

Press Release
Ministry of Justice
Republic of China (Taiwan)

August 7, 2013

**Ministry of Justice Addresses
Guang Da Xing No. 28 Shooting Incident Investigation Reports**

- I. Basic facts
 - A. At 9:58:21 on May 9, 2013, Republic of the Philippines patrol vessel MCS-3001 (hereafter “the Philippine vessel”) commanded Taiwan fishing boat Guang Da Xing No. 28 to allow Philippine personnel to board it for inspection at 19 degrees 59 minutes 13.2 seconds north latitude, 122 degrees 54 minutes 50.6 seconds east longitude. The Guang Da Xing No. 28, not wishing to fall under the Philippine vessel’s control, attempted to flee at over 11 knots. Never during this process did the unarmed Guang Da Xing No. 28 or its crew put the Philippine vessel’s crew into imminent threat of death or serious injury. Crew aboard the Philippine vessel, therefore, had no legal right to employ weapons. From the Philippine vessel, it could be seen that the bridge and deck of the Guang Da Xing No. 28 were unmanned. The crew had hidden themselves below decks. Aiming would have been difficult in the heavy seas, indicating that opening fire could clearly result in the injury or death of crew aboard the Guang Da Xing No. 28. Despite this, the Philippine vessel’s commanding officer, Arnold Dela Cruz y Enriquez, gave the order for Philippine Coast Guard personnel to open fire with the .30-caliber machine gun and M14 and M16 rifles on board. The Guang Da Xing No. 28 was under attack for 75 minutes. Of the 108 bullets fired, 45 hit the Guang Da Xing No. 28, resulting in the death of Mr. Hung Shih Cheng.
 - B. Prosecutors attached to the Pingtung District Prosecutors Office have today (August 7) completed their investigation and have ascertained the following from the evidence: Philippine vessel commanding officer Arnold Dela Cruz y Enriquez and seven shooters are liable for killing (referred to as “homicide” in the

official English translation) as defined in Article 271 of the Criminal Code. These eight persons are all accomplices to the homicide, sharing the burden of both criminal intention liaison and the act itself.

- II. According to the investigation report made public today by the Philippine Ministry of Justice, Philippine vessel commanding officer Arnold Dela Cruz y Enriquez and 7 others have been charged under Article 249 of The Revised Penal Code of the Philippines with homicide. Philippine prosecutors are going ahead with an indictment.

- III. According to the Republic of China (ROC) investigation report, eight individuals including commanding officer Arnold Dela Cruz y Enriquez ought to be charged with murder with attendant circumstances as defined in Paragraph 1 of Article 248 of The Revised Penal Code of the Philippines. This Article lists as a criterion “taking advantage of superior strength.” This indicates an intentional excessive use of violence on the part of the aggressor clearly out of proportion to the ability of the party being attacked to defend itself. This does not mean that a party being attacked is unable to defend him or herself, but rather is determined from the relative strength of the aggressor to the attacked. Crew aboard the Philippine vessel then violated Article VII, Item h of the Philippine Coast Guard Rules of Engagement in the Conduct of Maritime Law Enforcement Operations by ordering the firing of a warning shot to force the fishing boat to stop or proceed under its command and should have used other measures to achieve its ends. Moreover, Article VII, Item d of the Rules of Engagement prohibits Coast Guard personnel from using deadly force in carrying out their duties in the absence of the imminent threat of death or serious injury. It goes on to state that the principle of proportionality shall always be observed, and that the level of force employed must be limited so as to avoid the accidental inflicting of casualties on innocent civilians.

On board Philippine patrol vessel MCS-3001 were 20 personnel, one .30-caliber machine gun, and 14 automatic rifles. The small

fishing boat was unarmed. The shooters were aware that Guang Da Xing No. 28 crew members would be taking cover below decks. In violation of the Rules of Engagement—being under no imminent threat of death or serious injury, and having absolute superiority of firepower—MSC-3001 crew members took aim and kept up fire for 75 minutes at the unarmed Guang Da Xing No. 28, as it was attempting to flee at high speed. Some 108 bullets were fired, of which 45 hit the Guang Da Xing No. 28, with entry points all along the hull, resulting in the death of Hung Shih Cheng. Given that the defendants took advantage of superior strength, leveling a charge of murder with attendant circumstances as defined in The Revised Penal Code of the Philippines against the defendants is appropriate.

- IV. A basic comparison of Philippine and ROC law concerning indictment for killing/homicide
 - A. Article 249 of The Revised Penal Code of the Philippines addresses homicide, a crime for which is prescribed a sentence of imprisonment from 12 years and 1 day to 20 years. Article 248 of the Revised Penal Code of the Philippines addresses murder, a crime for which is prescribed a sentence of imprisonment from 20 years and 1 day to 40 years. (The Philippines has abolished the death penalty.)
 - B. Article 271 of the Criminal Code of the Republic of China, which falls under Chapter 22 Offenses of Homicide, states, “A person who takes the life of another shall be sentenced to death or life imprisonment or imprisonment for not less than 10 years.” The Criminal Code does not list a separate statute like Article 248 of The Revised Penal Code of the Philippines dealing with murder (killing with attendant circumstances).
 - C. Comparing the statutory sentences for homicide given in the Criminal Code of the Republic of China and for killing with attendant circumstances in the Philippines’ Revised Penal Code: The minimum sentence mandated by the Philippines is imprisonment for 12 years and 1 day, longer than the minimum of imprisonment for 10 years mandated by the Republic of China in Paragraph 1 of Article 271 of the aforementioned Criminal Code. As the Philippines has abolished the death penalty, its maximum sentence for murder is less severe than

that of the Republic of China.

- D. Republic of China statistics covering the past 10 years (2003 through 2012) for cases involving intentional killings (as defined in Paragraph 1 of Article 271 of the Criminal Code) where the final verdict has been issued show that of 1,929 persons convicted, 15.6 percent were sentenced to death or life in prison, while 84.4 percent were sentenced to imprisonment for 20 years or less. A total of 46.5 percent were sentenced to imprisonment for 12 years or less. Of those convicted of intentional killing, the sentence for 46.5 percent is less than the minimum Philippine statutory sentence (of 12 years and one day) for homicide (as defined in Article 249 of the Revised Penal Code), and 84.4 percent had sentences shorter than the maximum Philippine statutory sentence for homicide of 20 years.
- V. The Republic of China is a democracy that is a staunch defender of the rule of law and a strong supporter of an independent judiciary. The results of the Philippine investigation into this incident, and the Philippine indictment, are largely in accord with the results of the ROC investigation. With due respect to the Philippine judicial process, the ROC calls on the Philippines' judicial bodies to prosecute and sentence the accused in this case to the full extent of the law, based on the facts and evidence presented in this report, thus seeing justice done.