

# For or against abolition of the death penalty: Evidence from Taiwan

SUMMARY OF MAJOR FINDINGS

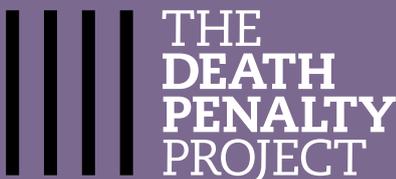
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In association with:



# Acknowledgements

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We are most grateful to Chuang Chi-Ting Serena for her translation of this report and vital support to our ongoing work in Taiwan. Finally, our sincere thanks as always to Lin Hsin-Yi and the team at the Taiwan Alliance to End the Death Penalty, for their continued support and dedication to our common goal of ending the death penalty in Taiwan and worldwide.

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# Foreword

For almost two decades Taiwan has been slowly treading the path towards total abolition of the death penalty. Although application of the punishment has been restricted both in law and practice, and Taiwan has incorporated the International Covenant on Civil and Political Rights into its domestic law, the death penalty remains in force and continues to be implemented.

What then is frustrating Taiwan's progress towards abolition? Within Taiwan the dominant narrative is that there is a divergence of opinion between the hopes of the reformers and the resistance of the public on the question of abolition. Opinion polls have consistently indicated that an overwhelming majority of the Taiwanese public would oppose abolition of the death penalty. This has been frequently referred to by policymakers when discussing prospects for abolition in Taiwan, as is documented in the Introduction to this report.

However, most public opinion polls, both in Taiwan and throughout the world, erroneously present the death penalty as a clear-cut issue that one is either for or against. Closer examination of the context and complexities of public opinion invariably reveals that, as with other views on criminal justice policy, attitudes towards capital punishment shift depending on a variety of factors, from the circumstances of the offence and the offender to the availability of alternative punishments. Without rigorous questioning that goes beyond simple 'for or against' polling, these and other important nuances regarding the public's views are often overlooked in debates on the death penalty.

To shed more light on the question of public attitudes towards capital punishment in Taiwan, the Taiwan Alliance to End the Death Penalty, with the financial support of the European Union (EIDHR), in 2013 commissioned Professor Chiu Hei-Yuan, Professor of Sociology at the prestigious Academia Sinica to conduct a more sophisticated in-depth public opinion survey. As with similar surveys recently conducted in other jurisdictions, the study provided important insights into the strength of the Taiwanese public's oft-cited support for the death penalty, revealing a much more nuanced picture than had been previously painted.

Following Taiwan's execution of Lee Hung-Chi (李宏基) in August 2018, The Death Penalty Project visited Taiwan with Sir Keir Starmer QC MP to engage with key legal and political stakeholders. The purpose of the visit was to learn why the death penalty continues to be implemented despite positive soundings from previous and current administrations that they intend to embrace abolition.

Over the course of our trip we were struck by the pervasive lack of awareness of the importance of the findings of Professor Chiu's research, which for various reasons had not been effectively communicated to government officials and to the public in general, and so has had very limited impact. It had demonstrated conclusively that, while the majority of respondents said *they were not in favour of abolishing the death penalty*, fewer than half *were strongly opposed to its abolition*. Thus, the assumption that public opinion constituted a major barrier to political action to bring about abolition of capital punishment was not supported by this well-conducted survey.

The Death Penalty Project therefore decided to publish the key findings of this important report for the first time for public dissemination and to bring the findings to a wider audience. We hope this will stimulate a more informed discourse by challenging previous perceptions about Taiwanese public opinion on this subject, and hopefully, to remove one of the main barriers to progress towards the goal of abolition.

We hope that publication of this study will make an enlightening and important contribution to the debate on the death penalty in Taiwan.

**Saul Lehrfreund and Parvais Jabbar**  
**Executive Directors**  
**The Death Penalty Project**





**PART ONE:**  
Introduction

## 1.1 The context

In 1990, the Vice-Minister of Justice of Taiwan informed a seminar convened by Amnesty International that his country intended to abolish the death penalty, “but only when social conditions and public opinion favoured such a move”.<sup>1</sup> Progress towards that goal was made by restricting the scope and implementation of capital punishment. Over the next decade, the death penalty was abolished for several crimes and made discretionary, rather than mandatory, for others. The number of people executed annually fell from 38 in 1997 to 10 in 2001, at which point a new Minister of Justice stated that he hoped to bring about complete abolition for all crimes by the end of his first term of office in 2004.<sup>2</sup> That did not happen. Instead, his Ministry repeated – in its document *The Policy of Gradual Abolition of the Death Penalty*, published in 2005 – that “a popular consensus on abolition must be established” before the government “will propose significant legislative change”.<sup>3</sup> Yet this did not halt all reform. Indeed, it heralded an attempt by the government of former President Chen Shui-Bian to take public concern into account by increasing the length of prison sentences and making criteria for obtaining parole more stringent for those serving a life sentence.

The mandatory death penalty was abolished for all crimes in 2006, making it possible to restrict the death penalty to only the worst of the worst cases of murder and all remaining capital crimes. In that year, for the first time, no executions were carried out, and an unofficial moratorium on executions took root. Furthermore, at the beginning of 2007 the Ministry of Justice announced a programme of research seminars and public hearings to encourage national debate on the abolition of the death penalty.<sup>4</sup>

This definite abolitionist trend was strengthened by the adoption of the International Covenant on Civil and Political Rights (ICCPR) into Taiwan’s domestic law in 2009. Article 6(1) of the Covenant protects the inherent right to life of every human being, so no one may be arbitrarily deprived of it. While article 6(2) restricts the imposition of the death penalty “in countries which have not abolished [it]” only “to the most serious crimes”, article 6(6) makes the goal of the Covenant clear by stating: “Nothing in this article shall be invoked to delay or prevent the abolition of capital punishment by any state party to the present Covenant.”<sup>5</sup>

Yet, in 2010, the abolitionists in the administration suffered a defeat and the movement towards abolition appeared to hit a brick wall. After more than four years had passed without an execution, the Minister of Justice, Wang Ching-Feng, was driven from office, ostensibly on the grounds of ‘public pressure’, because she had declared that she would never give her approval for an execution to take place. Her replacement as Minister, Tseng Yung-Fu – with the full support of President Ma Ying-Jeou (2008-16), who claimed

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<sup>1</sup> Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford: Oxford University Press, 2<sup>nd</sup> ed 1996, p. 34.

<sup>2</sup> Hood 3<sup>rd</sup> ed, 2003, p. 47.

<sup>3</sup> *The Taipei Times* 2 January 2006 and International Federation of Human Rights (FIDH), *The Death Penalty in Taiwan: Towards Abolition?* Report 450/2, June 2006, pp. 11-12.

<sup>4</sup> *The China Post* 11 January 2007.

<sup>5</sup> See The Death Penalty Project, *The Death Penalty in Taiwan: A Report on Taiwan’s Legal Obligations under the International Covenant on Civil and Political Rights*, London: 2014.

that he was personally opposed to capital punishment – approved the execution of four prisoners who had been convicted of murder. Five more prisoners were executed in 2011 and 17 more in the period up to the end of May 2014.<sup>6</sup> Undoubtedly, Ma had been influenced by the reported findings of opinion polls. He cited surveys conducted during his tenure as Minister of Justice that indicated 74% of the general public, 78% of the middle class and 88% of judicial professionals had been against scrapping the death penalty; moreover, more than a decade later, polling indicated as many as 72% of people were still against abolition.<sup>7</sup> In 2010, opinion polls reported that opposition to abolition had topped 85% of those polled, and the proportion who would accept replacing capital punishment with life imprisonment had fallen from more than 50% to 34%. Consequently, the government again insisted it would be politically impossible to abolish the death penalty completely.

The weight given by politicians to public opinion polls in Taiwan could not be better illustrated than by the reported statement, in 2014, of the then Justice Minister Luo Ying-Shay. Having voiced her personal support, as a Buddhist, for abolition at a meeting of the Judiciary and Organic Laws and Statutes Committee, she nevertheless asserted that, because about 70% of the public approves of capital punishment, “one should listen to the public’s opinion instead of acting on one’s own opinions”.<sup>8</sup>

The government’s position has not changed over the past four years. In August 2018, the Ministry of Justice – under the administration of President Tsai Ing-Wen, who came to power in May 2016 – gave a lack of a consensus in favour of abolition as the reason why Lee Hung-Chi, who had been convicted of murder, was not to be spared execution. This would be the first execution to take place for two years, despite the government’s public commitment to move towards fulfilment of its goal to end capital punishment.<sup>9</sup>

Taiwan is not alone in taking this stance. The number of countries that are party to the Covenant yet continue to retain and enforce the death penalty has been shrinking at a substantial pace since the last decade of the 20th century. However, many of those that have “delayed or prevented” abolition have – like Taiwan – justified their actions by maintaining abolition would be politically impossible because public opinion is so strongly opposed to it. Some apparently share the opinion of Taiwan’s political leadership that their own principled opposition ought to be trumped by the ‘weight’ of public opinion; to ‘go against’ public opinion would undermine respect for and obedience to the law, and its legitimacy. This is in stark contrast to the view, now accepted by a large majority of nations, that the death penalty is to be condemned as an arbitrary deprivation of life and a cruel, inhuman or degrading punishment.

## 1.2 The need for in-depth studies of public opinion

The primary evidence for public attitudes towards capital punishment comes, of course, from opinion polls. It is also reflected in the press and mass media, however, and in the pressure exerted by those who

<sup>6</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty. A Worldwide Perspective*, 5th edition 2015, p. 108.

<sup>7</sup> *United Daily News*, March 12, 2010.

<sup>8</sup> Katherine Wei, ‘Justice Minister voices support for the death penalty to be repealed’, *The China Post*, 9 October 2014. See also, ‘Taiwan: Justice Minister voices support for the death penalty to be repealed, unless the majority opinion’, Reported in *Hands off Cain, Newsletter*, year 13, n. 190, 10 October, 2014.

<sup>9</sup> Ministry of Justice Press Release on execution of Lee Hung-Chi, 31 August 2018, available at <https://www.moj.gov.tw/cp-21-105904-b0049-001.html> (Chinese).

purport to speak for the victims of murder and their families. Yet, much too often, the high level of support for the maintenance of the death penalty has been based on responses to the simple question “are you in favour of, or do you support, the death penalty” (or “are you in favour of the abolition of the death penalty”)? This question does not, of course, indicate how *strongly* respondents feel about their opinion or how obdurate they might be to the case for abolition. The findings may be represented by governments and the media to suggest *overwhelming* support, to justify political opposition to abolition – whereas such support may only be lukewarm and contingent on an ‘idealised’ view of how the system is administered. For instance, the level of support may depend on: knowledge of the various circumstances and situations in which murders occur, and consideration of mitigating factors such as mental health; whether alternative forms of proportionate and humane punishment were to be substituted for the death penalty; awareness of the realities of the system of capital punishment – in particular, whether it can be administered in a just, non-arbitrary and error-free way; whether knowledge of the movement to embrace abolition in other countries influences attitudes; and, of course, if there is convincing evidence that the death penalty is a more effective deterrent to murder than any other threatened form of punishment.

Advocates for abolition also need to foster an in-depth understanding of the nuances of public opinion, to know why people oppose the elimination of capital punishment. This is why most academic writing on the death penalty has given so much consideration to public opinion.<sup>10</sup> In recent years, a number of more sophisticated opinion surveys have been carried out in retentionist countries, which have taken into account considerations such as those mentioned above.<sup>11</sup> Their findings challenge the conclusion that public opinion is an implacable barrier to abolition for a government that has declared, in principle, that it favours complete abolition of capital punishment – and that, by adopting the ICCPR, has committed itself to protect the rights of citizens from political pressures evoked by the perceived opinions and demands of the masses.<sup>12</sup>

Finally, it needs to be recognised that abolition itself influences public opinion. In societies that have removed the death penalty, public opinion does, in time, come to support the abolitionist position as new norms defining the limits of punishment come to be established. Historically, governments have decided to abolish capital punishment even when opinion polls have indicated that a majority of the population favoured its retention. Yet, after abolition, support for the death penalty and its reinstatement has declined, and a new generation has embraced revised norms that regard capital punishment as a cruelty of the past.

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<sup>10</sup> See Oberwittler, Dietrich and Shenghui Qi, *Public Opinion on the Death Penalty in China: Results from a General Population Survey Conducted in Three Provinces in 2007/08*. Forschung Aktuell/research in brief 41, Freiburg: Max Planck Institute for Foreign and International Criminal Law, 2009.

<sup>11</sup> Roger Hood and Florence Seemungal, *Public Opinion on the Mandatory Death Penalty in Trinidad*. London: The Death Penalty Project, 2011; Roger Hood, *The Death Penalty in Malaysia. Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences*, London: The Death Penalty Project, 2013; Wing-Cheon Chan, Tan, Ern-Ser Tan, Jack Lee and Braema Mathi, ‘How Strong is Public Support for the Death Penalty in Singapore’, *Asian Journal of Criminology* (Published online 11 October 2017); Justice Tankebe, K. E. Boakye, and P. A. Atupare (2015), *Public Opinion on the Death Penalty in Ghana*. Accra: Centre for Criminology and Criminal Justice. Mai Sato, *The Death Penalty in Japan. Will the Public Tolerate Abolition?* Weisbaden: Springer VS, 2014; Mai Sato and Paul Bacon, *The Public Opinion Myth: Why Japan retains the death penalty*, London: The Death Penalty Project 2015; Penal Reform International (PRI), *Crime and Punishment: Public Perception, Judgement and Opinion*, London, Penal Reform International, 2013; and Mai Sato, *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?*, London: The Death Penalty Project, 2018.

<sup>12</sup> For a review and analysis of public opinion surveys mentioned in note 11, see, Roger Hood, ‘Is Public Opinion a Justifiable Reason not to Abolish the Death Penalty? A Comparative Analysis of Surveys in Eight Countries’, *Berkeley Journal of Criminal Law* (in Honour of Franklin E. Zimring), vol. 23 (2), 2018.

### 1.3 The survey and its methodology

For the reasons outlined above, a survey of the views of a representative sample of the Taiwanese population, aged 20 years and over,<sup>13</sup> on death penalty-related issues was conducted between November 2013 and January 2014. The findings were preliminarily presented to a conference held by the Taiwan Alliance to End the Death Penalty (TAEDP), in Taipei in December 2014. As in the other countries that retain the death penalty where similar surveys have been conducted, the opinion poll in Taiwan produced a much more nuanced picture of the level and intensity of public support for capital punishment. Yet the outcomes of the survey have remained little known, unappreciated and largely forgotten or ignored. Hence the decision of The Death Penalty Project to publish them, in light of the continuing recourse by the Taiwanese government, on certain occasions, to the execution of people convicted of murder.

The survey was conducted for the TAEDP by a team of researchers led by Professor Chiu Hei-Yuan, of the Institute of Sociology, Academia Sinica. It included other academics from Academia Sinica, a judge, a lawyer, law students and members of the TAEDP. The questionnaire was developed, tested, piloted and analysed by experts in survey research. It included a wide range of in-depth questions, covering the thoughts and attitudes of the respondents towards the death penalty, as well as their social, political and legal values. There were also questions from a public opinion survey carried out in China in 2007, and the survey drew on questionnaires from European and Asian countries to facilitate an international comparative analysis as an aid to further understanding of Taiwanese attitudes towards capital punishment. A copy of the questionnaire may be accessed through the website of The Death Penalty Project. The interviewers were trained by the Center for Survey Research at Academia Sinica. It established a dedicated team to check the quality of their work, to ensure the integrity of the data and to answer queries arising from the questions and responses. When the questionnaires were completed, the answers were reviewed and checked for authenticity and accuracy, and errors were corrected.

The data was collected through face-to-face interviews and respondents were selected using a three-stage probability sampling method. A total of 4,082 people were selected to be approached; 2,039 face-to-face interviews were completed – a positive response rate (before weighting adjustments) of 53% – and 17% declined to be interviewed.

The sampling units of the three stages were:

- *Primary sampling units: Towns, districts and cities* (six strata, ranging from metropolitan, commercial/industrial urban areas, new towns, traditional industrial towns and underdeveloped towns, to remote areas with ageing populations)
- *Secondary sampling units: villages and boroughs* (clusters)
- *Final sampling units: individuals*

The number of individuals selected for interviewing at each stage in each administrative district was proportionate to the population according to the 2012 census. This produced a remarkably close match between the characteristics of the sample interviewed and the distribution of the general population of Taiwan, in respect of gender, age, level of education and the type of region where domiciled. So, in relation to these variables, the findings should be representative of the views of the Taiwanese population as a whole.

<sup>13</sup> Excluding people living in institutions such as military facilities, hospitals, psychiatric centres, schools, vocational training centres, dormitories and prisons.



# **PART TWO:**

The findings



## 2.1 The strength of support for the death penalty in general

In the poll conducted for this study in January 2013, respondents were asked: ‘Do you support the abolition of the death penalty?’ This was a test of the level of *general* support not related to particular crimes for which capital punishment might be imposed. The proportion that answered ‘No’ was 85% – the highest recorded by 18 opinion polls held in Taiwan since 1990, when it was 75%. Indeed, it was 11 percentage points higher than a poll taken on 3 March 2010 (74%). However, it was, within the margin for error, much the same as that obtained by a telephone survey in March 2012 (see Table 1).

Without a detailed analysis of the response rates to earlier polls and the method of polling (by telephone, online survey or face-to-face interviewing), it is not possible to say with certainty whether the sharp rise in resistance to abolition recorded by the poll reported here was because of the method used, the sample of citizens polled, or to the events that stirred up emotions and highlighted the issue of capital punishment that preceded the 2012 and 2013 polls. On 9 March 2010, Prosecutor-General Huang Shih-Ming had called for death row inmates to be executed; yet – on 10 March – Minister of Justice Wang Ching-Feng publicly declared she would never sign any warrant for execution.<sup>14</sup> On 11 March, Wang was forced to resign as a result of her anti-death penalty stance.<sup>15</sup> Meanwhile, senior officials in the government continued to highlight the importance of resolving matters in accordance with the law and insisted that executions be carried out.<sup>16</sup> At the same time, the matter received widespread media attention, much of which expressed support for the death penalty. In the end, four death row inmates were executed on 28 April, bringing an end to Taiwan’s four-year moratorium on capital punishment. It is probable, therefore, that the government’s decision to end the moratorium, and media support for this action, were the main reasons why the percentage of people against abolishing the death penalty rose to 85% — the highest figure in 20 years.

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<sup>14</sup> Rich Chang and Loa Lok-Sin, ‘Justice chief defends stay of executions’, *Taipei Times*, 11 March 2010.

<sup>15</sup> Ko Shu-Ling, Vincent Y. Chao and Shih Hsui-Chuan, ‘Wang resigns over death penalty row’, *Taipei Times*, 12 March 2010.

<sup>16</sup> See note 5 above.

**Table 1: Pro-abolition and anti-abolition opinion: the long-term trend**

Date	Pro Abolition	Opposed to Abolition	Survey source
May 1990	9	75	Taiwan Social Opinion Survey, Academia Sinica
February 1991	13	69	Taiwan Social Opinion Survey, Academia Sinica
1993	13	63	United Daily Opinion Poll Center
1994	16	69	Taiwan Social Opinion Survey, Academia Sinica
April 2000	13	74	TVBS Poll Center
2000	13	75	United Daily Opinion Poll Center
January 2001	12	71	RDEC of the Executive Yuan
May 2001	15	70	TVBS Poll Center
August 2001	12	79	Taiwan Social Change Survey, Academia Sinica
October 2002	10	77	RDEC of the Executive Yuan
March 2006	18	72	TVBS Poll Center
June 2006	21	76	Taiwan Social Opinion Survey, Academia Sinica
2008	16	80	Ministry of Justice
March 2010	12	74	United Daily Opinion Poll Center
April 2010	9	85	TVBS Poll Center
2012		77	MSRC Market Survey and Research Co
December 2012	17	83	Pollster Online Survey
December 2013	10	88	TAEDP (Center for Survey Research, Academia Sinica)
December 2013	15	82	

**Note:** Percentages rounded. Dates shown are only precise to the year.

However, the fact that a high proportion of respondents were in favour of retaining the death penalty does not tell us how *strongly* they felt about it, or how their response might be affected by the amount of thought they had given to the issue. Neither can it indicate what their response might be if the death penalty were to be abolished.

To test whether opinion on the abolition of the death penalty was affected by the amount of consideration respondents may have given to the issue, the order in which the question about abolition was asked varied. For half the sample (even numbers), it was asked near the beginning of the questionnaire (the 13th question); for the other half (odd numbers), it was asked near the end (100th question), after many other questions relating to capital punishment had been asked.

Two findings emerged that suggest the level of opposition to abolition may vary depending on the context in which the question is posed – and, more significantly, that only a *minority* of respondents said they were *strongly opposed* to abolition (see Figure 1).

First, those who gave their views on abolition after considering a series of questions about the death penalty, knowledge of the system, confidence in decision-makers and other matters, were somewhat less likely (82%) to oppose abolition than those who considered this question early in the interview (88%).<sup>17</sup>

Second, the proportion *strongly opposed to abolition* fell from 35% to 29%, and it was this group that was affected by the question order, the proportion who answered simply that they disagreed having remained the same at 53%. The proportion in favour of abolition rose from 10% to 15%.

Thus, the percentage of people who felt *strongly* opposed to abolition was well short of a majority – between 29% and 35%. Their opposition decreased when they were made aware of the complex issues that surround the death penalty. As was found throughout this survey, however, the proportion in favour of abolition remained low and those *strongly* in favour very low. The majority of respondents did not say they felt *strongly* about the issue either way.<sup>18</sup>

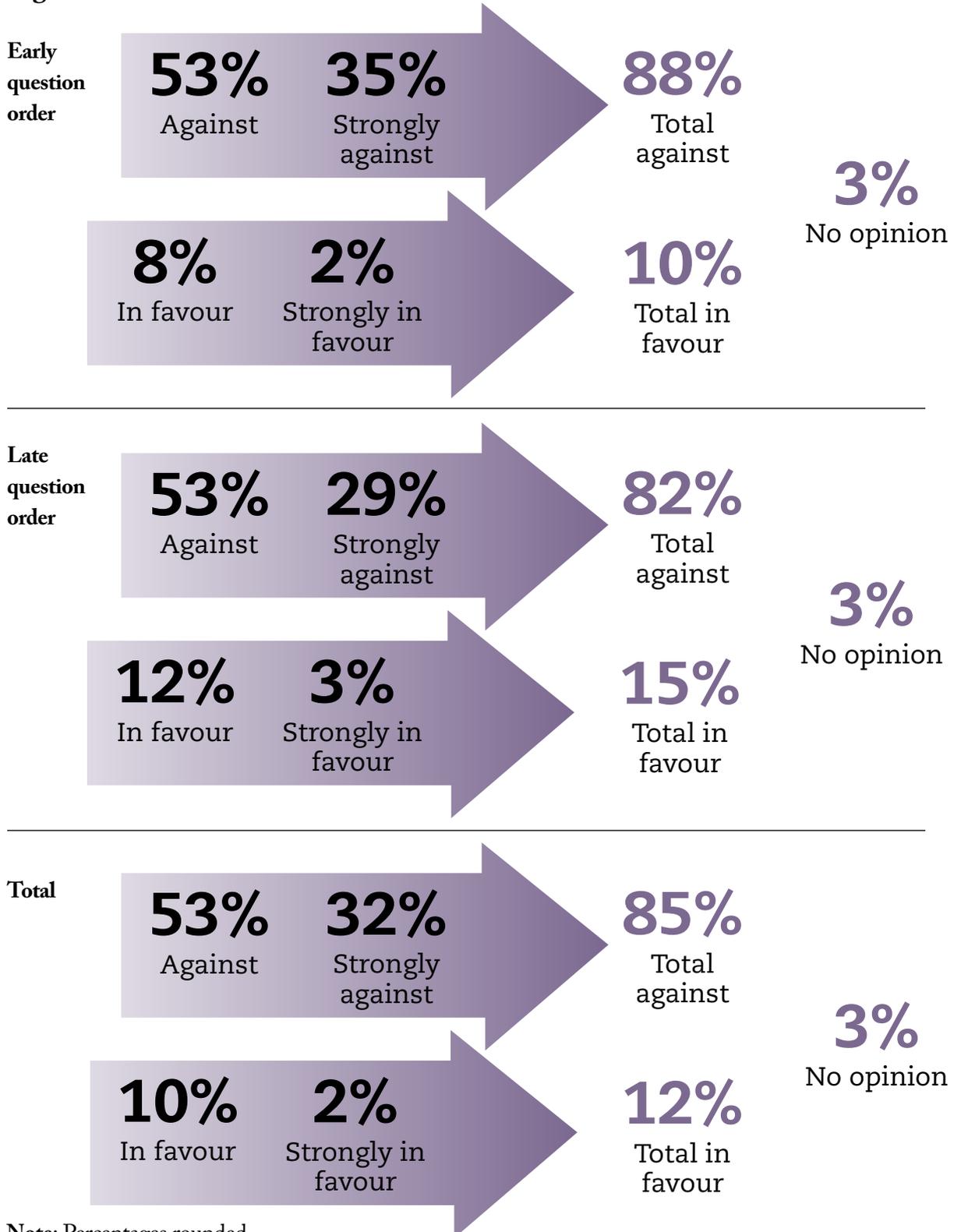
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<sup>17</sup>The six percentage points difference is statistically significant ( $t=3.60, p<.001$ )

<sup>18</sup> For example, the proportions who said they were *strongly* opposed to the statement: 'Life is precious so the death penalty should be abolished' was 19%; 16% were strongly opposed to 'Even a state cannot deprive a person of his life, so there should be no death penalty'; and 16% were *strongly* opposed to 'All criminals can be reformed, so there is no need for execution'.

# Do you support abolishing the death penalty?

Figure 1



## 2.2 Crimes not involving murder or loss of life

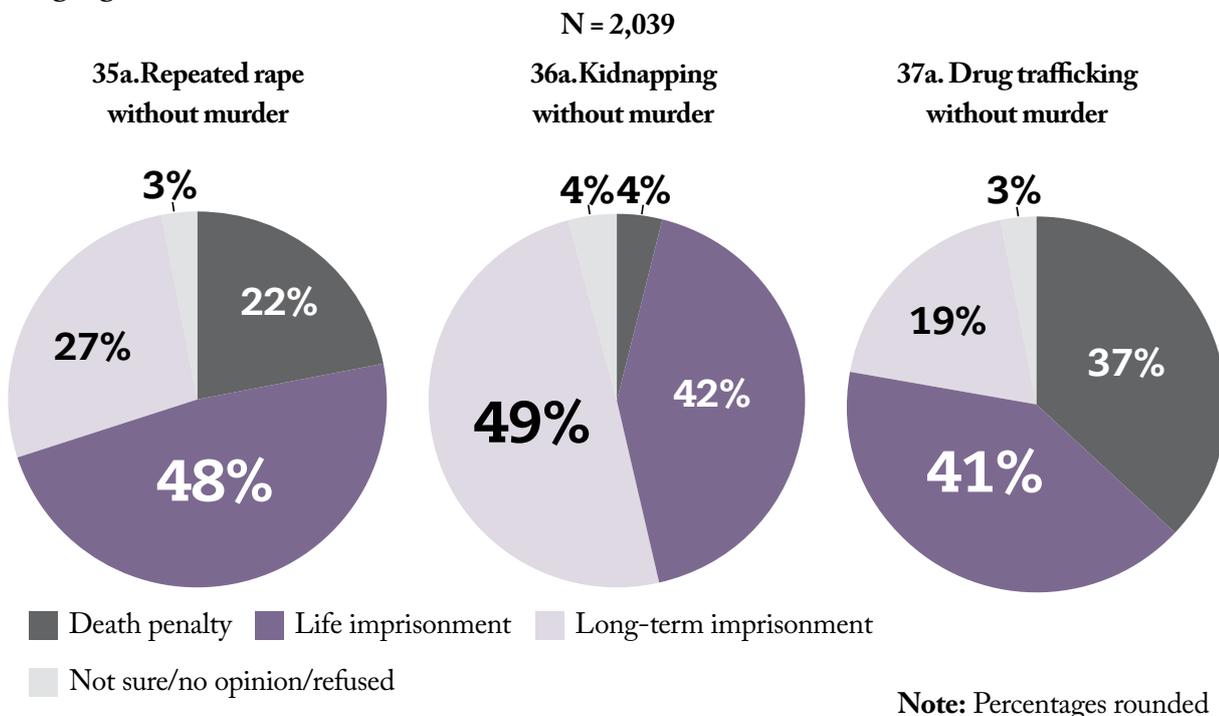
Although 85% of Taiwanese respondents said they were opposed to the abolition of the death penalty, the majority did not think it would be an appropriate punishment for three types of crime that were formerly, or currently, punishable by death in Taiwan. These were:

- repeated rape with violence inflicted on the victim, but no murder involved (no longer a capital offence);
- kidnapping without murder (punishable by death under the Criminal Code article 347, but no death sentences have been imposed for a long time); and
- trafficking a major amount of illegal drugs without murder (punishable by death under the Narcotics Hazard Prevention Act, article 4, but no death sentences have been imposed for a long time).

Only a minority of people surveyed chose the death penalty as suitable punishment for situations involving the crimes specified above.

As Figure 2 reveals, slightly more than one-third of the respondents thought death would be appropriate for the drug trafficker, but only 22% for repeated rape and beating, and 4% for kidnapping with no murder committed. For punishing repeated rape and drug trafficking, most respondents opted for life imprisonment (48% and 41% respectively). For punishing kidnapping, most chose long-term imprisonment (49%).

**Figure 2. On appropriate penalty for three felonies that do not involve murder: highest proportion highlighted.<sup>19</sup>**



<sup>19</sup> Original questions: (a) 'If someone repeatedly raped and beat a victim, but did not kill the victim, should s/he be sentenced to death, life imprisonment or a long prison term?'; (b) 'If someone kidnapped another person, but did not kill the victim, should the kidnapper be sentenced to death, life imprisonment or a long prison term?'; (c) 'If someone sold a major amount of illegal drugs, should s/he be sentenced to death, life imprisonment or long-term imprisonment (if there was no killing involved)?'

The reason for choosing death as the penalty for any of these three non-fatal crimes was based mainly on the view that a person, or people, had been 'deeply harmed': 30% of all respondents chose this as the reason they had supported the death penalty for trafficking a major amount of illegal drugs (accounting for 82% of all those who chose death for drug offences). However, only between 1% and 4% of all respondents said the 'need to warn others' (for general deterrence) was the main reason they had chosen the death penalty for any of these three types of crime.

The reason the majority of respondents did not consider death an appropriate penalty for each of these three non-fatal offences was that there was no case for taking a 'life with a life', because no murder had been involved. It was felt that long imprisonment would be sufficient and that some perpetrators deserved an opportunity to reform.

**Table 2: Main reasons for choosing the death penalty, or not, for three types of non-fatal felony**

	Repeated rape but did not kill victim (%)	Kidnapped but did not kill victim (%)	Sold a major amount of illegal drugs (%)
<b>DEATH SENTENCE</b>	<b>22</b>	<b>4.3</b>	<b>37</b>
Very severe harm	9	1.1	30
Satisfy victim's family	3	0.4	1
<i>Total retributive</i>	12	1.5	31
Deter others	3	1.3	3
Prevent repetition	6	1.3	2
Other	0.3	0.1	0.2
<b>NOT DEATH</b>	<b>78</b>	<b>96</b>	<b>63</b>
Did not kill	30	34	16
Death disproportionate/ long-term imprisonment sufficient	23	24	21
Given opportunity to reform	18	31	20
Oppose death penalty	2	2	2
No clear opinion/refuse	5	5	4*
<i>Total 2,039</i>	100	100	100

It is clear from these findings that:

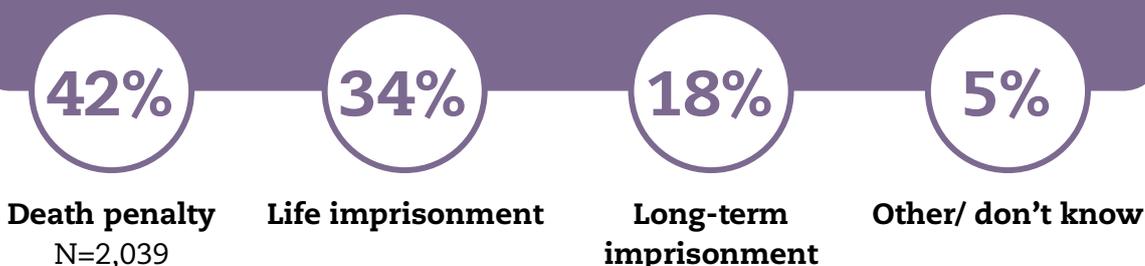
- It is now widely accepted that death is an excessive punishment for rape without murder
- That the death penalty could be abolished *de jure* for kidnapping and drug trafficking without murder without a public outcry

## 2.3 Support for the death penalty for different types of murder

For this survey, five types of felonies involving murder were selected from actual cases that had occurred in Taiwan, and edited into five murder scenarios. Respondents were asked to choose the kind of punishment they deemed to be appropriate for each of these five murder scenarios – the death penalty, life imprisonment, long-term imprisonment, or another penalty.

## Scenario One

A (male) and B (female) had been in a relationship for a long time. Recent quarrels led B to decide to break up with A, but A repeatedly asked B not to. B ignored A's pleadings. In the final discussion about the break-up, A killed B under the influence of anger. What sentence do you think A should receive: the death penalty, life imprisonment, or long-term imprisonment?



**Note:** Percentages rounded

More than half (58%) of those surveyed chose not to punish A with the death penalty, compared with 84% who said that 'in general' they were opposed to the abolition of the death penalty.

The most commonly cited reason – by 65% of those who chose the death penalty – was retribution: an 'eye for an eye' or to 'dispense justice to the victim's family'. Together, they accounted for 28% of the 2,039 people who judged this case. Only 9% of those who chose the death penalty gave their reason as being to 'prevent others from committing the same crime'.

Among the 58% who would not have the perpetrator executed, 46% believed he should be 'given a chance to repent', while 41% said 'life or long-term imprisonment is enough'.

## Scenario Two

After graduating from junior high school, A (male) found a part-time temporary job, but eventually lost it and became unemployed and indebted. One day, when he was about to leave a house after breaking in, the homeowner returned. The two started fighting. A killed the homeowner in the fight. Which sentence do you think A should receive: the death penalty, life imprisonment or long-term imprisonment?

33%

**Death penalty**  
N=2,039

39%

**Life imprisonment**

24%

**Long-term imprisonment**

4%

**Other/ don't know**

**Note:** Percentages rounded

Faced with this scenario, only one-third of those surveyed thought killing a householder during a burglary deserved the death penalty: four out of 10 chose life imprisonment (39%) and almost a quarter chose long-term imprisonment.

Among the 33 who thought that the perpetrator should receive the death penalty, 63% cited 'an eye for an eye' or 'dispense justice to the victim's family' as their main reason. Only a quarter (24%) of those who chose death did so because they thought it would be a deterrent to others – this group accounted for only 8% of all 2,039 who judged this case. As with Scenario One, the main reason for not choosing death was either to give the offender a chance to repent or a belief that life or long-term imprisonment was 'enough'. In other words, two-thirds rejected capital punishment as a disproportionate and unnecessary penalty.

## Scenario Three

A has been bullied and intimidated by B. One day, A brought a bottle of gasoline to B's house, which resulted in a dispute and a fight. Upon retreating, A threw the bottle away, causing the gasoline to spill. B's house caught fire and five of B's family members died as a result. Which sentence do you think A should receive: the death penalty, life imprisonment or long-term imprisonment?



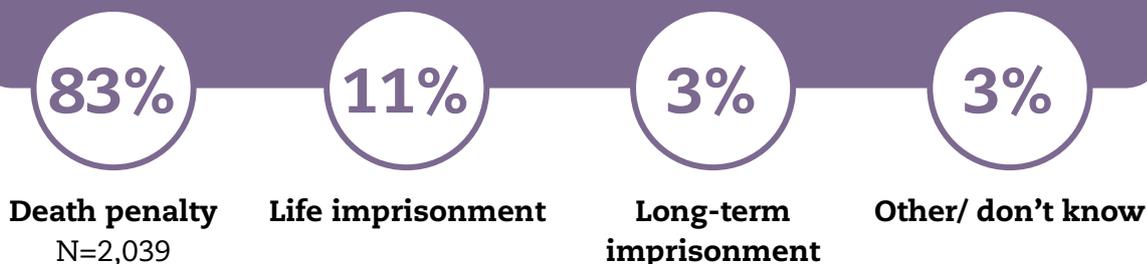
**Note:** Percentages rounded

In response to this scenario, in which the perpetrator had been “bullied and intimidated” by the victim, but who had taken gasoline to the victim’s house which resulted in multiple deaths, not much more than half (57%) the respondents judged that death was the required punishment.

Again, among the reasons given by the 57% who decided a death sentence was required, more than two-thirds (69%) chose an ‘eye for an eye’ (20%) or to ‘dispense justice to the victim’s family’ (49%), indicating the impact of multiple deaths. Fewer than one in five respondents (18%) chose death as a general deterrent, but they only comprised 10% of all respondents who judged this case. Among the 43% who deemed the death penalty to be unnecessary, 42% said that the perpetrator should be ‘given a chance to repent’, while 46% said ‘life or long-term imprisonment is enough’.

## Scenario Four

A acquired a knife, a rope and a handkerchief and randomly killed a ten-year-old girl. What sentence do you think A should receive: the death penalty, life imprisonment or long-term imprisonment?



**Note:** Percentages rounded

For the majority of respondents (83%) – the same percentage who said, in general that they opposed the abolition of the death penalty – the premeditated random killing of a little girl was an atrocious act for which the death penalty was the appropriate punishment.

Only one-tenth of the respondents chose life imprisonment as punishment for the perpetrator, while less than 3% believed that regular incarceration would be enough punishment.

Among the 83% of respondents who chose death as the punishment, 37% cited an 'eye for an eye' or to satisfy the victim's family, but – in this case – the majority (61%) chose death as a general deterrent (29%) or to 'prevent the killer from committing the same crime' (32%). Thus, retribution was less important to respondents in this case than acting to prevent repetition of such a crime. Among the 17% who considered the death penalty unnecessary, 42% thought the perpetrator deserved to be 'given a chance to repent', while 31% said that 'life or long-term imprisonment is enough'. More importantly, the reason given by 20% (although accounting for only 2.6% of all respondents) was that they were 'generally against sentencing murderers to death'.

## Scenario Five

Regarding the previous question, A was found by the court to have a mental disorder and had been undergoing treatment at a hospital for an extended period of time. What sentence do you think A should receive: the death penalty, life imprisonment or long-term imprisonment?



**Note:** Percentages rounded

The additional information that the defendant had been mentally ill for a long time had a dramatic effect on the proportion of respondents who believed that the death penalty would be the appropriate punishment. That proportion dropped by almost 50 percentage points, from 83% to 34%.

Instead, the proportion choosing life imprisonment increased from 11% to 44%, and for long-term imprisonment from 3% to 18%. The juxtaposition of these cases shows that – while the vast majority of respondents believed it would be right to execute a child killer on retributive and crime-control grounds – they would not regard this as justifiable unless such a person was fully responsible for his actions. Given that such an extreme and random act of child murder is nearly always the outcome of severe mental or personality disorders, the responses of those interviewed for this survey to Scenarios Four and Five is most illuminating.

To sum up, the judgments of more than 2,000 Taiwanese citizens on whether the death penalty would be the appropriate and just sentence when faced with five typical scenarios of murder were very different from their response to the ‘abstract’ question of whether or not they supported abolition of the death penalty. The only type of case for which it could be claimed that an overwhelming proportion of citizens would be *very strongly* opposed to abolition, or outraged by a lesser sentence than death, was the random killing of a young girl. Yet citizens did not respond in a vengeful or excessively severe way when informed that the person concerned was seriously mentally ill. This certainly shows that, when the realities of murder are known and appreciated, the loud bark of the public is quite different from its more moderate and proportionate bite.

The reasons the respondents gave for imposing the death penalty further illustrate a disjunction between responses to rather abstract questions and how people respond when faced with real-life scenarios. When asked the general question ‘does the death penalty help to prevent homicide’, 25% said ‘it helps a lot’ and 57% that ‘it helps’ – a total of 82%. Only 16% thought it did not help. Roughly the same proportion said it helped to improve public order/security, and two-thirds (68%) agreed with the statement that ‘among existing penalties, the death penalty is the most effective deterrent to crime’. Asked whether they thought crime rates were lower in countries with the death penalty than in those without, respondents were almost equally divided – 46% saying no and 42% yes (12% not knowing).

When faced with the scenarios of murder, however, only a small percentage (and only in one case more than 25%) chose deterrence as the main reason that they decided the death penalty was the appropriate punishment (see Table 3).

The main reason death was or was not chosen (with the exception of Scenario Five, where mental illness was the issue) related to a judgment on the seriousness of the crime – either that the harm caused (including to the feelings of the victim’s family) deserved death<sup>20</sup> or that it would be a disproportionate penalty and life, or long-term, imprisonment would be sufficient. These are moral assessments rather than empirical facts about the effectiveness of capital punishment, and – as such – may change as expectations of what constitutes cruel and inhuman punishment changes. While the majority held retributive views, relatively few held them strongly. For example, 66% agreed with the statement that a murderer must pay with his life, but only 17% *strongly* agreed – and while only 13% agreed that ‘even a state cannot deprive a person of his life’, only 19% *strongly* disagreed. Moreover, only 17% agreed that ‘all criminals can be reformed, so there is no need for execution’, but only 13% of the 77% who said they disagreed said they did so *strongly*.

The survey also found evidence that, once human rights standards had been set, a majority of the public supported them. In regard to the right to life – under which those who commit capital offences when less than 18 years old are protected from the death penalty – 75% were opposed to a 16-year-old being sentenced to death for murder, and only 18% were in favour. Nine out of 10 were in favour of the families of death row inmates being allowed to meet the inmate before execution.<sup>21</sup> In response to the opinion ‘some people are born to be criminals’, 81% disagreed (59% of them ‘strongly’). Given two examples of where a victim’s parents had forgiven the repentant killer of their child, between 71% and 83% approved of the decision not to sentence that offender to death. In terms of the criminal justice process, 86% did not agree that conviction should be allowed on the basis of a confession alone.

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<sup>20</sup> Concern for the feelings of the victim’s family is further demonstrated in the finding that 79% agreed (64% and (15% strongly) that “The death penalty can bring some comfort to the families and friends of crime victims.”

<sup>21</sup> In Taiwan, the death penalty is carried out in secrecy and only announced after it is done. Family members are not notified before the execution and only receive a notice from the government after it is publicly announced. Family members cannot even see the prisoner on death row one last time before the execution.

**Table 3: Reasons FOR choosing OR NOT choosing the death penalty for each murder scenario**

CHOICE OF SENTENCE: DEATH OR NOT DEATH	Scenario 1 Killed girlfriend (%)	Scenario 2 Housebreaker killed owner in a fight (%)	Scenario 3 Killed five in arson attack after a fight (%)	Scenario 4 Randomly murdered 10-year-old girl (%)	Scenario 5 (Sc 4, plus mentally disordered offender) (%)
<b>DEATH SENTENCE</b>	<b>42</b>	<b>33</b>	<b>57</b>	<b>83</b>	<b>34</b>
Eye for eye	15	12	11	18	
Satisfy victim's family	12	9	28	13	
Total retributive	27	21	39	31	
Deter others	9	8	10	24	
Prevent repetition	6	4	6	27	
Other	0.3	0.3	2	1.5	
<b>NOT DEATH<sup>22</sup></b>	<b>58</b>	<b>67</b>	<b>43</b>	<b>17</b>	<b>66</b>
Death disproportionate/ long- term imprisonment sufficient	27	38	16	6	
Chance to reform	21	21	18	4	
Oppose death penalty	2	2	3	3	
No clear opinion/refuse	8	6	6	4	
Total 2,039	100	100	100	100	100

**Note:** Percentages rounded

## 2.4 What if there was an alternative to the death penalty?

We have shown that asking a member of the public the abstract question of whether they do, or do not, oppose the abolition of the death penalty produces a different response than when they are asked the same question in the context of a set of facts about the crime for which it may be imposed. In other words, the level of support is contingent on the circumstances.

<sup>22</sup> Complete responses: 01. He should be given a chance to reform; 02. The death penalty is too much. Life or long-term imprisonment is enough; 03. I am generally opposed to the death penalty for murder.

It would be similarly misleading to examine answers to this general question about support for the death penalty without considering how a respondent might answer if a satisfactory substitute punishment were mentioned as an alternative to capital punishment. So, respondents were asked several questions that shed light on how they would respond if life imprisonment was made a substitute for the death penalty. In particular, they were asked:

- Whether they supported life imprisonment with no parole (LWOP) as a substitute for the death penalty.
- What their reaction would be if the death penalty was abolished and replaced by LWOP, with the convict working to earn money that would be devoted to compensating the victims or their families.
- What their reaction would be if the death penalty was abolished and replaced with life imprisonment that includes the possibility of parole after 25 years for convicts with good behaviour [in prison] and a low chance of recidivism.

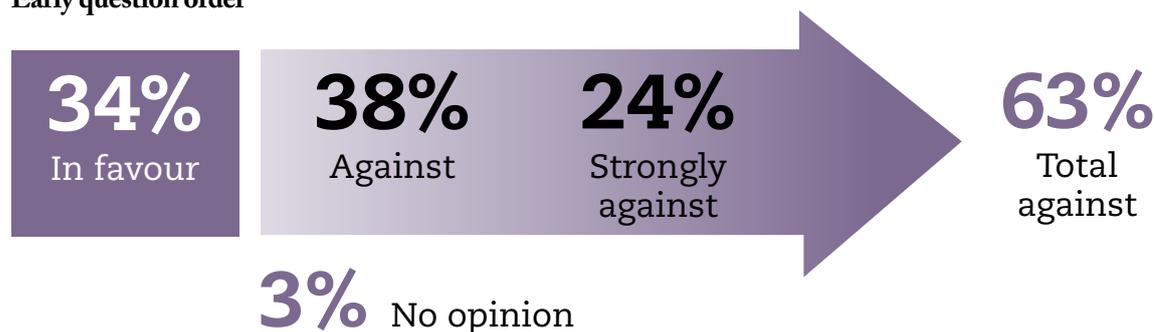
Note that the first question asked for an opinion on whether they would support an initiative to replace the death penalty, whereas the second and third options ask whether they would support either alternative in the event that the government abolished the death penalty.

For half the sample, the first question was asked early in the sequence of questions, while – for the other half – it was put after most other questions had been asked.

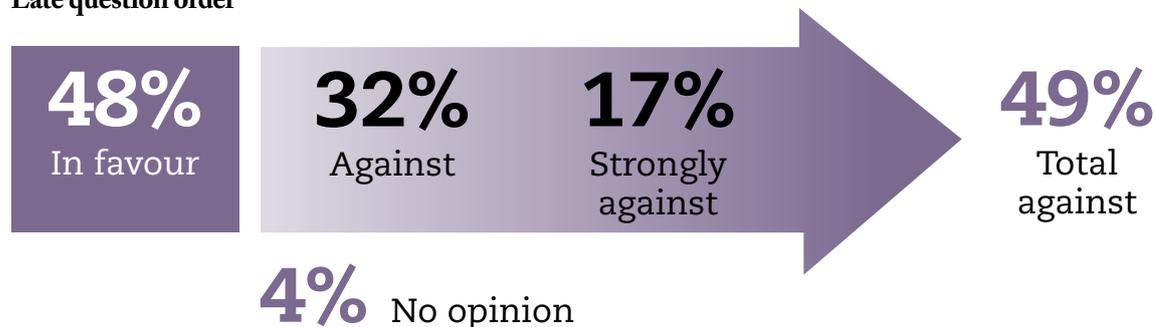
# Do you support life imprisonment without parole as a substitute for the death penalty?

Figure 3

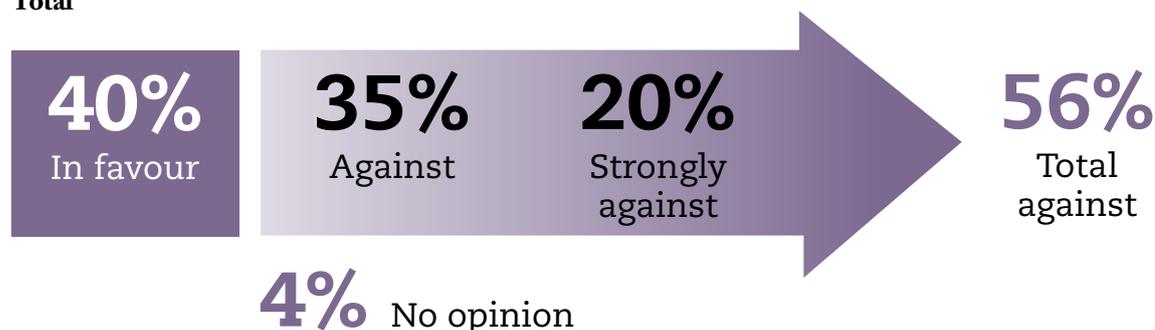
## Early question order



## Late question order



## Total



Note: Percentages rounded

When this issue was responded to in consecutive surveys between 1990 and 2008, those who supported substituting life imprisonment for the death penalty had always outnumbered those who were against this proposition. In 1990, the ratio between supporters and opponents was 52 to 38. In 1991, the gap shrank to 47:43, but then continued to increase in the following years. In 2008, the supporters-to-opponents gap was 56 to 43. In this 2013/14 survey, the ratio was reversed to 41% in favour and 56% against.

As happened when respondents were asked about their support for abolition, those who answered after consideration of other questions were considerably more likely to be in favour, and less likely to be strongly against, LWOP. Indeed, only one-third of those asked about this possibility early on were in favour (with 63% against), compared with almost half (48%) in favour – and virtually the same proportion against – among those who faced the question much later in the interview. The proportion of those who strongly objected to this proposal fell from 24% to only 17%.

The evidence suggests that, if given time to consider their views on life imprisonment without parole as the alternative to the death penalty, the opposition would be hardly any stronger than the support. Most significantly, there would be very little *strong* public opposition to this reform.

In addition to the question ‘do you support life imprisonment without parole as a substitute for the death penalty’, two other questions were posed to better understand respondents’ attitudes toward finding an alternative to the death penalty. They were asked whether they would support the following: ‘If the death penalty is abolished and replaced by life imprisonment without parole, the convicted should work to earn money that is devoted to compensating the victims or their families’: 71% were supportive (23% *strongly* supportive), while 27% said they would be opposed and only 8% were *strongly* opposed (see Table 4).

This indicates that many of those who had supported the death penalty in general, with no alternative suggested, would be prepared to see it replaced if it meant the families of victims would receive compensation through work performed by those who had deprived them of their relative.

In response to the third question, it was found that more than half of the people surveyed (55%) opposed giving well-behaved and non-dangerous inmates a possibility of earning parole after 25 years of incarceration (see Table 4). Only 17% said that they would be *strongly* opposed, however. This is hardly an overwhelming majority in opposition, given that 41% of respondents were definitely supportive of this idea and another 4% were not committed either way.

**Table 4: Percentages in favour of two forms of life imprisonment if the death penalty were to be abolished**

	Life imprisonment without parole plus requirement to work in prison to provide compensation for victims' families (%)	Life imprisonment with the possibility of parole after 25 years for well-behaved inmates with a low risk of recidivism (%)
For	71	41
Against	19	38
Strongly against	8	17
Total against	27	55
No opinion	3	4

Note: Percentages rounded

## 2.5 What if the system is not fair and/or innocent people may be executed?

Given that such a high proportion of respondents had said that, in general, they were opposed to abolition, it was very surprising to find that most people (69%) had no confidence in the fairness of decisions made by Taiwan's judiciary, and more than half (54%) expressed no confidence in the fairness of death penalty sentences – a mere 3% of them being *very* confident.<sup>23</sup> Three-quarters agreed with the view that Taiwan's current legal system 'protects people with power and status' and 78% endorsed the view that, if two people committed the same capital case, a poor person would be more likely than a rich person to be sentenced to death.

Faced with such widespread lack of confidence among the public that trials and sentencing decisions are fair and non-discriminatory, lawyers would be forced to conclude that a considerable majority of the public supports capital punishment even though they believe the administration of the death penalty is *arbitrary*. It can be strongly argued, therefore, that government should not base its policy on opinions of people who are prepared to support the death penalty even though they acknowledge it violates the right to life enshrined in article 6(1) of the International Covenant on Civil and Political Rights, now incorporated into Taiwanese law.

Only 17% of respondents were of the view that it was not possible for there to be miscarriages of justice among *current* death penalty cases in Taiwan, with only 2% of them endorsing the view that this was *completely* impossible. Although half of the respondents said they knew of cases in which an innocent person had been executed in Taiwan after the lifting of martial law in 1987, only half of these were able to name the notorious Chiang Kuo-Ching case – despite the publicity that had surrounded it when former President Ma had apologised for executing this innocent man.

<sup>23</sup> Further analysis showed that people with higher educational levels showed more confidence in the fairness of judicial decisions and death penalty sentencing and were less likely to say they "don't know" or "have no opinion."

When asked specifically about the impact of knowing about wrongful executions, 77% of respondents said they agreed with retaining the death penalty *even* if it were certified that innocent people had been wrongfully executed.

However, this knowledge had severely weakened their confidence, because only 6% now said they were *strongly* opposed to abolition – far fewer than the 32% (see Figure 1) who said they were strongly opposed to abolition when asked without having to face the contingency of executing an innocent person.

The fact that public opinion supports the death penalty (even if only weakly) when provided with certified evidence of wrongful convictions, indicates that they put their concern for social order and safety from violence above the human rights of a citizen. The question this obviously raises is whether a government now committed to upholding human rights should give credence and weight to opinions that defy the primacy of protecting these.

## 2.6 What knowledge underlies opinion?

What knowledge and assumptions lie behind the strong initial support for the death penalty among Taiwanese citizens? Moreover, are they sufficiently knowledgeable about the death penalty for the government to feel that apparent public support for capital punishment is a valid ground for delaying abolition of the death penalty?

Firstly, we considered how aware respondents were of the extent to which the death penalty is enforced in Taiwan and in the rest of the world. Such knowledge could be expected to affect attitudes towards retention or abolition. One would also expect public opinion to be given less weight in the political debate if it is shown to be ill-informed about the actual administration and enforcement of the death penalty in Taiwan. In other words, public opinion – as a factor to be taken seriously into account – will have greater legitimacy if it is known to be rationally based. Survey questions about the sentencing and execution of the death penalty in Taiwan and around the world are listed in Table 5, with the proportion of respondents who were able to give the correct answer, or one approaching it, and the number of questions answered correctly.

**Table 5: Percentage knowing the correct answer to four factual questions about the death penalty**

Factual questions	Frequency	%
How many death row inmates are there in Taiwan? <sup>24</sup>	331	16
How many of the 198 countries have abolished the death penalty? <sup>25</sup>	77	4
How many countries carried out executions last year? <sup>26</sup>	363	18
Did you know that an innocent person was executed (Chiang Kuo-Ching) after the lifting of martial law in 1987?	528	26
Number of correct answers		
0 correct answers	1,124	55
1 correct answer	608	30
2 correct answers	234	12
3 correct answers	69	3
4 correct answers	4	0.2
Total	2,039	100

**Note:** Percentages rounded

It can be seen that only a tiny percentage correctly responded to all four questions (0.2%). More than half (55%) did not know the correct answer to *any of them*, and 85% got the answer to only one question correct or none at all.<sup>27</sup>

Only four out of 2,039 people knew the answers to all four questions, and fewer than one in five knew the answer to three of the four questions, the exception being the widely publicised case of the innocent Chiang Kuo-Ching – but, even then, 74% knew nothing about it. This suggests a lack of interest in gaining knowledge about a subject on which the government takes their opinions seriously.

<sup>24</sup> At the time the survey was conducted, there were 45 death row inmates awaiting execution. The survey considered answers between 40-80 as correct.

<sup>25</sup> On 30 April 2014, 99 (50%) had abolished the death penalty completely. Altogether, 151 (77%) of all countries had abolished the death penalty or had not executed a death row inmate during the past decade.

<sup>26</sup> Twenty-two countries in 2013 (11%) executed at least one death row inmate.

<sup>27</sup> Respondents were critical of the news they received from the press and other media: 65% of those surveyed believed news on TV about homicides is not objective, while 57% believed reports on homicides in newspapers were not objective.

Furthermore, members of the public surveyed did not place any weight on the importance of knowing such facts. After they were provided with the information, they were asked again whether Taiwan should retain or abolish the death penalty, and 86% chose retain with only 10% opting for abolish – a ratio of retentionists to abolitionists (see Figure 1) no different from that expressed when this question was asked without such information being available.

**This finding suggests that, in general, the opinions on the death penalty among the Taiwanese public are extremely parochial. It also raises the question of whether responses given in opinion polls by a largely ignorant public ought to delay the implementation of the government's policy to eventually abolish the death penalty.<sup>28</sup>**

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<sup>28</sup> Using regression analysis, this study found that gender and education levels influence people's knowledge about the death penalty. Males generally know more about the death penalty and, the higher the education level, the more people know about the death penalty in Taiwan and the international trend of abolishing the death penalty.





# **PART THREE**

## Conclusions



### 3.1 Summary of main research findings

When interviewees were simply asked if they support abolishing the death penalty, 85% answered no. This was the highest proportion found in any survey held in Taiwan since 1990. It may have been particularly high because of the government's decision to resume executions in 2010, after four years, and the heightened salience given to the subject as a result. When the question was placed at the beginning of the questionnaire, however, 88% of interviewees were against the abolition of the death penalty; when it was placed at the end of the questionnaire – after many other questions and references to issues concerning capital punishment – 82% were against abolition: six percentage points lower. This was because those who said they were *strongly* against abolition declined from 35% to 29%, which suggests the *strength* of opposition to abolition may be lowered by asking for an opinion on this issue after its complexities have been raised by earlier questions.

When the people surveyed were simply asked if they 'support abolishing the death penalty and replacing it with life imprisonment without parole', the order of questions again influenced their answers significantly. When the question was placed at the beginning of the survey, 34% of interviewees supported the idea; when it was placed at the end of the questionnaire, 48% supported the measure – and the number of interviewees who were *against it* dropped from 63% to 49%.

When respondents were asked what their opinion would be if the death penalty was abolished and replaced with life imprisonment without parole – and the convicted made to work to earn money that would be devoted to compensating the victims or their families – 71% of respondents supported the measure, with only 27% against it. When the proposition was changed to 'life imprisonment that includes the possibility of parole after 25 years for convicts with good behaviour and low chance of recidivism', 41% of the people surveyed supported the measure and 55% were against it – but only 17% were *strongly* opposed.

When the people surveyed were asked their opinion on the punishment for crimes that did not involve murder – such as repeated rape, kidnapping and drug trafficking – only a minority supported sentencing people convicted of these crimes to death. Sentencing serious drug dealers to death was supported by 37% of the interviewees – the highest among all of the aforementioned crimes – while only 4% supported sentencing kidnappers to death. Instead, more than 40% of the people surveyed supported sentencing kidnappers to life imprisonment.

Interviewees were asked their opinion about penalties in five homicide scenarios, and 83% supported sentencing a criminal who randomly killed a young girl. Other than that, support for imposing a death sentence on a person who murdered in a crime of passion, one who did so while carrying out a burglary, and one who caused multiple deaths by committing arson ranged between 33% and 57%. When asked what penalty they would impose if the child killer had been seriously mentally ill, the percentage choosing the death penalty fell to only a third.

Respondents did not have sufficient knowledge about the death penalty. Only 16% knew – even approximately – how many inmates are currently on death row; just 26% knew about Chiang Kuo-Ching's case; 18% were aware of the number of countries that had carried out an execution in 2012; and only 4% of the people surveyed knew the number of countries that have abolished the death penalty in

law or in practice. When told the facts, however, the proportion of respondents opposed to abolition remained virtually unchanged.

More than two-thirds (69%) of the respondents did not have confidence in the fairness of judicial decisions, and 54% did not have confidence in the fairness of death sentences. Nearly three-quarters (73%) of the people surveyed believed that a wrongful execution could happen and 65% believed that some innocent people have been sentenced to death. However, when asked what their attitude would be if it were *certified* that an innocent person had been executed, the proportion opposed to abolition remained high (77%), although the proportion *strongly opposed* to abolition fell from 32% to 6%.

### 3.2 Policy recommendations

Based on the major findings of this survey, we propose the following recommendations to the government and non-governmental organisations (NGOs) working to abolish the death penalty:

- The Taiwanese government has pledged that abolishing the death penalty is a long-term goal and has incorporated the ICCPR into national domestic law. It should, therefore, play an active role in mapping out short-term and long-term plans for abolishing the death penalty and informing the public of the human rights case for doing so. The government should encourage NGOs that oppose the death penalty to provide it with supportive information and to join forces to reach the goal of complete abolition.
- While this survey found that a large majority of the population favours the retention of the death penalty, the proportion that expressed strong opinions against abolition was significantly less than half. This fell even lower when respondents were informed that an innocent person had been executed. It appears that the strength of opposition to abolition has been exaggerated considerably. Government agencies should not simply accept opinion that is ill-informed and that supports the death penalty, especially when it is held despite serious reservations about the fairness of the system. Instead, it should play a much more active part in bringing before the public facts about the inevitable human rights violations that have plagued capital punishment – not only in Taiwan, but everywhere in the world.
- The evidence suggests that there would not be very strong opposition to replacing the death penalty with forms of life imprisonment that the public considered to offer better protection and satisfaction for victims' families. Of the three options presented, a substantial majority would favour life without the possibility of parole, with the offender working to compensate the victims' families; but the substantial minority who favoured life imprisonment with the possibility of release after 25 years should not be ignored. Nor should the fact that there were relatively few respondents who were *strongly* against this option. An increasing number of jurisdictions worldwide recognise that sentences which are irreducible for all life-sentenced prisoners, irrespective of the gravity of their criminality, degree of continuing social dangerousness, and prospects of redemption, are offensive to fundamental human rights. The findings in this report, however, support the argument that the introduction of a system of life imprisonment that takes such factors into account in assessing the date for possible release into the community,

under licensed supervision, appears to be a viable option for Taiwan as a replacement for the death penalty.

- The fact that only a third of these Taiwanese respondents chose the death penalty when asked to ‘judge’ a scenario in which a child was murdered by a mentally ill person showed that a majority of them believed mentally ill killers should not be sentenced to death. This corresponds with the resolution approved by the United Nations Human Rights Committee and the requirement in the ICCPR. We strongly recommend the government to amend article 63 of the Criminal Code to stipulate that ‘people who suffer from mental disorder should not be sentenced to death’. Before the amendment is completed, the courts should comply with the ICCPR and the International Covenant on Economic, Social and Cultural Rights by not sentencing criminal offenders with mental disorders to death.
- The responses to other scenarios of murder revealed that, for most cases, there was low or only moderate support for inflicting the death penalty. Until abolition is achieved, a system of guidelines needs to be formally in place – as in several other countries – to ensure capital punishment is severely restricted to only the ‘rarest of the rare’ and the ‘worst of the worst’ cases of murder, and only where there is no prospect of rehabilitation.
- Of the people surveyed, 85% supported the statement that ‘not only the criminals themselves, but also society and the government, should be held responsible for crimes’. This suggests there would be strong support for government policies that improve crime control – as well as its prevention, detection and certainty of punishment – rather than rely on the occasional infliction of the death penalty, an inhuman and degrading punishment that has been rejected by the vast majority of the world.

# Authors

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Chiu Hei-Yuan is professor emeritus of sociology at Academia Sinica in Taipei, and professor of sociology at the National Taiwan University. Professor Chiu is a prominent leading academic in Taiwan and actively participates in social movements, including the promotion of abolition of the death penalty. Professor Chiu served as the convener of the Taiwan Alliance to End the Death Penalty from 2003 to 2013, and as chairperson of the Judicial Reform Foundation between 2011 and 2015. He remains a staunch supporter of the Taiwan Alliance to End the Death Penalty.

## Roger Hood

Roger Hood is professor emeritus of criminology at Oxford University and an emeritus fellow of All Souls College. He is co-author, with Professor Carolyn Hoyle, of *The Death Penalty: a Worldwide Perspective* (5th edition 2015) and co-editor, with Professor Surya Deva, of *Confronting Capital Punishment in Asia* (2013). Professor Hood has carried out surveys of public opinion on the mandatory death penalty in Trinidad and Malaysia, both published by The Death Penalty Project. He has delivered public lectures in China, India, Japan, Malaysia, Pakistan, the Philippines, Vietnam, Singapore and Taiwan. Recently, he served as consultant to the review of the mandatory death penalty in Malaysia by the Attorney General's Chambers. Professor Hood is an honorary Queen's Counsel, a fellow of the British Academy, and consultant to The Death Penalty Project.

# The Death Penalty Project

The Death Penalty Project is a legal action charity, based in London, working to promote and protect the human rights of those facing the death penalty. We provide free legal representation to death row prisoners around the world to highlight miscarriages of justice and breaches of human rights. We also assist other vulnerable prisoners, including juveniles, those who suffer from mental health issues and prisoners who are serving long-term sentences.

For more than three decades, our work has played a critical role in identifying miscarriages of justice, promoting minimum fair-trial guarantees in capital cases, and in establishing violations of domestic and international law. Through our legal work, the application of the death penalty has been restricted in many countries in line with international human rights standards. To complement our legal activities, we conduct capacity-building activities for members of the judiciary, defence lawyers and prosecutors, as well as mental health professionals, and commission studies on criminal justice and human rights issues relating to the death penalty.

We have been commissioning, supporting and publishing independent academic research on attitudes towards the death penalty for almost a decade. We use original data from public opinion surveys and other empirical research to engage in dialogue with policy-makers and politicians, and challenge popular misconceptions around the death penalty. Our previous publications focusing on attitudes towards the death penalty include:

- *Public Opinion Survey on the Mandatory Death Penalty in Trinidad* (2011), by Roger Hood and Florence Seemungal
- *The Death Penalty in Malaysia: Public Opinion on the Mandatory Death Penalty for Drug Trafficking, Murder and Firearms Offences* (2013), by Roger Hood
- *The Public Opinion Myth: Why Japan Retains the Death Penalty* (2015), by Mai Sato and Paul Bacon
- *12 Years Without an Execution: Is Zimbabwe Ready for Abolition?* (2018), by Mai Sato

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## Taiwan Alliance to End the Death Penalty

Taiwan Alliance to End the Death Penalty (TAEDP) is a coalition of Taiwanese abolitionist groups, non-governmental organisations and research institutes. The Alliance, formed in 2003, is the first coalition in Taiwan that advocates for the abolition of the death penalty and promotes reform of Taiwan's penal system. TAEDP undertakes its work through several different approaches. It works on individual death penalty cases and monitors trial procedures to ensure that every defendant receives a fair trial. TAEDP also regularly hosts training programmes and seminars for criminal defence attorneys. As a human rights organisation, TAEDP is not only concerned with the rights of those facing the death penalty, but also advocates for victims' rights and a more comprehensive victim support system for those affected by murder and other serious crimes. TAEDP regularly holds open forums to communicate with the general public, and collaborates with school teachers to develop teaching plans and other educational materials.

This report, a collaborative publication between the DPP and TAEDP, is released alongside *Unsafe Convictions in Capital Cases in Taiwan* (2019), a report by Carolyn Hoyle based on the research and findings of Chang Chuan-Fen. Previously, the DPP and TAEDP published *The Death Penalty in Taiwan: A Report on Taiwan's Legal Obligations under the International Covenant on Civil and Political Rights* (2014), and *The Handbook of Forensic Psychiatric Practice for Capital Cases in Taiwan* (2015).



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