human rights conventions. One method that may be considered is to add a constitutional amendment with general provision stating that the international human rights covenants that Taiwan has ratified are to possess domestic legal status. In this way the ideal of human rights guarantees in a constitutional nation can be tightly integrated with international human rights guarantees. Moreover, the existing system for examining constitutionality can then be employed to ensure that the international human rights standards are being put into practice. It seems, unfortunately, that

²²⁴ Fort Fu-Te Liao, “Ways to Implementing International Bill of Rights — Ratification, Accession or Incorporation?” *Taipei Bar Journal*, No. 272, May 2002, pp. 36-51, at pp. 43-45.

conditions for adding constitutional amendment are not yet mature. The government therefore up to now does not propose any constitutional amendment to grant international human rights conventions constitutional status.

The second method would establish a “Human Rights Basic Law,” with reference to some international precedents. This would incorporate articles from the ICCPR and the ICESCR, as well as systematically introduce content from other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention for the Elimination of All Forms of Racial Discrimination, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.

The Ministry of Justice presented its first draft bill of “Human Rights Basic Law” on 13 March 2001. It included 82 Articles and was divided into 14 chapters. However, this draft bill was criticized by scholars and human rights organizations. The Ministry of Justice therefore decided to revise its draft bill. On 15 June 2001, the Ministry of Justice presented its second draft bill. It included 30 Articles without division of chapters. Its Article 1 states that this Law has three purposes: first, to ensure constitutional principal of protecting fundamental rights; second, to domestically implement of international human rights treaties; to extend human rights protection system. Article 27 requires that, in order to realize the “Human Rights Basic Law,” the government should, according to financial condition, arrange budget for human rights protection with priority. It is further enshrined in Article 28 that the “Human Rights Basic Law” and other human rights related laws should be interpreted according to the Constitution, the International Bill of Rights and other international human rights instruments. According to Article 29 of the bill, human rights advisory institution is to be established for effective protection of human rights. Rights and

freedoms are guaranteed from Article 2 to Article 27. They include right to participate political activities, right to know, freedom of expression, right to nationality, freedom of movement, right of foreigner and stateless, right to fair trial, right to education and etc.

However, scholars and human rights organizations still did not feel satisfied by the second draft bill presented by the Ministry of Justice. The Executive Yuan Human Rights Protection and Promotion Committee therefore decided to hold this draft bill until further discussion and revision. By the end of 2002 the Executive Yuan did not finish revising such bill, and of course no bill for the “Human Rights Basic Law” has been sent to the Legislative Yuan.

One major problem of the “Human Rights Basic Law” is that, in terms of incorporating international human rights norms, there has been no similar domestic legal precedent in Taiwan. Therefore it is still being researched and debated. This issue still awaits further public discussion, so that the considerable number of questions can be cleared up and a consensus formed.

After further developments the Chen Shui-bian administration’s human rights policies in fact extend to a more fully comprehensive prospect, including national human rights action plan, national human rights museum, and human rights education.

4.3.3. National Human Rights Action Plan

On 2 January 2001, in his opening address to the “International Conference on National Human Rights Commissions,” President Chen further stressed:

I proposed, on behalf of my new administration, in my inaugural address last May a set of three human rights policies. The first is the creation of a national human rights commission, a step long advocated by the United Nations. The second proposes incorporating the International Bill of Human Rights into an ROC Bill of Rights. The

third is to encourage and intensify exchanges with international human rights NGOs.

These three policies respond to human rights on the global, national and NGO level. But this is only a first step. The next step would be a comprehensive national action plan as advocated by the 1993 Vienna World Conference on Human Rights.”

On 7 December 2001, at the opening ceremony and press conference for the historical exhibition “The Road to Freedom: Retrospectives on Taiwan’s Democratic Struggle and Human Rights Movement,” President Chen announced that in 2003 the National Human Rights Action Plan, whose creation by every country was demanded by the 1993 Vienna World Human Rights Conference, would be created, for “a more long-range, comprehensive, and detailed plan for bringing about ‘building a human rights state.’ This will include strengthening and renewing the core chapter of the Constitution on the rights and duties of the people.”

The concept of “national plans of action for the protection and promotion of human rights” was a product of the 1993 Vienna World Conference. The VDPA “recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.” In the Asia-Pacific region, the UN’s Office of the High Commissioner for Human Rights held a Workshop on the Development of National Plans of Action for the Promotion and Protection of Human Rights in the Asia-Pacific Region, which completed a draft set of principles, purposes, and procedures for national human rights action plans. The conclusions of both the VDPA and the Bangkok Workshop stressed that the national action plans must incorporate mechanisms for evaluation and revision. Their spirit and goals emphasized the need for the formation and existence of such plans, as an object and a foundation for sustained debate and consensus building.

Given all the serious inadequacies of Taiwan’s human rights infrastructure, the

government does not expect to create a perfect plan immediately, but it shall emphasize three points. The first is preparation of preconditions, through such projects as the Executive Yuan's survey of the administrative practices of all of its ministries and commissions, the setting up of the National Human Rights Commission, and the issuing of the country's first human rights report. Second step is working towards finalizing the National Human Rights Action Plan, which should commence in 2003. Third, when this work begins, it should follow the spirit and method emphasized by the VDPA and the Bangkok Workshop.²²⁵

The government's survey report was completed in January 2002. Its editorial format, in addition to referencing the international human rights conventions, takes into consideration the standard presentation of our existing legal codes, as well as the administrative jurisdiction of each agency. It is divided into four chapters. The second chapter present simple explanatory overviews of the history and prospects of human rights development in our country. The main substance of the report is chapter 3, wherein all human rights are divided into three broad categories: (1) civil and political rights, (2) economic, social, and cultural rights, and (3) rights of minorities and other special groups. These are then divided into sections, in which the relevant rights are further subdivided into a variety of types. Using each of those types as the analytical unit, the names and important content of each current law affecting this right, the effectiveness of its systematic implementation or execution of these laws, and the current work agenda and targets are explained in some detail. Then, each government department carried out an evaluation of the current system of laws and measures in its jurisdiction, and proposed directions which reform could take and its objectives. This

²²⁵ See 2002 Human Rights Policy White Paper of the Republic of China (Taiwan) Human Rights Infrastructure-building for a Human Rights State, February 2002, p. 49.

initial report will serve as the basis for the later phases of the survey.²²⁶

According to both of the Bills proposed by the NGOs and the government, the National Human Rights Commission will be required to issue annual national human rights reports. However, the bills still await the Legislative Yuan's review and passage, and a certain amount of preparatory time will be needed after passage before the National Human Rights Commission can be fully operational. Therefore, the Executive Yuan, in a January 2001 cabinet meeting, established March 2003 as the publication date of the country's first national human rights report. In the meantime, until the National Human Rights Commission is set up, the Executive Yuan Human Rights Protection and Promotion Committee is proceeding with plans for related drafting work. The first national human rights report will use international as well as constitutional standards in the drafting, to ensure that it will serve the functions of reports of the first and second categories.

The government has promised that, when the work of the National Human Rights Action Plan begins, it should follow the spirit and method emphasized by the VDPA and the Bangkok Workshop. The first National Human Rights Action Plan in Taiwan is due by the end of 2003.

4.3.4. National Human Rights Museum

We may also trace the history of establishing a national human rights museum back to the presidential election in 2000. During the campaign many victims of the "228 Massacre" occurred on 28 February 1947 demanded a memorial hall to memory such tragedy. Mr. Chen Shui-bian, as one of the candidates, promised to achieve this goal. He said why he promised such idea was because of both of the importance of "228 Massacre" itself and his personal experience and belief. According to Article 1

²²⁶ See *ibid.*, p. 23.

of the Constitution, the ROC should be democratic republic of the people, by the people and for the people. The purpose of the nation is to promote and protect people's freedoms and rights. All the powers and organizations of the government are designed for this purpose. However, Taiwan went through a long authoritarian ruling that turned constitutional purpose and mechanism up side down. This was the reason that the "228 Massacre" occurred. During such authoritarian ruling period human right protection became taboo or criminal. Constitutional education focused merely on governmental structure, which President Chen he himself suffered when he was a law school student.

President Chen emphasizes that the national human rights museum is designed to provide people with human rights knowledge. In his view, only people at present and in the future know human rights and constitutional history may effectively protect their own rights, participate in public affair and monitor the government. Therefore, President Chen believes that a national human rights museum will be a precious gift to victims and their families of historic tragedies and all the coming generations.²²⁷

After elected President Chen has been trying to keep his promise. First, a committee to promote the national human rights museum was established in June 2000. Duties of the members of this committee were to find a good location and a director for the national human rights museum. A building of former national library with traditional Chinese palace style was chosen. It is wished to turn a traditional building with symbol of authoritarian ruling into a significant base for promoting human rights and constitutional education all over the nation. Professor Lee Wun-Chi, a famous liberal historian, was appointed as the director.

²²⁷ President Chen Shui-bian, Speech when attended the establishment of a preparatory department for national human rights museum, 19 May 2002.

After two years' work the preparatory department of the national human rights museum was established on 19 May 2002. On the same day the Temporary Regulation of the Preparatory Department of the National Human Rights Museum was enacted by the Presidential Office.

The National Human Rights Museum will be designed with both functions of memorial hall and museum. On the one hand, it will present Taiwan's human rights history under the international human rights context, and will spread constitutional and universal human rights education in order to form a solid basement of human rights state on human rights value, knowledge and conception.²²⁸ It will therefore provide social education on human rights, democracy and constitutionalism. It will also be responsible for interchange with equivalent institutions abroad. The archiving, research and educational display functions of the National Human Rights Museum will be an important "upstream" resource in human rights education and research.

On the other hand, as for its commemorative function, it will present Taiwan's human rights history within the tapestry of world human rights history, for example by situating human rights violations such as the Wushe Incident, the February 28 Incident and the White Terror in that larger context. The National Human Rights Museum will also be a memorial hall of the "228 Massacre." It will take the "228 Massacre" as an important event in the history of international human rights developments. This Museum will remind all the Taiwanese people that a mass human rights violation tragedy such as the "228 Massacre" shall not happen again in Taiwan. It is a way to put the "228 Massacre" into a broader human being struggling for human rights to memory those scarified and to provide education for future

²²⁸ President Chen Shui-bian, Press Conference, the Exhibition "Human Rights Road — Memory of Democracy and Human Rights in Taiwan," 7 December 2001.

generations.²²⁹

The Presidential Office has been preparing for the “National Human Rights Museum Bill.” The National Human Rights Museum is supposed to be arranged under the Presidential Office. It is hoped that, after the Legislative Yuan passes the Act, the National Human Rights Museum will be established on the international human rights day this year, 10 December 2003.²³⁰

4.3.5. Human Rights Education

In October 2000, 5 months after his being as the President, President Chen expressed that we should face seriously three levels of human rights issues: human rights education, standard and mechanism. The first and most important one is human rights education, as Taiwan, because of past authoritarian rule, is lack of human rights education program and research center.²³¹

In the broader concept the human rights education includes several parts. The first is establishment of the National Human Rights Commission. As mentioned above, promoting human rights education and research is one of its important functions.

The second is establishment of the National Human Rights Museum, which will combine the functions of both commemorative hall and museum. It will be responsible for social education in human rights and democratic constitutional government.

Third is the establishment of human rights research centers at universities. Many

²²⁹ President Chen Shui-bian, Speech when attended new boos announcements for “228 Massacre Files” and “Sixth 228 Massacre Memorial Portraits,” 28 March 2002.

²³⁰ President Chen Shui-bian, Speech when attended “International Symposium of Human Rights in Taiwan,” 16 October 2002.

²³¹ President Chen Shui-bian, Speech when attended the ceremony of the establishment of Presidential Human Rights Advisory Group, 24 October 2000.

universities in other countries not only offer human rights courses, but also maintain human rights research centers. In October 2000 President Chen urged for a human rights research center in Taiwan.²³² It wasn't until the year 2001 that Soochow University, a private university, started up its Chang Fo-chuan Center for the Study of Human Rights, which is the first human rights center in Taiwan. It is argued that, aside from encouraging courses and research programs on human rights, Taiwan still has the need and the room to establish at least one other similar center. Although this proposal is still under discussion, Presidential Human Rights Advisory Group has been promoting another human rights research center, and some national universities have shown their interesting. It is therefore estimated that another human rights center may be established in a national university or research institute in the mid-2004.

The fourth topic is publications and the human rights information systems. The establishment of the National Human Rights Commission, the National Human Rights Memorial Museum and various university human rights research centers will all improve the collection of published materials and the establishing of such information systems. Similarly, it is expected that the creation of these institutions and the increased policy and program activities of the government will substantially influence the publishing market and library acquisition policies.

The fifth is international exchange. From the year 2000 onwards Taiwan's exchanges with the international human rights community has increased considerably, and this may continue to grow stronger. Many human rights activists from academia, human rights commissions, NGOs, etc. have visited Taiwan to participate some kinds of human rights activities.

The sixth item is emphasis and promotion of human rights in the national system

²³² Ibid.

of education. In order to realize President Chen's human rights education policy, the Ministry of Education established a Human Rights Education Committee in April 2001. The Committee is headed by the Minister of Education, and made up of 17 to 25 members including governmental officials and those who invited from academia and civil society. It has four working groups responsible for research and development, training of faculty and staff and planning of curricula, diffusion and promotion, and creation of space on the campuses for the development of a human rights culture.²³³ Its purpose is to promote human rights education, fundamental rights and benefits of teachers and students, respect for human rights among the citizenry, mutual respect among ethnic groups, and tolerance and caring. Its ways of achieving goals are to work out human rights education plans and valuations, to cultivate teachers, to develop educational curriculum and materials, to enhance human rights promotion, to improve measures in schools.²³⁴ It is wished that Taiwan's human rights culture would be cultivated through this process.

Some initial developments have also taken place with regard to education of civil servants and professionals. At the most important training centers, such as the National Civil Service Institute under the Civil Service Protection and Training Commission of the Examination Yuan, the required training programs for civil servants and police officers to pass from the elementary level to the junior level have added courses such as "The Constitutional System and the Protection of Human Rights" and "Gender Equality and Gender Issues." In 2001, nearly 6000 personnel

²³³ For further information please see Mab Huang, "The Present State and the Future of Human Rights Education in Taiwan", *National Policy Quarterly*, vol. 1 No.2, December 2002, pp. 69-84.

²³⁴ Ministry of Education, Promotion and Cultivation — Human Rights Education, 2002, p. 1.

received this category of training through these programs. In addition, the Institute for Judicial Professionals and the Foreign Service Institute have added a limited amount of human rights-related content to their curricula.²³⁵

Above human rights initiatives for “building a human rights state” are designed to achieve three objectives. First, after half a century of one-party monopoly of state power and 38 years of martial-law rule, the constitutional-democratic order specified in the ROC Constitution is slow to become a living reality penetrating the nation’s culture and tradition. Human rights being the heart of any constitutional democracy worthy of the name, in rebuilding the constitutional order, it is essential not only to emphasize the rule of law, but also to ensure that all laws meet human rights standards.

Second, after World War II, people are not only entitled to rights enshrined in the national constitution but also universal human rights protected by international human rights law. By emphasizing the universality of these rights and by incorporating international standards, the policies, measures and plans will serve to enrich the nation’s efforts to re-build and re-new the constitutional order.

Third, when the ROC was forced to withdraw from the UN in 1971, it was also prevented from the international human rights regime. Although designed primarily for domestic purposes, the human rights initiatives will also signal to the world that, despite diplomatic isolation imposed on us, we are still part of the global village of human rights, and that we are willing and ready to participate in the universal realization of universal rights.²³⁶

²³⁵ See 2002 Human Rights Policy White Paper of the Republic of China (Taiwan) Human Rights Infrastructure-building for a Human Rights State, February 2002, p. 55.

²³⁶ W.S. Peter Huang, “Building A Human Rights State-A Taiwan Pledge,” Taiwan Association for Human Rights, 2002.

4.4. Conclusion

In December 1946, the ROC adopted its Constitution, of which Chapter 2, Articles 7 to 24, enshrined the people's rights and obligations. However, both the "Temporary Provisions" and martial law order tremendously limited most of the rights guaranteed by the Constitution.

After 1987 democratization has been a very important foundation for human rights developments in Taiwan. It is certainly true that the human rights situation Taiwan has improved markedly over the past 15 years. There are no more prisoners of conscience, no more extra-judicial killings, the civil liberties of freedom of the press and freedom of assemblage are, by and large, respected. It has been a process of rebuilding the constitutional order and ensuring that all laws meet human rights standards.

However, Taiwan's diplomatic isolation constitutes another significant obstacle in the promotion of human rights, insulating the government from external human rights monitoring and hindering exchanges with the international human rights community.

In 2000, Mr. Chen Shui-bian won the presidential election, which ended KMT's ruling over Taiwan since 1945, and triggered new government's new human rights policies in Taiwan in the new millennium. Such human rights policies include, among others, the establishment of National Human Rights Commission and National Human Rights Museum, and proposals of human rights education, national human rights action plan and bringing international human rights home. Most of the human rights policies have been trying to meet international standards. All the policies are on their ways, but it is still too early to expect their results.