

Taiwan has resumed executions, and the process suggests legal reforms are needed, write **Jerome A. Cohen** and **Yu-jie Chen**

Slippery slope

Taiwan's execution of four of its 44 death row prisoners on April 30 seems insignificant compared to the many thousands executed in mainland China each year. Yet it attracted international attention, especially from Europe, because it ended a de facto moratorium that had been in place since December 2005 and punctured the hope of many reformers that Taiwan's moratorium would encourage other Asian nations that retain the death penalty to follow a gradual path towards its abolition.

Informed observers, at home and abroad, are also upset by the unnecessary procedural confusion that undermined the executions' legitimacy. The ensuing controversy, however, may lead to important improvements in handling such cases. Since Taiwan seems destined to retain capital punishment in practice as well as principle for the immediate future, and since the mainland is seeking to revise its own death penalty review procedures, these improvements can have great

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significance for how those governments and others deal with the greatest human right of all – the right to life.

The four sudden, secret executions were triggered by the forced resignation in March of minister of justice Wang Ching-feng, following her dramatic announcement that she would never sign any execution warrants. Immediately afterwards, a prominent civic group, the Taiwan Alliance to End the Death Penalty, applied on behalf of all death row prisoners for a constitutional review by the Council of Grand Justices, Taiwan's constitutional court. Since some prisoners had yet to sign the power of attorney required for the application, the council asked the lawyers to submit the missing ones before May 3.

Among the four executed, two eventually refused to authorise the application. But another's power of attorney reached the alliance on April 28. The alliance prepared to submit it before the May 3 deadline after ascertaining the

fourth prisoner's intention. Prison officials, however, denied the alliance a meeting on the grounds that the prisoner had violated some unspecified rule, and it is unclear whether he had also been denied communication by mail. The surprise executions on April 30, which were reportedly decided upon two days earlier and not announced in advance, not even to the families, cut off the two prisoners' right to file for final review and postpone, if not avoid, their deaths.

The government claimed the executions were legal, but the process raised serious issues. Under its regulations, as it recently confirmed, the Ministry of Justice must stay the execution of any prisoner who has applied for constitutional review. Yet the ministry ignored the council's filing deadline, depriving the two prisoners of at least a stay of execution.

Was the ministry not aware of this deadline? Or was it racing to execute all four, who had been convicted of the most heinous crimes, before any of them could stay execution? Did the ministry ask the prisoners or their lawyers if they had applied for the review? Could the fourth prisoner's violation of prison rules justify denying him a meeting to discuss his life-or-death application? And why, above all, were the executions carried out secretly?

The ministry should answer these questions. If not, the Control Yuan should investigate.

Whatever the outcome, certain reforms already seem needed. First, the Ministry of Justice should be required to give adequate public notice of its intent to carry out any execution. Had it done so in these cases, there would have been time to overcome confusion and unfairness. The government claims that it broke the moratorium because of its obligation to implement the will of the majority in accordance with democratic principles. Yet meaningful democracy depends on transparency, not furtive acts.

Second, the ministry should be required to confirm in writing from the condemned, his lawyers and the Council of Grand Justices that no request for review has been made or is about to be filed. Moreover, legislation, not merely regulation, should provide that a pending request automatically stays execution.

Third, no condemned person – for any reason – should be denied the right to promptly meet his lawyer and also communicate in writing, and every condemned should have the right to a government-compensated lawyer at both the Supreme Court and the council.

Fourth, as some government officials have recognised, to ensure the death

penalty is used with great caution, a death sentence should require the unanimous decision of the participating judges, and Supreme Court review should always involve oral argument by defence counsel.

Finally, since Taiwan has incorporated into its domestic law the International Covenant on Civil and Political Rights, which requires that prisoners be given a right to seek a pardon or commutation of their sentence, the Law on Pardon should be revised to establish a specific procedure for reviewing the pardon and commutation issues of death row inmates.

These proposals should be acceptable to the government, the legislature and the courts. After the executions, President Ma Ying-jeou, Premier Wu Den-yih and new Minister of Justice Tseng Yung-fu all

reaffirmed the importance of procedural protections in capital cases, and the Presidential Office stated that "respect for legal procedures is one of the nation's basic principles".

These reforms will further strengthen the legal institutions and procedural protections that every fair system requires. They should also provide stimulating reference materials for mainland China's ongoing efforts to make similar progress.

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