

The NGO Parallel Report By The Chinese Association for Human Rights

International Covenant on Civil and Political Rights

Drafting Organizations

- Chinese Society for Human Rights
- Taiwan Chapter, Association of World Citizens
- Tax Law Research Center of the National Taiwan University College of Law
- Taiwan Finance Association for the Study of Criminal Law
- Research Center for Department of Financial and Economic Law, National Chung Cheng University, Taiwan
- Police Brigade of the National Park Police Administration

Drafting Members

- Su You-chen (Lawyer, Chairman of Chinese Association for Human Rights)
- Lin Tian-cai (Lawyer, Chairman of Human Rights Committee on Taxation of Chinese Association for Human Rights)
- Professor Ge ke-chang (National Taiwan University College of Law Tax Law Research Center)
- Assistant Professor Yao Meng-chang (Fu Jen Catholic University School of Law)
- Professor Chen Zai-long (President of Finance Criminal Law Research Association)
- Chun-Jie Huang, Professor (Department of Financial and Economic Law, National Chung Cheng University, Taiwan)
- Director Liao Wen-cheng (Director of Police Brigade of the National Park Police Administration)



社團法人中華人權協會
(原名中國人權協會)
Chinese Association for Human Rights



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International Covenant on Civil and Political Rights (I)

- Issue 1: Issue relating to the right to a motion for amnesty made by the death-penalty-sentenced persons under the relevant legal regulation
- Issue 2: Issue relating to the violation of liberty and the right to life that have occurred or may occur due to miscarriage of justice by the court

International Covenant on Civil and Political Rights (II)

The Procedure of Taiwan Tax Agency by Taxation against ICCPR Article 18 – Everyone shall have the right to freedom of thought, conscience and religion

- Issue 1: Persecution of the religious group through criminal and taxation measures
- Issue 2: The State Government's inability to Regulate the Serious Violation against the Constitution, Laws and Human Rights by Tax Administration
- Issue 3: The actions of freezing the assets of the tax defaulter and the restriction on his overseas travel are too loosely applied and has no prior approval of the judiciary which violates people's basic living rights
- Issue 4: While the judicial cases were on trial, the act of forwarding the alleged charges from the indictment to the National Tax Administration to Levy a Tax Bill
- Issue 5: Disclosure of investigation notes by administrative agencies prior to trial results in defamation of defendant



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International Covenant on Civil and Political Rights (I)

The Implementation and Practice in Taiwan

Drafting Organizations

- Chinese Society for Human Rights
- Taiwan Chapter, Association of World Citizens
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Introduction

This is a report composed at November 25th 2012 by five NGOs, titled as “Civil Society’s Report to Implementation of ICCPR in Taiwan.” It mainly responds to the “Initial Report to the implementation of ICCPR in Taiwan” (hereinafter “Initial Report”), which made by the Presidential Office Human Rights Consultative Committee on April 20th 2012. This Shadow report aims to help the examination by the International Reviewing Committee of Independent Experts which will be held from February 25th to March 1st 2013 in Taipei, Taiwan.

By initiating such reports, even without the membership status of United Nations, Government as well as the society of Taiwan have great concern of and participate actively in the improvement and protection of Human Rights under International Standard. Therefore, the Ministry of Justice under the mandate of the Presidential Office Human Rights Consultative Committee had requested all Departments of central governments to submit their reports in accordance with the relevant Guideline made by the United Nations and convened a Convention composed of academic scholars, experts and NGO representatives to examine the draft .Afterwards, four sessions of public hearings were held to collect diverse and different opinions and were edited into three volumes of reports.

As member of national NGOs, authors of this shadow report has long engaged in substantive works in different human rights fields, who hold professional observations and understanding, affirms the making of the State Report. However, for the purpose to reach a higher level of human right protection and enjoyment, we have made a recommendation for reform against the State Report based on thematic/issue approach.

Issue 1: Issue relating to the right to a motion for amnesty made by the death-penalty-sentenced persons under the relevant legal regulation

1. Relevant article on the Covenant

Article 6, paragraph 4 of ICCPR

2. Concerns and Issues

- (1) According to Article 6, paragraph 4 of ICCPR, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- (2) However, point 84 of the initial report to ICCPR merely mentions that “the present Amnesty Law does not provide the decision to grant or deny the motion of persons who are sentenced to death. It does not provide any relevant procedure, substantial standard to the decision or remedy to the decision. Yet, it does not restrict the right of the persons sentenced to death to seek amnesty. ” As to the inconsistency of the Amnesty Law with the requirement under ICCPR, there is no amendment made to the Amnesty Law otherwise required by Article 8 of Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which provides measures incompatible to the Covenants be amended within two years after the Act would enter into force. A Working Group on Research and Promotion of Gradual Abolition of Death Penalty, established by the Ministry of Justice in 2009, once made the issue raised by Chinese Association for Human Rights (CAHR) into agenda for discussion; however, due to governmental agencies’ indifference and even deliberate absence from the meeting, there was no substantial results and conclusion to it.
- (3) The Department of Prosecutorial Affairs of the Ministry of Justice is of the opinion that the present provisions of the Amnesty Law consistent with the Article 6, paragraph of ICCPR and therefore no amendment is required.. However, several civil human rights organizations including CAHR consider otherwise with following reasons. The present Amnesty Law prescribes nothing about how and what will be the standard applicable to determine whether or not to grant such amnesty after President receives the motion. Theirs is also lack of redress for the objection to the result of the motion under the Amnesty Law. If these decisions should be left for the Ministry of

Justice to examine and proceed, the exclusive function of the President under the Constitution might be transgressed. Out of the above concerns, CAHR proposed a revised draft of the Amnesty Law to the Ministry of Justice for consideration. And the President Office Human Rights Consulting Committee also officially requested the Ministry of Justice to conduct further consideration. Since this issue had been enlisted in its agenda for deliberation by the Working Group on Research and Promotion of Gradual Abolition of Death Penalty, relevant amendments to the Law should be made as soon as possible so that decisions to the 61 persons' lawful motion could be consistent to the requirement under ICCPR. We consider it a gross omission for the Initial Report to oversee the issue we raised above.

- (4) In particular, as cited by point 82 of the Initial Report to ICCPR, there are 47 cases and 49 defendants on the death row. Among them, several had formally motioned to the Office of President or the Ministry of Justice for amnesty under Article 6, paragraph 4 of ICCPR. However, the execution, falling foul of due process of law, was carried out without any decision whether or not to grant the motion, or without giving reasons for disapproval in its reply to the persons making such motion. The explanation of "execution-under-the-law" in the Initial Report is obviously inappropriate and inconsistent with ICCPR.

3. Conclusion and Recommendation

- (1) The former Minister of Justice Ms. Wang Ching-feng though acted strongly against the execution of death penalty and the pressure from public opinion in its favor, eventually ended in her resignation... Minister Tseng Yung-fu took over and twice approved the execution of seven persons. Yet there are still 61 in the row. Ministry of Justice, facing the pressure of management of the prison and the opposition to abolish death penalty poll (76%), seems about to resume the third execution. The about equal pros and cons (47.4% vs. 48.1%) of the poll on the question, "whether Taiwan's international human rights image could be enhanced by abolishing the death penalty?" caused the decision makers in the state of hesitation to that effect. Nevertheless, the negative attitude towards persons seeking for amnesty would bring condemnations from international community inevitably.

We strongly recommend that the competent authorities are to facilitate the completion of the amendment to the Amnesty Law as soon as possible, including the review procedure and the substantial elements to grant

amnesty. The another review required by the Covenant can serve as a safety valve to avoid the possible judicial miscarriage, and to prevent the tragedy such as the cases of Jiang Guo-qing and Su Chien-ho from repeating. The point 83 of the Initial Report to the ICCPR mentions that Ministry follows “Guidelines to the Execution of Death Penalty” to conduct executions. Since the guidelines are merely administrative rules that have no legal force, and the failure to enlist the provision of Article 6, paragraph 4 as a cause to stop execution, the government shall not overlook the loophole therein when it explains to the citizens that the execution is fully compatible with the “law”.

Issue 2: Issue relating to the violation of liberty and the right to life that have occurred or may occur due to miscarriage of justice by the court

1. Relevant article on the Covenant

Article 6 of ICCPR Right to Life and Article 14, paragraph 3, section 7 Right of not to self-incrimination

2. Concerns and Issues

Point 89 of the Initial Report sets out that in August 1991 the 19-year-old youth Su Chien-ho, Liu Bing-lang and Chuang Lin-hsun were charged for murder of Wu couple who lived in Hsichih, Taipei County. They were sentenced to death by the court on February 9th, 1995. Hereinafter, the Control Yuan after investigation condemned the police involved in this case for illegal arrest and searches, extorting confession by torture, destroying evidences, forging documents and other things. However, the Court ignored the condemnation and the principle of presumption of innocence and failed the rules of evidence by judging on illegally obtained confession, illegally sentenced the suspects death penalty. The Control Yuan, in addition to proposing corrective measures, referred the police involving dereliction of duty and obstruction of freedom to investigation, and Attorney-General raised other three extraordinary appeals for relief. After defense lawyers strived to get a retrial, the defendant had found not guilty twice. Until the Initial Report was made, the case was still in the third trial in Taiwan High Court. The Initial Report fails to elaborate the actual trial procedures of the case and therefore, is not adequate to present a complete story from the miscarriage of justice to the vindication.

3. Conclusion and Recommendation

It is praiseworthy that Initial Report of ICCPR in point 89 lists the Su Chien-ho case as the index case involving the right of innocent lives that have been violated as view for those facing the death penalty. However, the place of the case in the Report and the description of the case getting a retrial after the judgment was given seem lacking by itself. We propose to amend as follows:

- (1)References made by the Initial Report to the Control Yuan investigation report involving not only material violations of the

Police Department of the Ministry of the Interior and Ministry of Justice, but also the Article 14 of ICCPR violation of judicial department. It is therefore appropriate to put in point 289 of the Initial Report stating the implementation of Article 14 of ICCPR "presumption of innocence" section. And it should subsequently add the section, "shall not compel defendant to confess or to self-incriminate" so that the Report can reflect the courage of judicial organ to admit its mistakes.

Appendix: The Amnesty Law

The Amnesty Law – revised on September 24, 1991

- Art. 1 Amnesty referred in the law means pardon extended by the state to forgive the crimes committed, exemptions from criminal liabilities, reduction of criminal liabilities and reinstatement of legal rights.
- Art. 2 The pardon extended by the state under the Amnesty Law has the effect of A.) voiding the conviction of criminal penalties B.) giving up the power to prosecute the un-convicted accused.
- Art. 3 The convicted criminal, once receiving amnesty under the law, is to be exonerated from the execution of liabilities, or, under certain circumstances, to have his convictions declared voided.
- Art. 4 A criminal who has been declared guilty with liabilities convicted, the liabilities will be reduced by the offering of exemptions under the Amnesty Law.
- Art. 5 A person whose civil rights have been deprived is to have his rights restored under the Amnesty Law.
- Art. 5-1 The conviction is not to be altered by the pardon, amnesty, reduction of penalties or reinstatement of rights. However, if a post is lost due to the conviction and falls under article 3, the person can file application for voiding the conviction. The post is restored retroactively back to the date of application if the application was approved by regulator.
- Art. 6 The president is empowered to order regulators to study the proposals and operations of the amnesty. The nation-wide reduction of penalties has to be implemented following amnesty procedures.
- Art. 7 A certificate should be sent to the person receiving amnesty after the pardons, reductions of criminal liabilities or reinstatement of rights have been announced by the president.
- Art. 8 This Law is effective immediately.

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International Covenant on Civil and Political Rights (II)

**The Procedure of Taiwan Tax Agency by Taxation against
ICCPR Article 18 –
Everyone shall have the right to freedom of
thought, conscience and religion**

Prepared by

- Chinese Association for Human Rights
- Association of World Citizens Taiwan Branch
- Research Center for Taxation and Public Finance Law, College of Law, National Taiwan University
- Taiwan Association for the Study of Finance Criminal Law
- Research Center for Department of Financial and Economic Law, National Chung Cheng University, Taiwan

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Preface

The Tai Ji Men tax case presented by Chinese Association for Human Rights is an example of a serious violation of the human rights stipulated by article 18 of the International Covenant of Cultural and Political Rights which highlights the rights to the freedom of thoughts, consciences, and religions. These rights are also recognized by the Constitution of the Republic of China.

The protection of cultural heritages and the rights to the freedom of beliefs, religions, and thought are universal human rights clearly recognized by the many provisions in the two Covenants. We would like to present a case of serious human rights violation by government agencies lasting for more than 16 years now with no sign of immediate resolutions and affecting the lives of tens of thousands of people. The case illustrates how lack of understanding and respect for human rights among government agencies can lead to miseries of civilians and infringement of human rights. We have good reason to believe this case is only the tip of the iceberg and hope that the presentation will prompt the government to take seriously the issue of government power staying above rights of civilians. To respect the freedom of thought, conscience and religion and corrective actions should be taken to implement the Two Covenants within each governmental administration. Thus, the people of Taiwan will soon see the light at the end of the tunnel for the human rights on taxation.

Executive Summary

This report presents a case of government clamping down upon Tai Ji Men, a qigong, martial art and heart-cultivation group providing the history, starting from 1996 through government power of prosecution and taxation. Among the many violations of human rights by tax agents, the most serious infringement is the law-interpreting power of tax agents to fabricate facts to suit their purpose of tax collections and the authority to restrict overseas trip and to freeze assets of taxpayers.

The Tai Ji Men case was started when the prosecutor illegitimately charged Tai Ji Men as an evil religious group and, with no legal proof, fabricated NT\$3.2 billion of income from committing fraud by Dr. Hong, zhang-men-ren (leader) of Tai Ji Men, out of the bank balance of NT\$610,000 plus, and filed charges of fraud, while at the same time, treated the same amount as tuition income and charged the case against tax-evasions and violations of tax codes. The two charges are contradictory and mutually-exclusive and the aim was to dismember the group with thousands of years of cultural heritages. Since then, the prosecutors and tax agents pressed ahead with persecutions against Tai Ji Men.

During the early stage of investigation, the prosecutor immediately took custody of all Dr. Hong's assets, leaving nothing for his family to depend on, and went beyond his legal authority by sending notice to local governments asking to cut supply of electricity and water to Tai Ji Men branch academies. Later on the Control Yuan investigated prosecutor's handling of the case and issued the Control Yuan Report reference number (91)0912600349 dated March 4, 2002 outlining 8 flaws of case investigation (Appendix 1) and seeking disciplinary actions against the prosecutor. The falsified statements from the whistle-blowers and the list of unidentifiable victims were exposed in the court. And the judge has confirmed Dr. Hong has committed no fraud after interrogating close o 200 witnesses. It was further confirmed that the money gifts from dizi to the master were voluntary gifts and Dr. Hong should not be subject to income taxes. After three levels of court hearings in over 11 years, justice was eventually returned and all charges have been ruled with not guilty with final verdict of no frauds, no tax evasions and no violations of tax codes. The defendants have also received compensation for injustice from the government. However, the pain does not stop here.

Immediately following the issuance of the bill of indictment by the prosecutor and before court hearings to determine the nature of the money, tax agents, without doing their due diligences to investigate the prosecutor's claim of the income as "illegal fraud "or legal tuition", immediately treated the fabricated NT\$3.2 billion as tuition income and issued large amount of tax bills and penalty accordingly with the aim to dismember a traditional menpai of martial

arts, qigong and cultivation with thousands of years of cultural heritages through the practice of illegal taxation. In spite of the Zhang-men-ren's wife has provided enough collateral to the tax administration, the National Tax Administration repeatedly freezes the Zhang-men-ren's assets after the prosecutor. Moreover, the tax administration even forged the document to auction off their property. And the deficiency of administrative remedies is unable to help people to revoke the illegal tax bill either. In the following 16 years, despite the dozens of winnings by Dr. Hong and Tai Ji Men in the administrative tribunal over administrative redress (appendix 2), tax agents repeatedly misinterpreted laws and continued to issue one tax bill after another. Taxpayers were dragged into a vicious and painful cycle of court fighting in administrative tribunal, winning the case followed by receiving a revised tax bills and going to court again. The 7 major flaws of tax collection have been identified by the Control Yuan and detailed in a report sent to tax administrations seeking for corrections. However, tax authority disregarded the report with no intention to change process. However, tax administration ignored and paid no attention to the Control Yuan report despite many witness statements have been proved falsified and the list of forged witness exposed. Tax agents also disregarded the expressions of 10,000 Tai Ji Men dizi of the intent of gift during the court investigation. And above all, the tax administration denies the result of its open survey on the internet, in which more than seven thousand responses all stated that the money were offered as gifts. Tax authority chose to assess taxes based upon the illegitimate charges in the bill of indictment. The freedom to belief and the equality of belief have been depressed. The intention to destroy cultures of qigong, martial arts and heart cultivation was clear and obvious.

" Paying tax according to the law" is the duty as well as the right of every citizen. However, civilian's rights are at risk of being violated when tax authority not only administers tax collections, but also interpret tax laws and even decides penalties with no regards to court verdicts. Taxpayers are defenseless in fighting against tax agents with the three powers in hand. The two International Covenants have been signed into domestic law by the president of Taiwan in April, 2009, and ratified on December 10th of the same year. Government agencies were ordered to review and reform relevant laws, regulations, and protocols in their jurisdiction to make them in compliance with the two Covenants within 2 years. However, the Ministry of Finance has officially proclaimed that no regulations were found to be in conflict with the spirits of the two International Covenants, a clear demonstration of lagging behind international standard of human rights protections. This report is specifically made to prompt Taiwan government to face the unpleasant reality and take the necessary actions in the following fronts before conducting a immediate and complete reform: Withhold the tax agents from the power to

make a case of tax collection by issuing administrative orders, bylaws or explanatory notes exceeding the definitions of laws to take custody of civilian assets and/or restrict overseas trips so that the rights to life, property rights and freedom of traveling can be protected.

1. Withhold the tax agents from the power to make a case of tax collection by issuing administrative orders, bylaws or explanatory notes exceeding the definitions of laws to take custody of civilian assets and/or restrict overseas trips in the name of securing the tax payment so that the rights to life, property rights and freedom of traveling can be protected.
2. Withhold the tax agents from the power to impose overly huge penalties against the principle of proportionality to safeguard civilian properties.
3. Government organizations should honor the principle of tax neutrality, respect different religious practices and refrain from forcing changes of practices or imposing unfavorable treatment through the means of taxations.
4. The Declaration of Taxpayer's Human rights should be declared and be based upon the principle of presumed innocence.
5. Protection of taxpayer's rights with the guardians should be legalized as soon as possible.
6. Professional tax courts should be instituted as soon as possible.
7. Major cases of tax injustices in violation of spirits of International Covenants such as Tai Ji Men case should be resolved as soon as possible.

Suggested List of Issues

1. The prosecutor has not been disciplined for his wrongdoings in handling the Tai Ji Men case, in spite of the Control Yuan investigations confirming violations of human rights and abuse of legal authorities and court rulings attesting to the deficiencies and flaws of evidences obtained through legal means.
2. Why Tax authority issued tax bills before the nature of the money was determined in the court of law?
3. The evidences and testimonies in tax agent's possessions have been ruled untrue and falsified in the criminal court. Why does the national tax administration still insist to use those false evidences and testimonies as basis for taxation to violate people's rights?
4. The penalties for misfiling or miscalculating taxes can run up to many times of the taxes due. The excessive penalties are a violation of right to life and

property right. It is not clear the high penalties are designed to protect the security of tax receipt or to punish taxpayers.

5. During the criminal court investigations, the judge has confirmed and ruled that the nature of the money is a gift and the verdict of no tax evasions and no violations of tax codes was reached. In addition in the following official online surveys conducted by tax authority, up to 10,000 Tai Ji Men dizi have expressed clearly the intent of the monetary gift to Dr. Hong. Why would the tax administration continue to violate people's right to freedom of expression?
6. The restriction on travel is itself a breach of the Covenants. However, tax authority, after its claims of taxes due have been fully protected by taking into custody Dr. Hong's assets, continued to issue injunction orders restricting Dr. Hong's overseas trip with no reasonable grounds.
7. The reason for Dr. Hong's winning in the court over administrative remedies is that tax agents failed to investigate and determine the nature of the money. It means that the tax bill was issued in the first place with no lawful foundations. This tax bill is already a breach of human rights. However, tax authority continued to issue bills after bills despite of taxpayer's winnings of administrative remedy cases.
8. The tax authority issued injunction orders prohibiting Dr. Hong from managing and disposing his assets when Dr. Hong was seeking administrative remedies.

The Tai Ji Men case of human rights violations has been filed in the Report 1503 (Appendix 3) and the Beige Book (Appendix 4).

I. Persecution of the religious group through criminal and taxation measures; in violation of the article 2, 18 (item 1 ~ 3), 19 (1~2), 22 (1~2) and 26

Response to the State Report

1. No statements have been made on the relationship between freedom of religion and belief, and fair taxations in item 10-70, including Table 1 – 14 on page 2 to 21 of the State Report on human rights.
2. Item 252 “The freedom and protection of preaching a religion” (page 61) of the national report on human rights states that freedom of preaching a religion is fully respected in Taiwan and religious groups can openly give speeches to preach their religions, hold religious class sessions for a specific

group of people, publicize books or produce DVDs to explain their religions, conduct activities to preach their religions via TV, radio stations, or the Internet, hold events for praying ceremonies, host religious events at public venues, or hold an event where gods patrolling the areas they oversee to calm people's hearts and repel evil. However, the violations of religious freedom and practices by the state through means of taxations such as assets withholding are not mentioned in the report.

3. Item 253 "The application for establishment of a religion and the method one becomes a religious leader" (Pages 61-62) states that all religions can follow the Civil Organizations Act to apply for the establishment of their religious organizations and that the Act has no limitations or regulations on the thoughts, speech, faith, and spiritual belief of any religion. However, the case is not discussed when tax agents riding above other branches of government and violating religious practices in the name of tax collections.
4. Item 256 "The tax exemptions and reductions available for religious groups" (Page 62) states that all religious groups that conform to the provisions of income tax laws, stamp duty codes, and property tax laws are eligible for exemptions and reductions. However, the issue is not raised when tax agents issue tax bills and assess penalties without regards to the recognitions of other government branches and with no respect for the tax rights of religious groups.
5. Item 264 (Page 114) states that the regulations and reasons for the restrictions on the freedom of speech stipulated in the criminal law, public officials election and recall act, and president and vice president election and recall act as shown in Table 34 (Page 65) should be rectified according to the spirit of the two Covenants. However, the case is not regulated when tax agents intentionally misinterpret taxpayer's will and violate taxpayer's rights of expressions and rights to reputations for the collection of taxes.
6. No statement was made in the State Report about the violations against Article 26 for the right of equality.

Current situations in Taiwan

1. Equal opportunities and rights to assembly have been protected in Taiwan's constitution. But government has set high standards for applying tax exemptions for non-profit organizations, religious group included. As a result, the complicated and high standards have made non-profit organizations with diverse range of tax rates. According to article 4.1.13 of the income tax code, non-profit organizations have to abide by the regulations by Executive Yuan in order to enjoy favorable tax treatment. To meet the regulatory requirements, the non-profit organization has to register

with government and follow prescribed operational details and financial disclosures. The government regulation and inspection have created unfair tax treatments among different non-profit organizations and are the way to intervene the rights of individuals in forming associations. This is in clear violation of article 2, 22 and 26 of the ICCPR. (Please see Attachment 1: Page 78 of the White Paper of ROC Centenary, Taxation and Human Rights White Paper. Attachment 4: It is against the principle of equality for the National Tax Administration to only impose tax on the Zhang-men-ren (leader) of Tai Ji Men, an organization of qigong, martial arts, and cultivation.)

2. Religious belief can take many different forms. Different religious groups have different practices to express and promote their philosophies, thoughts and beliefs and diverse traditions and ceremonies to raise money to fund the operations. The rights to the freedom of speech, religious belief and assembly are protected in Taiwan's constitution. But tax agents, due to their lack of human rights concepts and respect for religious practices, misinterpret and distort the nature of religious practices with the sole purpose of tax collections and penalty assessments. This is an outright discrimination against freedom of thoughts and religious belief and hindrance of religious activities by the state with the means of taxations. Not only does it violate the provisions of the constitution but also is against the spirits of article 2, 18, 19, 22, and 26 of the Covenant. (Please see Attachment 1: Page 148 of the ROC Centenary, Taxation and Human Rights White Paper (Chinese Version, English Version did not provide the translation of this part). Attachment 6: The tax agencies have excessive administrative power and arbitrarily interpret the nature of income (Pages 79). Attachment 7: Violation of freedom of contract. Attachment 8: The tax agencies lack reasons for imposing tax, violates the Rules of Evidence, are responsible for burden of proof, and are suspected of forgery).
3. There are instances when government intentionally pursues criminal prosecutions or manipulates media reports to defame religious groups and create negative publicity. This is clear violation of the provisions of the Covenants. (Please see Attachment 1) of the ROC Centenary, Taxation and Human Rights White Paper, Tai Ji Men Criminal Injustice Case).

4. Case :

- a. Tai Ji Men Qigong Academy (Tai Ji Men) is a group of qigong, martial arts and heart-cultivation. Tai Ji Men is a group member of Chinese Wushu Federation (Appendix 5). Practicing qigong is the way for Tai Ji Men dizi (similar to members) to strengthen heart-cultivation. Tai Ji Men is also the group member of Chinese Taoism Society and Taipei Taoism Society (Appendix 6). For years, Tai Ji Men has been recognized by both societies

for promoting cultural and religious activities (Appendix 7). Zhang-men-ren (similar to the master), Dr. Hong, Tao-Tze, has led the dizi to conduct heart-cultivation and spread positive energies with a heart of good intentions and kind thoughts. Tai Ji Men has participated in more ten national day celebrations in Taiwan and over 2,000 cultural activities and won international recognitions. Zhang-men-ren still continues leading his dizis to travel more than 60 countries over 5 continents to promote love and Peace and High Chinese culture during the investigation of judicial process. In year 2010, knowing Dr. Hong has no intention to stay overseas, the Ministry of Finance had issued a ban on his traveling that prevented him from returning to Taiwan. If he did, he would never be able to leave and continue his mission of promoting love and peace around the world. This ban on traveling severely infringe on people's freedom to preach religious belief and cultural promotion. Forcing Zhang-men-ren to be away from his families, relatives and dizis, the reunion become impossible! This is a serious violation against humanitarian.

- b. The monetary gift from dizi to Zhang-men-ren is the Chinese tradition showing dizi's willingness and honesty to learn from Zhang-men-ren. It's the rights of individuals expressing his/her beliefs. But tax authority distorted the fact and treated Tai Ji Men as a cram school and the monetary gifts tuitions. As a matter of fact, Tai Ji Men is neither a profit organization nor a cram school. And the fact has been confirmed by Ministry of Education, the regulator of educational institutes, in official statements in 1999 (Appendix 9). The Ministry of Education also publicly acknowledged in legislature hearing in 2000 that "Tai Ji Men is indeed not a cram school" (Appendix 10). However, Tai Ji Men continues to face repeated harassments from tax agents in the following ten plus years. The tax authority's actions have clearly violated the article 18 of the Covenant and the many provision of the General Comment Number 22 of the Human Rights Committee including item 1 and 2, "not limited in its application to traditional religions", item 4, "the freedom to manifest religion or belief may be exercised either individually or in community with others and in public or private" and item 5, which bars coercion of "policies or practices having the same intention or effect."
- c. Presenting monetary gift to the master is the freedom of expression for appreciation. Tai Ji Men dizi have handed in 4,645 statements of gift, 5,000 declarations of giving and 3,000 statements of giving to attest to the nature of the money. However, tax administrations ignored the evidence. In 2010, tax administrations examined the nature of the monetary gift from the Tai Ji Men dizi as per part of the petition process. All the 206 sampled dizi claimed that the money is a gift to the master. But Taipei Tax Administration falsified the documents and claimed that there were only 9 people stating as

gifts. Central Tax Administration also falsified the statements and announced that there were only 5. These two administrations seriously distorted the true intentions of the dizi and infringed upon the freedom of expression. They even concealed the evidences from the consideration of the appeal committee and the Administrative Court. The court, thus, made biased decision. In 2012, Taipei Tax Administration allowed the dizi to hand in statements of giving to examine the nature of the money gift. All the 7,000 dizi stated that the nature of the money is gift to the master (see appendix 11), but tax administration ignored the fact and distorted the gifts as tuitions. The tax bills have breached article 19 of the ICCPR and provisions of General Comment Number 34 of Human Rights Committee, such as item 9, “Paragraph 1 of article 19 requires protection of the right to hold opinions without interference. This is a right to which the Covenant permits no exception or restriction”, and item 10, “Any form of effort to coerce the holding or not holding of any opinion is prohibited”

- d. According to explanatory note issued by the Ministry of Finance (Appendix 12), the catechist in church taking contributions from disciples is not subject to income tax. As a result, the leaders of the tens of thousands of religious groups in Taiwan have never been taxed for receiving contributions. Notices of Taiwan Tax Bureau (Appendix 13) and statement from Ministry of Finance (Appendix 14) stipulate that “Qigong and martial art groups are not required to file application for business registration and therefore are exempt from business income taxes.” Hence, tens of thousands of qigong, martial arts and religious groups have never been levied tax for giving money gifts to their masters. Taipei Kuoshu Association, Chinese Martial Arts Association and Chinese Qigong Association, of which Tai Ji Men is a group member, all provided certifications certifying that no group member has ever been levied tax for giving money gift to masters (Appendix 15). Issuing tax bills to Tai Ji Men is obviously an infringement of article 2 and 26.
- e. The aggregate ordering of supplies for qigong practice is voluntary out of brotherhood. It does not involve in any business activities. Yet, tax administrations distorted the nature as for profit sales and levied business taxes together with penalties of 3 times of taxes due, business income taxes, and personal income taxes. The double taxation, even triple taxation, is in violation of the principle of proportionality and equality of taxation and thus against the provisions of article 2 and 26.
- f. Justice has not yet been returned to Tai Ji Men on the tax case. Since its inception in 1966, Tai Ji Men has never been taxed for receiving money gifts from dizi or the aggregate ordering of uniforms other than the 6 years, from 1991 to 1996, which were the years charged by prosecutor for tax

evasions and fraud at the same time. The criminal case, after more than 10 years of court trials and hearings, was eventually not guilty and the final verdict reached with no fraud, no tax evasions and no violations of tax codes. The criminal case ruling also confirmed that “since the money gifts submitted by dizi to the master is an act of voluntary giving out of willingness, according to clause 17 or article 4 of the tax code, the gift should be treated as tax free income.”, and “the aggregate ordering of uniforms is not an act of profit-seeking and Dr. Hong was not involved in the ordering” (Appendix 16). The detainees by illegitimate means have all received compensations from the nation for injustice in 2009. The Control Yuan conducted investigations into prosecutor’s handling of the Tai Ji Men case and serious flaws of criminal investigations were found (Appendix 1). A report was sent to the Ministry of Justice seeking disciplinary actions against prosecutor and the case was made widely known by being compiled into the Third General Report on the Work of Human Rights Protection of the Control Yuan as an example of important case of human right protection (Appendix 17). Tax authority’s tax assessments and collections in Tai Ji Men case were also investigated by the Control Yuan and 7 irregularities were found. Tax bureaus and Ministry of Finance were requested to take corrective actions (Appendix 2). Tai Ji Men tax case is derived from the criminal case. Since the criminal case, which bears heavier burden of proof, has been ruled with no tax evasions and no violations of tax codes, the tax case should have been withdrawn by tax agents to save public funds. However, tax agents, without doing their fair share of due diligence in the first place, continued to defy provisions of laws and principles of evidences to press Tai Ji Men with illegitimate tax bills. This is in violation of provisions of article 2, article 18 and article 26, item 10 of General Comment Number 18 of the Human Rights Committee, “States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant”, and item 15 “if a state party do not investigate the infringement of the rights, it may cause the second violation against the Covenants.”

- g. According to Control Yuan report (Appendix 1), the prosecutor has committed the following acts to intentionally defame Tai Ji Men. The acts have caused violations of article 2 and article 26.
 - i. Press and media were present in the premise during the searches. The prosecutor was interviewed many times during the case investigation and commented the progression of the case. Biased public opinions against the defendant were formed by the prosecutor and the press.
 - ii. The prosecutor charged Tai Ji Men with “raising the goblins to manipulate the spirits and minds of disciples” based upon statements

from the accusers. However, in the following searches, nothing was found to support the indictment. The case was prosecuted with obvious contradictions between statements made by some plaintiffs and evidences legally obtained through proper investigations. The indictment is obviously in violations of the principle of evidences.

- h. The 6th point of the Control Yuan report says that “After indictment, prosecutor sent out notices to the Ministry of Interior and county governments to demand Tai Ji Men be disbanded.” Because the city and county governments did not enforce the orders from the prosecutor, he again sent notices to Public Works Bureaus to cut the supply of water and electricity. This has violated the principle of rule by law. Prosecutor’s acts have seriously affected the freedom of religious belief and the right to assembly and thus violated the provisions of article 18 and article 22.
- i. Two Tai Ji Men dizi, Li Cheng-Wen and Wen Xiu-Chen, were interviewed in the press to express the benefits they gained from practicing Tai Ji Men qigong. With no charges filed against them and no search warrants, their residences were searched immediately after the press interview and they were taken into custody for further investigations (page 5 of Appendix 1). This has formed restrictions on the freedom of speech by the state power and is violation of article 19.

Recommendation

1. Government organizations should honor the principle of tax neutrality, respect different religious practices and refrain from forcing changes of practices or imposing unfavorable treatment through the means of taxations.
2. The state should not intervene to evaluate, hinder or obstruct the religious practices that are not against public orders and good morales such as worships, rituals and contributions to honor the respect of freedom of religious practices, right to expressions, right of disposal of personal assets and the freedom to contract.
3. When information disclosure is required by the state, special respects should be given to the religious practices, rituals and the privacy.
4. Private law orders should be well-defined and protected and legal framework should be instituted in the case of public law intervention.
5. According to item 2 of article 4 “No derogation from article 6, 7, 8 (paragraph 1 and 2), 11, 15, 16 and 18 may be made under this provision”, the rights should be absolute and cannot be restricted or contained in any circumstance. Legal framework should be built to

ensure the rights will be protected for all citizens under every circumstance.

6. The Declaration of Taxpayer's Human rights should be declared with detailed explanations of taxpayer's rights and the provisions of assistances available and remedies provided.

II. The State Government's inability to Regulate the Serious Violation against the Constitution, Laws and Human Rights by Tax Administration Violates Article 2.3, Article 1-3 of ICCPR

Response to the State Report

Not a single word is mentioned in the State Report regarding the violations of appeal and remedy system against the Covenants.

The current situation in Taiwan

1. Taiwan takes the strongest measures in the world to punish taxpayers accused of tax fraud. The fines in the United States, England, Japan and even Africa are 0.2, 0.3, 0.1 and 0.2 percent of the tax evaded, respectively. Heavy fines threaten the sustainability of enterprises.
2. The Taiwan tax administration's interpretation, which violates the Taiwan Constitution, states that revocation by the Administrative Court merely revokes the decision of the appeal but the original tax bill remains valid. It means that the tax authority can make a decision to re-issue the tax bill again. Consequently, people's property may be confiscated at any time. Unfortunately, the Administrative Court actually referred to the administration's interpretation that violates Article 19 of the Constitution, Articles 6 and 11 of the Central Regulation Standard Act, Articles 4 and 118 of the Administrative Procedure Act, and Article 2 of ICCPR.
3. As stated in Article 39 of the Administrative Appeal Act, the enforcement of an administrative action shall not be stopped by the commencement of an administrative appeal. This article violates the rights to property, complaint, and litigation.
4. The expertise of the judges of the Administrative Courts is insufficient. Less than 10% of all the cases win a lawsuit. Frequently in court rulings, a large proportion of the rulings are copied from the documents provided by the tax authorities. The court's actions violate Article 16 of the Constitution, Articles 4 and 5 of the Judges' Ethical Rules, Articles 133 and 189 of the Administrative Litigation Act, and Article 2 of ICCPR.

5. Less than one half of the members of the Petitions and Appeals Committee in the Ministry of Finance are impartial and professional scholars and experts. The members are chosen by the Minister. Furthermore, some of the members should not be involved due to the conflict of interest but are still members of the committee, leaving its fairness in serious doubt. In addition, the administration frequently does not follow the ruling from the Appeals Court, undermining the function of the appeals and petitions committee which violates Article 16 of the Constitution, Articles 52 and 55 of the Administrative Appeal Act, and Article 2 of ICCPR. (Appendix 18 & 19)
6. The Administration Courts have the obligation to investigate. When the judge investigates the evidence presented to the court, he should establish the validity of the tax bill that is the basis of the ruling. Even when people win the lawsuit, since the judiciary fails to dismiss the entirety of the case, the tax authority will make minor changes to tax bill and submit a new bill, subjecting the taxpayer further prosecution. The ruling violates the Principle of Procedural Economy, causes endless litigation, and wastes judicial and administrative resources. People are forced to file for another lawsuit again and his rights outlined in Article 16 of the Constitution are violated, the actions also violate Article 4 of the Judges' Ethical Rules, Article 216.1 of the Administrative Litigation Act, and Article 2 of ICCPR.
7. Articles 2 and 3 of ICCPR are violated because the Constitutional Authorities in Taiwan, (including the Executive, Judicial and Control Yuan), do not obey the Constitution and laws.

8. Case:

- a. The National Tax Administration and Ministry of Finance actually restricted Tai Ji Men from examining the evidence and the results of the Questionnaires of Tai Ji Men Case. Tai Ji Men's right to litigation has been violated by the government, and no relief was given even after appealing to the authorities. This has violated Article 2 of ICCPR.
- b. The interpretation 677 by Chief Justice from the Judicial Yuan states that anything related to people's rights should be treated immediately. Even one day delay is a Constitutional violation. However, whenever the National Tax Administration delays implementing the decision of the Appeals Court or the withdrawal of a petition, they have violated the Tax Collection Act Article 35 and the explanatory note 31577 by the Ministry of Finance on March 13, 1979 that the decision of petition should be conducted within two months. When Taichung High Administrative Court revoked the original bill on May 25th, 2005, not only has the National Tax Administration of the Central Province not file an appeal within the legal

time limit of 20 days according to Administrative Litigation Act Article 241, nor was a new decision of petition filed within 2 months. The case should be final and no new bill should be issued again. However, over the following 3 years and 4 months, the illegal bills were reissued four subsequent times. Moreover, the two year old revocation of the illegal tax bill from Taipei National Tax Administration on August 18th, 2011 by the Petition of Appeal Committee of the Ministry of Finance should have ceased any further illegal tax bills. Yet, the Taipei National Tax Administration completely ignores the findings of all supervisory departments and repeatedly issues illegal tax bills. In spite of the expired statute of limitations, judicial rulings and regulations of the law, the National Tax Administration continuously issues the same recycled tax bill, resulting in a violation of Article 2 of ICCPR.

- c. Tai Ji Men's Zhang-men-ren appealed to the Ministry of Finance in accordance to the law. The appeals were turned down by the Petitions and Appeals Committee; however the composition of the committee was not impartial members of society, as prescribed in the Administrative Appeal Act as less than one ninth of the members were impartial members from the society. The composition of the committee members seriously violated Article 52 of the Administrative Appeal Act which states, "The members of Petition and Appeal Committee shall chosen from the impartial members of society, consisting of scholars and experts and the ratio should be no less than one half."
- d. The then Director-Generals Chang Sheng-Ho and Yang Chong-Hua of Taipei National Tax Administration and Central Taiwan Province issued illegal tax bills to Tai Ji Men. Later they were chosen to be the members of the Petitions and Appeals Committee for the Tai Ji Men Tax Case. It was unjust and violated Article 55 of the Administrative Appeal Act Article 55 to avoid the conflict of the interest and violates the people's right to petition as outlined by the Constitution.
- e. The Taichung High Administrative Court knew that the National Tax Administrations had hidden important evidence (including the return of the Questionnaires) but the court did not order the National Tax Administration to provide the evidence according to the law. The National Tax Administrations did not provide the evidence but the court did not make the ruling based on the best interest of the party. This has violated Article 2 of ICCPR.
- f. The Taichung High Administrative Court called the National Tax Administration of Central Taiwan Province, requesting the testimony prepared for the criminal case against Tai Ji men's Zhang-men-ren and his wife for use in the Administrative Court, without following the procedures

outlined for preparatory court, which includes informing the party and calling for arguments in advance. This has violated the Principle of Fair Trial and Article 2 of ICCPR.

- g. Even though the explanatory notes 09313512360 from the Ministry of Finance on Sept. 29th, 2004 states that the related trials and each court ruling should be followed up on and taken into consideration; the Petitions and Appeals Committee have also clearly stated that if the judicial ruling will affect the tax bill of the case, the original tax authorities should fulfill the duty to correct its procedures. In addition, Administrative Court 1940 precedent no.13 and 1943 precedent No.18 both rule that the Administrative Agency needs to follow the ruling of the criminal trial. However, the National Tax Administration did not withdraw the illegal bill based on the ruling of the criminal trial.
- h. Tai Ji Men has been found to be innocent by the Judicial Trials and the investigation of the Control Yuan. However, the National Tax Administration is still relying on the illegal bill of indictment fabricated by the prosecutor even though the case has been reviewed by 342 members of the Petitions and Appeals and Committee, 395 judges, and has been revoked 15 times by the Administration Court. The Petitions and Appeals Committee and the Administrative Courts did not fulfill their duties to stop the National Tax Administration, and also violate laws themselves. Furthermore, the Control Yuan did not conduct any further actions against the government officials who violated laws after the investigation. This has also violated the Constitution and Article 2 and 2.3 of ICCPR.

Recommendation

1. The government should investigate whether the fine for tax evasion is too heavy, resulting in the violation of people's human rights.
2. The Administrative Courts have been called the "the Court of Losing." The judges of the Administrative Court lack expertise in tax law. A frequent complaint is the judges merely copy the materials presented in the tax authorities' documents in their court verdicts. It is urgent for the judges of the Administrative Courts to enhance their concepts of Human Rights on Taxation, tax knowledge and their roles as Administrative judges to protect the common people. The analysis and comments on the court's verdicts by the judges of the Administrative Courts should be encouraged. The assessment system for the judges of the Administrative Courts should also be implemented as soon as possible.
3. The regulation of that requires a taxpayer to pay one half of the tax bill or provide assurances in order to appeal, or the tax bill will be transferred to

compulsory execution should be removed to protect one's right to litigation.

4. The Judicial Yuan should propose a long-term educational plan for professional tax judges and form a professional tax court to ensure people's fast, fair and effective relief procedures.
5. Experts and scholars should be called upon for discussion and the illegal tax explanatory notes that violate the Constitution and the Covenants (such as No. 03497 and No. 35047 interpretations on May 25th, 1961 and July 29th, 1978, respectively) ought to be abolished.
6. In addition, to have real justice, the Appeals and Petitions Committee should consist of members of the bar association or certified public accountant association. The appeals committee members of the National Tax Administration should consist of one half of impartial and professional people from the society to fully comply with the law and avoid conflicts of interest. They should also advance their professional expertise and fair judgment to guarantee people's right to litigation and petition.
7. To enable people's honest intention of paying taxes, the tax authorities should do their best to provide necessary and convenient information to the public. Tax authorities should also make every effort to fulfill their obligations to protect tax payers' rights and interests.
8. The human rights education of the Covenants for government officials should be enhanced. The fairness, professional and human rights concepts of the Covenants should also be implemented in the relief agencies (the Petition and Appeal Committee and the court).
9. In order to implement the legal procedures in accordance to the taxation protocol and initiate communication between the tax administration and taxpayers, the Taxpayers Rights Protection Act (see Appendix 20) was passed by the Legislative Yuan in 2006. Further legislation and implementation should be continued as soon as possible and a Taxpayers Rights Protection Officer ought to be established to protect taxpayers' rights as well.
10. The Speedy Tax Collection and Trial Act ought to be enacted or Chapter 1.1 of the Tax Collection Act, "the Protection of Taxpayer's Rights," needs to be augmented to restrict the abuse of administrative power by the Tax Administration in order to protect the fundamental rights of taxpayers.

III. The actions of freezing the assets of the tax defaulter and the

restriction on his overseas travel are too loosely applied and has no prior approval of the judiciary which violates people's basic living rights as well as Article 12 of Taiwan's human rights covenants

Response to the State report

As stated in Item 162 and Table 22 (page76) of the Republic of China Initial State Report on ICCPR, the biggest reason for rejected travel requests is outstanding tax and other public debts; with the most frequent occurrences between the years of 2007 to 2010. Even though the numbers have gradually reduced, there are still over 2 million people who are rejected from travelling each year. It shows that the practice of restricting travel for tax defaulters is overly abused by the Ministry of Finance.

Table 1 Type of exit restriction for nationals

Unit: Case

Type \ Year	Year				
	2007	2008	2009	2010	2011
Financial and taxation control	55,571	30,731	23,056	20,662	18,084
Administrative enforcement	25,637	20,815	14,858	8,590	4,576
Judicial investigation control	7,569	8,088	7,308	7,324	6,964
Military service control	415	449	275	300	275
Protection case	17,003	17,259	19,219	20,308	21,826
Other control(s)	377	375	352	17	12
Total	106,572	77,717	65,068	57,201	51,737

Source: National Immigration Agency of the Ministry of the Interior

Description: The statistics are based on the number of regulated cases.

Current situation in Taiwan

1. The rejection of travel is a compulsory measure against the basic human rights of freedom of migration protected by the Taiwan Constitution. In Taiwan, the administrative order of "The Rejected Exit Procedure for Tax Defaulters and the Responsible Persons of Profit-Seeking Enterprises in Tax

Default” has been used to restrict tax defaulters’ exit for years. After many criticisms, Article 24, item 3 of the Tax Collection Act was amended by directly copying all the contents of the administrative order in May 2009. Only the less-developed countries would use the rejection of travel to ensure tax payment. Taiwan is one of the few countries that still applies this practice to tax defaulters.

2. The Article 23 of the Constitution states that the limitation of people’s basic human rights needs to conform to the principle of proportion. Therefore, The Ministry of Finance and tax authorities shall consider the necessity of rejected travel for tax defaulters. As stated in Article 24.item 3 of the Tax Collection Act, the Ministry of Finance “may” request the National Immigration Agency of the Ministry of Interior to reject the tax defaulter from exiting the Republic of China.” This article does not require the authority to restrict a taxpayer from exiting the country in order to ensure the tax collection. The article gives authorization to the Ministry of Finance to have administrative discretion. Instead of treating “tax in default exceeds a certain amount (over NTD 1 million income tax or NTD 2 million in profitable enterprise tax)” as the only requirement, the Ministry of Finance shall consider actual situations on a case by case basis. For example, if a tax defaulter has sufficient financial capability and poses a flight risk, the authority can restrict him from exiting to push the tax defaulter to actively pay the tax in default. Otherwise, the rejected exit does not effectively help to collect the tax. In this case, the rejected exit will violate people’s basic freedom and violates the Constitution and Article 12 of ICCPR.
3. Article 8 of the Constitution guarantees personal freedom. When a suspect is arrested and detained, the suspect shall be sent to court for investigation within 24 hrs. The Principle of Reservation by the Judges reveals that the Constitution put a great emphasizes on people’s personal freedom. Similarly, the restriction of travel is a compulsory measure, a kind of prohibition. According to Article 8 of the Constitution, in order to guarantee personal freedom, the restrictions on travel require court approval. However, in practice, the Ministry of Finance and Tax Administration ignore such protections and individual circumstances, relying on the reasoning that “exceeding a certain amount of tax in default” is sufficient justification for restricting travel. This act is careless and violates Article 12 of ICCPR.
4. According to Article 17 from Administrative Enforcement Agency of Ministry of Justice, a tax defaulter owes in an amount over NTD \$100,000 will be restricted in his residency. This restriction is even much more severe than travel restrictions. With this restriction, the person will not be allowed to exit the country or live abroad and the violation against personal freedom is much worse. Therefore, restriction of personal residency and

travel restrictions by the governmental officials severely violates Article 12 of ICCPR. As shown in government statistics, the tax defaulters with this restriction belong to the largest percentage of citizens which proves that this violation of Article 12 is a serious problem on the taxation issue.

5. Under the Tax Collection Act, Article 24, Item 1 states that once a taxpayer owes a tax, the tax authority has the right to notify other related officials to restrict any of his other rights. This act to restrict people's rights to manage his own property is a compulsory measure against the people's right to prosperity. It is also an act of prohibition. As long as the tax is not paid on time, whether the case is still on appeal, the tax authority can prohibit the person from managing his own prosperity in order to ensure tax payment. This above law does not have any time limit. The prohibition can last years, even more than 10 years. The only requirement is for a person to owe a tax over NTD \$10,000; the Tax Administration can simply issue an order to the Department of Land Administration to initiate this act. It is not only a careless act but also violates Article 15 of the Constitution. According to Article 5 of ICCPR, no restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtues of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

6. Case:

a. Criminal Violation of Tai Ji Men Case

- i. According to the Control Yuan Report item 4 (appendix 1), the prosecutor did not fully do his duty to prove whether the defendants' assets were gained through criminal acts before he froze all their assets. Imposing such compulsory sanctions is totally inappropriate and seriously infringed upon their property rights.
- ii. Prosecutor Hou Kuan-jen did not prove whether the defendants' assets were gained through criminal acts before he seized the defendants' assets, Bank transfers were blocked, and even accounts containing a few thousand dollars were all seized. Basic living expenses, children's tuition fees—not a single cent was left, constituting a serious violation of the proportionality principle in the constitution. The leaders and its families were deprived of their right to live. (Appendix 4)

b. Taxation violation of Tai Ji Men Case:

- i. In 1996, all of Tai Ji Men's Zhang-men-ren's property was frozen by the government at the beginning of the Tai Ji Men criminal case. Despite the fact that Zhang-men-ren provided sufficient property guarantee to the

National Tax Administration, the Ministry of Finance still froze his property over 16 years, Moreover, in March, 2010. The Ministry of Finance issued a ban on his traveling abroad that prevented Zhang-men-ren from being to return to unite with his family, relatives and dizis in Taiwan after traveling overseas to promote love and peace in 2006. This restriction has violated the freedom of migration as protected in Article 12.2 and 12.3 of ICCPR, as well as the General Comments 27 from Human Rights Committee: No. 13 “the restrictions must not impair the essence of the right”; No. 14 “restrictive measures must conform to the principle of proportionality”, No. 18 “the fundamental principles of equality and non-discrimination”, No. 21 “in no case may a person be arbitrarily deprived of the right to enter his or her own country”

- ii. The administrative litigation for the rejected exit on Tai Ji Men’s Zhang-men-ren was revoked by Taipei High Administrative Court No. 1924 Judgment in 2010. This ruling has been voted as the best annual judgment by experts and scholars for its application of the two Covenants. The judge pointed out that a certain amount of tax in default could not be used as the only legal requirement when the Ministry of Finance issued travel restrictions. The authority should consider the situation of the individual case such as the necessity and actual benefits. Otherwise, the authority will abuse their discretion (see appendix 20).
- iii. The value of the Zhang-men-ren’s property that was frozen was 40 times higher than the tax bill. Even though a security mortgage was presented to the Tax Administration, the Tax Administration fabricated the document to auction off the property of Zhang-men-ren’s wife without notifying her in advance. This action violated the right to property established by the Constitution as well as Article 5 of ICCPR.

Recommendation

1. Peoples’ freedom of immigration should be protected. Therefore, the government should consider the balance of public interest and people’s fundamental rights as well as follow the principle of proportion and The Principle of Reservation by the Judges when restricting a taxpayer’s ability to travel abroad. Therefore, an amendment to the Tax Collection Act, Article 24, Item 3 is needed. The reason for considering the rejected tax should also be clearly stated in the law, such as if the tax administration has fully investigated one’s property and his ability to pay the tax, but refused to do so. Moreover, the Ministry of finance should have approval from the court in order to notify the National Immigration Agency of the restriction on travel.

2. The restriction of a person's residency is even more severe than travel restrictions. Thus, the amount in the tax default from the Enforcement Act Article 17 to issue the restriction needs to be higher.
3. A amendment on Article 24 Item 1 is needed, and the reasons of issuing the prohibition on a tax defaulter's right to property management should be clearly stated in law so that the tax administration can exercise its administrative discretion based on the law. Only with the prior approval from the judge, should the governmental officials be able to notify other related agencies to transfer or restrict other rights.

IV. While the judicial cases were on trial, the act of forwarding the alleged charges from the indictment to the National Tax Administration to Levy a Tax Bill Violated Article 14, Item 7 of ICCPR.

Response to the State Report

Item 209: the presumption of innocence on the state report (page 95) indicates that it is a fundamental principle in the Code of Criminal Procedure. No single word is mentioned in the state report as to if the regulations, the details of implementation by each governmental agency and the possible instance of double jeopardy as well as the interrogation behaviors of government officials and prosecutors against the defendant have abided this principle.

Current situation in Taiwan

1. Investigating bureaus often informally open cases. The investigation period is then not restricted; then closed with an administration sign off. Later this case can then be reopened and reinvestigated. This creates an instance of double jeopardy.
2. Currently, judicial cases that involve taxation are often forwarded to tax administrations. Tax administrations issue taxes to the interested parties at the same time without independent investigation. When judicial cases are resolved, tax administrations frequently ignore the verdicts and make their own judgments. This violates Article 7 of ICCPR.
3. Article 154 of the Code of Criminal Procedure states that before a defendant is found guilty through a trial, he or she shall be presumed to be innocent. Determination of a crime should be based on the evidence presented in trial. However, the presumption of innocence does not exist in taxation cases in Taiwan. In accordance with the human rights protection

in a lawful country, both judicial and administrative cases should abide by this principle.

4. Case:

- a. As noted in the Control Yuan's report: item 5 (appendix 1, page 9), the prosecutor solely relied on the victim's statement to accuse the defendant of summoning demons and manipulating the dizi with evil spirits has raised heated discussion among the media.

The prosecutor's prosecution of cases without foundations based upon scientific research and findings damages the reputation of the judicial system. The prosecutor also violated the principle of evidence when the bill of indictment exhibited obvious contradictions based on the available evidence. In addition, the prosecutor has never interrogated the accused regarding the details of "summoning demons" and never gave the accused the fair chance to defend himself. The investigation process is seriously flawed. The prosecutor clearly violated Item 1, and 5 of Article 3.

- b. According to number 7 on Control Yuan's report, when the prosecutor questioned the defendant, he never informed the defendant's attorney to be present. This is the deprivation of the legal rights of the defendant. The prosecutor has violated Article 245 Item 4 of the Code of Criminal Procedure that during the interrogation of the defendant, the prosecutor should notify the defendant's attorney of the date, time and location of the interrogation. Section 2 of Item 3 and Human Rights Committee General Comments 32 and 34 state that a defendant must be notified of the right to communicate with an attorney, and the lawyer should be allowed to privately meet with the defendant, and communicate with the defendant with full respect for privacy.
- c. According to number 8 in Control Yuan's report', the prosecutor's attitude towards the defendant appeared to be rude and inappropriate during the interrogation. The Ministry of Justice should take this report into serious consideration and investigate the truth. It shows that Tai Ji Men's Zheng-men-ren was forced to make statement against himself or admit the charges. The prosecutor clearly violated Section 7 of Item 3 and Human Rights Committee number 32 General Comments 41 to guarantee the right not to be compelled to testify against oneself or to confess guilt. This safeguard must be understood in terms of the absence of any direct or indirect physical or undue psychological pressure from the investigating authorities on the accused.
- d. According to item number 9 in the Control Yuan Report, since the prosecution of the Tai Ji Men case on April 15th, 1997, the Tai Ji Men case had gone through 5 judges in Taiwan Taipei District Court without any verdict, resulting in over 4 years that the 5 defendants were forced to stay in

the state of uncertainty. Moreover, the property of the defendant, Mr. Hong and Mrs. Hong, including the real estate, bank account and stocks were frozen. This clearly violates Item 3 Paragraph 3rd and Human Rights Committee 32 and General Comments 35 to guarantee the right of the accused to be tried without delay.

- e. According to Injustice in a Tai Ji Men Taxation Case, in Chapter 2 of Republic of China Centenary, Taxation and Human Rights White Paper, on December 19, 1996, the Prosecutor conduct searches of 19 Tai Ji Men Academies across the island and residences of Tai Ji Men dizi. The news shocked the whole nation when it was broadcast on the evening news report. Just a day before, a statement was released on China Times by Hsinchu District Prosecutor's Office that the case will be closed soon after summoning Tai Ji Men's Zhang-men-ren, due to the lack of plaintiffs and evidence of any crimes. On November 30 of the same year, Kaohsiung District Prosecutor's Office closed the case without finding any evidence of crime and plaintiffs after searching Tai Ji Men Kaohsiung Academy. As a result, the prosecutor Ho violated Article 245 of investigation secrecy from the Code of Criminal Procedures and the regulation of Item 7.
- f. A "not guilty" verdict was ruled in all three court trials. The verdict clearly stated that the nature of red envelopes as a monetary gift and the ordering of uniforms by dizi as an act of voluntary assistance, not a profit-seeking behavior. But the National Tax Administration used the argument that the administrative agency is allowed to use its own judgment, as it continuously issue tax bills based on the fraudulent materials generated as evidence in the court trial as ruled by the judicial courts and Control Yuan. This clearly violates the regulation of Item 7.

Recommendation

1. Promptly enforce existing laws and punishments against public servants as soon as they have been proven to violate human rights protections. Any person who willfully delays the punishment or covers up the criminal activity of a public servant should also be punished. This will make the law more effective, and will eliminate the opportunity either for the crime to recur or for the recruitment of others into this criminal activity.
2. The tax law should refer to the principle of the presumption of innocence as the code of criminal procedure does.
3. The Speedy Tax Collection and Trial Act ought to be enacted or Chapter 1.1 of the Tax Collection Act, "the Protection of Taxpayer's Rights," needs to be augmented to restrict the abuse of administrative power by

the Tax Administration in order to protect the fundamental rights of taxpayers.

4. The tax collection authority cannot punish a tax payer based solely on information provided by the prosecution office. The tax collection authority should fully investigate the evidence and follow the principle of ethics and experience and take all evidence, both favorable and unfavorable to the taxpayer into consideration in order to develop an objective and reasonable decision.

V. Disclosure of investigation notes by administrative agencies prior to trial results in defamation of defendant in violation of Article 17, Item 1, and 2 of ICCPR

Response to the State Report

Items 238 to 240 (page 104 to 107) on the state report mentioned that “regulations on the protection of and non-interference with people’s privacy and freedom of communication are available in the Criminal Code, Code of the Criminal Procedure, Social Order Maintenance Act, Communications Protection and Surveillance Law and Police Authority Performing Act.” Moreover, in addition to naming the Protection Codes, Item 249 (page 108 and 109) of “regulations on protection for individuals upon illegitimate infringement of personal reputation” lists 45 people convicted in accordance with Article 104 of the Civil Servants Election and Recall Act (CSERA) and zero in accordance with Article 90 of the Presidential and Vice Presidential Election and Recall Act (PVPERA). The report failed to address occurrences of party’s reputation being harmed by the government agencies failing to protect confidentiality during the process of exercising their public power.

Current Situation in Taiwan

1. The Tax Administration has released the personal information of taxpayers to the media in violation of Article 33, Item 1.3 and 1.6 of the Tax Collection Act. The taxpayer’s information regarding property, income, profit-seeking enterprise and tax payment shall be provided to the tax administration solely for the purposes of tax determination and collection. In addition, release of the personal information of a taxpayer should be in accordance with Article 2 Item 1 of the Personal Information Act and protected by the Privacy Act.
2. As the Administration Agency exercises its power, leaking the personal information of taxpayers to unrelated third parties results in harm of taxpayer’s reputation, in doing so, the agency has illegally broadened the

applicable scope of Article 33 Item 1.8 of the Tax Collection Act. This action may also infringe on Article 132 Item 1 of Criminal Code for the government officials who leak confidential information other than for national security, and violates Article 23 of the Constitution to prohibit the releasing of information unless for the purpose of protecting the public interest.

3. Despite reforms in that a search warrant is now issued by a judge instead of the prosecuting office, frequent use of the term, “related locations” are written on search warrants, allowing for the violation of that the privacy of the party as well as third parties. Moreover, the media is frequently brought along when conducting the search, resulting in private information exposed to the media. This has resulted in the violation of Article 128, Item 2.3 of the Code of Criminal Procedure that any extra location should be listed on the search warrant and the procedure of issuing a search warrant shall not be open to the public in accordance with Article 245 of investigation secrecy.
4. Conducting a search of a third party and his residence without adequate justification violates Article 122 Item 2 of Codes of Criminal Procedure.

5. Case:

a. Criminal violation of Tai Ji Men case

- i. Prosecutor Ho Kuan-Ren Ji conducted a search of Tai Ji Men dizi, Li Cheng-Wen and Wen Xiu-Chen’s body and premises. The reason was groundless. This action violated the Code of Criminal Procedure
- ii. Dec. 12, 2007 Prosecutor Ho Kuan-Ren Ji conducted another search of Tai Ji Men academies and invited the media. The search warrants Prosecutor Ho issued included “non-relevant locations” to this case, allowing wide searches requiring several hundred policemen.
- iii. During the investigation, Prosecutor Ho constantly delivered untruthful statements and disclosed the progress of the investigation. As a result, more than 400 provocative media reports over a 4 month period were published; seriously jeopardized the reputation of Tai Men shifu and dizis.

b. Taxation violation of Tai Ji Men case

- i. In advance of receiving his tax bill, Tai Ji Men’s Zhang-men-ren, was the victim of having his tax due including penalties, the case investigation progress, his registered address and personal assets all disclosed to the newspaper (appendix 21). During the procedures of

administrative remedies, the process and the statement of two parties had been published in the newspaper (appendix 22), detailing the content of the appeal. This evidenced that the newspaper's information source was from the Taipei Tax Bureau.

- ii. The Administrative Execution Department issued a blanket letter to 49 banks in Taiwan (Appendix 23), including the banks without an established relationship with Tai Ji Men's Zhang-men-ren, requesting the freeze of any withdraw of Zhang-men-ren, for the purpose of their arbitrary execution. The reputation of Tai Ji Men's Zhang-men-ren and his spouse were seriously impaired.

Recommendation

1. Administrative organizations should follow the Personal Information Protection Act, respecting the privacy of the people. Any violation against the Act should be punished and indicted for further investigation.
2. Before an arbitrary execution, a clear investigation on the defendant's bank activities is mandatory before any asset is frozen. Any violation of the Act will be punished and the defendant entitled to compensation for impairing one's reputation.
3. Enhance the Human rights education for governmental employees. The justice, professionalism and the concept of Two Covenants should be implemented in all Administrative organizations.

Appendix

1. Control Yuan Report reference number (91)0912600349 dated March 4, 2002
2. Control Yuan Report reference number (98)0982200593 dated Sep. 4, 2009
3. 1503 Report filed by Association of World Citizens to the Human Rights Committee
4. ROC Centenary, Taxation and Human Rights White Paper
5. Certificate of the group member of Chinese Wushu Federation, Chinese Qi-gong Association and Taipei Chinese Kung Fu Association
6. Certificate of the group member of Chinese Taoism Society and Taipei Taoism Society
7. Letter from Taipei Taoism Society
8. Cultural Goodwill Trip of Tai Ji Men Shifu and dizis around the world spreading Love and Peace and promoting High Chinese Culture
9. The Ministry of Education Report reference number (88)88157959 dated Dec. 14, 1999
10. Tai Ji Men Public Hearing Meeting Minutes from Executive Yuan dated Dec. 21, 2000
11. Investigation Notice of the Verification Appeal issued by the Taipei City Tax Bureau, 1010234797 dated Aug. 03, 2012
12. Explanatory note issued by the Ministry of Finance, number 33031 dated Apr. 29, 1975
13. Notices of Taiwan Tax Bureau 03378 dated Aug. 11, 1987
14. Ministry of Finance Report reference number (84)841634845 dated July 12, 1995
15. Taipei Chinese Kung Fu Association reference number 0119 dated Nov. 15, 2003, Chinese Qi-gong Association, reference number 010 dated Nov. 12, 2003, Chinese Wushu Federation reference number 017 dated Nov. 11, 2003
16. Verdict of Taiwan High Criminal Court, Dated 2003, Reference No.2
17. General Report on the Work of Human Rights Protection of the Control Yuan (1999 – 2005)

18. Market Daily, Sept. 16th, 2010. Taxation Law A21, “People’s Income Distorted by Tax Administration Causing Social Grievance”
19. China Times, August, 2009, Editorial: “What is the Real Use of Petition and Appealing System?”
20. Annual Evaluation and Selection of Taiwan’s Best Rulings on Taxation
21. Economic Daily News, November 29th, 1997,
22. Economic Daily News, September 1st, 2003
23. Taipei Branch, Administrative Enforcement Agency, Reference No. 00085847, dated August 12th, 2003.