

# 逐步廢除死刑之政策

## 壹、前言

死刑起源於應報主義，係以國家公權力剝奪罪犯生命權，使其永久與社會隔離，由於手段殘酷，不符刑罰亦具教化之主張，故廢除死刑已漸是世界潮流，許多民主先進國家已廢除死刑或有條件的廢除死刑，惟是否全面廢除死刑，應視社會發展、法治觀念是否成熟及民眾之共識與支持。根據歷年來所做之相關民意調查，民眾對我國廢止死刑之意見，始終約有百分之八十的受訪者，表示反對，但如有相關配套措施，例如提高有期徒刑上限、無期徒刑假釋門檻等，反對意見則約下降至百分之四十，可見如有配套措施，並透過教育，導正民眾應報思想，應可逐步凝聚廢除死刑之社會共識。法務部將會透過廣泛討論與研究，凝聚多數民眾支持廢除死刑之共識後，才會提出廢除死刑的法律修正案，以兼顧人權之保障及治安之維護。

## 貳、我國政府對廢除死刑之措施

- 一、我國於民國 34 年已簽署聯合國之「經濟社會與文化權利國際公約」及「公民權利及政治權利國際公約」，政府為落實上開人權公約人權保障之理念，業將此二公約送請立法院審議，如經通過，由 總統公布，國際人權法典即國內法化，此外，更將存放於聯合國，向世界宣示我國保障人權之決心。而上開二公約，均揭示尊重生命權及嚴格限制死刑的原則，我國既簽署上開公約，即應循序漸進展現廢除死刑之誠意，以祛除國際社會的質疑，並符合前開公約之理想。

二、法務部為達成漸進廢除死刑之目標，採取階段措施，除擬將法定刑為唯一死刑之罪，研修為相對死刑外，在刑法修正案中提高數罪併罰有期徒刑上限及無期徒刑假釋門檻之新規定，亦於 94 年 2 月 2 日經 總統公布，將於 95 年 7 月 1 日施行，期使無期徒刑未來能替代死刑，配合被害人補償制度之推行，漸進達成廢除死刑之目的。

### 三、修法內容

- (一) 爭議甚大且具有多數唯一死刑之「懲治盜匪條例」，業經法務部提案修正廢止，並配合修正刑法部分條文，該廢止案及修正案經立法院修正通過後，於 91 年 1 月 30 日公布，其中擄人勒贖殺害被害人罪之法定刑原為唯一死刑，已配合修正為死刑或無期徒刑。
- (二) 其餘在刑法中法定刑為唯一死刑之罪，法務部亦將研修為相對死刑。目前法務部已針對現行刑法中尚存二條唯一死刑之海盜罪，研擬修正為相對死刑中。
- (三) 另於 94 年 2 月 2 日總統公布之中華民國刑法部分條文修正案（總則篇）中規定替代死刑之配合修正條文如下：
  - 1. 數罪併罰有期徒刑執行之上限提高為 30 年，使犯一罪與數罪之刑罰有所差別。且為避免刑度輕重失衡，將死刑減輕後的刑度，規定為無期徒刑；無期徒刑減輕者，為 20 年以下 15 年以上有期徒刑。
  - 2. 酌採美國「三振法案」的精神，對曾犯最輕本刑五年以上有期徒刑（如殺人、強盜、海盜、擄人勒贖等罪）的累犯，於假釋期間、受徒刑之執行完畢，或一部之執行而赦免後，五年以內故意再犯最輕本刑為 5 年以上有期徒刑之罪者（即第三犯）不得假釋。

3. 為達到防衛社會之目的，爰將其得假釋之門檻提高至執行逾 25 年，始得許假釋，以期廢除死刑政策完成前，能以無期徒刑來替代死刑的選科，實質取代死刑判決，以作為漸進廢除死刑之配套措施。
4. 參之「公民與政治權利國際公約」、「兒童權利公約」所揭示對未滿 18 歲人之犯罪行為，不得判處死刑或無釋放可能之無期徒刑之精神，已為國際間之共識，且符合罪刑均衡原則，而刪除未滿 18 歲人犯殺害直系血親尊親屬罪可判處死刑之規定。

### 參、執行死刑人數之統計

有關近幾年來，我國執行死刑之人數，因保障人權之理念及相關唯一死刑法規之修正，而有明顯降低之情形，其人數分別為：87 年有 32 人、88 年有 24 人、89 年有 17 人、90 年有 10 人、91 年有 9 人，92 年有 7 人，93 年有 3 人，94 年迄今為止僅有 1 人，在法務部逐步推動前述政策下，期能漸進實現廢除死刑之理想。

### 肆、教育宣導

為落實逐步廢除死刑政策，法務部以結合政府各相關機關及民間資源，多元、多樣、多管道方式，適時對民眾宣導政府逐步推動廢除死刑政策及各階段之各項配套措施，並督導所屬各地檢署積極結合在地資源多管道行銷推廣等方式，逐步降低民眾疑慮，進而凝聚共識，獲得支持。該教育宣導措施包括：

- (一) 結合行政院新聞局協調廣播電台或有線、無線電視台等節目製作單位規劃製作相關專題報導，協助廣為宣

導。

- (二) 新修正刑法所採逐步推動廢除死刑等刑事政策，法務部除將對檢察官及相關執法人員作教育訓練外，並適時在研討會或座談會上對民眾宣導上開觀念。此外，邀集刑事政策專家、學者及人權協會等民間團體代表專文探討相關議題，提供各相關機關擬訂政策參考。
- (三) 於法務部網站登載逐步廢除死刑政策之說帖及蒐集其他先進國家死刑存廢現況，提供民眾參考，使民眾瞭解廢除死刑乃世界之趨勢及主流，祛除民眾對治安惡化之疑慮，導正民眾應報主義之思想。另印製政府逐步推動廢除死刑政策之文宣品，分送各相關機關、各級學校及所屬各地檢屬推廣運用。
- (四) 協調教育部轉知所屬各縣（市）政府教育局於辦理轄區內各級學校教師人權法治教育研習活動時，增列相關主題課程。另督導所屬各地檢署主動安排並遴派檢察官或觀護人至轄區內各級學校、機關、團體宣講相關內容，期使民主法治觀念向下紮根，提昇民主法治素養。

## 伍、策進作為

為落實逐步廢除死刑政策，除懲治盜匪條例之廢止及其配套修正刑法部分條文已於 91 年 1 月 30 日完成立法，及刑法部分條文已於 94 年 2 月 2 日完成立法外，法務部另對於本政策之策進作為如下：

- (一) 民眾最質疑者為廢除死刑對社會治安之影響，因此檢、警人員應落實執法態度，重大刑案應迅速破案、迅速偵結，以積極行動展現維護治安之決心，祛除民

眾之疑慮。

- (二) 本部將持續推廣、宣導被害人補償制度，期以彌平被害人之部分損害。
- (三) 因執行死刑恐將造成生命無法回復之結果，為慎重計，法務部於 94 年 1 月 12 日業經修正「審核死刑案件執行實施要點」，將被告等人就死刑案件聲請司法院大法官解釋，程序仍在進行中者，增列為審核之事由，以保障人權。
- (四) 定期蒐集彙整官方處理犯罪案件統計資料，分析研究犯罪狀況及特性，並預測未來發展趨勢，以提供各相關機關研擬刑事政策及防制犯罪業務參考。

## 陸、結語

我國政府宣示「人權立國」，對於死刑之立法政策，已深入檢討，惟我國人民於犯罪行為採應報主義之觀念仍然盛行，人權法治教育尚待努力推動，死刑制度或許暫時無法全面廢除，因此我國政府現階段係以相對死刑取代絕對死刑，以減少有關死刑之立法作為政策目標，並輔以各替代死刑之配套措施，期以階段化方式達成全面廢止死刑之理想。

# **The Policy of Gradual Abolishment of Death Penalty**

## **I. Foreword**

**The death penalty is based on the theory of retribution and is to use state power to deprive convicted criminals of their rights to live and separate them from society forever. Since capital punishment is cruel and goes against the notion that punishment should encompass education, abolition of the death penalty has gradually become a global trend. Many democratic and industrialized countries have completely or conditionally abolished the death penalty. Whether to completely do away with the death penalty depends on the development of society, the maturity of concepts of law and order and the popular consensus and support. Opinion polls conducted in recent years show around 80% of respondents are consistently opposed to abolition of the death penalty. The opposition falls to 40%, however, if complementary measures such as raising the upper sentencing limits and the parole threshold for life imprisonment are adopted. Evidently, with consideration of complementary measures and education, public support for retribution may be reoriented and a general consensus formed on gradual abolition of the death penalty.**

**The Ministry of Justice will employ extensive discussion and research to form a popular consensus on the abolition, and only then propose the necessary amendments to existing laws to extend human rights protection while maintaining public security.**

## II. Measure taken by Taiwan government for abolishing death sentence

1. This country signed the United Nations *International Covenant on Economic, Social and Cultural Rights* and the United Nations *International Covenant on Civil and Political Rights* in as early as 1945. The government has sent these two covenants to the Legislative Yuan for review as a means to implement the ideals of human-rights protection therein. If these two covenants are approved by the Legislative Yuan they will be promulgated by the president and become part of the domestic system of laws. In addition, they will be deposited with the United Nations as a declaration of the Taiwan's determination to protect human rights. Both covenants proclaim the respect to the right to life and place strict limits on death penalty. Insofar as the ROC is a signatory to the covenants, it is obliged to show its sincerity regarding gradual abolition of the death penalty so as to remove any doubts in the international community and to live up to the ideals of the covenants.
2. To achieve the goal of gradually abolishing the death penalty, the Ministry of Justice is planning to take step-by-step measures. In the first step, it has replaced the mandatory death penalty, where it applies, with discretionary death penalty. Besides, by revising the criminal code, it has raised the upper limits of sentences and the parole threshold for life imprisonment. This new act was passed by Legislative Yuan and was promulgated on February 2, 2005, for implementation on July 1, 2005, in hopes that life imprisonment would replace the death penalty in future. This, in coordination with the implementation of the compensation system for victims will lead to gradual attainment of the goal of

**death-penalty abrogation.**

**3. Content of legal amendments:**

- a. The Ministry of Justice proposed abolition of the controversial *Act for the Control and Punishment of Banditry* that mandates death sentence for several offenses, and at the same time, drafted relevant amendments to the criminal code. With the approval of the Legislative Yuan, the act was formally abolished and the amendments promulgated on January 30, 2002. The mandatory death penalty for kidnap leading to murder was thereby replaced by capital or life imprisonment.**
- b. The Ministry of Justice will consider abolishing mandatory capital sentencing for the remaining crimes in the criminal code to which it applies and replace it with discretionary capital sentencing. The Ministry is currently drafting amendments to the criminal code on marine piracy which mandates death penalty in two instances.**
- c. On February 2, 2005, the president promulgated the following revisions to the General Provisions of the Criminal Code, which provides for replacement for death sentence:**
  - (1) Setting the upper sentencing term limit to 30 years in aggravated cases in order to distinguish the penalty difference between a single offense and multiple offenses. To maintain the penalty balance, the death penalty is replaced with life imprisonment and life imprisonment is replaced with a term sentence whose upper limit is no more than 20 years and no less than 15 years.**
  - (2) Adoption of the spirit of the U.S. “Three strikes and you’re out” policy by imposing aggravated penalties on repeat offenders of crime carrying imprisonment of five years and**



up (homicide, robbery, marine piracy, kidnap etc). It is stipulated that during the parole term, or the parole after serving part of the sentence, an offender who intentionally commits another offence within five years shall be sentenced to more than five years' imprisonment without parole (third-time offenders).

- (3) To defend the society, the parole threshold is raised to imprisonment over 25 years in hopes that before the death sentence is abolished, life imprisonment can become the choice for its physical replacement. This is used as a complementary measure for the gradual abolition of death sentence.
- (4) According to the UN *International Covenant on Civil and Political Rights* and *Covenant on Children's Rights*, an offender below the age of 18 cannot be punished to death or to a life sentence that cannot be paroled. This has become international consensus and this consensus is consistent with the principle of balancing the crime and its punishment. In keeping with this spirit, the death penalty provisions for those under the age of 18 convicted of the murder of direct lineal relatives are deleted.

### **III. Statistics on the execution of death sentences**

In the past few years, the number of prisoners executed in Taiwan has shown a clear decline due to greater consideration for human rights protection and amendments to mandatory death penalty laws. Figures show 32 executions in 1998, 24 in 1999, 17 in 2000, 10 in 2001, 9 in 2002, 7 in 2003, and 3 in 2004, and only 1 up to September, 2005. It is expected that by gradually

**implementing the policy described above, Taiwan can gradually realize the ideal of abolishing the death penalty.**

#### **IV. Education and publicity**

**To implement the policy of abolishing death penalty, the Ministry of Justice has signed up other government agencies and the private sector to use their resources for publicity through plural, diverse, and multiple channels in an effort to gradually implement the various measures taken for the abolition of death sentence. At the same time, it uses local resources to promote the idea in order to gradually dispel people's suspicions, forge a consensus, and win their support. The education and publicity measures include:**

- 1. The Ministry of Justice has helped the Government Information Office to coordinate the various territorial, satellite and cable television channels in the making of programming.**
- 2. The Ministry of Justice will promote the new policy of gradually abolishing the death penalty by holding education classes for prosecutors and other law-enforcement officers and at the same time publicize the idea to the people. It will also invited experts on criminal policy, scholars, and representatives of human-rights civic bodies to write articles on the subject for reference of related agencies in formulating policies.**
- 3. Using the Ministry of Justice's website to post the policy of abolition of death penalty and to collect the situation of other advanced nations regarding the abolition of death sentence for knowledge of the general public. This will enable the people to know that abolition of death sentence has become the order of the day in the world and to dissuade them to give up their**

suspensions. In addition, publicity literatures will be prepared for distribution to related organizations, schools at all levels, and MOJ's prosecutorial offices for use.

4. The Ministry of Justice has asked the Ministry of Education to inform the departments of education of the various city and county governments to add the subject to the curriculums when they offer human-rights education to teachers of all levels. In addition, the MOJ has urged the various prosecutors' offices to send prosecutors or guardians to the various schools, organizations and civic bodies to lecture on related subjects so that the idea of the rule of law can take root and people's democratic makings can be improved.

## **V. Policy initiatives**

To follow to the finish the policy of abolition of death penalty the *Act for the Control and Punishment of Banditry* was terminated and the complementary revision to some articles in the criminal code was passed by the Legislature on January 30, 2002. The legislative process was completed on February 2, 2005. Since then, the Ministry of Justice has taken the following initiatives with regard to this policy:

1. Because the people are suspicious of the abolition's impact on social peace and order, the prosecutors and police shall be serious in their enforcement of law by solving major criminal cases and concluding their investigations as quickly as possible. This resolute approach can demonstrate the determination to maintain social peace and order and dispel the general public's worries.
2. The Ministry of Justice will continue its publicity on the

compensation system for victims in hopes of making up for their losses.

3. Because the execution of death penalty will result in irredeemable loss of life, the Ministry of Justice has acted with extreme care in this respect. It revised the *Guidelines for Reviewing Death Sentence Execution* on January 12, 2005, to enable a defendant to appeal to Grand Justice for interpretation on his or her death verdict while the case is still in process in order to further protect human rights.
4. The Ministry of Justice regularly collects and sorts out the statistics on the government's handling of criminal cases for analyzing, studying the circumstances and characteristics of the offenses. The information is used for forecasting the future trend and for reference of making criminal policies.

## **VI. Conclusion**

The Taiwan government has declared that human rights are the foundation of the nation and has conducted in-depth review of legislative policy on the death penalty. As death penalty cannot be totally removed in the moment, more efforts are needed in the promotion of human-rights education. The current policy is to replace mandatory death penalty with discretionary death penalty through reducing death-penalty provisions in the laws. At the same time, various complementary measures are taken in order to carry out the ideal of abolishing death-penalty step by step.