



Taiwan

Foreign Nationals and the Death Penalty

Death Penalty Overview

According to Amnesty International, by the end of 2021 there were 45 people on death row in Taiwan. After a one-year hiatus from executions, Taiwan executed one Taiwanese national in 2020. Five death sentences were handed down in 2020 and a further two in 2021, all to Taiwanese nationals.

Since Taiwan's transition towards democracy in the 1980s, Taiwan has made efforts to reform its criminal justice system, including capital punishment. Taiwan took a notable step toward this end in 2009, when it ratified the International Covenant on Civil and Political Rights (ICCPR), a key international instrument setting forth human rights standards and restrictions on the use of the death penalty. The ICCPR outlines safeguards designed to protect the right to life and states that members should work towards the

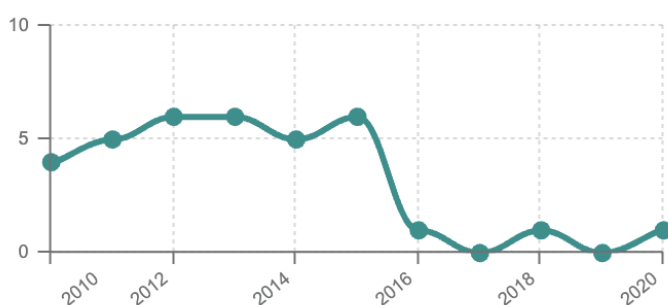
goal of eventually abolishing the death penalty. Taiwan implemented the ICCPR through domestic law in 2010, rendering it binding on its government and judiciary. However, notwithstanding a formal commitment to the ICCPR and its principles, in 2010 Taiwan lifted a moratorium on executions and has since carried out at least 35 executions.

There are more than 50 crimes which attract the death penalty in Taiwan. These are outlined in the Criminal Code and other statutes and can be generally categorised into three groups. Firstly, aggravated crimes resulting in death, such as murder, for which the death penalty or life imprisonment is mandatory.

Secondly, severe crimes, not including intentional murder, for which the death penalty is a discretionary. And thirdly, crimes not resulting in death, such as robbery and hijacking, where the death penalty is also discretionary.

All those executed in the last 10 years were convicted of murder with aggravating elements or other crimes resulting in death.

Number of Executions in the Past 10 Years



Death row prisoners in Taiwan have very restricted visitation and correspondence rights. Executions are shrouded in secrecy – families are usually not informed in advance about executions, only learning of the execution afterwards, when they are invited to collect the body. Under measures designed to make executions ‘more humane’ passed in 2020, death row prisoners are now permitted to hold final religious rituals and leave messages – by voice or video – for family members. Taiwan permits execution by shooting or lethal injection, though in practice only death by shooting is used.

Taiwan has also sentenced to death a number of people to death who would be classified as mentally ill or intellectually disabled – in violation of the ICCPR. While the government denies that executions are carried out on the mentally ill, death sentences continue to be handed down to such individuals, including foreign nationals.

Furthermore, many capital defendants whose sentences were finalised by Taiwan’s Supreme Court had no legal representation when their cases were heard before the highest tribunal. Though against human rights law standards, Taiwan’s Criminal Code (Article 388) permits third instance trials to take place without counsel and a 2014 Death Penalty Project report identified numerous such cases in the past two decades.

Activists and policy makers have deplored these cases as considerable breaches of due process protections and fundamental human rights and calls into question the accuracy and fairness of capital convictions.

"Interpret[ation] is a resource that Taiwan is significantly deficient in"

- Chi-Fang Li, Capital Defence Lawyer in Taiwan

Foreign Nationals

At the end of 2021, there was one foreign national on death row and three foreign nationals whose pending cases were at risk of receiving the death penalty. In each case the charges involved murder.

Our research has revealed that foreign and dual nationals face distinctive disadvantages when charged with death penalty-eligible offences in Taiwan. For example, there have been several instances of inadequate translation services both pre-trial, during trial, and during the appeals process for foreign and dual nationals who did not speak Mandarin.

Interpretation services are crucial because without adequate and accurate translation a foreign defendant may be unable to understand their legal position, Taiwan's legal system, or put forward their defence. In recent years, a number of Taiwanese death penalty defence lawyers have argued that poor translation services violated their client's due process and fair trial rights.

Case Study 2008 - Cecilia Alcaraz



Cecilia traveled to Taiwan in 2005 at 43 years old, seeking better job opportunities than those available in her home country, the Philippines. She first

worked as a domestic worker and once her contract expired, continued to work illegally in Taiwan as an English tutor.

In 2007, Cecilia was charged with robbing and murdering her employer, a Taiwanese national and was sentenced to death in September 2008.

She was represented by The Taiwan Alliance to End the Death Penalty, who emphasised that translation was an issue throughout the case. The court provided an interpreter for the hearings and trial, but the interpreter translated only into English and not into Cecilia's native language. Though Cecilia understood English at an intermediate level, she was unable to understand the complex legal terms used throughout the proceedings. As a result, Cecilia did not have full comprehension of the legal proceedings or her legal situation. Cecilia's lawyers argued on appeal that the inadequacies in translation amounted to a fair trial violation.

In 2008, owing both to political pressure and advocacy by Filipino and Taiwanese organisations, the President of Taiwan commuted Cecilia's sentence to life imprisonment. Cecilia remains in prison in Taiwan.

Li Guo-hui



Li Guo-hui, a 52-year-old man from Myanmar, came to Taiwan in 2004 where he lived in a Burmese community where Mandarin was not spoken. Li is unable to communicate in Mandarin at all, beyond basic phrases.

Li suffers from mental illness and auditory hallucinations ("voices"), which he claims compelled him to commit the crime; setting fire to a residential building in 2017. Nine people died in the blaze.

Li was not provided with a translator during the investigation phase. As a result, Li signed the record of interrogation without full understanding its contents. Inculpatory statements stemming from this were used against him in court and Li was sentenced to death.

Li's lawyer argued that pre-trial issues, particularly the failure to provide Li with a translator, deprived Li of his fundamental rights to fair trial and due process. He stated that Li's case was tragically emblematic of the procedural disadvantages that foreign national defendants often face in Taiwan's criminal justice system.

Acknowledgements

With special thanks to the following organisations and individuals who lent their considerable assistance and expertise towards this research on Taiwan: The Taiwan Alliance to End the Death Penalty, Lin Hsin-yi, Chi-Fang Li and Caroline Vorce.