THE DEATH PENALTY
IN LAW AND IN PRACTICE

TAIWAN

AREA
36 193 km²

CAPITAL
Taipei

POPULATION
23,301,968 (Jan. 2023, State statistics)

OFFICIAL LANGUAGE
Mandarin

N.B: the sovereignty of the Republic of China is not recognized by the United Nations

HEAD OF STATE
Since 20 May 2016, President Tsai Ing-wen is the head of state of the Republic of China (ROC), also referred to as the president of Taiwan.

HEAD OF GOVERNMENT
On 31 January 2023, Chen Chien-jen was appointed Premier of the Republic of China, officially President of the Executive Yuan.

MINISTER OF FOREIGN AFFAIRS
M. Jaushieh Joseph Wu

MINISTER OF JUSTICE
M. Tsai Ching-hsiang

MINISTRY IN CHARGE OF THE PENITENTIARY ADMINISTRATION
Ministry of Justice
DEATH PENALTY APPLICATION AND CONDITIONS OF DETENTION OF DEATH ROW PRISONERS

The application of the death penalty in Taiwan raises human rights concern, as it is not restricted to the most serious crimes, in spite of international norms and treaties incorporated in the Taiwanese law: the death penalty can be imposed for over 30 different crimes. According to the Taiwan Alliance to End the Death Penalty (TAEDP), there are no safeguards preventing the execution of mentally disabled people either. In their 2019 study, For or against the death penalty: Evidence from Taiwan, The Death Penalty Project (DPP) uncovered occurrences of ill-treatment and torture in the process of obtaining confessions from the accused confirming that the procedure preceding convictions, as well as executions, violates international human rights norms. There is no rule regulating the time a prisoner spends on death row before being executed, and “no information available on the criteria for selecting prisoners for executions”\(^1\). In addition, there is no warning before the carrying of the executions, and the family and lawyers are not legally required to be informed prior to the execution of the sentence. Guarantees of fair trial and access to an effective defence are questionable, as at least one sixth of the convictions that resulted in a death penalty between 2006 and 2015 were “unsafe” (included high risk of errors in expert evidence, testimonies, and preservation of the evidence...)\(^2\). According to Taiwan’s Code of Criminal Procedure, defendants in capital punishment cases have the right to compulsory defense. However, since the judges at the Supreme Court proceed to De Jure trials only, where they examine whether judgments violate the law and cannot determine anything with regards to the facts, defendants and attorneys are not required to attend hearings at the Supreme Court. This resulted in a lack of legal representation for the defendants. In 2012, the practice changed and the Supreme Court now inquires whether the defendant wishes to appear in court.

CONDITIONS ON DEATH ROW

The conditions on death row do not appear to meet international standards, as prisoners share a 4.5 metre square room for two, and are allowed less than 30 minutes of outdoor exercise time per day.

PARDON

As provided by article 40 of the Constitution, “the President shall, in accordance with law, exercise the power of granting amnesties, pardons, remission of sentences and restitution of civil rights”. In practice, the death row prisoners’ right to pardon is not effectively exercised, as reported by Amnesty International (2021); many of the prisoners executed during the last years had sent requests for pardon but received no reply.

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1 The Death Penalty Project & Taiwan Alliance to End the Death Penalty (2019). “For or against the death penalty: Evidence from Taiwan”, Ed. DPP, London.
2 Ibid.
THE DEATH PENALTY IN LAW AND IN PRACTICE

NUMBER OF DEATH SENTENCES OVER THE LAST 10 YEARS

1 Figures provided by TAEDP.

NUMBER OF EXECUTIONS OVER THE LAST 10 YEARS

1 Figures provided by TAEDP.

2 Ibid.

THE NATIONAL LEGAL FRAMEWORK

CRIMINAL CODE OF THE REPUBLIC OF CHINA

Part 1 - General Provisions / Chapter 5 - Punishment:

Article 33 Principal punishments are of the following kinds:
1. Death (penalty)
2. Life imprisonment
3. Imprisonment of more than two months and less than fifteen years. If punishment is reduced or increased, such period may be reduced to less than two months or increased to twenty years.
4. Shortterm imprisonment of more than one day but less than 60 days. If the punishment is increased, the period may be increased to one hundred and twenty days.
5. Fine of more than one thousand NTD counted by the hundred yuan.

Chapter 8 - Sentencing

Article 63 A death penalty or life imprisonment shall not be imposed on an offender who is under the age of eighteen or over the age of eighty. If the punishment prescribed for the offense is death or imprisonment for like, the punishment shall be reduced.

Article 64 A death penalty shall not be increased. If a death penalty is reduced, the punishment shall be life imprisonment.

Part 2 - Specific Offenses / Chapter 1 - Civil Disturbance

Article 101 Any person with force committing an offense specified in paragraph 1 of the preceding article shall be sentenced to life imprisonment or imprisonment not less than seven years; a ringleader shall be sentenced to death or life imprisonment. Any person preparing or conspiring to commit an offense specified in the preceding paragraph shall be sentenced to imprisonment of not less than one year but not more than seven years.

Chapter 2 - Treason

Article 103 Any person colluding with a foreign state or its agent with intent that such state or other state start war against the Republic of China shall be sentenced to death or life imprisonment. An attempt to commit an offense specified in the preceding paragraph is punishable. Any person preparing or conspiring to commit an offense specified in paragraph 1 shall be sentenced to imprisonment not less than three years but not more than ten years.

Article 104 Any person colluding with a foreign state or its agent with intent to subject territory of the Republic of China to such state or other state shall be sentenced to death or life imprisonment.
Any person preparing or conspiring to commit an offense specified in the preceding paragraph is punishable. Any person preparing or conspiring to commit an offense specified in paragraph 1 shall be sentenced to imprisonment not less than three years but not more than ten years.

Article 107
Any person committing an offense specified in paragraph 1 of the preceding article under one of the following circumstances shall be sentenced to death or life imprisonment.
1. Surrendering armed forces to an enemy or surrendering, destroying, damaging, or rendering useless the following strategic point, naval base, military post, military vessel or aircraft, or another military place or structure, arms, ammunition, money, provisions or other war materials for the use of the military of the Republic of China; bridge, railway, vehicle, electric wire, electric machine, telegraph station, or another thing used for transportation.
2. Recruiting for an enemy or inducing a person in the armed services to surrender to the enemy.
3. Inciting a person in the armed services to neglect his duty, desert, mutiny, or commit a breach of discipline.
4. Disclosing or delivering to the enemy a document, plan, information, or another thing of secret nature concerning a strategic point, naval base, military post, military vessel or aircraft, or another military place or structure;
5. Committing an act of espionage for an enemy or rendering aid to an enemy spy.

Article 105
Any citizen of the Republic of China serving in the armed forces of an enemy or joining the enemy’s fight with arms against the Republic of China or against an ally of the Republic of China shall be sentenced to death or life imprisonment. An attempt to commit an offense specified in the preceding paragraph is punishable. Any person preparing or conspiring to commit an offense specified in paragraph 1 shall be sentenced to imprisonment not less than three years but not more than ten years.

Chapter 11 - Offenses Against Public Safety

Article 185-1
A person who hijacks, through the employment of violence, threats or other illegal means, an aircraft in use or controls its flight shall be sentenced to death, life imprisonment, or imprisonment for not less than seven years. If the offense is light, he shall be sentenced to imprisonment for not more than seven years. If an offense results in death, the offender shall be sentenced to death, life imprisonment, or imprisonment for not less than ten years. [...]
Article 334
A person who commits piracy and intentionally kills another shall be sentenced to death or life imprisonment. A person who commits piracy and takes the opportunity to commit one of the following acts shall be sentenced to death, life imprisonment, or imprisonment for not less than ten years:
1. Arson
2. Forcing the victim to commit sexual intercourse
3. Kidnapping for ransom
4. Causing aggravated injury to another

Chapter 33 - Offenses of Extortion and Kidnapping for Ransom

Article 347
A person who kidnaps another for purpose to extort ransom shall be sentenced to life imprisonment or imprisonment for not less than seven years. If death results from the commission of the offense, the offender shall be sentenced to death or life imprisonment or imprisonment for not less than twelve years; if aggravated injury results from the offense, the offender shall be sentenced to life imprisonment, or imprisonment for not less than ten years. An attempt to commit an offense specified in paragraph 1 is punishable. A person who prepares to commit an offense specified in paragraph 1 shall be sentenced to imprisonment for not more than two years. A person who commits an offense specified in paragraph 1 and who releases the victim before payment of ransom have his punishment reduced; who releases the victim after payment of ransom may have his punishment reduced.

Article 348
A person who commits an offense specified in paragraph 1 of the preceding article and intentionally kills his victim shall be sentenced to death or life imprisonment.
A person who commits an offense specified in paragraph 1 of the preceding article and who has one of the following circumstances shall be sentenced to death or life imprisonment or imprisonment for not less than twelve years:
1. Forcing the victim to commit sexual intercourse
2. Resulting in aggravated injury

(CHEINESE) CODE OF CRIMINAL PROCEDURE
Part III - Appeals / Chapter 1 - General Provisions

Article 344
A party who disagrees with the judgment of a lower court may appeal to the appellate court.
sentence, life imprisonment or imprisonment of more than two years is likely to
abscend, he/she may be arrested with a warrant.
The prosecutor may arrest the sentenced person as described in the first part
of the preceding paragraph pursuant to Subparagraph 1 and Subparagraph 2
of Article 76 with a warrant without notice and put him/her on a wanted list
pursuant to Article 84.

CRIMINAL CODE OF THE ARMED FORCES:
Part Two - Special Provisions /
Chapter 1 - Offences against the allegiance to the nation

Article 14 A person who commits an overt act with intent to destroy the organization
of the State, seize State territory, change the Constitution, or overthrow the
Government by strongarm means or threatening with force shall be punished
with imprisonment for not less than ten years; an ringleader shall be punished
with imprisonment for not less than ten years, death or imprisonment for life.
A person who prepares to commit an offence specified in the preceding para-
graph shall be sentenced to imprisonment for not less than one year and not
more than seven years.

Article 15 A person who conspire to commit with violence an offence specified in the pre-
ceding paragraph shall be sentenced to imprisonment for not less than seven
years or for life, a ringleader shall be sentenced to death or imprisonment for life.
A person who prepares or conspires to commit an offence specified in the pre-
ceding paragraph shall be sentenced to imprisonment for not less than three
years and not more than ten years.

Article 17 A person who commits an offence specified in one of the following circum-
stances shall be punished with death or imprisonment for life:
1. Destroying, or damaging the military facilities and materials for military use
in an enemy in paragraph I of Article 58 or paragraph I of Article 59;
2. Obstructing the way in the land and water, or destroying, damaging the bridge,
beacon, signs or other things to interfere the military traffic;
3. The commander leads the troops not to go to the assigned defensive place or
causes the troops to have unauthorized departure from the arranged deployment;
4. Dispersing the troops or tempting the troops to disorder so that interference
the communication and gathering;
5. An act of causing the lack of arms, ammunition, food, coverlets and clothes
and other important materials for military use;
6. Committing an offence specified in paragraph I or paragraph IV of Article 16.
An attempt to commit an offence specified in the preceding paragraph is punishable.
A person who prepares or conspires to commit an offence specified in paragraph
I shall be sentenced to imprisonment for not less than six months and not
more than five years; if the offence committed specified in the three preceding
paragraphs was slight, the punishment may be reduced.

Article 18 A person who profit an enemy intentionally, and committed an offence
specified in one of the following circumstances shall be punished with death
or imprisonment for life:

1. Destroying, or damaging the military facilities or materials for military use
in an enemy in paragraph I of Article 58 or paragraph I of Article 59;
2. Obstructing the way in the land and water, or destroying, damaging the bridge,
beacon, signs or other things to interfere the military traffic;
3. The commander leads the troops not to go to the assigned defensive place or
causes the troops to have unauthorized departure from the arranged deployment;
4. Dispersing the troops or tempting the troops to disorder so that interference
the communication and gathering;
5. An act of causing the lack of arms, ammunition, food, coverlets and clothes
and other important materials for military use;
6. Committing an offence specified in paragraph I or paragraph IV of Article 16.
An attempt to commit an offence specified in the preceding paragraph is punishable.
A person who prepares or conspires to commit an offence specified in paragraph
I shall be sentenced to imprisonment for not less than six months and not
more than five years; if the offence committed specified in the three preceding
paragraphs was slight, the punishment may be reduced.
An attempt to commit an offence specified in the two preceding paragraphs is punishable.
A person who commits the offence premeditatedly in the preceding paragraph shall be punished with imprisonment for not less than six months and not more than five years.

**Chapter II - Offences against the military duty or service**

**Article 26**
A commander that starts wars without cause will be punished with death, imprisonment for life or imprisonment for not less than ten years.

**Article 27**
Any person who disobeys any operations order before or in the presence of the enemy shall be punished by death or imprisonment for life.
An attempt to commit the offense specified in the preceding paragraph is punishable.

**Article 31**
A person who discards a document, plan, information, electromagnetic record, or other things shall be punished with imprisonment for not more than three years, detention, or a fine of not more than 300,000 yuan. A person who discards the materials in the preceding paragraph to an enemy shall be punished with imprisonment for not more than seven years.
A person who commits the offences in the two preceding paragraphs unpremeditatedly and causes injury to the military interests shall be punished with imprisonment for not more than two years, detention, or a fine of not more than 200,000 yuan.
A person who commits the offence in the preceding paragraph in wartime shall be punished with imprisonment for life or imprisonment for not less than seven years; if the offence caused injury to military interest shall be punished with imprisonment for life or imprisonment for not less than ten years; a person who commits the offence in the third paragraph shall be punished with imprisonment for not less than one year and not more than seven years.

**Article 41**
A person who takes out military armaments, ammunition or other materials and leaves the position in service without reasons or does not assume service shall be punished with imprisonment for not less than seven years. If the person who commits the offences in the preceding paragraph in wartime is sentenced to death, imprisonment for life or imprisonment for not less than ten years.
A person who commits the offences in the preceding paragraph unpremeditatedly and causes injury to the military interests shall be punished with imprisonment for not more than three years, detention, or a fine of not more than 300,000 yuan. A person who discards the materials in the preceding paragraph to an enemy shall be punished with imprisonment for not more than seven years.

**Chapter III - Offences against the military duty of officer**

**Article 42**
A commander who leaves the subordinate, leaves the assigned defensive place or move the post without authorization shall be punished with imprisonment for not less than one year and not more than seven years. If the above-mentioned offence committed in wartime shall be punished with imprisonment for life or imprisonment for not less than seven years.
If the above-mentioned offence committed in wartime shall be punished with imprisonment for life or imprisonment for not less than seven years.
If the above-mentioned offence committed in wartime shall be punished with imprisonment for life.

**Chapter IV: Offences against the military duty of subordinate**

**Article 43**
A commander who deserts the injured subordinate without reasons shall be punished with imprisonment for not less than one year and not more than seven years.
If the death of a soldier results from the commitment of the offence, the commander shall be punished with imprisonment for life or imprisonment for not less than seven years; if the soldier is seriously harmed, the commander shall be punished with imprisonment for not less than three years and not more than ten years.

**Article 47**
A person who disobeys the military orders of which transmitted or announced from higher authorities or within the commander’s powers shall be punished imprisonment for not more than five years.
A person who commits the offences in wartime shall be punished with death or the imprisonment for life.
A person who commits the offence unpremeditatedly and causes the injury to the military interest shall be punished with imprisonment for not less than five years and not more than twelve years.
If the offender voluntarily and timely executes the duty that needn't be executed immediately when the offence of the first paragraph was committed may have the punishment reduced or remitted.

**Article 48**
A person who participates in an open assembly with offence of the first paragraph shall be punished with imprisonment for not less than three years and not more than ten years; the ringleader shall be punished with imprisonment for not less than three years and not more than ten years.
If the offence in the preceding paragraph committed in wartime shall be punished with death, imprisonment for life or imprisonment for not less than ten years; the ringleader shall be punished with death or imprisonment for life.

**Article 49**
A person who uses violence, threat to a commander or puts the commander in fear shall be punished with imprisonment for not less than one year and not more than seven years.
A person who commits the offence of the preceding paragraph in wartime shall be punished with death, imprisonment for life or imprisonment for not less than ten years.
A person who commits the offence in the first paragraph to the senior officer shall be punished with imprisonment for not more than three year, detention, or a fine of not more than 300,000 yuan. If the offence committed in wartime shall be punished with imprisonment for life or imprisonment for not less than seven years.
An attempt to commit an offence specified in the first paragraph is punishable.

**Article 50**
A person who participates in an open assembly and commits the offence of the preceding paragraph shall be punished with imprisonment for not less than ten years and not more than seven years; the ringleader shall be punished with imprisonment for not less than seven years; a person who actually commits shall be punished with imprisonment for not less than five years.
A person who is involved and commits the offence of the preceding paragraph in wartime shall be punished with death, imprisonment for life; the ringleader shall be punished with death, imprisonment for not less than seven years; a person who actually commits shall be punished with death, imprisonment for life or imprisonment for not less than ten years. An attempt to commit an offence specified in the two preceding paragraphs is punishable.

Chapter V: Other military offences

Article 53 A person who by violence, treats or other ways kidnaps military vessel, aircraft or controls its navigation shall be punished with death, imprisonment for life or imprisonment for not less than ten years. An attempt to commit an offence specified in the preceding paragraphs is punishable. A person who prepares to commit an offence specified in paragraph I shall be punished with imprisonment for not less than six months and not more than five years.

Article 58 A person who destroys military airport, harbor, tunnel, blockhouse, strategic point, military vessel, aircraft, vehicle, arms, ammunition, radar, signal communication, information facilitates and equipments, or other important military facilitates and materials for war, or otherwise making the military facilities useless and material for military use shall be punished with imprisonment for life or imprisonment for not less than seven years. A person who commits the offence negligently shall be punished with imprisonment for not more than three years, detention, or a fine of not more than 300,000 yuan. A person who commits an offence specified in paragraph I in wartime shall be punished with death or imprisonment for life; a person who commits paragraph II may have the punishment increased up to one half. An attempt to commit an offence specified in the paragraph I and III is punishable. A person who prepares to commit an offence specified in paragraph I shall be punished with imprisonment for not more than three years, detention, or a fine of not more than 300,000 yuan. If the offence of the four paragraphs is committed the punishment may be reduced.

Article 65 A person who manufactures, sales or transports military arms or ammunition without authorization shall be punished with death, imprisonment for life or imprisonment for not less than ten years. A person who commits the offence of the preceding paragraph with intent to facilitate himself or others to commit a crime shall be punished with death or imprisonment for life. A person who manufactures, sales or transports the main components of military arms or ammunition without authorization shall be punished with imprisonment for life or imprisonment for not less than seven years. An attempt to commit an offence specified in the three preceding paragraphs is punishable.

THE INTERNATIONAL LEGAL FRAMEWORK

THE MAIN INTERNATIONAL INSTRUMENTS AIMING AT ABOLISHING THE DEATH PENALTY

<table>
<thead>
<tr>
<th>TREATY</th>
<th>RATIFICATION OR ACCESSION DATE</th>
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<tbody>
<tr>
<td>International Covenant on Civil and Political Rights, 1966</td>
<td>N/A Incorporated into national law on 31 March 2009</td>
</tr>
<tr>
<td>Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, 1989</td>
<td>N/A</td>
</tr>
<tr>
<td>Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984</td>
<td>N/A</td>
</tr>
<tr>
<td>Optional Protocol of the Convention against Torture, 2002</td>
<td>N/A</td>
</tr>
<tr>
<td>Convention on the Rights of the Child, 1989</td>
<td>N/A Incorporated into national law on 20 November 2014</td>
</tr>
</tbody>
</table>
**Second Optional Protocol to the International Covenant on Civil and Political Rights**, is implemented. States or territories where the death penalty and/or having ratified OP2*. The death penalty is abolished unless there are exceptional circumstances. States or territories where the death penalty is abolished.

Palestine is a particular case: it cannot vote the moratorium resolution, has ratified OP2, but the death penalty is still applied in Gaza (last documented executions in 2022).

Abolitionist States for all crimes
- States or territories where the death penalty is abolished.

Abolitionist State for ordinary crimes
- States or territories where the death penalty is abolished unless there are exceptional circumstances.

States with a moratorium on executions
- States or territories where the death penalty is implemented but no executions have been carried out for at least 10 years and which did not oppose the latest UN resolution for a universal moratorium on executions and/or having ratified OP2*.

Retentionist States
- States or territories where the death penalty is implemented.

* Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
* Palestine is a particular case: it cannot vote the moratorium resolution, has ratified OP2, but the death penalty is still applied in Gaza (last documented executions in 2022).