

## Wrongful execution: No justice for Chiang

Written by Wu Ching-chin 吳景欽

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On Oct. 10, 1975, a boy was born to the family of a hotel operator surnamed Chiang (蔣) in then-Taipei County. He was named Kuo-ching (國慶, national celebration), as it was National Day. Twenty-one years later, when Chiang Kuo-ching (蔣國慶) had just six months to go until the end of his compulsory military service, he was convicted of the rape and murder of a five-year-old girl.

He was executed a year later. A fellow service member, Hsu Jung-chou (許景周), later confessed to the crime, but the state has still not given Chiang justice.

After the Taipei District Prosecutors' Office finished its investigation into the responsibility of the wrongful verdict in the Chiang case, it did not prosecute anyone involved in the case — in particular, those most likely to be responsible, such as former minister of national defense Chen Chao-min (陳昭敏), who was the commander of Air Force Headquarters at the time — saying it could find no hard evidence or that the case had gone beyond the statute of limitations.

It is as if Chiang's death were a natural disaster rather than manmade.

It is indeed difficult to prove that Chiang died as a result of orders issued by Chen. Before 1999, military jurisdiction fell under the commander-in-chief of the armed forces. All indictment documents and verdicts had to be sent to the commander for advance scrutiny, and at the time, Article 87 of the Criminal Code of the Armed Forces stipulated that the death penalty was the only possible punishment for rape.

Military trials were crude processes and there was a lack of procedural guarantees for the accused. In addition, the procedure was swift as a verdict would be finalized on first appeal. Any soldier who was tortured and forced to confess was destined to be sentenced to death. Therefore, to say that Chen bore no responsibility is clearly problematic.

Article 28 of the 1998 Rome Statute states that where there is a specific order from a superior to a subordinate within a hierarchy, and the superior is aware of the inappropriate behavior of subordinates, but does not take preventive measures, or turns a blind eye, then the superior is

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also responsible. This is to prevent those in positions of authority evading legal sanction.

Taiwan is not a signatory to the statute, but based on standard definitions of human rights, a prosecution would have been in accordance with common practice, rather than finding a favorable legal interpretation for these officials.

When Chiang's family for the second time requested a review of the decision not to bring charges against those responsible, then-Taiwan High Prosecutors' Office chief prosecutor and now Supreme Prosecutors' Office Prosecutor-General Yen Ta-ho (顏大和) in 2012 sent the case back for further investigation, but to this day, the Taipei District Prosecutors' Office has done nothing to address the issue.

Because a request by a complainant that the court tries a case requires that a request to review a decision not to bring charges has been denied, that means that by leaving matters hanging in this way, the prosecutors are blocking the public's right to institute legal proceedings.

What is worse is that those involved in the defense ministry's compensation claims for Chen and others repeatedly use the prosecutors' decision not to bring charges against them as a means to legitimize their exemption from paying civil damages. This means that the prosecutors, whose duty it is to prosecute illegal acts, have become a protective umbrella for the offenders in this case.

Justice has not been done, and Chiang is certainly not resting in peace.

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Translated by Clare Lear

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