

# Why the State Stops to Kill: The Death Penalty and the Rule of Law in Taiwan

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## Introduction

To execute, or not to execute: that is the question. In countries which still have capital punishment, execution of death row inmates is not only a legal issue, but also a political decision governments must grapple with.<sup>1</sup> Due to this double—legal and political—identity, we cannot understand the complexity of the death penalty completely and correctly, if the political aspect of execution decision-making remains unexamined. On the other hand, suspension, as opposed to abolition, of capital punishment and reductions in the number of executions are often considered to be crucial steps of judicial reform.<sup>2</sup> Judicial reform is often associated with political climate.<sup>3</sup> Therefore, exploring the application of the death penalty, and changes in the number of executions from the perspective of politics provides useful clues for understanding the course of judicial reform.

As a country grappling with the death penalty and executions for 70 years, Taiwan provides important source material and examples for analyzing how political dynamics can profoundly influence judicial reform.<sup>4</sup> The volume of executions in Taiwan has shifted in four distinct stages, each of which reflects how the political climate drives criminal procedure reform. Taiwan had embraced the death penalty before the 1980s, when there were more than 50 executions performed annually.<sup>5</sup>

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<sup>1</sup> E.G. Austin, *The Death Penalty: The Political Calculus on Capital Punishment*, THE ECONOMIST (Jul. 6, 2011), <https://www.economist.com/blogs/democracyinamerica/2011/07/death-penalty>.

<sup>2</sup> For example, the General Assembly of the United Nations called for a moratorium on executions to be established in all countries that maintain the death penalty. *See* G.A. Res. 62/149, U.N. Doc. A/RES/62/149 (Feb. 26, 2008); *see also* PETER HODGKINSON & WILLIAM SCHABAS, CAPITAL PUNISHMENT: STRATEGIES FOR ABOLITION 28 (2009) (“Two factors seem to explain the positive developments in . . . Taiwan. First, the moves towards abolition are a result of political leadership at the highest levels. Second, the developments are associated with a desire to break with the injuries of former autocratic regimes, where general use of capital punishment was associated with a pervasive climate of political repression.”).

<sup>3</sup> *See, e.g.*, JODI S. FINKEL, JUDICIAL REFORM AS POLITICAL INSURANCE: ARGENTINA, PERU, AND MEXICO IN THE 1990S (2008); JULIO FAUNDEZ, GOOD GOVERNMENT AND LAW LEGAL AND INSTITUTIONAL REFORM IN DEVELOPING COUNTRIES (1997).

<sup>4</sup> A comparative study of the death penalty in Taiwan and South Korea focuses on the impact of political change, *see* DAVID T. JOHNSON AND FRANKLIN E. ZIMRING, THE NEXT FRONTIER: NATIONAL DEVELOPMENT, POLITICAL CHANGE, AND THE DEATH PENALTY IN ASIA 191-96 (2009).

<sup>5</sup> *See infra* Part I. Mass State Killings in Secret: 1949-1987.

From 1997 to 2010, executions in Taiwan declined from 38 in 1997 to zero in 2009.<sup>6</sup> In particular, from 2006 through 2009, Taiwan had executed no one for four consecutive years.<sup>7</sup> In 2010, most people believed Taiwan would formally abolish the death penalty. Instead, a new series of executions began. From 2010 to 2016, Taiwan carried out executions every year, although the numbers were in the single digits.<sup>8</sup>

Using statistics and exploring the local context at each stage, this article analyzes the effect of political factors on Taiwan's application of the death penalty over the past 70 years. For example, when Taiwan ended its authoritarian regime and embraced democratization in 1987, the number of executions increased dramatically. This article holds that the increase could be attributed either to the increase in transparency of state killings, or to the government's tougher stance on social turbulence following the lifting of martial law. In the 1990s, while executions were by and large on a declining trend, the number of executions in 1997 and 1998 rose conspicuously and suddenly, as law and order deteriorated. However, politics may also prevent executions in Taiwan.<sup>9</sup> From 1997 to 2006, the number of executions in Taiwan declined from 38 to zero. This article holds that the striking decline in executions may be due to the government's desire to promote relations with the international community, by meeting international standards on human rights. After 2010, however, Taiwan again carried out executions, but the numbers were in the single-digits per year. The Minister of Justice pronounced that "no executions [would be] approved, infuriating society and arguably leading to this resurgence of executions."<sup>10</sup> Nevertheless, the fact that executions remain few in number can be attributed to the robust development of local human rights NGOs in Taiwan.

### **I. Mass State Killings in Secret: 1949-1987**

The creation of modern Taiwan can be traced back to 1949, when the Kuomintang (KMT), also known as the Chinese Nationalist Party,

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<sup>6</sup> See *infra* Part II. From 78 Executions to Zero: 1988-2009.

<sup>7</sup> *Id.*

<sup>8</sup> See *infra* Part III. Resumption of Executions: 2010-2016.

<sup>9</sup> Similar political impact on executions has happened in South Korea. See JOHNSON & ZIMRING, *supra* note 4, at 151-54.

<sup>10</sup> *Taipei, Justice Minister Resigns Because Opposed To The Death Penalty*, AsiaNews (Mar. 12, 2018). Available at: <http://www.asianews.it/news-en/Taipei,-Justice-Minister-resigns-because-opposed-to-the-death-penalty—17862.html>.

moved its government to Taiwan after the Communist Part of China defeated the KMT on the Chinese mainland. From that time, Taiwan was under martial law for almost forty years, until 1987.<sup>11</sup> After such a long period under authoritarian rule,<sup>12</sup> Taiwan's citizens quickly embraced democracy with vigorous political and social movements.<sup>13</sup>

The number of people executed under authoritarianism in Taiwan was not clearly documented. Borrowing Professors David Johnson and Franklin Zimring's words, the data on the figures for execution during this period is "patchy."<sup>14</sup> There are two major problems that make the examination of executions in this period challenging. First, the data on judicial executions, which refer to the executions of people convicted by common courts, are ambiguous in and before 1970.<sup>15</sup> The counts of judicial executions, in the few existing former studies claiming to quote the official governmental record, do not align.<sup>16</sup> On the other hand, the data from studies after 1971 are consistent.<sup>17</sup> **Figure I.1** below shows the number of judicial executions in Taiwan from 1971 to 1990. According to existing studies and government publications, Taiwan performed judicial executions every year from 1948-1990, with the highest amount reaching 27 in 1976 and the lowest being one single execution in 1985.<sup>18</sup>

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<sup>11</sup> Kuldip R. Rampal, *Post-martial law media boom in Taiwan*, GAZETTE (Leiden, Netherlands), 53(1-2), 73 (1994).

<sup>12</sup> While the martial law was lifted in 1987, some scholars hold that Taiwan's authoritarianism and white terror did not end until 1992. See WANG TAI-SHENG, XUE HUA-YUAN & HUANG SHI-JIE, *Zhui xun tai wan fa lü de zu ji shi jian bai xuan yu fa lü shi yan jiu* [LOOKING FOR FOOTPRINTS OF THE LAW OF TAIWAN: SELECTIONS OF 100 EVENTS AND STUDY OF LEGAL HISTORY] 192 (2014).

<sup>13</sup> *Id.* See also Rampal, *supra* note 11, at 78-90.

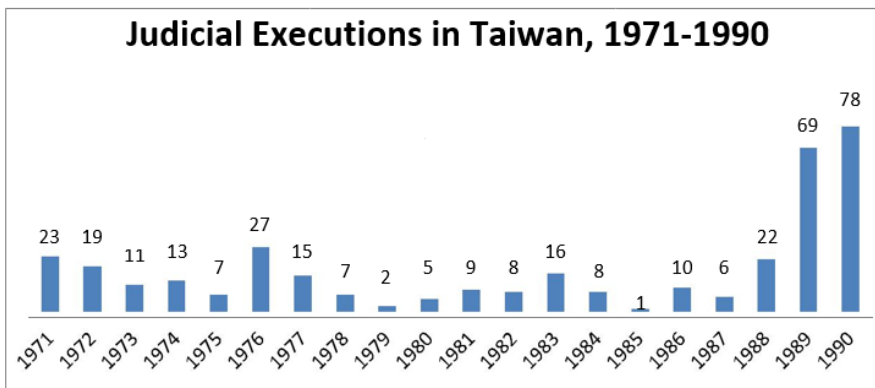
<sup>14</sup> JOHNSON & ZIMRING, *supra* note 4, at 197.

<sup>15</sup> TAIWAN OPPOSES THE DEATH PENALTY: PROCEEDINGS OF THE FUJEN UNIVERSITY INTERNATIONAL CONFERENCE ON ABOLITION OF THE DEATH PENALTY, 291-92 (Edmund Ryden ed., 2001). However, the above source also notes that these numbers differ from those provided in another study which also claims to quote official data. For example, in an article authored by Professor Hsieh Zui-chi in 1967, two executions were carried out in 1956, 4 in 1966, and 3 in 1968.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* See also CHUEN-JIM SHEU et al., *Si Xing Cun Fei Zhi Tan Tao* [DISCUSSION ON RETENTION OR ABOLITION OF DEATH PENALTY] 33-35, published by RESEARCH, DEVELOPMENT, AND EVALUATION COMMISSION, EXECUTIVE YUAN, Taiwan (2009 Reprinted).

<sup>18</sup> *Id.* According to this book, the years of 1948, 1957, 1959, 1966, and 1968 also had one execution.



**Figure I.1 Judicial Executions in Taiwan, 1971-1990**

TAIWAN OPPOSES THE DEATH PENALTY: PROCEEDINGS OF THE FUJEN UNIVERSITY INTERNATIONAL CONFERENCE ON ABOLITION OF THE DEATH PENALTY, 291-92 (Edmund Ryden ed., 2001); CHUEN-JIM SHEU et al., *Si Xing Cun Fei Zhi Tan Tao* [DISCUSSION ON RETENTION OR ABOLITION OF DEATH PENALTY] 33-35, published by RESEARCH, DEVELOPMENT, AND EVALUATION COMMISSION, EXECUTIVE YUAN, Taiwan (2009 Reprinted).

An even more challenging problem in examining the statistics of this period is that most state killings carried out under martial law were done in secret, and not officially documented. These undisclosed executions were carried out as part of national security crackdowns.<sup>19</sup> Trials in military courts were also concealed until 1980.<sup>20</sup> Scholars believe that there were mass state killings, both judicial and non-judicial, under the authoritarian regime in Taiwan from 1949 to 1987.<sup>21</sup> A government publication has an unofficial estimate that more than 3,000 people were executed from 1950 to 1954, because of the suppression of political dissidents known as the White Terror campaign.<sup>22</sup> However, some

<sup>19</sup> JOHNSON & ZIMRING, *supra* note 4, at 198.

<sup>20</sup> *Id.* at 197-199. Also see LIN SHAN-TIAN, *WU SHI NIAN LAI DE TAI WAN FA ZHI* 41-42 (1996).

<sup>21</sup> *Id.*

<sup>22</sup> See Huang Tai-lin, *White Terror Exhibit Unveils Part Of The Truth*, *TAIPEI TIMES* (May 20, 2005) <http://www.taipeitimes.com/News/taiwan/archives/2005/05/20/2003255840/2>

(“According to a study that was conducted by former DPP legislator and political prisoner Hsieh Tsung-min, and cited by the investigative committee, there were about 29,000 cases of political persecution during the Martial Law era, involving 140,000 people. An

scholars believe that about 45,000 people were executed in the 1950s alone.<sup>23</sup> Some even suggest that Taiwan was comparable to China in the aggressiveness of executions carried out during the years of authoritarian rule.<sup>24</sup>

As presented in the **Figure I.1**, the number of judicial executions skyrocketed after 1987, when trials ceased in military courts. Some analysts have suggested that state killings in Taiwan rapidly increased after 1987.<sup>25</sup> However, the reverse may be the case. As other scholars have indicated, what increased after the authoritarian rule was not the number of state killings, but rather the transparency of them.<sup>26</sup> This is because the data before and during 1987 did not record extra-judicial executions, which comprised the majority of executions during that period.<sup>27</sup>

## II. From 78 Executions to Zero: 1988-2009

With the end of authoritarian rule in 1987, Taiwan experienced a series of dramatic political and social transformations, which together had a significant impact on the death penalty. As shown in **Figure II.1**, for example, in 1990, the number of executions in Taiwan reached a historical high of 78. After the high, the annual number of Taiwan's executions rapidly dropped to 16 executions in 1995. **Figure II.1** illustrates this striking 80% drop over a five year period.

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estimated 3,000 to 4,000 people were executed.”).

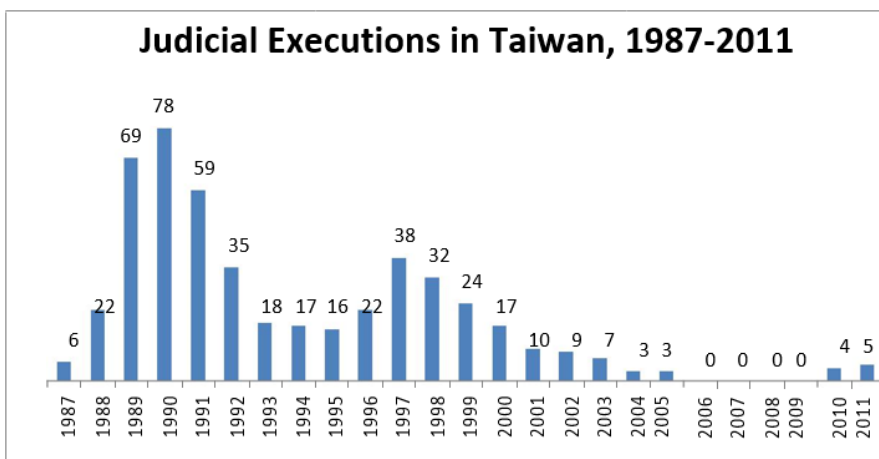
<sup>23</sup> See DENNY ROY, *TAIWAN: A POLITICAL HISTORY* 90 (2003). However, the number of 45,000 executions is regarded by Taiwan's Ministry of Justice officials as too high. See JOHNSON & ZIMRING, *supra* note 4, at 197.

<sup>24</sup> See JOHNSON & ZIMRING, *supra* note 4, at 197 (“If Chiang [,Kai-shek] was not as enthusiastic about executions as Mao, the available evidence suggests that in some respects he was close.”).

<sup>25</sup> See RYDEN, *supra* note 15, at 292.

<sup>26</sup> *Id.* at 291–92.

<sup>27</sup> *Id.*



**Figure II.1 Judicial Executions in Taiwan, 1987-2011**

Quoted from Fort Fu-Te Liao, "From seventy-eight to zero: Why executions declined after Taiwan's democratization", *Punishment & Society*, 10(2), 159 (2008) (As to data from 1987 to 2004); Official Website of Ministry of Justice, Taiwan Numbers of Executions and Death Row Inmates [http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3\\_Report.aspx?list\\_id=1245](http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3_Report.aspx?list_id=1245) (As to data from 2005 to 2011).

In **Figure II.1**, we can see that the annual number of executions fluctuated from 1987-2011. The numbers rose from 1987 to 1990, fell from 1990 to 1995, rose momentarily from 1996 to 1997, fell gradually to none from 1997 to 2009, and rose again after 2010. These changes in executions should be comprehended in political and social contexts; in particular, these changes indicate the necessity for political leaders to meet social expectations.<sup>28</sup>

Lee Teng-hui was president from 1988 to 2000, following the end of authoritarian rule and Taiwan's subsequent embrace of democratization.<sup>29</sup> During Lee's presidency, the death penalty was not abolished, but the number of executions continually dropped from a high of 78 in 1990 to 17 in 2000. This was an almost 80 percent drop. However, there were also two short periods where there were increases in executions during Lee's administration—from 1988 to 1990, and from 1996 to 1997—which need further analysis.

Scholars have different perspectives on how to interpret the 1988-1990 increase in executions. Some hold, as noted in the previous section, that the greater number of judicial executions recorded in this period reflect not the actual increase of state killings, but the increase of *the transparency of those killings*.<sup>30</sup> On the other hand, other scholars believe the increase of executions was “real” and reflected a “tougher” attitude towards crime, which was a byproduct of the process of democratization. At this time, Taiwan's society faced dramatic changes and resulted in social turbulence.<sup>31</sup> No matter which interpretation is closer to the truth, there is no doubt that the rise in the number of executions from 1988 to

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<sup>28</sup> Taiwan's Code of Criminal Procedure provides that “[c]apital punishment shall be approved by the highest authority of judicial administration,” which is the Minister of Justice, not the President of Taiwan. Taiwan Code of Criminal Procedure, Art. 461. However, it is no doubt that the President plays the decisive role in deciding whether to execute death row prisoners, because the Minister could be replaced, if he or she does not follow the wishes of the president. See Fort Fu-Te Liao, *The Abolition of The Death Penalty in Taiwan: Why a De Facto Moratorium Was Established and Lost*, 11 ASIA-PAC. J. ON HUM. RTS. & L. 1, 7–8 (2010).

<sup>29</sup> See Rampal, *supra* note 11.

<sup>30</sup> See RYDEN, *supra* note 15, at 291–92; see also JOHNSON & ZIMRING, *supra* note 4, at 201 (arguing that “[t]he figures for 1987 and 1988 do not include executions carried out in secret under martial law, and this is the main reason for the sudden rise in executions from 1988 to 1989.”). From this perspective, even though there were 22 executions recorded in 1988 when the martial law was already lifted, it does not mean there were only 22 state killings in Taiwan in that year. See *id.*

<sup>31</sup> See JOHNSON & ZIMRING, *supra* note 4, at 199.



1990 was a result of the end of martial law.

With regard to the second increase of executions from 1997 to 1998, it is evident that it arose out of the government's reaction to Taiwan's social turbulence resulting from serious crimes. From 1996 to 1998, Taiwan experienced a series of notorious criminal offenses: gangsters kidnapped and held a legislator in a dog cage, the head of a county and eight of his associates were shot in the head, a prominent feminist and politician was raped and murdered, the daughter of a well-known TV show hostess was kidnapped and murdered, the South African military attaché and his family were detained and wounded.<sup>32</sup> The occurrence of so many high-profile crimes resulted in a serious crisis of law and order, and the Lee administration evidently responded with a more aggressive criminal policy, including carrying out more executions.<sup>33</sup> The fact that the number of new prisoners increased during this period supports the validity of this theory.<sup>34</sup> During Lee's presidency, the number of new prisoners also peaked in 1997 and continually decreased after that year. Overall, the number of executions declined under Lee's administration, despite two short periods of increase. While Lee did not articulate his attitude towards the death penalty and its abolition, executions in fact declined under his presidency.

The successor to Lee, Chen Shui-bian, was the first and only president to date, who supported the abolition of capital punishment both through rhetoric and action.<sup>35</sup> Chen clearly expressed his attitude, several times, towards the death penalty in Taiwan.<sup>36</sup> During Chen's two-term presidency from 2000 to 2008, while the death penalty was not yet legally abolished, the figures for executions continuously declined from 17 in 2000, to zero in 2006, 2007 and 2008.<sup>37</sup> When Chen stepped down on

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<sup>32</sup> *Id.* at 202–03.

<sup>33</sup> *Id.* at 203.

<sup>34</sup> *Id.*

<sup>35</sup> INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, TAIWAN ALLIANCE TO END THE DEATH PENALTY, REPORT: INTERNATIONAL FACT-FINDING MISSION: THE DEATH PENALTY IN TAIWAN: TOWARDS ABOLITION? 8 (2016), <https://www.fidh.org/IMG/pdf/tw450a.pdf> (“In late April 2000, president-elect Chen Shui-bian took action on the abolition of the death penalty for the first time in Taiwan's history, in response to the Pope's call for its abolition. President Chen Shui-bian has since repeatedly attempted to turn the death penalty into a public issue.”).

<sup>36</sup> *Id.*

<sup>37</sup> Statistics can be found on the official website of Ministry of Justice, Taiwan. Available at

May 20, 2008, the goal of abolition had not yet been achieved. However, the fact that no executions took place in the last two and a half years of Chen's presidency led the public to believe that Taiwan had essentially abolished the death penalty, or was "preparing for abolition."<sup>38</sup> The next president, Ma Ying-jeou, maintained the moratorium, further reinforcing the public's impression of abolition, until four people were executed on April 30, 2010.<sup>39</sup> From the last executions on December 26, 2005, to the reestablishment of executions in the end of April 2010, Taiwan's de facto moratorium on executions lasted four years and five months, thus far the record length in contemporary Taiwan.

### III. Resumption of Executions: 2010-2016

Perhaps to the surprise of many people,<sup>40</sup> the resumption of the executions in Taiwan, unlike the events from 1996 to 1998, was not due to a deterioration of public safety, but resulted from the rhetoric of a politician. In March 2010, a legislator questioned then-Minister of Justice, Wang Ching-feng, about why Taiwan had not carried out executions for more than four years, and criticized Wang for not ordering the executions.<sup>41</sup> At that time, Taiwan had 44 convicts on death row.<sup>42</sup> Wang, who was a long-time advocate of the abolition of the death penalty,<sup>43</sup> reiterated her anti-death-penalty stance and stated she would not allow

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[http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3\\_Report.aspx?list\\_id=1245](http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3_Report.aspx?list_id=1245) (last visited: December 12, 2018). Also note that 11 of the 17 executions in 2000 were carried out during Lee's presidency, before Chen assumed office in May 20, 2000.

<sup>38</sup> See HODGKINSON & SCHABAS, *supra* note 2, at 26.

<sup>39</sup> ROGER HOOD & CAROLYN HOYLE, *THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE* 108 (2015).

<sup>40</sup> See, e.g., Shih Hsiu-chuan, *ANALYSIS: Taiwan Urged to Rethink Resumption of Death Penalty*, TAIPEI TIMES (Mar. 29, 2010), <http://www.taipeitimes.com/News/taiwan/archives/2010/03/29/2003469219> ("The manner in which the government dealt with the recent death penalty dispute sparked by former justice minister Wang Ching-feng's open letter supporting the moratorium and her subsequent resignation has been incomprehensible to [Roger] Hood and many other international campaigners.").

<sup>41</sup> Rich Chang, *Ma's Top Prosecutor Pick Airs Views on Death Penalty*, TAIPEI TIMES (Mar. 9, 2010), *available at* <http://www.taipeitimes.com/News/taiwan/archives/2010/03/09/20034675802003467758> (last visited July 9, 2018).

<sup>42</sup> *Id.*

<sup>43</sup> *Ministry of Justice Seeks To Ban Death Penalty*, TAIWAN TODAY (February 2, 2010), *available at* <http://taiwantoday.tw/news.php?unit=2,23,45&post=937> (last visited July 9, 2018).

any executions in her tenure.<sup>44</sup> Despite great public outcry and protest against her, Wang remained steadfast in her determination to halt executions of death row prisoners. Further, Wang stated she would rather “go to hell” and “resign” than carry out executions.<sup>45</sup> Due to public outrage and strong opposition against her, Wang resigned as the Minister of Justice on March 11, 2010.<sup>46</sup> One month later, on April 28, 2010, the incoming Minister of Justice signed off on execution orders for four convicts on death row.<sup>47</sup> The executions were carried out on April 30, 2010, ending Taiwan’s four year and five month de facto moratorium.<sup>48</sup> From that time forward, Taiwan has executed people every year, as shown in **Figure III.1**.



**Figure III.1 Judicial Executions in Taiwan, 2010-2016**

Official Website of Ministry of Justice, Taiwan, Numbers of Executions and Death Row Inmates,

[http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3\\_Report.aspx?list\\_id=124](http://www.rjtd.moj.gov.tw/rjtdweb/common/WebList3_Report.aspx?list_id=124).

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<sup>44</sup> See Rich Chang & Loa Iok-sin, *Justice Chief Defends Stay of Executions*, TAIPEI TIMES (Mar. 11, 2010), available at <http://www.taipeitimes.com/News/front/archives/2010/03/11/2003467758> (last visited July 9, 2017).

<sup>45</sup> *Id.*

<sup>46</sup> *Justice Minister Resigns in Death Penalty Dispute*, TAIWAN TODAY (Mar. 12, 2010), <http://taiwantoday.tw/news.php?unit=2,23,45&post=1013>.

<sup>47</sup> Ralph Jennings, *Death Penalty Returns in Taiwan, 4 Executed*, REUTERS (Apr. 30, 2010), <http://mobile.reuters.com/article/worldNews/idUSTRE63T3SP20100430>.

<sup>48</sup> *Id.*



A. *Legal Issue: Discretionary Power in Executions?*

From the circumstances of Wang's resignation, we can see how complicated the issue of the death penalty is in contemporary Taiwan. From a legal perspective, it is ambiguous whether the Minister of Justice has the authority to halt the executions. According to Taiwan's Code of Criminal Procedure, "[a]fter a pronouncement of capital punishment is final, the prosecutor shall promptly send the case file to the highest authority of judicial administration,"<sup>49</sup> and "[c]apital punishment shall be approved by the highest authority of judicial administration and be executed within 3 days after receiving such approval. . ."<sup>50</sup> It is uncontroversial that the so-called "highest authority of judicial administration" in the statutes means the Ministry of Justice.<sup>51</sup> However, it is not clear whether the Minister is granted any discretionary power over executions. Some people, including the then-Deputy Minister of Justice, believe that the Minister is *obliged* to approve executions once the conviction is affirmed by the Highest Court.<sup>52</sup> Opponents of Wang's stance on executions argued that executions should be carried out as long as capital punishment was the law of the land. Therefore, Wang's action was considered malpractice, a violation of the law and the Constitution.<sup>53</sup> However, human rights lawyers and Wang's supporters argued that the statutes never required the Minister to approve executions.<sup>54</sup> Instead, the statutes granted the Minister full discretionary power to decide whether to sign an execution order, without setting a time frame in which the decision must be made.<sup>55</sup> In this opinion, Wang's *de facto* moratorium on executions did not violate either the law or the Constitution, but was "a responsible decision made in accordance with international human rights standard", one of Wang's supporters said.<sup>56</sup>

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<sup>49</sup> Taiwan Code of Criminal Procedure, Art. 460.

<sup>50</sup> *Id.* at Art. 461.

<sup>51</sup> Jaw-Perng Wang, *The Current State of Capital Punishments in Taiwan*, 6 NATIONAL TAIWAN UNIV. L. REV. 143, 158 (2011).

<sup>52</sup> *Id.* at 145. See also Fort Fu-Te Liao, *supra* note 28, at 8.

<sup>53</sup> *Justice Minister under Fire for Death Penalty Stance*, TAIWAN TODAY (Mar. 11, 2010), <http://taiwantoday.tw/news.php?unit=2,23,45&post=1011>.

<sup>54</sup> Wang, *supra* note 51, at 158-59 ("Unfortunately, the majority of observers have the opposite view that the [Code of Criminal Procedure]'s absence of when and how fast the MOJ must approve executions means nothing but that the MOJ is supposed to be very careful in approving executions.").

<sup>55</sup> *Id.*

<sup>56</sup> Chang & Iok-sin, *supra* note 44.

*B. Political Context: Public Nervousness About Non-Executions*

The second implication of Wang's resignation highlights how sensitive the issue of the death penalty is in Taiwan. While Wang was the first Minister of Justice who refused to execute convicts after the lifting of martial law, she was not the first Minister of Justice who publicly advocated for the abolition of the death penalty. Neither was she the first Minister to suspend executions for a long period, nor was hers the longest *de facto* moratorium. In 2001, Chen Ding-Nan was the first Minister of Justice, to publicly advocate for the abolition of capital punishment.<sup>57</sup> Chen went so far as to announce in public that he planned to abolish the death penalty before his term ended.<sup>58</sup> He ultimately did not achieve his goal. Chen instead ordered 32 executions during his less-than-five-year term, while he also made efforts to improve procedural protections in the implementation of capital punishment.<sup>59</sup> On the other hand, the first Minister to institute an informal execution moratorium was Shih Mao-lin. After executing two people in the first year of his term, Shin did not sign any additional execution orders for the remainder of his term.<sup>60</sup> This moratorium, of about two years and five months, was by far the longest period of time that a Minister of Justice refused to approve executions, up to that point.

Considering that Wang was neither the first Minister of Justice to advocate for abolishing capital punishment, nor the first Minister to stop executions for an unprecedented period of time, why did her speech espouse such strong opposition? This article holds that Wang's unambiguous and high-profile refusal to approve executions played an important role in this event. As noted previously, while she was not the first Minister to halt executions, Wang was indeed the first one who openly spoke to the public that she "*will never approve any executions*".<sup>61</sup> Further, Wang declared that she would rather "*go to hell*" than authorize

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<sup>57</sup> See HODGKINSON & SCHABAS, *supra* note 2, at 27.

<sup>58</sup> HANS GORAN FRANCK & WILLIAM SCHABAS, *THE BARBARIC PUNISHMENT: ABOLISHING THE DEATH PENALTY* 124 (2003).

<sup>59</sup> *Abolish the death penalty, Chen Dingnam is determined to remain unchanged*, ALTERNATIVE DEATH PENALTY PROMOTION ALLIANCE, JUDICIAL REFORM FOUNDATION (Aug. 5, 2004) <https://www.jrf.org.tw/articles/412>.

<sup>60</sup> Liao, *supra* note 28, at 7.

<sup>61</sup> Wang, *supra* note 51, at 169-70.

the executions.<sup>62</sup> Such high-profile statements infuriated victims' families making Wang the center of a media firestorm. For example, Pai Ping-ping, a well-known TV show hostess whose daughter was kidnapped and murdered, said, "*If President Ma Ying-jeou's government allows Wang's decision [to halt executions] to stand, voters nationwide should boycott this government with their votes.*"<sup>63</sup> In addition to Pai, Lu Chin-te, whose ten-year-old son was kidnapped in 1987 and whose body has never been found, called Wang "*incompetent*" and urged voters to boycott politicians in favor of abolishing capital punishment in the coming elections.<sup>64</sup> In the end, Wang's unambiguous and high-profile refusal quickly led to her resignation.<sup>65</sup>

Concurrently, a major local newspaper criticized Wang in an editorial for her outspoken manner about suspending executions:

"In her capacity as Minister of Justice, Wang Ching-feng had many opportunities and channels by which she could have persuaded the public to respect human life. She had many ways by which she could have gradually promoted her goal of abolishing the death penalty. But she chose to ignore them. Instead, she resorted to rhetorical shock tactics to promote her beliefs. As a result, she has debased public discourse of the issue, and regressed it to a more conservative extreme."<sup>66</sup>

A similar editorial in an English-language newspaper commented, "*The public and the media have questioned this situation [that no executions have been carried out since 2006], but as past justice ministers have trod carefully and found reasons to postpone the*

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<sup>62</sup> Chang and Iok-sin, *supra* note 44.

<sup>63</sup> Flora Wang & Loa Iok-sin, *Public Divided On Capital Punishment*, TAIPEI TIMES (Mar. 12, 2010), <http://www.taipeitimes.com/News/taiwan/archives/2010/03/12/2003467802>.

<sup>64</sup> *Id.*

<sup>65</sup> Cindy Sui, *Death Penalty Dilemma Dividing Taiwan*, BBC NEWS (June 4, 2012), <http://www.bbc.com/news/world-asia-18202396> ("But the moratorium ended in 2010 after former Justice Minister Wang Ching-feng inadvertently drew attention to it, by publicly stating that she would not sign off on any executions.").

<sup>66</sup> *Political Appointees: Reconciling Convictions with Responsibilities*, UNITED DAILY NEWS EDITORIAL (Mar. 15, 2010), <http://www.taiwannpfnews.org.tw/english/page.aspx?type=article&mnum=113&anum=7779>.

*executions, both the public and media have avoided forcing the ministry's hand.*"<sup>67</sup> Therefore, "[w]hen Wang publicly declared her refusal to order any executions, she challenged the families of victims and the general public," and "hurt the government, the Ministry of Justice and the spirit of the law — not to mention the campaign against the death penalty."<sup>68</sup>

#### IV. The Future of the Death Penalty in Taiwan: 2017 and Beyond

Since the more than four-year long *de facto* moratorium was lifted in 2010, executions in Taiwan have been carried out for seven consecutive years, disappointing abolitionists and human rights advocates. It is worth noting that "*all the executions since 2010, when the four-year moratorium was lifted, took place when the government approval rate was low,*" according to the Taiwan Alliance to End the Death Penalty (TAEDP).<sup>69</sup> On the other hand, opinion polls since 1990 have shown that about 70 percent to 80 percent of respondents are against the abolition of capital punishment.<sup>70</sup> Some more recent public opinion polls show that nearly 90 percent of respondents are against the abolition.<sup>71</sup> While it is bad news for abolitionists, they still hold out hope: since the first female President, Tsai Ing-Wen, assumed office on May 20, 2016, the new administration has yet to carry out a single execution, and she has been in office for over one year.<sup>72</sup>

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<sup>67</sup> Editorial: *Wang Dealt Blow To Her Own Cause*, TAIPEI TIMES (Mar. 13, 2010), <http://www.taipeitimes.com/News/editorials/archives/2010/03/13/2003467876>.

<sup>68</sup> *Id.*

<sup>69</sup> Lin Hsin-yi, *Death Penalty: Fig Leaf for Government's Incompetence*, TAIWAN ALLIANCE TO END THE DEATH PENALTY (Apr. 29, 2015), <http://www.taedp.org.tw/en/story/2808>.

<sup>70</sup> Wang, *supra* note 51, at 168-69.

<sup>71</sup> Alison Hsiao, *Nearly 90% Against Abolishing Death Penalty: Poll*, TAIPEI TIMES (Apr. 22, 2016), <http://www.taipeitimes.com/News/front/archives/2016/04/22/2003644522> ("The poll, conducted last week, found that 87.9 percent of respondents oppose abolition, mainly because they think it would undermine public safety and embolden people to commit criminal acts, the council said in a statement.").

<sup>72</sup> However, after the author submitted the final draft of this article to the Journal, Tsai's government carried out its first execution on August 31, 2018. The executed convict, Lee Hung-Chi, was sentenced to death because he killed his former spouse outside the kindergarten their two daughters attended and then took one of the girls to his car, where he tried to kill both her and himself by carbon monoxide poisoning. The girl died two months later despite treatment. See TAIPEI (AFP), Taiwan carries out first execution in two years, THE STRAITS TIMES (September 1, 2018).



While it is difficult to predict the future of the death penalty in Taiwan due to the complexity of this issue, I predict that Taiwan may have entered another long *de facto* moratorium on executions, for the three crucial reasons discussed below.

### A. *International Pressure to Stop Executions*

First, Taiwan has been urged by the international community to either abolish the death penalty entirely or stop executions. Due to its diplomatic predicament, the Taiwanese government has always sought to promote relations with the international community and has made concerted efforts to meet international standards on human rights.<sup>73</sup> Evidence of this effort is apparent in observing that the Legislative Yuan (the Taiwanese Parliament) passed the *International Covenant on Civil and Political Rights* (hereinafter ICCPR) and *International Covenant on Economic, Social and Cultural Rights* (hereinafter ICESCR) on March 31, 2009.<sup>74</sup> That same day, the *Act to Implement the ICCPR and the ICESCR* (hereinafter the *Implementation Act*) was also passed and took effect on December 10, 2009.<sup>75</sup> The *Implementation Act* provides that the human rights protection provisions in the two Covenants have the same effect as domestic law.<sup>76</sup>

In complying with the *Implementation Act*, Taiwan's government submitted its reports on the implementation of the international human rights covenants for an international committee to review in 2013 and 2017.<sup>77</sup> In response to both submissions, the International Review

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<https://www.straitstimes.com/asia/east-asia/taiwan-carries-out-first-execution-in-two-years>.

<sup>73</sup> JOHNSON & ZIMRING, *supra* note 4, at 193 (“Taiwan has been largely isolated from other nations and from the international human rights community as a result of its exclusion from the UN in 1971, yet its leaders and NGOs have struggled mightily to convince other nations and international organizations that it is a member in good standing of the democratic club, committed, above all, to respecting human rights.”).

<sup>74</sup> Wang, *supra* note 51, at 170.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> See REVIEW OF THE INITIAL REPORTS OF THE GOVERNMENT OF TAIWAN ON THE IMPLEMENTATION OF THE INTERNATIONAL HUMAN RIGHTS COVENANTS—CONCLUDING OBSERVATIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL GROUP OF INDEPENDENT EXPERTS (2013), <http://www.humanrights.moj.gov.tw/np.asp?ctNode=40240&mp=205> [hereinafter *2013 Review*]; REVIEW OF THE SECOND REPORTS OF THE GOVERNMENT OF TAIWAN ON THE IMPLEMENTATION OF THE INTERNATIONAL HUMAN RIGHTS COVENANTS—CONCLUDING

Committee strongly recommended that Taiwan should intensify its efforts in abolishing capital punishment and immediately introduce a moratorium on executions.<sup>78</sup> In particular, the International Review Committee commented, in its *2017 Review*, that it “strongly regrets that there has been no progress in the abolition of capital punishment,” because “the number of executions has remained roughly the same in recent years and the Government continues to justify its retentionist attitude by opinion polls, which allegedly prove that a large majority of the population remains in favour of the death penalty.”<sup>79</sup>

In addition to the strongly-worded review reports, Taiwan’s resurgence of executions since 2010 has been internationally criticized and condemned by foreign governments and human rights groups, including *Amnesty International*,<sup>80</sup> *the International Federation for Human Rights*,<sup>81</sup> *International Commission of Jurists*,<sup>82</sup> the European Union,<sup>83</sup> and specific countries such as Germany,<sup>84</sup> France,<sup>85</sup> and the United Kingdom.<sup>86</sup> Although the international pressure draws criticism, claiming these organizations and governments are interfering in Taiwan’s

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OBSERVATIONS AND RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL REVIEW COMMITTEE (2017), <http://www.humanrights.moj.gov.tw/lp.asp?CtNode=44901&CtUnit=18161&BaseDSD=7&mp=205> [hereinafter *2017 Review*].

<sup>78</sup> See 2013 Review, *supra* note 77, at 11-12; 2017 Review, *supra* note 77, at 11.

<sup>79</sup> 2017 Review, *supra* note 77, at 11.

<sup>80</sup> *Taiwan Condemned over Executions*, BBC NEWS (Dec. 22, 2012), <http://www.bbc.com/news/world-asia-pacific-20822542>. See also *Taiwan: Executions of Five Men Condemned*, AMNESTY INTERNATIONAL (Mar. 4, 2011), <https://www.amnesty.org/en/press-releases/2011/03/taiwan-executions-five-men-condemned/>.

<sup>81</sup> *FIDH/TAHR: Resumption of Executions a Major Step Back*, TAIWAN ASSOCIATION FOR HUMAN RIGHTS (May 4, 2010), <https://www.tahr.org.tw/node/680>.

<sup>82</sup> *ICJ Condemns Taiwan’s Imposition of The Death Penalty*, INT’L COMMISSION OF JURISTS (Apr. 20, 2013), <https://www.icj.org/icj-condemns-taiwans-imposition-of-the-death-penalty/>.

<sup>83</sup> Shih Hsiu-chuan, *Taiwan Has Breached Its Commitments: EU*, TAIPEI TIMES (Dec. 23, 2012), <http://www.taipeitimes.com/News/front/archives/2012/12/23/2003550795>.

<sup>84</sup> Shih Hsiu-chuan & Loa Iok-sin *Five Executions Spark Concern in EU, Germany*, TAIPEI TIMES (Mar. 6, 2011), <http://www.taipeitimes.com/News/front/archives/2011/03/06/2003497481>.

<sup>85</sup> Shih Hsiu-chuan, *France, Rights Group Condemn Executions*, TAIPEI TIMES (Dec. 27, 2012), <http://www.taipeitimes.com/News/front/archives/2012/12/27/2003551086>.

<sup>86</sup> Press Release, United Kingdom Foreign & Commonwealth Office, Foreign Office Concerned at Taiwan Executions (Apr. 29, 2014).

internal affairs<sup>87</sup> and that domestic public opinion remains in favor of the death penalty, it is increasingly difficult for the government of Taiwan to disregard the pressure from the international community.

### *B. Development in Domestic Human Rights NGOs*

The second factor, which may contribute to a longer *de facto* moratorium on executions in the near future, is the development of Taiwan's domestic human rights NGOs. There are multiple NGOs in Taiwan that have campaigned for the abolition of capital punishment or at least the reduction of its use,<sup>88</sup> including but not limited to *Taiwan Association for Human Rights* (TAHR),<sup>89</sup> *Taiwan Alliance to End the Death Penalty*,<sup>90</sup> *Judicial Reform Foundation* (JRF),<sup>91</sup> *Taiwan Innocent Project*<sup>92</sup>.

Among these NGOs, the developing organization *Taiwan Innocent Project* (TIP) is noteworthy. Inspired by the work of the Innocence Project in the United States and founded in 2012, TIP focuses on the correction of wrongful convictions and studies the causes of failure of justice in Taiwan.<sup>93</sup> TIP has received over 900 applications to

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<sup>87</sup> See, e.g., Shih Hsiu-chuan, *EU Calls for Moratorium on Executions*, TAIPEI TIMES (June 7, 2015), <http://www.taipeitimes.com/News/front/archives/2015/06/07/2003620105>. In addition, to clarify that the EU isn't interfering in Taiwan's internal affairs, the EU made a statement on its official website about this issue. While this statement can't be located on the EU official website now, it still can be located on the official website of the Bureau Français de Taipei. See Q&A: The European Union and death penalty in Taiwan, <https://www.france-taipei.org/Q-A-The-European-Union-and-death> (last visited December 28, 2018).

<sup>88</sup> For example, on January 17, 2017, 80 local NGOs issued a joint statement regarding international covenants and Taiwan's human rights issues. Among others, this statement criticized Taiwan's Ministry of Justice for its stance that "in fact, death penalty is permissible with the Covenants. Taiwan has not ratified the second optional protocol (to ICCPR) which requires abolition of death penalty." (delivered by the Deputy Minister Chen). This joint statement held that "it seems that the MoJ is advising judges not to apply the Covenants in their judgements, a position that is deeply troublesome." See Joint Statement by Covenants Watch representing 80 participating NGOs, TAEDP Official Website, available at <https://www.taedp.org.tw/en/story/3118>.

<sup>89</sup> TAIWAN ASSOCIATION FOR HUMAN RIGHTS, <https://www.tahr.org.tw/taxonomy/term/27>.

<sup>90</sup> TAIWAN ALLIANCE TO END THE DEATH PENALTY, <http://www.taedp.org.tw/en>.

<sup>91</sup> JUDICIAL REFORM FOUNDATION, [http://www.jrf.org.tw/newjrf/index\\_new\\_e.asp](http://www.jrf.org.tw/newjrf/index_new_e.asp).

<sup>92</sup> TAIWAN INNOCENCE PROJECT, [http://twinnocenceproject.org/index\\_en.php?lang=en](http://twinnocenceproject.org/index_en.php?lang=en).

<sup>93</sup> *Id.*

investigate post-conviction cases since 2012, and has taken on 21 of them as of July 2017.<sup>94</sup> Among the accepted cases, TIP has exonerated individuals wrongfully convicted of rape,<sup>95</sup> homicide,<sup>96</sup> and crimes against public safety.<sup>97</sup> TIP has also assisted individuals convicted of murder and sentenced to death or life imprisonment in obtaining new trials.<sup>98</sup>

Although many NGOs in Taiwan have contributed to the campaign against the death penalty, the work of TIP has brought new attention to this issue. Because the mission of TIP is to assist post-conviction cases where the defendant claims to have been wrongly convicted, either due to flawed forensic evidence or state misconduct, its scope of work covers various criminal cases and is not limited to those individuals sentenced to death. When TIP engages with death penalty cases, however, it focuses mainly on investigating whether there is flawed forensic evidence or if there has been a failure of justice. In doing so, the position of TIP may be more acceptable to Taiwan's citizens. This is due to the fact that the public of Taiwan may be more sympathetic to the idea that their fellow citizens are wrongly convicted and sentenced because of a failure of justice, rather than the general idea of abolishing capital punishment.

This idea is further supported by the strong public distrust of the criminal justice system, particularly the mistrust of the courts and its prosecutors. **Figure IV.1** shows the serious crisis of confidence facing Taiwan's criminal justice system.<sup>99</sup> The data shows that most people in Taiwan do not trust the decisions made by courts and prosecutors.

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<sup>94</sup> Interview with Lo Shi-xiang, Director, TAIWAN INNOCENCE PROJECT (July 9, 2017).

<sup>95</sup> See Cases: Chen Long-qi, Taiwan Innocence Project (Apr. 2, 2013), <http://twinnocenceproject.org/CaseDetail.php?CaseId=18>.

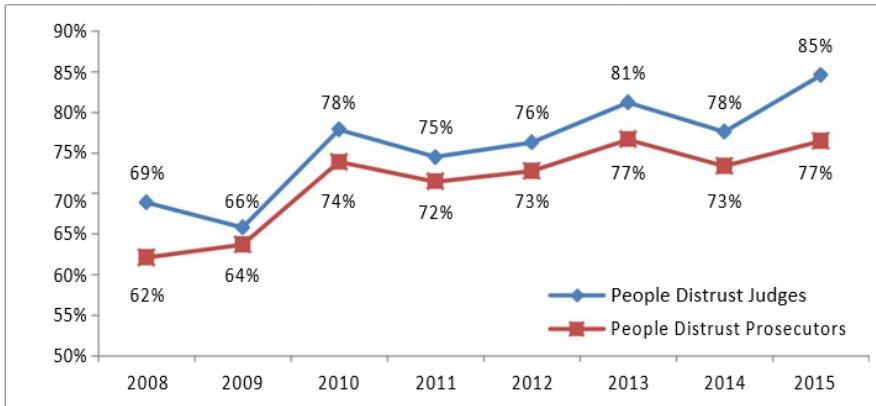
<sup>96</sup> See Cases: Chen Yen-fei, TAIWAN INNOCENCE PROJECT (Feb. 19, 2014), <http://twinnocenceproject.org/CaseDetail.php?CaseId=16>.

<sup>97</sup> Case of Zhang Yue-ying, see TAIWAN INNOCENCE PROJECT, <https://us15.campaign-archive.com/?u=a98c6a57f98a45f38d3109e49&id=0a69636e02>.

<sup>98</sup> See Cases: Lin Chin-gui, TAIWAN INNOCENCE PROJECT (July 21, 2015) <http://twinnocenceproject.org/CaseDetail.php?CaseId=17> (sentenced to life imprisonment). Cases: Cheng Hsing-tse, TAIWAN INNOCENCE PROJECT (Dec. 17, 2011) <http://twinnocenceproject.org/CaseDetail.php?CaseId=12> (sentenced to death).

<sup>99</sup> NATIONAL CHUNG CHENG UNIVERSITY CRIME RESEARCH CENTER, ANNUAL NATIONWIDE SURVEY ON VICTIMS AND EXTENT OF SATISFACTION ON GOVERNMENT PERFORMANCE, 2008-2015 <http://deptcrc.ccu.edu.tw/index.php?option=module&lang=cht&task=showlist&id=4&index=2>.

Therefore, when TIP assists convicts that have been sentenced to death in finding flawed evidence and/or a miscarriage of justice, the public of Taiwan tends to support TIP's work or at least remain neutral. This positive reception is rare for most human rights NGOs, whose scope of work is limited to the assistance of death row prisoners.<sup>100</sup>



**Figure IV.1 People in Taiwan Distrust that Judges and Prosecutors Are Fair in Making Decisions.**

Annual Nationwide Survey on Victims and Extent of Satisfaction on Government Performance, Crime Research Center, National Chung Cheng University, Taiwan.

<sup>100</sup> For example, TAEDP had to move its office due to threats of physical violence against its staff. See Lin Hsin -yi, *Executions, Threats, An Apology And Forgiveness*, TAIPEI TIMES (June 20, 2010), <http://www.taipeitimes.com/News/editorials/archives/2010/06/20/2003475931/1> (“In fact, a number of organizations that support ending the death penalty — such as the Judicial Reform Foundation, the Taiwan Association for Human Rights and Amnesty International — and even defense lawyers working pro bono on death penalty cases, are being harassed, verbally abused and threatened.”).

### C. Understated Strategy in Politics

The third factor that may lead to a new *de facto* moratorium on executions in Taiwan is the lesson learned from the former Minister of Justice, Wang Ching-feng. That is, Wang's resignation taught Taiwan's politicians who are in favor of moratorium on executions to act quietly, instead of publicly declaring their policy.<sup>101</sup>

This understated strategy for approaching the death penalty is evident in observing the actions of Taiwan's current President, Tsai Ing-wen, and Minister of Justice, Chiu Tai-san. Since Tsai assumed office on May 20, 2016, she has *never* publicly expressed her attitude towards the death penalty. The last time Tsai publicly declared her stance on this issue was in 2015, when she was running for the 2016 presidential election.<sup>102</sup> Since then, despite the opposing party continuing to question her stance,<sup>103</sup> and receiving criticism from the international community for her inaction in abolishing the death penalty, Tsai has kept silent on this issue.<sup>104</sup> Concurrently, however, Taiwan has had a *de facto* moratorium on executions for more than a year since Tsai assumed office.

If one suspects that Tsai's understated attitude towards the death penalty is nothing more than her indifference to this issue, they should also look to the speech and action of the Minister of Justice, Chiu Tai-san, who is responsible for approving execution orders.<sup>105</sup> Since he was nominated to be the Minister, Chiu has expressed his stance on the death penalty twice. The first time was in May 2016, right after he took office, in response to questions in the Legislative Yuan about his stance on this issue. Chiu said, "*There is no urgency to resolve the question of whether to abolish the death penalty,*" "*I don't have a particular stance on this*

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<sup>101</sup> See *supra* notes 41 and 43.

<sup>102</sup> EDITORIAL: A Shaky Relationship with Progress, TAIPEI TIMES, (July 21, 2015) <http://www.taipeitimes.com/News/editorials/archives/2015/07/21/2003623525>; See also Xiao ying: fei si xu liang tiao jian, tai wan hai bu cun zai, Zi You Shi Bao (July 17, 2015) <http://news.ltn.com.tw/news/politics/breakingnews/1382526> (Chinese) (At that time, the presidential candidate Tsai said in general, "If the death penalty is to be abolished, there needs to be a public consensus on the issue and a well-thought-out and implemented policy. These two conditions have not existed in Taiwan's society.")

<sup>103</sup> Stacey Hsu, *KMT Seeks Tsai's Stance*, TAIPEI TIMES, (May 30, 2016) <http://www.taipeitimes.com/News/front/archives/2016/03/30/2003642758>.

<sup>104</sup> Michael Caster, *Taiwan: Can Tsai Ing-Wen Change the Politics of Death?*, THE DIPLOMAT (February 10, 2016) <https://thediplomat.com/2016/02/taiwan-can-tsai-ing-wen-change-the-politics-of-death/>.

<sup>105</sup> Taiwan's Code of Criminal Procedure, *supra* note 28.

issue,” and “*Taiwan maintains the death penalty — both in law and in practice — and the ministry has decided to continue carrying out the execution of death row inmates after grave consideration.*”<sup>106</sup> Although his statement may disappoint the abolitionists, the fact remains that Chiu has not signed off any execution orders so far. Chiu also commented on the issue of capital punishment in January 2017, when he denied that his Ministry was procrastinating on the execution of prisoners on death row. Instead, Chiu responded that the Ministry was just being “cautious.”<sup>107</sup> Intriguingly, when the press mentioned that the public may compare him unfavorably with the former Minister Luo Ying-shay who “had the guts to execute death row convicts” and who, during her tenure approved the executions of twelve death row prisoners from 2014 to 2016, Chiu responded by saying, “*it also takes the guts not to execute convicts.*”<sup>108</sup>

Based on the observed understated attitudes of President Tsai and Minister Chiu towards the contentious issue of the death penalty and the fact that there have been no executions since either of them took office, this article holds that Tsai and Chiu have learned from the former Minister Wang Ching-feng’s experience. As noted earlier, Wang was forced to resign, after she declared in public that she would never approve any executions. After Wang’s resignation, the government of Taiwan resumed executions, ending Taiwan’s human rights record of no executions for more than four years. Facing such a controversial issue, it appears Tsai’s administration has decided to keep quiet and bide its time.<sup>109</sup> While the seeming inaction of Tsai’s administration in abolishing the death penalty may dissatisfy the abolitionists,<sup>110</sup> it may not be completely fair to say that

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<sup>106</sup> *Nation to Maintain Death Penalty: Minister*, TAIPEI TIMES (May 31, 2016), <http://www.taipeitimes.com/News/taiwan/archives/2016/05/31/2003647544>; Xiang cheng-zhen, Si xing ti dai fang an, pan san shi nian yi shang? qiu tai san: wu ji ding li chang, Zi You Shi Bao (May 24, 2016), <http://news.ltn.com.tw/news/society/breakingnews/1707092> (Chinese).

<sup>107</sup> *Justice Minister Denies Delaying Execution of Death Sentences*, THE CHINA POST (Jan. 11, 2017), <http://www.chinapost.com.tw/taiwan/national/national-news/2017/01/11/489179/justice-minister.htm>.

<sup>108</sup> Chiu tai san: bu zhi xing si xing ye shi yao po li (May 24, 2016), <http://www.cna.com.tw/news/asoc/201605240374-1.aspx> (Chinese).

<sup>109</sup> Central News Agency, *Death Penalty Issue Not Urgent: Justice Minister*, TAIWAN NEWS (May 30, 2016), <http://www.taiwannews.com.tw/en/news/2930414> (“‘I hope consensus can be forged through dialogue,’ Chiu said at a legislative hearing, when asked whether his ministry planned to push for abolition of the death penalty.”).

<sup>110</sup> Owen Bowcott, *A Fight to the Death: Stopping the Death Penalty in Taiwan*, The Guardian, October 3, 2016, available at

Tsai and Chiu have done nothing with this issue. After all, the fact remains that Taiwan has not performed an execution for fourteen months.<sup>111</sup> In some sense, it is a *de facto* moratorium.

## V. Conclusion

Issues about the death penalty are not only a legal concern, but also a political matter. The experiences of contemporary Taiwan since 1949 have shown us how the politics of the death penalty can change over time.

From 1949 to 1987, the authoritarian government of Taiwan used mass state killings, both judicial and non-judicial executions, as tools to suppress political dissidents. After martial law was lifted in 1987, the number of executions declined quickly, with two short but important exceptions. From 1988 to 1990, the number of executions increased, either because of increased transparency on state killings or because of the government's tougher stance towards the temporary social turbulence after the lifting of martial law. Regardless of which interpretation is more accurate, each is related to and marked the end of the authoritarian regime. Conversely, the other short-period increase from 1996 to 1997 was because the government chose to react to serious crimes in a tough way. Although the death penalty was still used by the government as a political instrument, it only took 16 years for Taiwan to reduce executions from a

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<https://www.theguardian.com/world/2016/oct/03/death-penalty-capital-punishment-taiwan> (last visited July 9, 2017).

<sup>111</sup> See *supra* note 72. Tsai's government carried out its first execution on August 31, 2018. It has also been the first execution in Taiwan for two years. As stated above, the executed convict was Lee Hung-Chi. According to the deputy Minister of Justice Chen Ming-tang, the reason for this execution is that Lee's actions were brutal and ruthless and inflicted irreparable harms to the victims' families. Chen repeated the stance of the Ministry of Justice, "Abolishing the death sentence is an international trend and a long-term goal for the justice ministry. . . but there is no consensus in our country." It is expectable that international communities condemned the decision of execution. (<https://www.taiwannews.com.tw/en/news/3522121>). Human rights NGOs also criticized the government's decision of carrying out the execution (<http://focustaiwan.tw/news/asoc/201808310023.aspx>) However, as this article argues that while the condemnation from international communities and NGOs may add pressure on Taiwan's government, the pressure is not yet sufficient for the authority to give up the death penalty and its execution as a political tool. As TAEDP noted in 2015, "all the executions since 2010. . .took place when the government approval rate was low", the new execution has also been associated with the low supporting rate and the coming mid-term election in November 2018 (<http://focustaiwan.tw/news/asoc/201808310023.aspx>).



high of 78 in 1990 to none in 2006.

A *de facto* moratorium on executions from 2006 to 2009 seemed to suggest that Taiwan was going to eventually abolish the death penalty. Nonetheless, politics intervened unexpectedly: the Minister of Justice, Wang Ching-feng, was forced to step down because of her refusal to approve executions. Following Wang's resignation, the Taiwanese government carried out executions for seven consecutive years, between 2010 and 2016, and has been severely criticized for these executions by the international community.

Since the President, Tsai Ing-wen, and Minister of Justice, Chiu Tai-san, took office on May 20, 2016, there have been no executions.<sup>112</sup> Although it is hard to predict how long this *de facto* moratorium will last, there are three factors indicating that the Taiwanese government will likely continue this *de facto* moratorium unless the government suffers from strong political pressure or has certain political needs. Under the mounting pressure from the international community, including the EU and multiple human rights NGOs, and with the robust development of domestic human rights NGOs in Taiwan, the government has to be very cautious about their approach to the death penalty. Despite the fact that Tsai's administration has neither promised, as the international community and NGOs requested, to immediately abolish capital punishment, nor to permanently suspend executions, the understated attitude of the government towards these issues seems to be a friend, not an enemy, of the abolition of the death penalty. However, the lack of promise that the government will abolish the death penalty or at least issue an official moratorium on execution also suggests the potential risk that the death penalty and its execution may still be used as a convenient political tool for the government, even though it is not as convenient as it was 30 years ago.

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<sup>112</sup> *Id.*