

## Republic of China (Taiwan) Immigration Detention Profile

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### INTRODUCTION

Immigration detention is an important tool of immigration control in Taiwan (Republic of China). However, because of opposition by China (People's Republic of China) to recognising Taiwan as a sovereign state, the county is prevented from being a member of the United Nations and thus its detention practices are not subject to relevant international human rights legal instruments.<sup>1</sup> Nevertheless, Taiwan has long aspired to be a part of the UN system and it has included key provisions from human rights law in its legislation.

There appears to be a trend toward de-emphasising the use of immigration detention, and the National Immigration Agency claims to detain “only if absolutely necessary.” Official sources report declining numbers of detainees since 2011: 9,451 “illegal foreigners” were detained in 2012; 9,346 in 2013; 7,090 in 2014; and 7,171 during the first ten months of 2015. Likewise the average number of days foreigners are kept in immigration detention dropped from 44.12 in 2012 to 27.84 days for the ten months ending October 2015. For “Mainland residents” (citizens of the People's Republic of China), average stay dropped from 80.17 in 2012 to 51.94 during the same period. There have also been decreases in deportations: 12,756 were expelled in 2012; 8,166 in 2014; and 7,500 during the first ten months of 2015.<sup>2</sup>

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<sup>1</sup> Sigrid Winkler, “Taiwan’s UN Dilemma: To Be or Not To Be,” Brookings, 20 June 2012, <https://www.brookings.edu/opinions/taiwans-un-dilemma-to-be-or-not-to-be/>

<sup>2</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

Government sources report that 39,125 people were held in the main island's immigration detention centres between 2007 and 2011 and another 65,933 in "temporary shelters" on smaller islands closer to mainland China.<sup>3</sup> There have been cases of people being detained for very long periods of time. In 2008, a Taiwanese civil society organisation assisted a Sierra Leone citizen who had been held in immigration detention for more than 10 years.<sup>4</sup>

Advocates have had some success in pushing reforms. In 2015, the country adopted a law ending the detention of various vulnerable groups, including young children and women who are more than five weeks pregnant.<sup>5</sup>

The Republic of China was an original member of the United Nations and the UN Security Council. But in October 1971, the General Assembly recognized the People's Republic of China as the only legitimate representative of the country.<sup>6</sup> Taiwan's government has made various unsuccessful attempts to participate in UN activities since then.<sup>7</sup> Its most recent attempts to register ratification of two core human rights treaties were turned down by the UN Secretary-General in 2009.<sup>8</sup>

Notwithstanding this rejection, the Legislative Yuan (parliament) adopted an Implementation Act making the Covenants on Civil and Political (ICCPR) and on Economic, Social and Cultural Rights legally binding in Taiwan. The act included provisions for a "national human rights reporting system to regularly monitor the implementation of the covenant."<sup>9</sup> Despite the UN legal monitoring vacuum, Taiwanese domestic law includes a legal framework for immigration detention. The 2012 and 2016 government reports on implementation of ICCPR provide data and statistics on immigration detention.<sup>10</sup>

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<sup>3</sup> Republic of China (Taiwan), "Implementation of the International Covenant on Civil and Political Rights, Initial report submitted under article 40 of the Covenant," September 2012.

<http://www.humanrights.moj.gov.tw/public/Attachment/541517201510.pdf>

<sup>4</sup> Taiwan Association for Human Rights. Global Detention Project Questionnaire. 31 December 2013.

<sup>5</sup> International Detention Coalition, "Children and Pregnant Women No Longer Detained in Taiwan," 9 February 2015, <http://idcoalition.org/news/new-limits-detention-taiwan/>.

<sup>6</sup> General Assembly Resolution 2758 (XXVI), *Restoration of the Lawful Rights of the People's Republic of China in the United Nations*, 1976<sup>th</sup> plenary meeting, 25 October 1971.

<http://www.un.org/documents/ga/res/26/ares26.htm>

<sup>7</sup> General Assembly, Request for the inclusion of a supplementary item in the agenda of the sixty-third session. Need to examine the fundamental rights of the 23 million people of the Republic of China (Taiwan) to participate meaningfully in the activities of the United Nations specialized agencies Sixty-third session, A/63/194, 22nd August 2008. <http://www.taiwanembassy.org/public/Data/891723384371.pdf>

<sup>8</sup> Schabas, William A. "Taiwan and the International Covenant on Civil and Political Rights," PhD studies in human rights. 15 March 2010. <http://humanrightsdoctorate.blogspot.ch/2010/03/taiwan-and-international-covenant-on.html>

<sup>9</sup> Peter Huang, "A Breakthrough in human rights," *Taipei Times*, 8 April 2009.

<http://www.taipetimes.com/News/editorials/print/2009/04/08/2003440494>

<sup>10</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016; Republic of China (Taiwan), "Implementation of the International Covenant on Civil and Political Rights, Initial report submitted under article 40 of the Covenant," September 2012.

<http://www.humanrights.moj.gov.tw/public/Attachment/541517201510.pdf>

## LAWS, POLICIES, AND PRACTICES

**Grounds and length of detention.** The [Immigration Act](#) adopted in 1999 contains detention and deportation provisions in Article 38.<sup>11</sup> Grounds for detention include inability to present valid travel documents and “evidence to suggest loss of whereabouts, escaping from authority, or reluctance to leave the country under own free will.” Detention is divided into three periods: temporary (up to 15 days); continuous (from 16 to 60 days); and extended (from 61 to 100 days). Decisions within the temporary phase are at the discretion of the National Immigration Agency, under the Ministry of Interior. Detention beyond 15 days is by court order.<sup>12</sup>

Article 38 was revised in 2011 and set a limit of 120 days for administrative detention of aliens (except for nationals of the Peoples’ Democratic Republic of China, who can be detained indefinitely).<sup>13</sup>

In 2013, a group of 10 foreign independent experts reviewed the Taiwan government’s first reports on implementation of the ICCPR. In their [concluding observations and recommendations](#), they said that orders under the Immigration Act should be subject to judicial review and that the 120-day limit for administrative detention of aliens should be equally applied to nationals from the People’s Republic of China.<sup>14</sup>

Legal challenges were mounted by civil society on prolonged detention on the constitutionality of the Act, which led to the adoption of amendments in 2011 and 2015.<sup>15</sup> The 2015 amended law reduced the length of immigration detention from 120 to 100 days; it provides for the suspension of detention for persons with mental or physical health problems, pregnant women as well as those who have recently given birth or suffered a miscarriage, and children under 12.<sup>16</sup> Due to Taiwan’s geo-political situation, there are specific provisions concerning people from Mainland China, which allows them to be placed “in temporary custody before deportation or ordered in addition to perform

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<sup>11</sup> Immigration Act, as amended.

<http://www.immigration.gov.tw/ct.asp?xItem=1096847&ctNode=30026&mp=2>.

<sup>12</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

<sup>13</sup> Review of the Initial Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants, Concluding Observations and Recommendations Adopted by the International Group of Experts, Taipei, 1 March 2013. <http://bim.lbg.ac.at/en/news/taiwan-s-human-rights-compliance-under-international-review>

<sup>14</sup> Concluding Observations and Recommendations Adopted by the International Group of Independent Experts, March 2013, <http://chrgj.org/documents/concluding-observations-and-recommendations-adopted-by-the-international-group-of-independent-experts-taipei-1-march-2013/>

<sup>15</sup> International Detention Coalition. “Children & Pregnant Women No Longer Detained in Taiwan.” January 2015. <http://idcoalition.org/news/new-limits-detention-taiwan/>

<sup>16</sup> Immigration Act, amended Articles 15, 36-38 and 91 as well as Articles 38-1~38-9 stipulated in the Presidential Decree hua-zong-yi-yi-zi No. 10400013351, promulgated on February 4, 2015 Ministry of the Interior of ROC, <http://glrs.moi.gov.tw/EngLawContent.aspx?id=332>.

labour services.” Under separate legislation “Mainland residents” may be detained over the 100 days limit for up to 150 days.<sup>17</sup>

**Procedural safeguards.** The experts who reviewed the government report on implementation of ICCPR also recommended that Article 9(4) ICCPR that entitles persons deprived of liberty to a review of the lawfulness of detention before a court should also be applicable to foreigners or “mainlanders” detained under immigration law. In 2014, the Habeas Corpus act was amended to also apply to foreigners so that “a person arrested or detained by an organ other than court, may petition for habeas corpus, no matter criminal activities are involved or not; an arrestee's or a detainee's request should be reviewed by a specialized court.” According to official sources, from July 2014 to October 2015, there were 36 final decisions under administrative habeas corpus cases concluded by district courses (13 under the Immigration Act and 23 under de Act Governing Relations between the People of the Taiwan Area and the Mainland Area).<sup>18</sup>

Under Article 3 of the Regulations Governing the Detention of Aliens, detained foreigners are informed in writing of the reasons, legal basis, rights and obligations related to their detention.<sup>19</sup> Such information is available in 17 languages.<sup>20</sup> Likewise consular assistance is available including for nationals of countries such as Indonesia, Vietnam and Thailand. Medical services are reportedly provided through arrangements with the Immigration Agency and civil society and religious organisation.

**Re-entry bans.** According to official figures, 17,542 persons were prohibited entry due to previous record of overstay and illegal work in 2014 and 15,112 for the first ten months of 2015.<sup>21</sup>

**Criminalisation.** Article 74 of the Immigration Act provides that “A person who enters and/or exits the State without permission or breaks an exit ban shall be punished with imprisonment for not more than three (3) years, detention, and/or a fine of not more than NT\$ 90,000.”

**International law.** Although the country cannot be a party to the UN Refugee Convention, there have been ongoing discussions in the country concerning a Draft Refugee Act since 2006. Dissenters exiled from Mainland China as well as stateless persons from Tibet and the Thai-Burma border who entered Taiwan before the end of 2008 can obtain residence permits but are not recognized as refugees and do not enjoy

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<sup>17</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

<sup>18</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

<sup>19</sup> Regulations Governing Temporary Detention of Passengers, 14 January 2013, <http://www.immigration.gov.tw/ct.asp?xItem=1182927&ctNode=30026&mp=2>.

<sup>20</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

<sup>21</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

some of the rights provided in the Refugee Convention.<sup>22</sup> The draft refugee Act establishing for the first time an asylum application process passed initial review at the Legislative Yuan (Parliament) on 14 July 2016.<sup>23</sup> At the time of writing no information is available as to whether immigration detainees can apply for asylum in detention or whether asylum seekers are protected from immigration detention.

As the UN does not recognize the Republic of China as a sovereign state, UN agencies like UNHCR and a number of other international organisations (including the World Bank and the International Organisation for Migration) do not collect statistics or socio-economic data on the country, which has effectively left the country in a statistical black hole internationally.<sup>24</sup>

**Alternatives to detention.** In a [2016 Working Paper](#) for the Global Detention Project, the director of the [International Detention Coalition](#) described advocacy efforts aimed at getting the country to adopt “alternatives to detention.” He wrote that the adoption by Taiwan of legal reforms in 2015 illustrates how local advocates can use the promotion of ATDs to effectively engage governments on reform ideas. A representative of a Taiwanese NGO said that without ATDs advocates may have “continued to use legislative adversarial strategies and not sought to engage the government.”<sup>25</sup>

## DETENTION INFRASTRUCTURE

As of 2016, Taiwan’s National Immigration Agency had a [dedicated website](#) listing country’s immigration detention centres.<sup>26</sup> At the time of this publication, the website listed seven facilities, including their addresses and contact information:

- [Lienchiang Detention Center](#)
- [Kinmen Detention Center](#)
- [Nantou Detention Center](#)
- [Second Yilan Detention Center](#)
- [First Yilan Detention Center](#)
- [Hsinchu Detention Center](#)
- [Taipei Detention Center](#)

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<sup>22</sup> Asia Pacific Refugee Rights Network. Taiwan. APRRN WIKI. <http://aprrn.info/wiki/tiki-index.php?page=Taiwan>

<sup>23</sup> Abraham Gerber, « Draft refugee act passes initial committee review,” Taipei Times, 15 July 2016, <http://www.taipetimes.com/News/taiwan/archives/2016/07/15/2003651069>.

<sup>24</sup> The World Bank. “Where are your data on Taiwan?”

<https://datahelpdesk.worldbank.org/knowledgebase/articles/114933-where-are-your-data-on-taiwan>

<sup>25</sup> Grant Mitchell, “Engaging Governments on Alternatives to Immigration Detention,” Global Detention Project Working Paper No. 14, July 2016, <https://www.globaldetentionproject.org/engaging-governments-alternatives-immigration-detention>.

<sup>26</sup> National Immigration Agency, “Detention Centers,”

<http://www.immigration.gov.tw/lp.asp?ctNode=32917&CtUnit=16673&BaseDSD=108&mp=2> (accessed 17 October 2016)

Two of these facilities, Kinmen and Lienchiang, are on two small islands located between Taiwan and the People’s Republic of China. According to government sources, the National Immigration Agency uses different facilities depending on the expected time before expulsion. Persons expelled within “relatively short time are placed into temporary detention centers of the Specialized Operational Brigades of the National Immigration Agency, whereas those who cannot leave within a short time-horizon are placed at large-capacity detention centers of the Agency.”<sup>27</sup>

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<sup>27</sup> Implementation of the International Covenant on Civil and Political Rights – Second Report Submitted under Article 40 of the Covenant, Republic of China (Taiwan), April 2016.

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