

# The Death Penalty in Taiwan and Mainland China: Should It Be Abolished?

TSAI TUN-MING\*†

## INTRODUCTION

In a retributive system of justice, only individuals who have killed others can justifiably be sentenced to death. Yet under both ancient Chinese law and modern Chinese criminal law, capital punishment is not limited to crimes involving the killing of another. Besides murder, the death penalty may be imposed for crimes such as robbery, piracy, extortion and "internal disruption." There has also been a trend toward expanding the use of the death penalty. Certain political crimes, for example, are punishable by death on both sides of the Taiwan Strait. The governments of the People's Republic of China (PRC) and the Republic of China (ROC) use the death penalty as a weapon of fear to suppress political opposition.

This comment examines capital punishment in both the ROC and the PRC. It also argues that the death penalty should be abolished for political crimes.

## I. DEATH PENALTY LAWS IN THE REPUBLIC OF CHINA

The ROC Criminal Code, originally implemented in 1935, makes a number of crimes punishable by death. For some crimes, such as rape, murder, and piracy, the death penalty is mandatory unless mitigating factors can be shown. For other crimes, such as robbery, murder of a blood relative, instigation of civil strife, conspiracy to start a war, and treason, imposition of the death penalty remains completely at the court's discretion even if no mitigating factors are shown. In addition, the death penalty cannot generally be used against individuals under 18 years of age or over 63 years of age.

The Criminal Code provides for several procedural safeguards. First, upon notification that a death sentence has been issued, the

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\* Professor of Law, National Taiwan University.

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Attorney General must promptly review the entire trial record. If the Attorney General finds that a retrial is required, he may order the Ministry of Justice to reexamine the case. Second, if the person sentenced to death is found to be mentally unstable, the Ministry of Justice may grant a stay of the execution pending further investigation. Should the person recover from the mental disorder, the Ministry may waive the death sentence at its discretion. If an execution takes place and it is later discovered that the person did not commit a crime punishable by death, the person's legal heirs are eligible for compensation of up to 2 million yuan.

## II. DEATH PENALTY LAWS IN THE PEOPLE'S REPUBLIC OF CHINA

Under present PRC law, the death penalty may be imposed for murder as well as a number of crimes which do not involve the killing of another. Among these are "counter-revolutionary" crimes, crimes that endanger public safety, crimes involving the destruction of transportation, mining, or electric transmission equipment, and serious acts of official corruption. In contrast to the law of the ROC, however, the law of the PRC does not mandate the death penalty for any criminal offenses. Imposition of a death sentence is always left to the sentencing court's discretion.

Under PRC law, the death penalty is to be reserved for only the most repulsive and unrepentant offenders. As a result, courts have the option of issuing a "suspended" death sentence whereby an execution is delayed for up to two years pending efforts to reform the offender. Courts may reduce a death sentence to life imprisonment where the offender is deemed to have shown remorse or regret during the suspension period. Where an offender is found to display "public spiritedness," the sentence may be reduced to a fixed prison term of 15 to 20 years.

As under ROC law, young offenders are given special consideration and cannot be executed if younger than 18 years of age. If a crime is particularly serious, however, an offender who is older than 16 but not yet 18 may be given a two-year suspended death sentence. Those who are older than 14 but under 18 are to be given reduced sentences.

Criminal procedure laws of the PRC mandate that all death sentences be submitted to the Supreme People's Court for review and approval and that every order for an actual execution be signed by its president. If the Supreme People's Court disagrees with the issuance of a death sentence, it may retry the case or remand the case for a new

trial. In practice, the review process operates quickly, leading to immediate executions in many cases. This appears to be especially true—as was seen following the Tiananmen Square incident—in those cases involving “counter-revolutionary” activities.

### III. SHOULD THE DEATH PENALTY BE ABANDONED?

Historically, nearly every nation has used the death penalty as a means of punishing serious crimes. In more recent times, some countries have abolished capital punishment while others have discontinued use of the death penalty without formally abolishing it. Still other countries have reserved the right to impose the death penalty in times of national emergency. In general, however, a majority of countries still maintain some form of the death penalty.

The differing stand taken by countries toward capital punishment reflects the general debate as to whether the death penalty should be abolished. Proponents of the death penalty speak from the perspective of retribution. They argue that offenders must repay the victim as well as society and that others contemplating similar crimes must be deterred. Those who oppose the death penalty argue that the law should be humanitarian and educate society about criminal acts and the government’s crime policy. Each view is reasonable to a certain extent, making the decision to maintain or abolish the death penalty a difficult one.

In determining whether Taiwan should keep the death penalty, we cannot overlook our country’s current situation. To do otherwise would be to place the discussion in a false context. From the perspective of present day ROC society, rashly abolishing the death penalty could lead to regrettable consequences. For one thing, it could encourage persons to commit violent crimes. Therefore, the death penalty should be kept for those who commit murder. For crimes not involving the killing of another, however, imposition of the death penalty should be limited. By reducing the number of crimes punishable by the death penalty, this punishment, whereby an individual is deprived of his life, will eventually be eliminated from our country’s criminal law. I believe such a day is not unimaginable.

As for the PRC, although abolition of capital punishment has been discussed, it remains a part of the government’s legal regime. Several justifications are often put forward. First, according to Marxist-Leninist doctrine, there is a need for class struggle and using the death penalty is a legitimate means to eliminate class enemies of the people. Second, it is believed that the threat of severe punishment is needed to deter the country’s hard-core criminal element from com-

mitting violent acts. Because such individuals cannot otherwise be reformed, only the most extreme punishment will deter them. Third, the death penalty is viewed as a temporary measure which will only be required until the class struggle is complete. At that time, the conditions which made the death penalty necessary will have been eliminated.

#### IV. USE OF THE DEATH PENALTY IN PRACTICE

The ROC's highest court pronounced death sentences for a total of 23 people during 1987 and 1988. By the middle of 1989, the court had already sentenced 32 people to death, a three-fold increase from the previous years. Because the number of death sentences increased so rapidly, it attracted the attention of various international human rights organizations. In response to protests from these organizations, the court explained that those sentenced to death had committed serious crimes such as murder, rape and murder, or armed robbery and murder. The court argued that those sentenced to death were all of an evil nature and that if they were not sentenced to death, public safety could not be guaranteed. In sum, while the court admitted there had been an unusually large number of death sentences handed down, it emphasized that the decisions had not been made without reason.

Although the death penalty appears justified in many cases, the question remains as to whether there are alternatives to using it. After all, serious crime is not unique to the ROC and no society has managed to avoid the incidence of armed robbery, rape, and murder. At the same time, of course, individuals convicted of serious crimes are to some degree unreformable. Still, in those countries that have kept the death penalty but have refrained from using it, these same criminals do receive punishment and are otherwise separated from society. Clearly, such individuals do not necessarily need to be sentenced to death.

It should be noted that the PRC has also expanded the use of capital punishment, in part due to legislative efforts by the National People's Congress (NPC). In 1981, the NPC enlarged the scope of the death penalty to cover fugitives and repeat offenders who have already undergone hard labor or other reform programs. In 1982, the NPC made certain economic crimes punishable by death. In 1983, the NPC expanded the death penalty to cover persons convicted of seriously endangering public safety. Not surprisingly, the number of death sentences imposed in the PRC increased following implementation of these laws.

The best example of the expanded use of capital punishment in the PRC was the aftermath of the Tiananmen Square incident. Following the crackdown, there were reports of wholesale arrests of citizens and scholars who had participated in the movement. A number of those arrested were quickly tried and sentenced to death and some were summarily executed. Although it remains uncertain as to how many citizens were arrested and ultimately executed, the figures cannot be small.

## V. ELIMINATING THE DEATH PENALTY FOR POLITICAL CRIMES

Even with many details of the Tiananmen Square crackdown still unknown, it seems clear that the authorities did not follow decreed PRC legal procedures in punishing persons involved. According to PRC law, the power to indict, try and sentence persons to death remains with the Judiciary. Yet as was seen, the Judiciary complied fully with the orders of government leaders to try and execute certain individuals. If government leaders have such power over judicial authorities, we may say the government can use the Judiciary to murder the people. Moreover, the crime these individuals committed was merely to demand that the Communist government provide greater openness and democracy. It is perhaps not surprising that the Chinese leaders refused to tolerate the demonstrators' demands. That the judicial authorities expressed an identical viewpoint, however, shows that they cannot operate independently from the government and that they are mere instruments of one-party rule.

While many countries have not yet abolished capital punishment, most have constitutional provisions that prohibit the death penalty from being used to punish political crimes. The constitutions of the ROC and the PRC lack such prohibitions. More troubling, the governments on both sides of the Taiwan Strait deny that they even punish political crimes. Despite such claims, the crime the ROC Criminal Code defines as "creating internal disorder" and that which PRC criminal law defines as "engaging in counter-revolutionary activities" are in reality political crimes. Under the ROC's law against internal disorder, an individual may be punished for mere intent to commit an illegal act. Under PRC law, engaging in counter-revolutionary activities includes merely denying that the government's power comes from the proletariat. Such laws lack the most common constitutional requisites and must be revised or abolished.

## CONCLUSION

The governments on both sides of the Taiwan Strait need to insti-

tute democratic reforms. Such reforms often begin only after the citizens themselves initiate action. Yet until the demands raised appear to be those of a clear majority, individuals who speak out remain easy targets for persecution. This was seen following the Tiananmen Square incident.

A death sentence, once carried out, can never be rescinded. Therefore, the death penalty should be imposed with the utmost caution and in no case to punish political crimes. As long as the governments on the two sides of the Taiwan Strait punish political crimes with the death penalty, their citizens are denied basic rights such as freedom of speech and a free press. Because both governments remain unwilling to completely abolish the death penalty, they should at a minimum limit its use to non-political crimes.