

TAIWAN

- a. National Human Rights Commission Bills**
- b. Anti-Terrorism Actions Bill**

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Taiwanese Bills of National Human Rights Commission and Anti-Terrorism

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This note covers two Taiwanese governmental bills: one is to establish a national human rights commission; the other is to combat terrorism actions.

A. National Human Rights Commission

On 23 August 2002 the Executive Yuan of Taiwan presented a set of bills to the Legislative Yuan (Parliament) with the purpose of establishing a National Human Rights Commission in Taiwan. It in fact includes three bills: the Amend Bill of the Organic Law of the Office of the President, the Organic Law of the National Human Rights Commission and the Statute governing the exercise of functions and powers of the National Human Rights Commission. They establish the status, structure and functions of the Commission.

a. Status

There have been debates on what the legal status the National Human Rights Commission should be. One view proposes to amend the Constitution to give the Commission constitutional status. A second opinion wishes to put the Commission under the Control Yuan (Ombudsmen). A third view expresses that the Commission should be part of the Legislative Yuan. The fourth says that, provided that it will be very difficult to put new amendments into the Constitution, we should have a national human rights commission under the Presidential Office but with independent capacity, which is similar to an independent commission in the USA.

The Taiwanese government adopts the last view. The way chosen is to insert a new section 17-1 to the Organic Law of the Office of the President. Such provision reads: Under the Office of the President there shall be established the National Human Rights Commission that exercises its powers independently in accordance with law. The structure and exercising of functions and powers of the National Human Rights Commission shall be regulated by laws. This section makes clear that the National Human Rights Commission will be under the Office of the President, but the Commission will be guaranteed by laws to be an independent from the President and other executive powers.

The reason provided is that before a national human rights commission is established, references should be made to well-established standards, standards already created by the

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United Nations, legal systems, experiences from other countries, as well as the Republic of China's own constitutional conditions. Since the exercise of functions and powers of the five Yuans, namely the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Control Yuan and the Examination Yuan, are closely related to human rights, the National Human Rights Commission shall be established under the Office of the President and its independence, detachment and impartiality shall be guaranteed.

As expressed in the proposed section 17-1 to the Organic Law of the Office of the President that the structure and exercising of functions and powers of the National Human Rights Commission shall be regulated by laws. The Executive Yuan also present two bills to the Legislative Yuan concerning the Commission's structure and exercising of functions and powers.

b. Structure

According to section 3 of the Bill of Organic Law of the National Human Rights Commission, the Commission shall consist of 11 commissioners appointed by the President, including a Chief Commissioner of special appointment to act as the chief executive officer of the Commission, and one Deputy Chief Commissioner, equivalent to a senior grade 14 level official, who assists the Chief Commissioner in managing administrative matters. The grade of the offices of the remaining commissioners will be equivalent to senior grade 13 level officials. Human rights commissioners shall hold the offices for a term of four years, and in the event that any human rights commissioner vacates his or her office, his or her successor shall continue and complete the remaining term.

Section 4 of the Bill further regulates that human rights commissioner-appointees shall meet one of the following criteria: (1) have had significant achievements or contributions to the promotion and protection of human rights or minority rights; (2) have had important publications or contributed significantly to research of human rights issues.

Rules governing the review and selection of commissioners shall be made by the Office of the President.

It is also explicitly ruled in section 4 that human rights commissioners shall be independent from political parties and exercise their powers in accordance with the law without interference, and may not participate in any partisan activities during their terms as commissioners.



The Commission shall establish three departments, including the Secretariat Office, Personnel Office and Accounting Office, in charge of administrative affairs provided for under Section 2, and the departments may be further divided into sections for the purpose of managing administrative affairs.

The Commission is also supported by human rights investigators and researchers. The Commission may deem it necessary to invite, without remuneration, academic scholars and experts to be advisors or advisory committee members.

c. Functions

According to Section 2 of the Bill of Organic Law of the National Human Rights Commission, the National Human Rights shall have the functions and powers to:

1. formulate and review any laws, regulations and policies which are intended for the promotion and protection of human rights;
 2. prepare and produce annual national human rights report;
 3. promote human rights education and advocate human rights concepts;
 4. implement international human rights norms and promote international human rights exchanges and cooperation;
 5. deal with serious human rights violations;
 6. visit places where serious human rights violations threaten to take place;
- and
7. engage in any other issues relating to the promotion and protection of human rights.

Formulate and review laws

It has to be noted that Section 2 of the Bill of the Statute governing the exercise of functions and powers of the National Human Rights Commission also rules that the Commission may, in exercising its functions and powers in accordance with the Organic Law of the National Human Rights Commission, request relevant government agencies to provide necessary assistance. Upon receipt of requests under the preceding subsection, government agencies shall immediately provide their assistance and may not reject such requests except when provided for by the law. Section 3 of the Bill of the Statute governing the exercise of functions and powers of the National Human Rights Commission grants that the Commission may request relevant government agencies to provide opinions as to whether their promulgated regulations, policies or administrative measures infringe upon human rights, and to proffer remedial plans thereto.

Reports

With regard to reports, the Commission, according to Section 6 of the Bill of Organic Law of the National Human Rights Commission, shall, by 31 March every year, submit an annual national human rights report to the President and the Legislative Yuan. Section 4 of the Statute governing the exercise of functions and powers of the National Human Rights Commission further requires the Commission to produce annual national human rights reports on civil, political, economic, social and cultural rights in accordance with the related principles enshrined in international human rights conventions to objectively evaluate national human rights conditions. The Commission may prepare and submit special reports on human rights issues to the President and the Legislative Yuan when deemed necessary. The Commission shall publicize the reports provided for under the two preceding subsections, and send them to relevant authorities for reference and action.

Human rights education

Concerning human rights education, section 5 of the Statute governing the exercise of functions and powers of the National Human Rights Commission provides that the Commission may formulate human rights education plans, promote human rights education, and request central and local educational authorities to provide opinions as to issues relating to the promotion of human rights education at all levels of schools. The Commission may appoint human rights commissioners or human rights investigators to visit all grade-levels of schools to acquire knowledge of the promotion of human rights education.

Individual Application

In accordance to Section 6 the Statute governing the exercise of functions and powers of the National Human Rights Commission, the Commission, in exercise of its functions and powers or upon application, may deal with the following issues: (1) the existence or non-existence of laws, systems or measures which violate human rights; or (2) serious human rights violations which are not within the jurisdiction of the Control Yuan. The Commission may not deal with any complaints which are under prosecutorial investigation or judicial proceeding. In the event that a complaint is within the jurisdiction of the Control Yuan, the complaint shall be immediately sent to the Control Yuan. Section 7 rules that in the event that the human rights of any individual or group of individuals is violated as set out in Section 6 of this Statute, the individual or group of individuals may apply to the Commission for investigation. Any person who is not a party to the violation may also file a petition to the Commission.

According to Section 20 of the Statute governing the exercise of functions and powers of the National Human Rights Commission, the findings of the investigation of applications shall be produced in writing, incorporating opinions as to how the complaint to which the investigation was made should be dealt with, which shall be submitted to the Commission for adopting a written resolution. The written resolution shall be publicized and sent to the applicant or petitioner. Notwithstanding, the resolution, in part or as a whole, may not be disclosed if it is to be treated as confidential.

The Commission, if it deems the existence of a human rights violation, may deal with the complaint in the following ways:

1. recommend relevant institutions or groups adopt necessary measures for improvement or remedies;
2. assist victims in seeking recourse to remedies;
3. recommend relevant authorities to make, amend or repeal laws, regulations or systems;
4. send public servants in breach of laws to the responsible authority or Control Yuan for discipline in accordance with the law;
5. send criminal offense suspects to the Prosecutor's Office for prosecution;
- or
6. deal with the complaint in any other appropriate means.

The institutions or groups receiving recommendations under the preceding subsection shall, within three months, notify the Commission of its subsequent actions.

Visit

It is ruled in section 21 of the Statute governing the exercise of functions and powers of the National Human Rights Commission that human rights commissioners may visit places where serious human rights violations threaten to take place. The Commissioner or Commissioners who visit shall submit a report to the Commission within a month after.

B. Anti-Terrorism

It was on 4 November 2003 that the Executive Yuan of Taiwan submitted the Anti-Terrorism Actions Bill to the Legislative Yuan. The Bill includes twenty sections. It is stated in section 1 that its purposes are to combat terror actions, maintain national security, promote international co-operation and keep world peace.

Section 2 of the Bill defines the meanings of terror action, terrorist organization and terrorist. A terror action refers to that an individual or organization, based on the ideas of politic, religion, race, though or other particular ones, intends to terrify the public, and planned or organized to commit one of the followings: murder, serious injury, arson, putting in or ignite explosive, kidnap, abducting and controlling public or private car, boat, aircraft, interfering electric, energy or information system, easing nuclear or radioactive rays, putting poison, germ or other materials damaging human bodies. A terrorist organization is defined as an organization, which has more than three persons with internal management structure, holds the purpose of engaging in terror actions. A person will be named terrorist if he or she engages in a terror action, or participates into or supports a terrorist organization. Penalty on a terrorist can be more than ten years imprisonment, life sentence or death penalty. Those who participate in terrorist organizations can be imposed more than five years imprisonment and/or fined one billion (100,000,000) new Taiwan dollars (about 3,000,000 US dollars). One who supports a terrorist organization can be imprisoned one to sever years and/or fined 10,000,000 new Taiwan dollars (about 300,000 US dollars). According to section 14 of the Bill Taiwanese citizens who commit terror actions or participate in terrorist organization outside Taiwanese territory can also be penalized.

Structure arrangements are listed in sections 3 to 5 of the Bill. According to section 3 of the Bill, the Executive Yuan has to assemble related executive ministries to form a “anti-terrorism task force,” who has the power to direct police and rescue agencies. The National Security Bureau will be in charge of collecting information of terrorists and their organizations. The Ministry of Defense has to support actions combating terrorism. Several measures are included in the Bill. First, communication control will be allowed. According to section 7 of the Bill, the power to monitor communications of international recognized terrorists and their organizations goes to the Chief of National Security Bureau. On the other hand, monitoring communications of citizens should obtain the permission from judges in the Higher Court where the National Security Bureau locates. Furthermore, in urgent cases the Chief of National Security Bureau may do it without

permissions. However, if the judges do not grant permission within 48 hours, such control should stop. The Chief of National Security Bureau may stop or limit communications in order to fit the need of dealing with grave terrorist attacks and to prevent the people from urgent dangers. It further ruled in section 7 of the Bill that, if there are facts that terrorists are using internet to do terror actions, policy agencies may request telecommunication enterprises to preserve and provide their internet records. Such data will be kept up to 180 days. Necessary equipments will be provided by governmental budgets. However, if telecommunication enterprises do not co-operate to fit such equipments into their systems, they will be fined from 500,000 to 2,500,000 new Taiwan dollars. If they insist on not fitting equipments, their licenses can be annulled.

Second, in accordance with section 8 of the Bill, if there is someone suspected as a terrorist, policy agencies may bring such person to their offices up to 24 hours to verify his/her identity. If places are suspected to be provided to store tools engaging in terror actions, or cars, boats, aircrafts or other transportation tools are suspected having terrorists within, policy agencies, when it is necessary, may inspect them. In order to prevent terror actions, if there is a fact that a terrorist or terrorists are in a house, building or other places, policy agencies, when the people's lives, bodies or properties are in danger and there is no other ways to rescue or prevent without entering into, may enter into and inspect such places. Section 10 also rules that, when there is fact that personal property, real estate or other properties are used by terrorists to engage in terror actions, the Chiefs of Coast Guard Bureau, Investigation Bureau of the Ministry of Justice and Policy Bureau of the Ministry of Interior Affairs, when they deem that it is necessary to prevent terror actions, may hold such properties or prohibit their transaction, which can last for up to three months.

Third, if there is a fact that a terrorist or terrorists are suspected to use banking accounts to engage in terror actions, the Chiefs of Coast Guard Bureau, Investigation Bureau of the Ministry of Justice and Policy Bureau of the Ministry of Interior Affairs may apply to a court for prohibiting such accounts from transaction for up to six months. In urgent cases the Chiefs may directly order such prohibitions, but they have to apply for permission within three days. If a court does not grant such permission within three days, such orders should be stopped immediately.