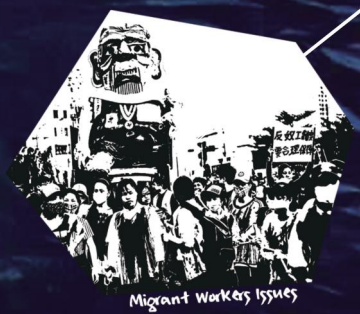
Shadow Report 2016

on Government's Response to the Concluding Observations and Recommendations



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Shadow Report 2016 on Government's Response to the Concluding Observations and Recommendations

Covenants Watch, Taiwan

September 3, 2016

About this report

The Shadow Report on Taiwan government's "Response to the Concluding Observations and Recommendations Adopted by the International Group of Independent Experts on March 1, 2013" was prepared for two reasons. First, it complements the government report for the review of the second national human rights report in January 2017 by international experts; second, it summarizes the disagreement between civil society organizations and the government with regard to human rights issues in Taiwan between 2013 and 2016.

The report is the product of scores of authors affiliated with 79 NGOs, whose names are listed below. Covenants Watch served as the platform of collaboration for this process, with the help of associate editors. The production and translation of this report will not be possible without the support of donations to the 318 Sunflower Movement (managed through the Economic Democracy Union), grants from Taiwan Foundation for Democracy and Taipei Bar Association, Taiwan Alliance to End the Death Penalty, and individual donations to the Covenants Watch.

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Executive Summary

Introduction

1. Covenants Watch: The Legislative Yuan ratified the ICCPR and ICESCR in 2009, and passed the *Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights* (the Implementation Act) to impose legal power. The Covenants Watch – an alliance comprising a coalition of 40 human rights groups founded by Mr. Peter Huang – was established in the same year to monitor the government in fulfilling the obligations stipulated in the two Covenants. Since then, the Covenants Watch (hereafter referred to as "CW") has closely monitored the government to conform to the standards stipulated by the United Nations (UN) in terms of the review process and specifications. We participated in reviewing the laws and regulations according to the Covenants, monitored the implementation progress of the Concluding Observations and Recommendations, and continue to propose constructive suggestions for law amendment and policy formulation.

2. Transfer of Power: Between the Review of the Initial State Report in February 2013 and the second review in 2017, significant political changes have taken place. The Sunflower Parliament Occupation Movement in March 10 2014, which garnered the increased attention of the public towards democracy and the government, has brought a significant influence. In addition, the coalition of the Umbrella Movement in Hong Kong in September 2014 and the disappearance of five people associated with Causeway Bay Books at the end of 2015 spurred people's awareness concerning the importance of safeguarding human rights in Taiwan. The outcomes of the 2014 Local Elections and the 2016 Presidential and Parliament Elections indicated a significant change in Taiwan's political landscape. Although the Democratic Progressive Party (DPP) assumed office between 2000 and 2008, the Kuomintang (KMT) has held majority seats in the Legislative Yuan since 1949. This situation changed following the inauguration of the 9th Legislative Yuan in March 2016. For the first time, the DPP held more seats in the Legislative Yuan than the KMT by a ratio of 69:35, with five New Power Party (NPP) legislators and four People First Party (PFP) legislators.

3. In the following section, discussions are categorized into the former and current government administrations (using the presidential inauguration in May 2016 as the cut-off point).

Former Government Administration

4. Composition of National Reports: The Second National Report was largely

composed in the second half of 2015 using the same approach adopted for the composition of the Initial State Report. First, the various governmental departments composed a draft based on predetermined division of labor. Then, the Presidential Office Human Rights Consultative Committee convened consultation meetings at the Ministry of Justice where government representatives hear from invited public interest groups. A number of members of the CW partook in the consultation meetings, requesting that more accurate data be presented in the reports to reflect the progress and regress of various rights. The Second National Report on ICCPR and ICESCR was announced by the Office of the President in April 2016.

5. The Government's Follow-Up on the Concluding Observations: The Concluding Observations and Recommendations was the core human rights document created during the review of the First National Report in 2013. The CW actively partook in the follow-up review meetings organized by the government. We suggested in the first meeting that various governments departments should individually organize review meetings to establish direct dialogue with the public. As a result, relevant departments collectively organized 26 public hearings in addition to the review meeting hosted by the Ministry of Justice in the second half of 2013. Under the repeated pronouncement by public interest groups, competent authorities are expected to apprehend the plight and proposition of the public.

6. The Extent of Implementation of the 81 Recommendations: Besides Points 11 (ratification of the *Implementation Act of the Convention on the Rights of the Child* and *Act to Implement the Convention on the Rights of Persons with Disabilities*), 60 (granting medical parole to former President Chen Shui-Bian), 61 (partial amendment of the *Habeas Corpus Act*), 62 (amendment of the *Immigration Act* in accordance with Judicial Yuan Constitutional Interpretation No. 710), and 69 (repeal of the *HIV Infection Control and Patient Rights Protection Act* and other restrictions on aliens with infections), the remaining insufficiencies have yet to be improved in accordance with the recommendations. Based on the evaluation outcomes of the NGOs, the extent of implementation is extremely limited, particularly concerning the execution of capital punishment and forced evictions, which continue to take place.

7. The Mechanism for Human Rights Protection: The government's institutions to protect and promote human rights were clearly inadequate. First, the Presidential Office Human Rights Consultative Committee does not have administrative authority over the government. In principle, the Working Group on Human Rights Protection and Promotion of the Executive Yuan is responsible for reviewing the human rights policies of various departments, rectifying the flaws of various authorities, and mediating interministry cooperation. However, this working group has been functioning at a minimum level. On the other hand, the establishment of the National Human Right Commission was repeatedly deferred

during President Ma's tenure.

8. Legislation Review: Article 8 of the *Implementation Act* stipulates that "All levels of governmental institutions and agencies should review laws, regulations, directions, and administrative measures within their functions according to the two Covenants. All laws, regulations, directions, and administrative measures incompatible to the two Covenants should be amended within two years after the Act enters into force by new laws, law amendments, law abolitions, and improved administrative measures." However, no mechanism for systematic reviews has been established beside the "*Inventory of Various Competent Authorities Reviewed for the Compliance of Laws, Regulations, and Administrative Measures to the Two Covenants*" produced in the first round of reviews held in 2011. The government also failed to systematically promote the introduction, research, and analysis of international human rights regulations.

9. Application of the Two Covenants in Courts: Observations on the implementation of the Two Covenants in the court system revealed that the Justices of the Constitutional Court had referenced the Two Covenants on multiple cases after 2009 to interpret constitutional rights. A combined total of 207 cases in which the implicated parties based their claims on or which the court referenced the Two Covenants were recorded among the Supreme Courts (including Criminal Civil, and Administrative Courts) in a five-year period between the date of ratification of covenants and September 2014. This statistic confirms the increased implementation of the Two Covenants compared to the pre-ratification period. However, the implementation of the Two Covenants in district courts remains lackluster.

10. The Covenants as cause of action: According to the concluding comments of the First Supreme Administrative Court Division-Chief Judges and Judges Extended Meeting held in August 2014, "the human rights provisions stipulated in the ICCPR and ICESCR pertain domestic legal status. However, whether a claimant can directly pursue a cause of action against government departments is dependent on whether the content, terms, and conditions of the cause of action are clearly stipulated in the relevant regulations of the Two Covenants. Clearly defined regulations, such as Paragraph 3, Article 24 of the ICCPR: '*Every child shall be registered immediately after birth and shall have a name,*' and Subparagraph 1, Paragraph 2, Article 13 of the ICESCR: '*Primary education shall be compulsory and available free to all,*' can be used as a legal basis for cause of action." This comment is extremely conservative. The Supreme Administrative Court should have encouraged judges to reference the Two Covenants, and to avoid confusion among judges the concepts of "justiciability" and "self-executing." According to the experience of lawyers, judges remain unfamiliar with the principle of making "interpretations of domestic laws which give effect to their Covenant obligations."

11. Ratification of Conventions: The government ratified the *Implementation Act of the Convention on the Rights of the Child* and the *Act to Implement the Convention on the Rights of Persons with Disabilities* in 2014. However, the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* have remained in a prolonged "research" stage. The *International Convention on the Elimination of All Forms of Racial Discrimination* is a convention ratified before Taiwan withdrew from the United Nations. It currently requires an implementation act to pertain domestic legal status.

12. Stagnation of Issues Concerning the Self-Determination and Traditional Territories of Indigenous Peoples: Not only is the indigenous people in Taiwan subject to extreme marginalization, but they are also at risk of losing their cultural identities and languages. Since the Review of the First National Report in 2013, no substantive progress has been made on issues concerning the self-determination of indigenous peoples, confirmation of their traditional territories, or respect towards indigenous cultures and customs.

13. Exacerbation of Low-Wage Trends and Economic Inequality: Improvements in labor conditions in Taiwan remain unsubstantive, yet the income of high-income earners continues to rise, consequently broadening the wealth gap. Income tax statistics show that Taiwan's top five percent of income earners received 55 times, 94 times, and 112 times more income than the bottom five percent of income earners in 2005, 2010, and 2014, respectively. In addition, taxes only account for 12.4% of the Taiwan's overall GDP because of the low rates on capital gain, limiting the efficacy of income redistribution.

14. Lack of National Human Rights Action Plans: President Ma's administration manifested neither engaged in systematic planning nor formulated national human rights action plans. The government continues to adopt a perfunctory piecemeal approach to address human rights demands and resolve protests and petitions.

15. Citizen Participation: No increase in citizen involvement in public policy formulation and community development are exhibited since 2013. In terms of public policy formulation, President Ma's administration manifested desirous intention to establish closer trade relations with the PRC and openly expressed its support of the One-China Principle on international media. The government denied citizen participation, even in policies involving core issues of national identity and long-term national interest. The tension finally exploded with the undemocratic ratification of the *Cross-Strait Service Trade Agreement (CSSTA)* by KMT legislators in March 2014, leading to the rise of the Sunflower Movement, where protesters occupied the Legislative Yuan and took to the streets in protest. In terms of community development, the government continues to promote urban renewal, urban land consolidation, and industry or business park development projects in various regions of Taiwan without arranging suitable channels for

citizen participation. Land acquisition for these projects is primarily government-led. Some urban land redistribution projects also hold closed ballots for local landowners relying on majority votes. Both methods severely affect the rights of local residents, particularly the rights of minority landowners and non-landowners, who are often forcefully evicted. Additionally, development of the traditional territories lacks a standardized process in which the views and opinions of the indigenous people are taken into consideration.

16. Human Rights Education: Although human rights courses are available to civil servants and judges, the participation is mostly voluntary. Therefore, the coverage of these courses is relatively low. Moreover, the benefits of lecture-based (unidirectional) course for raising human rights awareness are limited. As a resolve, the government should systematically collate actual cases, develop teaching materials, and foster dedicated teachers.

17. Human Rights Tools: The government maintains a conservative attitude towards the research, development, and promotion of human rights indicators, human rights statistics, human rights impact assessments, and other tools to monitor human rights performance effectively.

New Administration

18. President Tsai's administration assumed office in May 2016. The outcomes of human rights policy implementation remain to be observed as the new government has only been in office for two months. Nonetheless, several observations on the new government are presented below.

19. Human Rights Policy: President Tsai failed to mention human rights in her inauguration speech, and her administration has yet to announce a complete human rights policy. However, three of the agendas addressed by President Tsai in her speech directly affect human rights, namely, judicial reform, transitional justice, and pension reform.

20. National Human Rights Commission: In the Presidential Office Human Rights Consultative Committee Meeting directed by the newly elected Vice President Chen on 22 July 2016, members conceded that the commission should be established without delays, and established a list of preference to the four establishment proposals. The stagnation of this matter from 2014 had finally gained progress.

21. Transitional Justice: The purpose of transitional justice is to compensate for or rectify the human rights violations that occurred in Taiwan during KMT governance after WWII. These violations included the 228 Incident, in which the

government ordered the military repression of protesters against the KMT and the military; and the martial law (White Terror) period, in which the KMT government suppressed political dissidents through imprisonment, torture, and murder, and implemented various policies (incl., restricting assembly, restricting speech, restricting publication, and controlling election) to protect its totalitarian actions.

(1) The Presidential Office shall establish a Truth and Reconciliation Commission.

(2) The Statute Governing Promotion of Transitional Justice shall be discussed in the Legislative Yuan. The Executive Yuan shall establish the Transitional Justice Promotion Committee to implement four objectives, specifically, (1) disclosing political files to the public; (2) eradicating authoritarian symbols and preserving historical sites under the then authoritarian regime; (3) reinstating cases of injustice, restoring historical truth, and promoting social reconciliation; and (4) handling assets improperly obtained by political parties.

(3) The Legislative Yuan ratified the Act Governing the Handling of Ill-gotten Assets of Political Parties and Their Affiliate Organizations in July 2016, which had been blocked by KMT legislators 306 times in the past 14 years. In addition, the Executive Yuan shall establish the Ill-Gotten Asset Handling Committee. KMT assets are largely categorized into three sources: (1) treasury asset and foreign exchange assets of the PRC transferred to the KMT formally or privately during KMT governance; (2) assets acquired from Japan after 1945; and (3) revenue created by investment and profit-seeking companies owned by the KMT. Other assets include the gratis donations of possessions by various government institutions to the KMT and its affiliates, discounted acquisition of government land and real estate, seizures of public land, and privileges gained from KMT-owned enterprises.

22. Transitional Justice of the Indigenous People: On 1 August 2016, President Tsai represented the Presidential Office in extending a formal apology to the indigenous people of Taiwan for the oppression and exploitation of the Han people. The Indigenous People's Transitional Justice Committee shall be established in the Presidential Office to comprehensively handle affairs concerning indigenous culture, language, native title, and governance.

23. Judicial Reform: During her inauguration speech, Present Tsai expressed that the general sentiment is that people have lost confidence in Taiwan's judicial system. A national congress on judicial issues shall be held in October 2016, inviting citizens to participate in judicial reform, but the agenda has yet to be announced.

24. Pension Reform: Taiwan's pension system fundamentally comprises the Statutory Pay-As-You-Plan (calculated based on individuals' pension schemes during employment) and the Occupational Plan. Currently, the two most prominent issues concerning pension are financial security and fairness. Subsequently, a large gap exists between the rate of replacement of labor pension and that of civil service

pensions. For example, the pension received by retired elementary teachers far exceeds the average salary of young workers.

Conclusion

25. The concluding observations and recommendations following the review of the Initial State Report had significant impact on the Taiwanese government and civil society. Although progress remains unsubstantive, outcomes are cumulative. We anticipate that the new government will be more open to the suggestions of international experts. Covenants Watch aims to urge the government in establishing comprehensive human rights protection and promotion mechanisms. Such mechanisms include establishing the National Human Rights Institute and a dedicated human rights office at the Executive Yuan to coordinate the handling of interdepartmental human rights issues and supervise human rights affairs in the various ministries. The applicability of the covenants in courts relies on the continued review of existing domestic laws and regulations by the administrative and judicial departments, as well as the timely mitigation of gaps or discrepancies between domestic and international laws and regulations by the Legislature. These are long-term plans. We look forward to your constructive and professional opinions to facilitate progress in Taiwan.

COR Points 8-9 National Human Rights Commission

The Establishment of a National Human Rights Commission (NHRC)

26. In order to respond to the Concluding Observations and Recommendations submitted by Independent International Human Rights Experts to the 2013 State Human Rights Report on the two international human rights covenants and the 2014 State Report on the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), the Presidential Office Human Rights Consultative Committee set up a task force to study the establishment of a national human rights institution. The task force submitted three draft proposals to the consultative committee, namely to establish a NHRC under the Office of the President, under the Executive Yuan or as an institution independent in organization and powers from existing governmental institutions. The content of the National Human Rights Institution Research and Planning Proposal was quite comprehensive and the task force had consulted many government agencies and civil society organizations and even carried out investigative visits abroad. However, senior officials in the government of President Ma Ying-jeou asked the Ministry of Justice on several occasions to review the proposals and also obstructed efforts by NGOs to work with lawmakers to submit related draft legislation to the Legislative Yuan. On December 10, 2015, the Control Yuan introduced a draft organic law to set up a national human rights commission under the Control Yuan under which all 29 members of the Control Yuan would simultaneously serve as commissioners of a national human rights commission.[1]

27. The first campaign by NGOs during the late 1990s and early 2000s had already established the principles for a commission-type national human rights institution which would possess robust functions to ensure the protection of human rights, such as quasi-judicial powers of investigation. However, such a commission has yet to be established after over a decade. In addition to the decisive factor of a lack of political will on the party of the ruling authorities, another obstacle has been the constitutional and legal issues involved in the institutional design and positioning of such an institution.

    Previous points of debate have included questions such as the following:

    - Would the establishment of an NHRC under the Office of the President turn into an expansion of presidential powers?
    - Would the NHRC be able to realize the independence in budget and personnel mandated by the Paris Principles if it was established under the

1 The "Control Yuan National Human Rights Commission Organization Act (Draft)" (in Chinese) can be viewed at the following website: https://goo.gl/W9wExO.

Executive Yuan as an independent commission such as the Fair Trade Commission or the National Communications Council?

- Would it be possible to establish the NHRC as an entirely new independent institution separate from all existing governmental bodies?
- Would the NHRC and its investigative powers and human rights protection functions be compatible with the existing powers of the Control Yuan?
- Would the Control Yuan be capable of self-transformation into a NHRC or would the NHRC be established as a subordinate body under the Control Yuan such as the existing Ministry of Audit or as a Human Rights Committee?

In addition to these questions, there is also still no agreement on the issue of whether the establishment of a NHRC, regardless of where it was situated, require amendment of the Constitution or only require the enactment of legislation.

28. With the joint efforts of the member organizations of the Covenants Watch, President Tsai Ing-wen (then the presidential candidate of the Democratic Progressive Party) publically announced on December 9, 2015 that she would promote the establishment of a national human rights commission if elected in the January 16, 2016 national polls. We urge the new government to abide by its campaign commitment and initiate related legislative and consultative work so that a national human rights commission can be established in accord with the Paris Principles in a reasonable period of time. The need for a human rights institution that can transcend existing government agencies and plan and coordinate all types of human rights promotion and guarantee work has become even more urgent with Taiwan's incorporation of five core international human rights covenants and conventions into domestic law. For example, Taiwan currently lacks any independent national institution to promote, promote, protect and monitor implementation of the Convention on the Rights of Persons with Disabilities (CRPD) as mandated by Article 33-2 of said convention.

The tasks of promoting and protecting human rights prior to the establishment of a national human rights commission

29. Before the establishment of a national human rights commission, we also call on the government to bolster existing mechanisms for the promotion and protection of human rights. Such work is especially urgent in fields which the government has chronically neglected human rights promotion work and must invest more resources and manpower as well as conduct such work in a more systematic and consultative manner. Such tasks include human rights education for personnel in the judiciary, law enforcement and the civil service (including teachers and

medical personnel), enhancing the human rights awareness of ordinary citizens and developing and implementing new methods for human rights monitoring, such as human rights impact assessments and human rights indicators.

COR Points 10-11 United Nations Core Human Rights Covenants and Conventions

30. Point 10 of the Concluding Observations and Recommendations noted that Taiwan has promulgated implementation acts for three core human rights covenants and conventions. These acts clearly mandate that obligations under these covenants and conventions prevail over other laws, with the exception of the Constitution, in the event of any inconsistency and that all domestic laws, regulations or administrative measures which are not in accordance with the covenants or conventions in question should be revised within a certain period of time. Subsequently, in 2014, Taiwan also enacted similar implementation acts which ensured a similar legal status for the Convention on the Rights of the Child (CRC) and the CRPD.

31. Nevertheless, there is controversy regarding the status of the covenants and conventions in judicial work and within administrative agencies. In terms of judicial work, there have been some judgments which have explicitly citied the covenants or conventions and have advocated that they are equivalent to "human rights basic laws"[2] or that the covenants or conventions should have precedence when there are inconsistencies with domestic law.[3] However, some judges have opposed such views and maintain that the status of the covenants and conventions cannot supersede the finding of Interpretation 329 issued by the Constitution Court on December 24, 1993 that "treaties hold the same status as laws."[4]

32. Based on Article 8 of the Act for the Implementation for the ICCPR and ICESCR, the Executive Yuan issued instructions on December 14, 2009 requiring all levels of government agencies to carry out a review of existing laws and regulations. The process of revision of some of the laws and regulations identified by the Executive Yuan Subcommittee on Human Rights Protection as contradicting the two covenants has yet to be completed. Nevertheless, the government has not continued to carry out re-examination of laws and regulations for compliance with the two covenants. For example, civil society organizations have advocated that foreign household workers be guaranteed the basic wage as based on the ICESCR and that portions of the Assembly and Parade Act be directly rendered invalid due

2 Taoyuan District Court - Administrative Judgment NO:92 (2012).
3 Taiwan High Court Tainan Branch - Criminal- Second Appeal 772 (2013).
4 See <http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=329>.

to contravention of Article 21 of the ICCPR. However, government agencies have maintained that the covenants cannot be directly applied until the Legislative Yuan completes the process of revising laws in question.

33. We advocate that the State must realize in a suitable manner all of the obligations for human rights guarantees embodied in an international human rights covenant or convention as soon as it completes the process of becoming part of domestic law. Before a law is revised, the executive government agencies should use various provisional measures to implement the human rights protections; the legislative branch should take it upon itself to refrain from enacting laws which violate international human rights covenants or conventions; and the judiciary should substantively apply the covenants and ensure the people's fundamental rights when delivering judgments. The government should immediately use this kind of interpretation to appreciate the statement by the panel of independent human rights experts that the obligations of each covenant "prevail over other laws, with the exception of the Constitution."

Regarding the CRC and the CRPD

34. The Legislative Yuan enacted implementation acts for the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) on June 4, 2014 and August 20, 2014, respectively. However, the Executive Yuan did not submit the ratification bills for the two covenants themselves to the Legislative Yuan for review until November 20, 2014 and November 27, 2014, respectively, or after enactment of the respective implementation acts. As a result, the CRC and the CRPD were only ratified by the Legislative Yuan on April 22, 2016.

35. Based on the implementation acts for the CRC and CRPD, the Executive Yuan established the "Executive Yuan Child and Juvenile Welfare and Rights Promoting Team" [5] and the "Executive Yuan Rights of Persons with Disabilities Promoting Team" [6] to plan, coordinate, monitor and promote the implementation of the conventions at all levels of government. However, these members of these two task forces concurrently held posts in other agencies and the actual agency for the implementation of these two conventions has been the Social and Family Affairs Administration of the Ministry of Health and Welfare (MOHW). As a result, these two task forces have been unable to realize their functions of monitoring the government and providing policy guidance. Since most of the civil society members on the task force for child and juvenile rights represent large scale child welfare institutions, many of which directly accept contracts for the provision of

5 More details on this promoting team can be found (in Chinese), including a list of their members, can be found at the following website: <http://ppt.cc/4DGX1>.

6 More details on this task force can be found (in Chinese), including a list of their members, can be found at the following website:<http://ppt.cc/1GrIEhttp://ppt.cc/4DGX1)??]>.

state welfare services, how can they manifest the critical and independent spirit of the State Report? In addition, this task force lacks representation of the perspective of rights and pluralism due to the over-representation of protective child welfare organizations and the relative lack of child and juvenile developmental welfare organizations as well as the lack of any children or juvenile members.[7]

36. The Social and Family Affairs Administration used an open bidding process to commission academic institutions to carry out the work of re-examination of laws and regulations, education and training and the drafting of state reports at a cost of NT$30,381,196 (US$1=NT$32).[8]

    However, civil society organizations believe that state agencies should themselves bear responsibility for the actual implementation of these human rights covenants and conventions. The Office for Child Rights Special Projects is staffed by short-term contractual employees with a high rate of turnover and was clearly established to cope with the international review and not for sustained promotion of the implementation of the convention.

Regarding the ICERD

37. The ROC government had already ratified the ICERD before it left the United Nations in October 1971. This convention took effect in Taiwan on January 1, 1971, but the government has not carried out the obligations of implementing the ICERD during the past 44 years.

38. According to Paragraph 4 of the State Report, the government invited experts and scholars to discuss whether to separately enact an implementation act for the ICERD or to enact a special law against racial discrimination after the international review of the first ICCPR-ICESCR State Report. However, we are unable to evaluate the degree of progress in these efforts as the government has not publically disclosed the related materials, proceedings or resolutions of those

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7 Article 43 of the CRC mandates: "For the purposes of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a 'Committee on the Rights of the Child.' The Committee shall consist of 18 experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems."

8 The official announcement of the restricted public tender for the "Implementation Act of the Convention on the Rights of the Child - Law and Regulation Review and Educational and Training Services Program" can be viewed at <http://ppt.cc/3LNWc> (in Chinese). The tender for the "First Phase Service Program for Implementation Act of the Convention of the Rights of the Child - State Report and Information Systems" can be viewed at <http://ppt.cc/eujiU> in Chinese The tender for "Services for the Promotion of the Implementation Act of the Convention of the Rights of the Child Program" is at <http://ppt.cc/l3fOq>. The tender for the "Services for the Implementation of the Convention to Implement the Convention on the Rights of Persons with Disabilities Program" (in Chinese) is at <http://ppt.cc/StUmN>.

meetings.

39. We urge the government to hold discussions on the incorporation into domestic law of related international covenants and conventions. The government should invite a wide range of representatives from various ethnic groups and civil society organizations, including indigenous peoples, Pingpu people, Hakka people, Tibetans resident in Taiwan, new immigrants and migrant workers, to jointly discuss how to realize the early ratification of related international human rights conventions. The Ministry of Interior should ensure that the process of such deliberations are open and transparent.

Regarding CAT and OPCAT

40. With regard to CAT and OPCAT, the Ministry of Interior has already completed a draft implementation act for CAT. In line with the Optional Protocol's call for the establishment of a national preventive mechanism, the MOI is considering using Article 6 of the draft implementation act to establish a national commission for the prevention of torture under the Control Yuan. This proposal has received the preliminary approval of the Control Yuan, but would require revision of the Organic Law of the Control Yuan.

41. However, during a meeting held on this issue on September 24, 2015, a representative of the Department of Prosecutorial Affairs of the MOJ advocated that, based on the newly promulgated "Conclusion of Treaties Law,"[9] so long as the treaty bill has completed its legal process, it will have domestic effect and a separate implementation act will not be necessary. However, in light of Taiwan's special international situation, a signed covenant or convention may have domestic law effect, but it may be impossible to realize international legal validity through ratification by the Legislative Yuan and completion of the procedure of the deposit of the ratification documents with the UN secretariat. The importance of the use of implementation acts for the convention lies in the fact that the Taiwan government is at present unable to carry out the monitoring procedure mandated by the covenants and conventions and accept direct monitoring by the UN human rights system.

42. The implementation acts have at least two objectives, namely to allow the articles of the covenants or conventions to have effect in domestic law and to clarify the human rights obligations undertaken by the government in the wake of the incorporation of human rights covenants and conventions into domestic law. These obligations include measures such as the human rights state report system, reexamination of laws and regulations, provision of necessary budgets and the

9 The "Conclusion of Treaties Law was promulgated by President Ma Ying-jeou on July 15, 2015 < http://goo.gl/3zkFPi> and its implementation act was promulgated on November 20, 2015. Official English translations are not yet available.

establishment of monitoring institutions. We therefore urge the new government which took office in May 2016 to promptly submit the draft implementation act for the CAT and the Optional Protocol to the Legislative Yuan for review.

Regarding the ICRMW

43. Taiwan's small and medium enterprises, household care services and ocean-going fishing boats all depend heavily on the contributions of the large numbers of migrant workers from Southeast Asian nations. However, Taiwan has been subject to criticism for the lack of proportionate human rights protections for migrant workers and for having a "sweat and blood" system which infringes on the human rights of migrant workers. Therefore, incorporation into domestic law of the ICRMW is extremely important.

44. In December 2014, the Ministry of Labour (MOL) completed a subcontracted research assessment on how to incorporate the ICRMW into domestic law, but the MOL has not taken any further action for well over a year. [10]

Regarding the ICCPED

45. There has been almost no progress in enactment of the ICCPED. The MOJ claims that Taiwan's domestic legal system already meets the core obligations of the ICCPED and therefore has hesitated to undertake efforts to incorporate the convention into domestic law. However, the MOJ has failed to take note of the fact that the scope of the convention is precisely to provide a mechanism to carry out investigations and determine responsibility as well as offer protection and reparations for victims and their dependents in the event that some people are forcibly disappeared at times when the domestic legal system is dysfunctional.

46. Numerous cases of disappearances occurred in Taiwan during the nearly four decades of martial law rule. Although Taiwan's democratic system has improved since that time, we still should use this convention to further upgrade human rights guarantees.

COR Points 12-13 The Implementation Act Related to the International Covenants

47. On August 17, 2009, the MOJ requested all government ministries and agencies to conduct a review of laws, regulations and administrative measures for compliance with the ICCPR and ICESCR. This survey generated a list of 219 items for review, while civil society organizations proposed an additional 44 items. The total list of

10 The complete report (in Chinese) can be accessed at the following website: <http://ppt.cc/Fh6aM>.

263 items was submitted to the Executive Yuan Human Rights Protection Committee for review. As of June 30, 2015, the process of review and correction of 39 (14.83%) of these issues have yet to be completed, including 31 cases of laws, seven administrative orders and one administrative measure. This result transgresses Article 8 of Act for Implementation of the ICCPR-ICESCR implementation act.[11]

48. In Paragraph 15 of its "Response to the Concluding Observations and Recommendations, "the State notes that the Executive Yuan will include laws that impact on human rights in its "Gender Impact Assessment Review Form" and arrange for experts to conduct assessments on responsible government agencies. An examination of the form shows that it covers eight types of laws. Notably, its Section 7 calls for quantitative evaluation of the possible cost and benefits that government or society will need to bear for the promotion and realisation of a proposed law with relation to human right regulations in the Constitution or the ICCPR or ICESCR or a detailed explanation of such costs and benefits if quantitative assessment is difficult to provide. The form also requires responsible agencies to indicate whether the proposed bill under review is or is not in accordance with the Constitution, the interpretations of the Constitutional Court, the ICCPR or ICESCR and the General Comments of the UN Human Rights Council and of the UN Committee on Economic, Social and Cultural Rights, respectively.[12]

49. We suggest that the State revise the Central Regulation Standards Act and the Administrative Procedures Act in order to mandate that proposed laws, regulations or major administrative measures or plans must pass human rights impact assessments before their approval by the Executive Yuan. Before the completion of the revisions of these two acts, the Presidential Office Human Rights Consultative Committee should complete the redesign of an "Human Rights Impact Assessment Form for Legislation" to include clear identification of objectives and sensitive groups, a clear and precise evaluation method, procedure and categories and related indicators. This evaluation should be included when the Executive Yuan submits draft laws or bills to the Legislative Yuan for review as reference for lawmakers. In addition, the Executive and Legislative branches should bolster training in the appreciation of human rights principles and spirit and human rights impact assessment for legislation.

50. We suggest that Article 8 of the Act to Implement the ICCPR and ICESCR be revised to change the phrase "all laws, regulations, directions and administrative

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11 The MOJ has a special webpage devoted to the progress of review of laws, regulations and administrative measures that violate the ICCPR or ICESCR. No further progress is recorded as of May 31, 2016 compared to June 30, 2015. See < http://goo.gl/wlcFtv> (in Chinese).

12 The Gender Impact Assessment Review Form is available at the following website (in Chinese): <http://ppt.cc/bq81r>.

measures incompatible to the two Covenants should be amended within two years after the Act enters into force" to "establish a mechanism for a regular review of all laws, regulations, directions and administrative measures." At the same time, the procedure and standards for the review should be clarified. For example, the procedures should indicate what laws should be included in the review process under what kinds of conditions. In addition, the revisions should indicate by what agencies and what kind of procedures and instruments should be used to carry out the review after a law enters the review process. For example, civil society organizations and individuals often submit suggestions to government and other public agencies or even have encountered friction in this process, indicating that further review and revision of laws and regulations is necessary. Therefore, we suggest that an "event-based" mechanism to initiate reviews be included.

51. The Executive Yuan Department of Gender Equality bears responsibility for overall planning and organizing for the CEDAW State Report and related Conclusions and Recommendations and subsequent tracking and auditing as well as for organizing special subcommittees of Executive Yuan Gender Equality Committee members and other invited experts and scholars to attend follow-up meetings and provide advice on questionable points or doubts. However, the Department of Gender Equality is constrained by its status and can only pass suggestions to the responsible government ministry or agency and is unable to put forward a comprehensive national action plan. Although the Executive Yuan Gender Equality Committee has a relatively higher status, the effectiveness of the civic special case subcommittee in supervising government agencies is also constrained by the delineation of its role and challenges over its accountability and representativeness.

52. Government agencies responsible for each conclusion or recommendation have been easily able to adopt conservative mentalities and separate their operations from their impact. Moreover, rates of attendance and the level of representation at follow-up meetings has been low. When officials do attend, they usually do not have sufficient authorization and are unable to immediately respond to questions raised in discussions. In addition, the progress and efficiency of meetings have been affected by the lack of sufficient understanding on the part of some agencies about and the procedures for the State Report.

53. We suggest that: (1) The Executive Yuan Gender Equality Committee should openly accept recommendations by civil society organizations of commissioners familiar with CEDAW and local women's issues and other methods to bolster its representativeness; (2) The rate of attendance and the level of representation at Executive Yuan Gender Equality Committee meetings should be increased. The Central Personnel Office should conduct annual courses to bolster basic understanding of CEDAW and capability to discuss related issues and formulate gender policies.

COR Points 14-16 Judicial Implementation of the Covenants

54. Regarding the rare number of judicial verdicts which cite the two covenants, the Judicial Yuan has stated that it will send copies of the two covenants and their associated general comments to all levels of courts for use as reference by judges and will also include courses on human rights guarantees into professional training for judges. However, lower level courts or administrative agencies have actually often cited a resolution issued on August 12, 2014 by the Association of Supreme Administrative Court Chief Judges as a standard for delineating whether the two covenants are applicable based on whether "there are clear provisions for the content and key conditions for a claim." In cases for which it is judged that the covenants lack "clear provision," the provision for the human right guarantee in question will only be considered to be declaratory and the people will have no foundations to use the two covenants as a basis for a claim in public law and the people's right to petition for legal redress will therefore be gravely obstructed. [13]

55. Paragraph 10 of General Comment 9 for the ICESCR issued by the Committee on Economic, Social and Cultural Rights (CESCR) in December 1998 states "it is important to distinguish between justiciability (which refers to those matters which are appropriately resolved by the courts) and norms which are self-executing (capable of being applied by courts without further elaboration)." In the case of provisions which are not capable of immediate implementation, courts still must explain the relevance of the articles of the covenants in verdicts and to explain in detail the reasons for their judgments. The above-mentioned Supreme Administrative Court resolution failed to take into account General Comment 9 and review whether the articles of the two covenants clearly and precisely influenced the legal action filed by the people. Furthermore, the resolution, in the case at hand did not refer to the related provisions of the General Comment with regard to "the right to family life," determined that the "the right of family life" manifested in the two covenants was a vague declaratory principle and thus abrogated the people's right to appeal for judicial remedy.

56. Furthermore, there have already been three judicial verdicts which have cited this Supreme Administrative Court resolution in determining that Article 11 Section 1 of the ICESCR regarding "the right to adequate housing" was only declaratory in nature and could not be used as a basis for petitions in public law for provision of resettlement even in cases of forcible eviction.[14] One of the verdicts even stated that active pursuit by the people of the right of resettlement "depends on the

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13 The resolution can be seen (in Chinese) at the following website: <http://ppt.cc/Oc0aV>.

14 The three verdicts concerning "the right to adequate housing" were Taiwan Taipei High Administrative Court 2014 Verdict Suzi No. 2020; Taiwan Supreme Administrative Court 2014 Verdict Panzi No 447 and Taiwan Supreme Administrative Court 2015 Verdict Panzi No. 543.

legislative branch to provide clear and precise provisions based on the will of the nation regarding the content and conditions for a so-called right of adequate living." Subsequently, the government agencies in question, in this case the Taipei Detention Center of the MOJ Agency of Corrections, were unable to achieve this standard and "the people could only use this as the basis to appeal to the judgment of the court for assistance in protecting their rights." We believe that the Supreme Administrative Court had made an erroneous interpretation of the question of justiciability.

57. Taiwan courts maintain that they cannot issue judicial judgments regarding the distribution of resources by the executive branch or impose restrictions on executive branch budgets. In a 2015 verdict concerned with "the right to adequate housing, "the Taiwan Supreme Administrative Court (Verdict 2015 Panzi 447) found that the State's forcible eviction "involved striking a balance between resource distribution policies and the so-called 'people's right for adequate living standards and also involved conflicts among pluralistic interest and values." The court declared that the ICESCR had only expounded norms but still had not concretized its stipulations. However, we believe that, in the face of cases of forced evictions, courts should not advocate that the right to housing protected by the ICESCR because of should not be applied because the judiciary's power in "the distribution of resources is subject to restrictions."[15]

58. The Chinese language version of the General Comments was edited by scholars invited by the Ministry of Justice and is based primarily on a translation in simplified characters issued by China. Using General Comment No. 7 (regarding adequate housing and forced evictions) on the ICESCR, the Chinese version of Paragraphs 8 and 16 water down the obligation and thereby creates an erroneous interpretation of the State party's obligations. We recommend that the MOJ carry out a broad-based review and proof-reading of this edition.

59. We suggest that the MOJ's list of the citation of provisions of the two covenants in court judgments be arranged based on a categories of human rights issues to highlight cases related to each type of human rights.[16]

COR Point 18 CEDAW Education and Training

60. With regard to Paragraph 20 of the State report, judicial officers in the trial process

15 See Taiwan Supreme Administrative Court Judgement Panzi No. 447 in 2015.

16 Please refer to the Judicial Yuan's current and extremely crude collation of such judgements, which only lists the number of the judgement in which the covenants may have been cited. The case numbers indicate neither which covenant was cited nor which right was concerned. Users therefore have to conduct individual searches in the Judicial Yuan database. See <http://ppt.cc/0Y2il> .

for cases of gender violence often are unable to distinguish between sexual assaults between strangers and sexual assaults involving people who know each other. Instead, they often labour under the myth that "when a woman's body is assaulted, she should shout, resist or immediately report to the police." Hence, they may easily interpret the lack of such reactions on the part of the person involved as indications that the contact did not violate her will and thus make improper dispositions or verdicts. There are also some judges who maintain that no sexual assault could have taken place if a victim had not immediately exposed the incident, filed a police report or underwent an examination for injuries. For example, Taiwan Supreme Court Judgment No. 1066 in 2015 annulled an original judgement for retrial on the grounds that since the plaintiff reported to the police "this cases does not seem to match with usual cases of sexual assault which are reported promptly to police for action immediately after they occur since she reported the case to police over a day and a half after the time she claimed she was sexually assaulted by the defendant. "

61. We recommend that the government encourage legal professionals to develop curriculum on CEDAW and other international human rights covenants and conventions, research and develop professional educational material on gender violence based on the standards of CEDAW and other human rights treaties and include related content in national examinations for judicial personnel.

62. The officers of the Judicial Yuan, including judges, judicial associate officers, family matters investigation officers, mediation commissioners and Gguardians ad Litem, should all have education and training in human rights, CEDAW and gender equality. The Judicial Yuan establish effective evaluation systems to list annual targets for staff training rates and track results and evaluate whether the judiciary is able to manifest human rights and the spirit of CEDAW in indictments, verdicts and the disposition of cases.

COR Point 19 Human Rights Education and Training

63. Taiwan's national education has listed human rights education as one of seven "disciplines" in elementary school education since the gradual introduction of an uniform Grade 1-9 curriculum since the 2001 school year, which has formed the basis for the integration of human rights education into all areas of learning.[17] In

17 The Grade 1-9 Curriculum has three separate versions, namely the 2001 Provisional Curriculum Guidelines, the 2003 Curriculum Guidelines and the 2008 Curriculum Guidelines. The 2008 Curriculum Guidelines added "marine education" and also revised "gender education" to "gender equity education." The seven disciplines are now gender equity education, environmental education, information technology education, home economics education, human rights education, career development education and marine education. A comprehensive guide to G1-9 curricula (in Chinese) is at: <http://ppt.cc/13tJ>.

2014, the "Twelve-Year Basic Education Program" was introduced. In the new Twelve - Year Basic Education Curriculum to take effect in the 2018 school year, Human rights education will be integrated with all fields, subjects and flexible learning teaching methods and will no longer be an official course and will not have a clearly delineated section number. Human rights education curriculum guidelines will also be cancelled.[18]

64. Enhancement of human rights awareness and understanding as well as respect for human rights concepts is an extremely critical step in the process of democratization. Considering the fact that currently serving teachers never received abundant training in human rights education courses and that their own understanding and acceptance of human rights values and principles are insufficient, the Ministry of Education (MOE) from 2009 established a "Curriculum and Instruction Consulting Committee" for national human rights education and curriculum and instruction consulting teams in local governments to assist teachers to transform human rights education into course instruction. The performance of the curriculum and instruction consulting system has been widely praised.[19] However, the Twelve Year Basic Education Program does not plan to continue the central government human rights education team and city and county government human rights counselling networks are expected to shrivel in turn.

65. We recommend that the government should draft a national human rights education action plan and arrange necessary resources to ensure that educational workers, government officials, judges, prosecutors, law enforcement personnel and military personnel receive appropriate human rights education and become familiar with human rights knowledge and information and work in common to promote and guarantee the realization of all human rights. With regard to the training of teachers, the government can adopt suitable measures such as continuing to invest resources into human rights education curriculum and instruction consulting systems, maintaining space for dialogue among human rights professional groups, cultivating the human rights teaching quality and teaching ability and cultivate the capability of human rights instructors to provide individualized education as well as use human rights education indicators to

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18 The 12-year basic education program will no longer issue curriculum guidelines for each separate discipline. Instead, a research and revision task force for the curriculum guidelines for each field of study will arrange topic working circles to provide concepts and key points for learning. Human rights and gender equality education, environmental education and marine education will be listed together as four "major issues" with 15 other "ordinary issues." The Twelve Year Basic Education Guidelines (2014) can be seen (in Chinese) at the following website: <http://ppt.cc/87IDV>.

19 See Research, Development and Evaluation Commission (RDEC), "Evaluating the Current Situation in Implementation of the Grade 1-9 Curriculum," 2010. The website for the MOE Gender Equity Education curriculum and instruction committee (in Chinese) can be accessed here: <http://genderedu.moe.edu.tw/intro/super_pages.php?ID=intro1>.

monitor whether curricula and course work are implemented, track the learning progress of students and ensure the realization of human rights education and learning. With regard to course content, teaching methods and teaching materials, care should be taken to avoid formalistic article by article interpretation as in lectures. Instead, the government can encourage schools and institutions to choose systematic human rights teaching materials and make good use of the related resources of civil society organizations and bolster cooperation with NGOs in human rights education work.

COR Points 20-21 Transparency and Participation in Decision-making

Citizen Participation and Policy-Making in Land Development and Housing

66. On informal settlements on state-owned land: The National Land Clean-up and Reactivation Superintendent Squad is at present the decision-making body regarding the determination of policies on state owned land. This body was established through an administrative direction instead of law by the Executive Yuan on November 27, 2009 as a cross-ministerial task force attended by representatives of at least vice-ministerial levels,[20] whose meetings are consistently held without advance notification and lack mechanisms for public participation, and the records are usually brief or abbreviated. Therefore, civil society and even the Legislative Yuan have been unable to carry out effective after-the-fact monitoring or supervision. Nevertheless, this task force can make policy decisions on state-owned land and properties which occupy over 60 percent of Taiwan's total land area and therefore can have major impact on land development, environmental protection, social welfare and national fiscal policies. These decisions can also affect the housing rights of inhabitants on the informal settlements. (Please also refer to Paragraph 210 below regarding Point 49 in Response to the Concluding Observations and Recommendations).

67. On urban renewal: At present, several sets of proposed draft revisions to the Urban Renewal Act, originally promulgated in November 1998 and last amended in May 2010, are in the stage explanatory meetings, public hearings and review in the Legislative Yuan Interior Affairs Committee. [21] Under current regulations, the people can only provide verbal testimony or written petitions, a situation not in keeping with the principle of effective or meaningful participation. In Interpretation 709 regarding "Review and Approval of Urban Renewal Business

20 Directions Concerning the Establishment of the National Land Clean-up and Reactivation Squad as revised as of May 20, 2015: <http://ppt.cc/NRTrh>.

21 An English translation of the Urban Renewal Act is at < http://goo.gl/FomDji>.

Summaries and Plans" issued on April 26, 2013,[22] the Constitutional Court declared that the act should be revised to add provisions for public hearings proceedings with the function of debate in order to protect public participation. Although the original draft of the second State Report stated that the Ministry of the Interior (MOI) had revised its "Directions for Urban Renewal Hearing Proceeding of the Ministry of the Interior" effective December 22, 2014 and that local governments had held 222 hearings under its procedures, the State Report offered no further explanation regarding: (a) why the Ministry of the Interior revised the "Directions for Urban Renewal Hearing Proceedings," and administrative direction, instead of the Urban Renewal Act to implement the hearings; and, (b) preparatory meetings are not held before urban renewal hearings in order to collect points of dispute and do not feature pluralistic debate. Moreover, urban renewal review committee members do not need to provide reasons why they adopt or do not adopt the conclusions of urban renewal meetings. It is evident that the urban renewal meetings as held in the present manner are not in accord with the principle of effective participation.

68. On urban land consolidation: Urban land consolidation implemented by the public sector process is based on the sequences of land area selection and approval, assessment of land value and cadastral survey, and ground-breaking.[23] Before approval of the site selection, there are no notifications of stakeholders or hearings. Only 30 days after the approval of the selected area is publically announced can owners of land in the selected zone use notifications of the announcement as the basis to put forward objections. Only if the number of landowners who object must exceed half of the total number of landowners and over half of the privately - owned land area would the responsible agencies convene another review meeting on the proposed case. Moreover, as there are no legal standards regulating what would be the appropriate manner to carry out such a re-examination, the central government responsible agency can act based on its own conscience. On the other hand, in the case of urban land consolidations implemented by the private sector, the lower thresholds for approval is too low to protect the interests of relatively disadvantaged or weak landowners; similarly, no hearings or consultations are

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22 An English language translation is at <http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=709>.

23 According to Article 56 of the Equalization of Land Rights Act, the government at various levels may select areas for land consolidation plans. This process is termed urban land consolidation implemented by the public sector. Article 58 of the same act mandates that the competent authorities may encourage landowners to organize groups by themselves for the purpose of implementing urban land consolidation in order to promote land use and acceleration consolidation. This process is termed urban land readjustment implemented by the private sector. Urban land readjustment and zone expropriation are similar in that, after the land acquired is readjusted and allocated for the determined use and land used for public installations is deducted, landowners are compensated with cash payments for the remaining plots of undeveloped land to not meet the minimum area requirements for construction. The main differences are that urban land adjustment is carried out with regard to urban land and that the joint burden ratio is relatively less with a ceiling of 45%.

needed before official approvals, and the process is far from transparent.[24] Furthermore, although the process is initiated by private-sector landowners, adjacent public - owned property can also be included in the area for consolidation.[25] But residents living on public owned lands, being in fact stakeholders, are unable to receive any advance information and face being included in the area of consolidation which usually leads to eviction.

69. On zone expropriations: Zone expropriation at present are carried out for economic reasons and through a process which lacks clear and precise standards for assessing the public interest or necessity and which also lack transparent review processes. Instead, most zone expropriations are approved through the arbitrary judgement of developer agencies or professional committees and lack foundation in social consensus. At present, authorities in charge carrying out zone expropriations are only required to separately hold one public hearing before the development plan is approved and before submitting the zone expropriation plan. However, the absence of room for participation by the people in the process of drafting of plans that will seriously affect their own rights and interests means that they are only able to submit petitions after the drafts, and petitions submitted at this stage are unlikely to have any substantive impact on the plans since they are not legally binding.[26]

70. With regard to homelessness, the government has to date still invites local government and NGOs which apply to the government to ask for their opinions, while persons whose rights are directly affected still do not have opportunities to participate in the decision-making process.

Participation by People with Disabilities

71. The design of mechanisms for participation in policy-making and expression of views by persons with mental or physical disabilities is not entirely in keeping with the principle of 'nothing about us without us" or with the requirements of Article 33 Paragraph (3) of the CPRD.

72. Legal revisions should be made to institutionalize public participation: At present,

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24 The thresholds for approval of urban land consolidation implemented by the private sector are agreement of at least half of the landowners. When the landowners who agree possess at least half of the land area to be included in the consolidation, the proposed case can be reported to the responsible government agency for approval.

25 See Article 23 of the "Encouragement Regulations for Landowners in Implementing Urban Land Readjustment" <http://law.moj.gov.tw/LawClass/LawContent.aspx?PCODE=D0060012>.

26 In recent years, the summaries of expropriation plans still only discuss the population and land area and other statistical data and contain platitudes such as "there will be no impact of expropriation on population age structure," "there are no concerns for the budgetary sources of expropriation expenditures," "tax revenues from developed land will rise" or "the area of agricultural land involved in expropriations will not affect grain security" and ignore the impact of expropriations on procedural and substantive housing and work rights.

the discretionary power of executive agencies administrative agencies to decide whether consultations with the public or with stakeholders should be held and what kinds of formats should be utilized is often arbitrary and wilful. The MOJ should as soon as possible draft revisions regarding participation in public policy decision-making for review by the Executive Yuan and by the Legislative Yuan.

73. The government should clarity the power and position of the Committee of Rights of Persons with Disabilities under the Executive Yuan. According to Article 33 of CRPD, States Parties shall establish a coordination mechanism and one or more independent monitoring mechanisms within government as well as ensuring the involvement and participation of the civil society. The current Committee, established under Article 6 of the CRPD Enforcement Act, has a broad yet vague mandate, making it difficult to define whether it is a national "focal point" as is described in Article 33(1) of CRPD, or an independent monitoring mechanism in Article 33(2). Furthermore, it is worrying to observe how the Committee, which only meets once every few month, lacks concrete work methods and procedures to execute its official tasks as various as the promotion and educational training of the Convention, the supervision of its implementation by all levels of government authorities and the research and investigation into the current status of the rights of persons with disabilities, etc.

74. Subsequently, the government should also revise the existing Directions for the Establishment of the Committee of Rights of Persons with Disabilities, which fails to guarantee full participation of persons with disabilities and their representative organizations. Under Article 6 of the CRPD Enforcement Act and the Directions, the number of academic experts plus representatives from DPOs shall represent no less than 1/2 of the total number of committee members. However, in the Committee's first member list, only one out of the seven representatives from DPOs is himself/herself a person with disability; several of the academic experts, who are undertaking government-commissioned projects on implementation of CRC and CRPD, are faced with moral conflicts or conflicts in interest. Thereby we propose that the Directions should increase the representative seats of persons with disabilities and DPOs up to 1/3 or even 1/2 on the Committee, and it is necessary to formulate codes of ethic and conflict of interest policies.

Citizen Participation in Policy-Making in the field of Rights of Indigenous Peoples

75. In recent years, there has not been noticeable improvement in the protection of the right of consent and the right of participation in decision-making for indigenous peoples. In the overwhelming majority of cases of public - and private - sector development, research, regulation and land-use planning, indigenous peoples have only been able to at most only able to hold "tribal councils" and resolve either to give consent or reject the plan. Only in rare cases have indigenous peoples been involved in the processes of advance planning discussion and formulation. In

addition, even though the Executive Yuan Council for Indigenous Peoples (CIP) drafted and enact on January 4, 2016 "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" based on Articles 21, 22 and 31 of the Indigenous Peoples Basic Law (IPBL), the substantive content of the new regulations is divorced from the social reality of indigenous peoples in Taiwan.[27]

76. For example, Article 2 of the "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" require the members of an indigenous village to establish their household registration in the village instead of allowing the village itself to define the qualifications for membership in the community. This provision infringes on the rights of participation in village decision - making and development for indigenous people who are working or studying outside of the village. Article 5 of the regulations decrees that the "village council" is the highest institution of executive power in the village and Article 11 also mandates that "(t)the convention, resolutions and all procedures or methods decided upon by village officers that violate the stipulations of these regulations or the bylaws of the village are invalid." These powerful articles compel indigenous peoples and all indigenous villages to set aside traditional pluralistic internal decision making or regulation models and require that they can only accept the council format recognized by the government. These stipulations gravely restrict the right of self-determination of indigenous peoples and clearly transgress the provisions of Article 4 and Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.

77. The self-governance functions of indigenous people traditionally formed through a pluralistic autonomous decision-making and regulation model within the scope of each indigenous people and tribe. On December 16, 2015, a revision to the IPBL was enacted after passage by the Legislative Yuan including a new Article 2-1 which stipulated that: "In order to promote the healthy autonomous development of indigenous peoples tribes, each tribe should establish a tribal council. Each tribe will be recognized as 'tribal public corporations' through the central indigenous peoples responsible agency." This provision aimed to use the legal institutions of a modern state to grant a status of a subject to indigenous peoples law and use the form of "tribal public corporation" to return the capabilities of self-determination and self-governance to indigenous peoples. However, how the government will

27 The Chinese language text of the "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" is available at the following website: <http://gazette.nat.gov.tw/EG_FileManager/eguploadpub/eg022001/ch02/type1/gov13/num5/Eg.htm>.

take any concrete action to realize this concept must still be monitored.[28]

78. In summation, we recommend:

(1) When government agencies at all levels implement or monitor development, research, regulation or land utilization planning in indigenous peoples regions, they should uphold the comprehensive rights of indigenous peoples to participate in the formation of the content of planning, evaluation and implementation and realization of self-governance.

(2) Besides realizing the provisions of Article 21 of the IPBL, government policy making should respect the principles of the Declaration on the Rights of Indigenous Peoples to secure their "free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (Article 19) and to ensure their full and effective participation of indigenous people in related processes.

(3) When drafting and enacting regulations for the organization of tribal public corporations based on Article 2-1 of the IPBL, the CIP should ensure that the scope of the new rules has considerable flexibility and freedom and should avoid adopting a legalistic unitary and stereotyped image that would restrict the existing tribal autonomy. The current "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" should also be revised based on similar standards.

COR Points 22-23 Corporate Responsibility

The unsettled incident of pollution in Ha Tinh Province, Vietnam, by Formosa Ha Tinh Steel

79. Formosa Ha Tinh Steel (FHTS) is a joint venture of Formosa Plastics Group and China Steel, and Taiwan Ministry of Economic Affairs (MOEA) is the major stockholder of the latter. Starting in April 2016 and lasted for several weeks, a large number of dead fish were found on the coast of Ha Tinh where FHTS was located. Several divers employed by FHTS and residents nearby also suffered from illnesses and one diver died shortly after diving. The incident caused panic and anger among communities and caught international attention. It has not been confirmed whether pollution from FHTS was responsible for these events. However, there have been several precedencies where Taiwanese corporations

28 Lin Shu-ya, "The Right of Approval of Indigenous Peoples and village corporate persons (draft)," p.7-8, Sixth Conference on Traditional Customs and Rules and National Rule of Law" (in Chinese). National Taipei University of Education, May 1, 2016.

violated human rights and damaged the environment in other countries. Prominent examples in recent years include human trafficking in Cambodia, forced labor in distant water fishery, forced evictions in Koh Kong province (Cambodia) by a sugar plantation invested by Ve Wong Corporation, and the closing down of a Korean company Hydis by E-Ink Holdings following a merger.

80. Business activities have great influence over the lives and rights of people, so ensuring that foreign investments abide by international human rights norms is part of a state's duty to protect. Regarding the FHTS incident, the government cannot evade its duty of monitoring and management, given its direct involvement in China Steel. However, in Government's Follow-up Reports to the Concluding Observations, there is no mentioning of regulating and monitoring foreign investment of Taiwanese corporations. In fact, nothing took place in the interim three years except one public hearing on corporate social responsibilities.

81. The facts about the pollution around FHTS are still unclear. The statement by the Formosa Plastics Group (FPG) has been inconsistent. It is unclear why the FPG paid 500 million US dollars to the Vietnam government. Was it a compensation based on humanitarian considerations, a reparation for actual damages, a bailout for the safety of high-level managers, or collusion between FPG and the Vietnamese government? We demand a revelation of truths by the government, China Steel, and FPG. We urge the international experts to put this incident in the list of issues so that the government can properly address it and recognize its responsibilities in regulating transnational investment.

82. The "New South Policy" is a slogan of the Tsai government, but we warn against the conspiracy between the government and corporations. The New South Policy has to be built on its concerns on human rights, labor, environment, and anti-corruption.

83. We have the following suggestions:

(1) The government, particularly the MOEA, should follow the UN Global Compact and the Guiding Principles for Business and Human Rights adopted by the Human Rights Council, and strengthen its regulations on business governance, stock exchange, and investment.

(2) The conducts of corporations overseas should be regulated by law, including establishing a mechanism to investigate complaints of human rights violation, and pressing criminal charges for violations. The rights to protest and seek remedy in Taiwan by noncitizen stakeholders should be protected. There should not be further cases like Hydis workers who came to Taiwan to fight for their rights and ended up being deported and prohibited from re-entering.

(3) Human rights impact assessment, including the procedures and substantive

contents, should be promulgated to evaluate potential risks and damages of business activities. For example, article 6.3 of the "Regulation for foreign investment by corporations" stipulates that foreign investment shall not violate international treaties, but the actual mechanism of safeguarding and auditing is not clear. The Invest Commission of MOEA should take definite moves. Human rights impact assessment should be a mandatory step in the evaluation for all international trade and investment agreements.

(4) National Human Rights Commission (NHRC) can play an important role in "Business and Human Rights" issues. President Tsai should keep her promise and establish the NHRC without delay.

COR Points 24-25 Transitional Justice

84. The Experts have stressed the pursuit of truth and justice should take place in tandem with the provision of reparations. Civil society organizations have also repeatedly urged the Taiwan government to repeal restrictions on the right of victims of martial law era political cases (White Terror) to appeal the verdicts of military courts contained in Article 9 of the National Security and to review the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period.[29] This act limited the responsibility of the State for the White Terror to monetary compensation and also required the people to submit evidence that they were victimized. However, the government has yet to take concrete action to respond to Points 24-25 of the Concluding Observations

29 "The February 28 Incident Disposition and Compensation Act" was enacted on April 4, 1995 during the tenure of President Lee Teng-hui (January 1988-May 2000). Under Article 3 of this act, the February 28th Memorial Foundation, which is still in operation, was established with the responsibility for issuing reparations and certifications of restoration of reputation, conducting research and the collection of historical materials, disseminating the educational, cultural, historical or human-rights significance of the 228 Incident and other tasks. Shortly before Taiwan's first transition of political power from the Chinese Nationalist Party (Kuomintang or KMT) to the Democratic Progressive Party (DPP) in May 2000, the government enacted the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period on June 17, 1998 in order to handle the wrongful and false trials during the 38-year period of martial law (imposed by the KMT from May 20, 1949 through July 15, 1987). Under Article 3 of this act, the government established the Foundation for Wrongly Charged People during the Period of National Mobilization for Suppression of the Communist Rebellion on March 9, 1999. The foundation's tasks included reviewing applications for compensation from martial law era political victims or their relatives, granting compensation, restoring reputation and other related tasks. This foundation completed its work and ended its operation on March 8, 2014. During its 15 years of operation, the foundation completed the review of 10,065 applications, of which 7,965 (79%) were accepted, including 809 cases of death sentences (10.15%), and 2,036 applications were not granted compensation. The foundation also issued 4,066 certificates of restoration of reputation in 16 tranches. The foundation issued a total of NT$19.623 billion in compensation payments. This sum was taken by succeeding Taiwan governments from tax paid by the people for give to victims and relatives of victims of the White Terror as minimum compensation or consolation payments.

and Recommendations and focussed its response on statistics of monetary compensation payments and persists in obstructing the pursuit of justice by the victims.

85. The government has yet to follow the recommendations of the Experts to establish a "truth and reconciliation commission" as a mechanism to carry out a systematic investigation of the legacy of nearly 40 years of martial law rule. As a result, the knowledge of the victims and their relatives and Taiwan society at large regarding the historical truth of the White Terror remains limited. In her May 20, 2016 inaugural address, President Tsai Ing-wen stated the new government's intention to realize this commitment and civil society needs to continue to monitor the situation.

86. The government's management and regulation of official files related to the White Terror has not been entirely reasonable and has failed to find a balance between the public interest of the pursuit of historical truth and the protection of individual privacy. The government has not effectively collected the party archives of the former ruling Chinese Nationalist Party (Kuomintang or KMT) to assist in understanding authoritarian rule and has also not invested resources to collate, research and publish such files. The government has thereby been derelict in measures to effectively disclose the complete truth of the decades of White Terror.

Historical justice for indigenous peoples and transitional justice

87. Most discussion of transitional justice in Taiwan society is limited to the February 28th Incident of 1947 and the White Terror, both of which were created by KMT authoritarian rule. Nevertheless, indigenous peoples suffered even more severe infringements on rights during the long history of colonialism. Some of these tragedies were the product of errors committed by the KMT authoritarian regime and others were the responsibility of even earlier exogenous regimes or immigrants.

88. First, even if the KMT authoritarian regime caused the February 28th Incident, the White Terror and the problem of illicit KMT party assets, indigenous people also experienced particular injuries with the confiscation of traditional lands, the murder of political elites, the improper policy of "turning the mountain land into flat land" by forcing indigenous people to adopt Han Chinese names and thus lose their own names, language and culture. Second, from a longer-term perspective, the issue of historical justice for the indigenous peoples on Taiwan must be faced jointly by all of the Taiwan people. From the Dutch and Spanish, the clan of Cheng Cheng-kung, the Qing Dynasty's "Opening Up the Mountains and Pacifying Aboriginal Peoples" policy through Japanese colonial rule, the indigenous peoples on Taiwan have suffered massive injury and suffering. What is the historical truth? How can reparations and reconciliation take place?

89. The State and Taiwan society as a whole should not pretend that the injustice suffered by the indigenous peoples on Taiwan never happened and this issue should not be seen as "only the affair of indigenous peoples." However, in the wake of the January 2016 national elections, the historical justice and transitional justice for the indigenous peoples were neglected while the new Legislative Yuan and the new government actively promoted a draft "Act for the Promotion of Transitional Justice." The new governing Democratic Progressive Party (DPP) refused to include the infringements on rights suffered by indigenous peoples together in the above-mentioned act and only agreed to include the issue in the work of the planned truth and reconciliation commission to be set up under the Office of the Presidency and which will be of a consultative nature with limited investigatory and administrative powers. As of June 30, 2016, indigenous peoples organizations have strongly protested this plan.[30]

90. We recommend the following:

(1) The "Transitional Justice Promotion Commission" which the new government plans to set up under the Executive Yuan and which will have executive powers should include among its objectives "handling the improper infringement on the rights of indigenous peoples," investigation and disclosure of the historical truth of the infringement of rights suffered by indigenous peoples on Taiwan and undertake the restoration of rights, reparations or compensation. The organizational design of the Transitional Justice Promotion Commission should also include provisions for the participation of indigenous peoples.

(2) The above advocations should be included in the draft Act for the Promotion of Transitional Justice and related subsidiary statutes should be enacted after promulgation of the mother law. Only in this way can Taiwan society be enabled to face together the historical experience of the indigenous peoples in the course of discussing transitional justice and, afterwards, steadily strive for reconciliation between indigenous peoples and the State and between indigenous peoples and other ethnic groups.

COR Points 26-27 Gender Equality Department and Anti-Discriminations Law

91. The national budget allocation for integrated gender equality purposes is insufficient and we recommend that at least 1% of the annual central government budget expenditures be devoted to gender mainstreaming. Before calculating the

30 See the campaign sponsored by the Indigenous Youth Front on the theme of "What significance does Tsai Ing-wen's apology have if transitional justice does not include indigenous peoples?" <https://www.facebook.com/events/608797485950585/>.

national expenditures and resources directly or indirectly related to gender, the government should independently draft a budget and open up convenience and free civic participation.

92. Regarding the evaluation of the effect of gender mainstreaming, we suggest that the Executive Yuan Department of Gender Equality refer to the 2012 United Nations Human Rights Indicators framework and assist central government ministries and agencies and local governments to set up indicators to evaluate the effect of gender mainstreaming operations.

COR Points 28-29 Gender Equality and Education

Gender Equality and Education

93. Since 2013, conservative forces have incessantly used all types of methods to oppose gender equality education (including LGBT education, sex education and alternative family education) and have obstructed the gender equality education curriculum guidelines for the Twelve Year Basic Education Program. In the face of this backlash, the Ministry of Education has not only failed to uphold its obligation under the Gender Equity Education to actively support the rights of alternative gender students. Instead, the MOE has packaged these gender discriminatory ideological positions as "diverse social opinions" and invited their proponents into all kinds of policy -making bodies, thus leading to considerable back-tracking in Taiwan's gender equity education.

94. In January 2014, the MOE appointed persons who openly made homophobic statements or opposed LGBT education to become members of the MOE's Gender Equity Education Committee for 2014-2017.[31]

95. The MOE has the responsibility for research and development of instructional materials for gender equity education, but when educational materials with progressive values came under attack by conservative forces, the MOE compromised with the conservative forces in order to calm the dispute. For example, after the conservative religious organization "Taiwan Union for True Love' began in early 2011 to slander the gender equity education instructors' resources handbook edited by university professors under commission by the MOE. [32]

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31 See Eddy Chang, "Taipei Watcher: Enemy Within,"Taipei Times, June 26, 2014 < http://goo.gl/gP9mjy> and Ho Yi, "Unravelling the Gordian Knot," Taipei Times, July 01, 2014 <http://www.taipeitimes.com/News/feat/print/2014/07/01/2003594066/.

32 The instructional materials that came under attack included "This is How We Can Teach Gender" which was edited by Hsiao Chao-chun, Wang Li-ching and Hung Chu-yin, all of whom are

The MOE then began to delete or revise sections in the handbook regarding gay education. After 2011, the MOE never again commissioned the research and development of educational materials on alternative gender equity or gay education. [33]

96. Some members of the MOE Gender Equity Education Committee appointed for the two year term of 2014-2015 spent a great deal of time in meetings discussing the case of an educational video entitled "Shall We Swim?" produced by the Taiwan Gender Equity Educational Association in 2011 for viewing by senior high-school students. In the wake of repeated demands, the MOE issued an official document instructing senior and junior high schools and elementary schools that this video "cannot be used" and proposed a motion demanding that the MOE restore the central review mechanism for vetting civic educational material. This action not only constrained he promotion and discussion of gender education issues and also is a concrete example of a violation of democracy and freedom of expression. [34]

97. We recommend the following:

(1) Gender equity education committees at all levels should appoint experts and scholars, representatives of civic organizations and educational workers who have a sense of gender equity awareness as committee members;

(2) The Twelve Year Basic Education Curriculum Outline should explicitly delineate the content and implementation methods for gender equity education;

(3) Gender equity education should include the topics of sexual orientation, gender identity and anti-discrimination;

(4) the MOE should research and develop gay educational materials appropriate for all levels of schools;

(5) the MOE should review the existence of hetero-sexist and patriarchal ideologies in textbooks and ensure that school courses include the subjects of gender diversity and human rights;

(6) on-the-job training and educational courses for instructors should include

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elementary school teachers (http://ppt.cc/Wf2a8) and "A Handbook for Understanding Gay Education" by Chao Shu-chu and Kuo Li-an (http://ppt.cc/jBw3O).

33 See Sun Chiung-li, "The Gender Equity Education Handbook is distorted; Gender Education Groups Sue 'Taiwan Union for True Love,"' Coolloud, May 12, 2011 (in Chinese) <http://www.coolloud.org.tw/node/61717/>; Loa Iok-sin, "Gender, gay rights groups file slander suit in Taipei," May 13, 2011 < http://goo.gl/iykGmt>.

34 For an analysis of the consequences of this controversy, see Chuang Shu-ching, "Education, reform can curb abuse," Taipei Times, July 22, 2015 < http://goo.gl/P5n9Nm>.

opposing homophobia and challenging heterosexual privilege and thus help teachers bring these topics into discussions of cultural pluralism, anti-discrimination or social justice;

(7) Realize the content of Points 22-23 of the Concluding Observations and Recommendations from the review of the second State report on CEDAW.

Transgender issues

98. 66. Transgender is still considered to be an illness in Taiwan. Transgender persons need to go through mental health diagnosis and surgery before they can obtain gender recognition. These requirements pose an extremely steep threshold to transgender persons who are already in economic disadvantaged conditions. The lack of correlation between self-defined gender and the legal determination of gender spurs the creation of a vicious spiral and persons who are unable to bear these dilemmas will finally end on the road to despair and disaster.

99. We recommend that mandatory surgery should not be used as the basis for gender recognition but adopt the following framework based on the experience of Denmark: (1) All ROC citizens of at least 16 years of age can submit applications for gender recognition. Persons who are at least 16 years of age but who are not yet 18 will require agreement from their guardian; (2) mandatory surgery or mental health diagnosis will not be the basis for gender recognition; and (3) there will be a six month buffer period which will commence automatically after the application is submitted during which the applicant can retract his or her application.

COR Point 30 Rights of Indigenous Peoples

Nuclear Waste and the Rights of Indigenous Peoples

100. In responding to the Concluding Observations and Recommendations to the first State report (Paragraphs 85-88), the Ministry of Economic Affairs (MOEA) stated that it has already begun dialogue in preparation for referenda on possible low-level radioactive waste (LLRW) repositories. In the future, the location of a possible LLRW final repository may be decided by referendum, in which at least 50 percent of resident citizens. If a proposed LLRW repository site is near indigenous peoples communities, the plan will require prior approval by nearby indigenous peoples villages before the county-level referendum is held, according to Article 31 of the IPBL. Nevertheless, this kind of narrative is overly simplified and cannot explain the exact implementation plan.

101. During two meetings convened on August 28 and November 6, 2013 by the CIP, indigenous peoples organizations and representatives of affected villages proposed that based on Article 31 of the IPBL (which mandates that "The

government may not store toxic materials in indigenous peoples regions in contrary to the will of indigenous peoples") such a referendum should be based in the scope of the areas influenced by the establishment of such a repository. Indigenous peoples representatives agreed that the threshold for passage should be raised to two-thirds approval and that success in finding a site not be a precondition for the transfer of low-level radioactive waste from Lanyu (Orchid Island). However, during the past three years, there has been no sign that the MOEA has turned these recommendations into substantial policies or any indication of what the current situation is.

102. There has also been no concrete action taken by the Taiwan Power Co (Taipower) with regard to the demands that it immediately remove nuclear waste from Lanyu and the MOEA also admits that there are difficulties in meeting this demand.[35] According to the proceedings of the eight review meeting of the second round off the Second Regular Report on the ICCPR-ICESCR held on October 22, 2015 provided by the Ministry of Justice, Taipower and the Lanyu Township government had completed on April 17, 2015 procedures for an extension of the land lease for the nuclear waste storage facility on the grounds that the lease extension was in the public interest. These statements are clearly contrary to the expectations of indigenous people and are not in accord with the resolutions reached at the CIP public hearing. The fact that this narrative was not included in the final "Response to the Concluding Observations and Recommendations" issued in April shows the government's intention to evade this issue. [36]

103. Discussion of the controversy over nuclear waste storage not only impinges on the issue of the threshold and scope of related referenda, but also must probe the background for the policy decision to designate Lanyu as the site to store low-level radioactive waste in the mid-1980s. At the time, Taipower deposited the nuclear waste at Lanyu without obtaining the free, advance and knowing consent of the Dawu people on Lanyu.

104. In addition, based on the "Regulations on the Final Disposal of High Level Radioactive Waste (HLRW) and Safety Management of the Facilities" first issued by the Atomic Energy Council (AEC) in August 2005 [37] and the "Preliminary

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35 See "A Broken Promise! MOEA: It will be difficult to remove nuclear waste from Lanyu," New Talk (Chinese), February 29, 2016 <http://newtalk.tw/news/views/2016-02-; Loa Iok-sin, "Taipower still wants to ship nuclear waste overseas," Taipei Times, March 12, 2016 < http://goo.gl/MWIj9M>.

36 That paragraph was not included in the final version of the State report. The original version was as follows: "Removal of the Lanyu Depository is government policy, but before the completion of the establishment of a final repository for low-level radioactive waste, the extension of the operating and the land leases for the Lanyu repository are necessary to maintain positive interaction with Lanyu. The Taiwan Power Co and the Lanyu Township Government completed the extension of the land lease for the Lanyu Depository on April 17. Besides avoiding sparking protest activities by local residents, this extension is accord with the public interest."

37 See <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=J0160070/>.

Technical Feasibility Evaluation of Our Country's Final Repository Site for Spent Nuclear Fuel" issued by Taipower in June 2010,[38] the government is scheduled to select a HLRW final disposal facility during 2017-2028. During the survey and evaluation of several sites, Taipower has violated Article 21 of the IPBL. Without securing the permission of local indigenous peoples villages, Taipower drilled exploratory wells and carried out other related geological structural survey operations in the area of Xiulin Township in Hualien County and Nanao Township in Yilan County. The AEC even cooperated with the Ministry of Science and Technology to carry out at "Area 146" the border of Xiulin and Nanao townships "the AEC-MOST underground tunnel research office program to study the experience of Finland's Onkalo spent nuclear fuel repository and aim to design the underground tunnel that will link with the proposed HLRW final depository. Despite numerous protests by indigenous people, the MOEA and AEC still refuse to disclose complete information or to legally obtain the agreement of local indigenous people for this research project.

105. The events related above are developments concerned with the issue of nuclear waste storage that surfaced after the international review of the first State report in January 2013. Despite numerous reminders, information and data regarding the above mentioned disputes were still not included in the second State report. We call on the government to provide a comprehensive and concrete explanation and clearly respond to the concerns of indigenous peoples organizations and affected communities.

COR Point 31 Rights of Indigenous Peoples

Indigenous reservation land

106. In the response to the Concluding Observations and Recommendations on the first State report (Paragraphs 92-96), the responses of the Council of Indigenous Peoples (CIP) and the Council of Agriculture (COA) were not sufficiently to the point. The dispute regarding the land for the Shihtiping Fishing Port in Fengpin Village in Hualien County was only one example of such a land dispute and not the single example. The concerned ministries should explain the following: the measures to protect rights during the window from the time of application for determination as indigenous reservation land through the time of approval and the disposition and remedial measures available if such land is expropriated or seized during that window.

107. In the response, the CIP referred to "public property still to be added to indigenous reservation land" and stated that the competent authorities have

38 The feasibility evaluation can be accessed at <http://ppt.cc/DeN18/>.

already fulfilled their duty to restore indigenous peoples land rights. However, in fact, from the beginning of implementation of the "Program for the Supplemental Addition of Indigenous Reservation Land" in 2007 to 2014, only 9.2% of applications have successfully obtained land. The obstacles and challenges faced by indigenous people in the process of applying for supplemental land have sparked numerous disputes.[39]

108. There are many contradictions in the process for applying for supplemental land for indigenous reservation land. Historically speaking, most indigenous tribal land had been violently seized and redistributed by the State during the Japanese colonial period. Beginning in late 1945, these lands were inherited by the ROC government or state enterprises. At present, when indigenous people apply to take back the land of their ancestors, they must themselves collect and submit all kinds of land-use evidence. Layers of review by the village government, the city or county government and the CIP follow until finally land management agency can express its opinion and decide whether to approve the application. However, when faced with the possibility of losing control over land in which they have had a long-term vested interest, the public asset management agencies often have antagonisms and contradictions with indigenous people or refuse to implement the procedure or even turn around and file legal action against the indigenous applicants themselves.[40]

109. On one hand, the adoption by the government of Western concepts of property and its use of cadastral records as the only evidence to survey the land use of indigenous peoples when making dispositions of land passed on generation by generation from the ancestors of today's indigenous peoples can easily trigger conflicts since the lack of recorded frameworks of land use make it difficult for indigenous people to prove their exclusive use rights or ownership of their land. On the other hand, since the intention of the policy is to restore the land to its original owner, why does the application process generate conflicts between the land management agencies and indigenous peoples? Moreover, when the CIP, as

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39 This figure, derived from the statistics of the Council of Indigenous People, was contained in a report by the Taiwan Indigenous Television (TITV) on "As of the end of the year, less than 10 percent of supplemental land applications will have been approved," broadcast November 24, 2014. See: <https://www.youtube.com/watch?v=0E3jHq9Hd7A/>.

40 At the end of 2013, a dispute erupted concerning the Mei-Feng Farm of National Taiwan University. Members of the Seediq people filed an application under the Program for the Supplemental Addition of Indigenous Reservation Land to register land which they had long cultivated and resided upon as indigenous reservation land. However, after receiving the application materials, National Taiwan University (NTU), which was the land management agency, not only directly refused to agree to the application but also filed suit under the Civil Code against the Seediq people that required the demolishment of the unlicensed housing and the return of the land to the state and sparked protests by indigenous people. See Juan Chun-ta (2015), "The Trajectory of the Taiwan Indigenous Movement (1983-2014)" (in Chinese), Graduate Institute of Sociology, National Taiwan University, M.A. thesis, pp.152-161.

the competent authorities, encounters this kind of conflict, it does not have legally clear decision - making power, but can only constantly "coordinate" between the different sides. If the land management agency is unwilling to make any concessions, the CIP is essentially powerless. [41]

110. The above - mentioned difficulties encountered by indigenous peoples in the process of applying to register indigenous reservation land have improperly abrogated the borders of exclusive use rights of indigenous peoples over reservation land and exposed the chronic problem of the discrimination against indigenous peoples' traditions and customs by Han Chinese law. We recommend that:

(1) The procedure for applications to supplement indigenous peoples reservation land should be thoroughly reviewed and adjusted. Indigenous people should be able to obtain ownership if they can demonstrate the fact that they are actually engaged in the use and cultivation of land based on traditional knowledge.

(2) If indigenous reservation areas are found to have substantial utilization and are in accordance with related regulations, the Executive Yuan should carry out cross-ministerial consultations and directly retrieve the land in question from the land management agency and transfer it to the indigenous reservation area management agency (i.e., the Council of Indigenous Peoples). The CIP should then complete the procedure for allocation as indigenous reservation land in order to avoid indigenous peoples traditional lands from becoming the prize of a property war between vested interests. In addition, we advocate that the disposition powers of land management should be frozen during the period after an area of land has entered the application process to be designated as indigenous peoples reservation land and prior to the completion of the process as a means to preserve the integrity of the affected land during the window between application and approval.

(3) Finally, should the methods to resolve the land problems of indigenous peoples be restricted to only allowing individual indigenous persons obtain individual ownership of indigenous reservation land? The government should thoroughly reconsider this question and launch a wide-ranging dialogue with indigenous

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41 Conflicts frequently still occur in situations when the land management agency, while the application for reservation land is still in the review stage, may act to avoid its responsibility to allocate supplemental land by rapidly redistributing plots of land or submitting its own applications to use some of the land in the application for various purposes. The dispute over the Shihtiping Fishing Port in Fengpin Township in Hualien County is a typical example. From 1990 - 1993, indigenous peoples applied to the township office to register indigenous reservation land, but in 1993 the National Property Administration of the Ministry of Finance allocated that land to the "East Coast National Scenic Area Administration". From 1996-1999, local indigenous people again submitted many petitions to the Ministry of Transportation and Communications (MOTC), but the MOTC "declined to accept" the petitions on the grounds that the area in question had already been turned into the Shihtiping-Hsiukuluan River Scenic Zone.

peoples to search for alternative ways to resolve land rights problems.

Mining and Indigenous People's Rights

111. In the Response to the Concluding Observations and Recommendations to the First Review in the State Report (Paragraph 91), the definition of mining projects is restricted to land use applications for back-end mining operations. Nevertheless, during the state of the front-end determination of mining rights, the government does not plan to carry out advance notification or obtain the approval of affected indigenous peoples communities. In addition, the State Report only relates the situation regarding mining applications between 2012-2015 and did not mention how much indigenous peoples lands or communities have been affected by Taiwan's 254 existing mines. The State report erroneously refers to Article 21 of the IPBL and maintains that the approval of the indigenous peoples competent agency, namely the CIP, should be solicited before the commencement of mining operations, but entirely ignores that the article in question mandates that "the government shall consult with indigenous peoples, tribes or indigenous people and obtain their consent."

112. From the content of the above-mentioned response in the State Report, it can be seen that the MOEA's Bureau of Mines and the CIP have no idea of how many mines are sited on indigenous reservation land or traditional lands or the degree of impact on indigenous peoples and their communities. Neither the Bureau of Mines nor the CIP have paid attention to the impact of mining on the self-management of indigenous peoples lands and resources and neither have shown any sign of even grasping the most fundamental statistics related to this question. In fact, there are 15 mines in the traditional lands of the Ciyakang tribal area of the Turku people in Wanrung Township in Hualien County, including eight which are still in operation (see map).

Distribution of Mining Rights in Ciyankang Tribal Area in 2012

(Printed by Ciyankang Tribal Council)

(1) Jinlongfong Marble Mine
Mining Rights: 1975/10/12-2015/10/11
40 Years
Method: Open Pit Mining
Products: Marble

(2) Dalishi (Marble) Mine
Mining Rights: 2005/4/12-2015/4/11
10 Years
Method: Open Pit Mining
Products: Marble

(3) Longfongchih Marble Mine
Mining Rights: 1975/10/17-2015/10/16
40 Years
Method: Open Pit Mining
Products: Marble

(4) Jinfongchih Marble Mine
Mining Rights: 1975/10/17-2017/10/16
42 Years
Method: Open Pit Mining
Products: Marble

(5) Fonglin Marble Mine
Mining Rights: 1974/9/10-2024/9/9
50 Years
Method: Open Pit Mining
Products: Marble, Dolomite

(6) Sindongtai Mine
Mining Rights: 1972/1/28-2025/1/27
53 Years
Method: Open Pit Mining
Products: Marble, Dolomite

(7) Shunyucai Mine
Mining Rights: 1988/2/20-2013/2/19
25 Years
Method: Open Pit Mining
Products: Marble, Dolomite

(8) Sinyue Mine
Mining Rights: 1989/1/21-2014/1/20
25 Years
Method: Open Pit Mining
Products: Marble

(9) Shanyi Mine
Mining Rights: 1972/5/30-2017/5/29
45 Years
Method: Pit Mining
Products: Gems (Nephrite), Serpentine

(10) Sikou No. 2 Mine
Mining Rights1952/8/21-2027/8/20
75 Years
Method: Open Pit Mining
Products: Marble, Talc, Dolomite, Serpentine, Asbestos, Gems (Nephrite)

(11) Tiansing Mineral Mine
Mining Rights: 1959/12/24-2014/12/23
55 Years
Method: Pit Mining
Products: Gems (Nephrite) Serpentine, Asbestos, Talc

(12) Lijian Mine: Fongtian Mine
Mining Rights: 1956/8/28-2016/8/27
60 Years
Method: Pit Mining
Products: Gems (Nephrite), Serpentine, Asbestos, Talc

(13) Fongtian Mine
Mining Rights: 1956/8/28-2026/8/27
70 Years
Method: Open Pit Mining
Products: Gems (Nephrite), Serpentine, Asbestos, Talc

(14) Dayu Pit Mine
Mining Rights: 1968/9/12-2013/9/11
45 Years
Method: Pit Mining
Products: Gems (Nephrite), Serpentine, Asbestos, Talc

(15) Sikou No. 5 Mine
Mining Rights: 1954/4/29-2019/4/28
65 Years
Method: Open Pit Mining
Products: Marble, Dolomit

113. The Mining Act itself does not grant indigenous people the right of consent in processing mining applications if the area of the mine overlaps with indigenous peoples reservation land or traditional territories. If indigenous persons are not owners of indigenous reserved land, they will not even have the opportunity to express their views. Only in a minority of cases during the stage of "approval of mining land" or if the mining agency applies to expand the mining area and is required to carry out an environmental impact assessment based on the Environmental Impact Assessment Act may the CIP and indigenous peoples manage to secure opportunities to participate in related meetings and express their views. However, the Bureau of Mines can still grant approval for the designation of mining land and allow mining enterprises carry out excavation and mining even without the approval of local indigenous peoples. Moreover, with regard to the question of "securing the right to use the land" if the mining land belongs to privately-owned indigenous reservation land, Article 47 of the Mining Act actually permits he mineral right holder can commence to use the land after depositing the land price, rental or compensation with the court even if the indigenous people do not agree to rent or sell the reservation land.

114. Through the loophole discussed above, mining enterprises can easily overcome the defensive rights of indigenous peoples based on the IPBL. Enterprises can excavate mines and profit from the sale of minerals on indigenous peoples land while the environmental and social costs will be borne by the indigenous peoples themselves at the risk of the extinction of their communities. For example, government policy has supported several mining projects in the Nanao area of Yilan County. All of these projects require large scale transformation of landscapes in areas of high concentration of marble, dolomite and other minerals such as the upstream areas of the Tungao North Stream and the Nanao North Stream and the area surrounding the Aohua tribal community. These excavations have caused numerous problems, including impeding water and soil conservation, intensifying the flow of water in rivers and creating ecological disputes and environmental pollution. The casual piling up of slag also has obstructed steams and increased risk of soil and rock erosion or landslides and thus poses huge threats to the local environment and the right of survival of local indigenous peoples. The above phenomena evidently transgress Article 1 Paragraph 2 of the ICESCR concerning the right of indigenous peoples to "for their own ends, freely dispose of their natural wealth and resources."

115. We demand that in the future all development projects in indigenous peoples land (including indigenous reservation land and traditional territories) must secure approval from the concerned indigenous people before development can proceed as mandated by the IPBL's Article 21 and the "Regulations for Consultations to Obtain the Consent and Participation of Indigenous Peoples." With regard to mining and the governance of resources, the MOEA Bureau of Mines should take the initiative to establish a joint management system with indigenous peoples as

mandated by Article 22 of the IPBL. Finally, the collection of minerals by indigenous people on indigenous peoples land based on traditional culture, rituals or their own use and not for the purpose of for-profit enterprises should not require approval of mining rights or other permits and should be decriminalized out of respect for the rights of indigenous people over their land and resources.

COR Point 32 Indigenous Peoples Rights

Who Should Determine "Traditional Land" in the "Indigenous Peoples Basic Law"

116. In its response to the Concluding Observations and Recommendations for the first State report (Paragraphs 89-90), the CIP states that when government or private parties intend to engage in development plans, they should first consult with and obtain the consent from indigenous people as mandated by Article 21 of the IPBL to ensure the guarantees for the land rights of indigenous peoples. Nevertheless, the decisive point is how the "traditional lands" of indigenous peoples land should be determined and by whom? During a meeting convened by the Executive Yuan on August 1, 2013 to resolve the "Hsiang Shan (Hsiang Mountain) BOT" dispute between the Thao people over a government - sponsored BOT (build, operate and transfer) project earmarked for their lands in the Sun Moon Lake area, the responsible state minister (minister without portfolio) and the Ministry of Justice submitted a joint resolution which declared that the traditional lands of indigenous people must be officially designated and promulgated before they could be considered under the scope of application of the IPBL's Article 21. The tone struck by the government on the question of traditional land itself has sparked a series of land disputes. [42]

117. The meaning of the term "native title" is based on an appreciation of the linkage between indigenous peoples and their land and, from the standpoint of cultural pluralism, sets aside the notions of land derived from officialdom, Han Chinese or science and affirms that indigenous people can meld a relationship between humans and land based on the knowledge of their ancestors that predates the

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42 The Hsiang Shan BOT dispute between the Thao people involved the "Sun Moon Lake Hsiang Shan Tourist Resort BOT Project" to be carried out by the Sun Moon Lake National Scenic Area Administration with the authorization of the MOTC. In January 2009, the contract signing ceremony took place between the Sun Moon Lake Administration and Hong Kong's Bond Group and officially announced that the project had completed the bidding process. However, this process did not secure the consent of the Thao tribe who owned the land in question as required by the IPBL's Article 21. in November 2012, Thao tribe members held a protest outside of the Legislative Yuan against the Sun Moon Lake National Scenic Area Administration's Hsiang Shan Cable Car Station Project and the Hsiang Shan Tourist Resort BOT project and calling for the return of their land. See Lee I-chia, "Resort project gains approval, despite protests," Taipei Times, August 31, 2013 <http://www.taipeitimes.com/News/taiwan/archives/2013/08/31/2003571014>.

intervention of the state or colonialism.[43] After the IPBL was promulgated in February 2005, the State on one hand affirmed the traditional territorial rights of indigenous peoples, but on the other hand mandated that "official designation" as the basis for such rights without apparent realization of the mutual contradiction between these positions.

118. In terms of administrative affairs, the CIP as early as 2002 began to gradually carry out surveys of indigenous peoples traditional territories. Subsequently, after repeated demands by indigenous peoples organizations and individuals, the CIP finally in April 2013 disclosed the results of these surveys on the CIP website. Afterward, CIP officials during related meetings only used the term "make known" when asking development agencies or responsible agencies to comply with related regulations and specifically avoided using the term "promulgate" a term which has legally binding significance. This State report did not explain what considerations or difficulties the CIP had regarding this difference in usage.

119. In order to respond to the difficulties actually faced by indigenous peoples, we urge that the government should take action to "promulgate" the scope of indigenous peoples traditional land as soon as possible and demand that all agencies and private development parties strictly respect the provisions of Article 21 of the IPBL. At the same time, we also strongly call on the government to as soon as possible conduct an inventory and disclose all laws and regulations that are in conflict with the IPBL and the two covenants and immediately launch efforts to amend such laws and regulations in order to avoid indigenous people being put in a situation in which they are unable to effectively receive complete guarantees for their basic rights due to disorder in the domestic legal system.

Identity determination of the Pingpu indigenous peoples

120. At present, the government has officially recognized 16 tribes of indigenous peoples. [44]However, there are 10 tribes of indigenous people who belong to the Austronesian linguistic family that have not yet been officially recognized by the central government, including the Ketagalan, Taokas, Papora, Pazeh, Babuza, Kavalan, Hoanya, Siraya, Makatau and Taivoan peoples. The above tribes, whom are usually referred to as Pingpu indigenous peoples, originally inhabited plains and low-lying hills on Taiwan's west and east coasts. However, beginning in the 16th century, Taiwan was occupation by successive regimes of the Dutch, Spanish and the Qing Empire and experienced massive Han Chinese immigration. Subsequently, the distribution and cultural patterns of these people underwent

43 See Lo Yung-ching, "Practice and Application of Digitalisation Methods for Surveys of Traditional Lands of Taiwan Indigenous People" (in Chinese), Taiwan's Indigenous People Resource Center, No.3, September 2007 <http://www.tiprc.org.tw/epaper/03/03_tradarea.html/>.

44 A list of "the Tribes in Taiwan" can be found at the Council of Indigenous People website: <http://www.apc.gov.tw/portal/cateInfo.html?CID=5DD9C4959C302B9FD0636733C6861689/>.

huge transformations and they faced cultural extinction. Since the 1990s, the Pingpu indigenous people have actively launched movements for identification and restoration of their names and have struggled for recognition of their individual and national identity through lobbying and administrative legal action as well as street protests. [45]

Nevertheless, due to the government's erroneous imposition of a "plains/mountain compatriots" identification for indigenous peoples in the 1950s, [46] even if the Pingpu indigenous peoples have made major gains in language, culture, rites and community rebuilding and have an intense sense of identity, their status as indigenous peoples still not been recognized by the State.

121. In its response to the Concluding Observations and Recommendations to the first State report, the State report (Paragraph 97) stated that the government had acknowledged the historical facts supporting the existence of the Pingpu peoples and was willing to offer full support on the cultural and historical aspects to help the Pingpu peoples restore their cultures and languages. However, the State report also said that "not undermining the existing benefits of indigenous peoples" be a precondition to the recognition and rights proposals for the identity of Pingpu peoples based on the "differential principle." This kind of position obviously cannot respond to the demands by Pingpu people to have the same identity and collective rights as other indigenous peoples and clearly contravenes the provision for self-determination of Article 1 Paragraph 1 in both the ICCPR and ICESCR. At the same time, the government's response also entails a misconception that "restoring the national identity of the Pingpu peoples will affect the rights of the existing 16 indigenous tribes" that is divisive and also open to doubt of possibly contravening the prohibition against discrimination in Article 2 Paragraph 1 of the ICCPR.

122. In its response to the Concluding Observations and Recommendations to the first State report, the State report (Paragraph 98) relates the results of numerous policy measures, but the State reports all lack more detailed statistical data on further progress of these measures. We request that the government provide full information on the results and implementation scale of "Pingpu Peoples Settlement Revitalization Plans" and "Pingpu Peoples Language and Culture Recovery Plans" and disclose the research results for "Survey of the Current Status of Pingpu Peoples Settlement" and "Survey on the Distribution of Pingpu Peoples

45 For more information on the process of the restoration of the names of the Pingpu tribes, see Hsieh Jolan (2011), "The Challenge of the Pingpu Indigenous Peoples Identity Movement and Official Identity Determination," (in Chinese), Taiwan Journal of Indigenous Studies, 4(2), pp.121-142.

46 For information on the loss of the identity of indigenous peoples in the 1950s, see Yap Ko-hua, "Exclusion of Renunciation? Identification of Plains Tribes and Mountain Compatriots," Taiwan Historical Research, Vol 20, No.3 pp.117-206, September 2013. Institute of Taiwan History, Academia Sinica, Taipei, Taiwan (in Chinese).

Settlements" for the review and utilization by the Pingpu people.

123. Even more importantly, even if the government has begun to promote the above-mentioned plans, there is still no comprehensive and standing policy direction or clear legal institutional grounding for the task of cultural recovery and development of the Pingpu indigenous peoples. Since each plan is supported by short-term expenditures of a competitive and supplementary character, the cultural continuity and development policies for Pingpu indigenous people remain one-sided and scattered and protection for the implementation of their cultural rights remains incomplete. This state of affairs contravenes Article 27 of the ICCPR and Article 15, Paragraph 2 of the ICESCR.

124. In order to promote work regarding the identity recognition of Pingpu people, we propose the following:

(1) The government should disclose the progress of "Letters of Intent to Register Status" and the proceedings of various task force meetings and public hearings regarding Pingpu peoples identity recognition work so that Pinppu people can review the content and progress of such efforts and participate in the decision-making process.

(2) The government should immediately collect statistics on the population of Pingpu indigenous peoples and, using the Japanese colonial government era household registration data as the foundation, allow all local governments to accept registration by the people to facilitate subsequent identity recognition and resource distribution planning. In fact, local governments have already leaped ahead of the central government in terms of identity recognition for Pingpu indigenous people. For example, the former Tainan County (which was incorporated into Tainan City in 2012) took the lead in recognizing the Siraya people as a "county designated indigenous people" in 2005 and initiated a complete system for status registration including notification and publicity measures. As of April 15, 2009, 12,478 persons had registered as Siraya indigenous people in Tainan City, thus providing the only case of a Pingpu indigenous people with contemporary population reference data.[47]

(3) The government should immediately propose concrete policies and budgets for the restoration of the Pingpu peoples indigenous status. The Executive Yuan should guide the CIP and other related ministries and agencies in promoting necessary legal revisions, legislative work and other measures and must restore the national and individual status and complete national rights of the Pingpu

47 Statistics (in Chinese) collected by the Tainan City Ethnic Affairs Committee can be found at <http://www.tainan.gov.tw/nation/page.asp?nsub=H2A2A0/>.

indigenous people. [48] The State report relates that the government has already ensured indigenous peoples rights through indigenous tribal meetings and corporation of tribes, however, such measures cannot be realized for Pingpu people given the lack of government recognition of the Pingpu indigenous people. The government should promptly realize transitional and historical justice in order to avoid yet another abrogation of the right of self-determination of indigenous peoples.

COR Point 35 Rights of Indigenous Peoples

The Indigenous Peoples Basic Law has yet to be implemented

125. Since the first review of the State report on the two covenants in January 2013, the government has yet to clearly express its position or endorse the "United Nations Declaration on the Rights of Indigenous Peoples," but has only passively stated that the Declaration has many common advocations with the Indigenous Peoples Basic Law. Nevertheless, the collective rights and right of self-determination stressed in the Declaration are not specifically guaranteed in the IPBL. We urge the government to officially and clearly express its position regarding the Declaration and revise and strengthen the IPBL through the incorporation of the provisions for indigenous peoples rights contained in the Declaration.

126. Article 34 Paragraph 1 of the IPBL states that "(t)he relevant authority shall amend, make or repeal relevant regulations in accordance with the principles of this law within three years from its effectiveness." After the IPBL was promulgated in February 2005, a re-examination of other laws and regulations showed that 82 were in conflict with the IPBL. However, only 68 of these laws and regulations have been revised or enacted during the intervening 10 years. The CIP should clearly explain what the timetable is for the revisions of the remaining 16 laws and publically disclose a detailed list of the laws and regulations that have been revised. In addition, Paragraph Two of the same article mandates that before the completion of the amendment, enactment or repeal of such laws and regulations, "the central indigenous competent authority" shall interpret and implement the relevant laws and regulations in accord with the principles of this law. Based on this provision, the CIP should list laws and regulations that are not in accord with the IPBL and disclose the progress on discussions with other competent agencies for their revision or repeal.

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48 New President Tsai Ing-wen announced her policy commitment regarding indigenous peoples during the campaign for the January 16, 2016 election on August 1, 2015. Details (in Chinese) can be seen at <http://iing.tw/posts/46/>. See also: Loa Iok-sin, "Tsai promises to fight for Pingpu legal recognition," Taipei Times, August 2, 2015 < http://goo.gl/I0qNxl>.

127. For example, Article 15 of the Forestry Act mandates the Forestry Bureau of the Council of Agriculture and the CIP to jointly decide the rules for the use of forestry resources within the traditional territory of indigenous peoples. Nevertheless, since the revision of the Forestry Act in 2004, there has only been once case in which this provision has been utilized. In October 2007, the CIP issued a set of "Directions for harvesting forest products of indigenous peoples in the Yufeng and Xiuluan Villages, Jianshi Shiang, Hsinchu County" in the wake of the "Smangus Beech Tree Incident" in which three young men of the Atayal community of Smangus in Yufeng Village, Hsinchu County were indicted for stealing national property after moving part of a fallen tree after a typhoon in October 2005. Even though Articles 19 and 20 of the IPBL explicitly mandate that indigenous people have the right to use national resources on their own land, indigenous people who engage in the harvesting and use of natural resources in traditional domains can still be prosecuted and sanctioned by the State. Similar absurd situations occur with regard to other laws. From the standpoint of the indigenous peoples resistance movement it can truly be said that "a decade has passed like one day."[49] It is a matter of regret that the CIP did not say one word about this type of administrative sloth and dereliction in the State report but instead has touted its progress in revising laws and used the unwillingness of the legislative agencies to cooperate as an excuse for stalling. We call on the CIP to seriously face this issue and put forward concrete solutions.

128. In addition, the content touched up by the IPBL is not limited to questions related to land, but also includes self-governance, education, medical care, employment, judicial affairs, economics, environmental protection and women and gender affairs. However, the CIP, the Ministry of the Interior and the Ministry of Finance only respond to questions related to the issue of land. Concerned government agencies should submit supplemental material into the State report on the above - mentioned issues and explain the related progress and implementation of the IPBL.

129. Finally, we also recommend that the government consider promoting "the Special Constitutional Chapter for Taiwan's Indigenous Peoples" and other feasible methods to directly incorporate the important content of the United Nations Declaration on the Rights of Indigenous Peoples and the IPBL directly into the main body of the Constitution and thus use the principle of a "constitutional mandate" to address the ills of the shirking of responsibility among government

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49 Regarding the demands of the indigenous peoples movement, see: Juan Chun-ta (2015), "The Trajectory of the Taiwan Indigenous Movement (1983-2014)" (in Chinese), M.A. thesis, Graduate Institute of Sociology, National Taiwan University, Taipei City, Taiwan. The three Atayal men were ultimately acquitted. See Loa Iok-sin, "CIP defines boundaries over Smangus," Taipei Times, October 19, 2007 <http://www.taipeitimes.com/News/taiwan/archives/2007/10/19/2003383782/> and Loa Iok-sin, "High Court acquits three Atayal in Smangus case,"Taipei Times, February 10, 2010 <http://www.taipeitimes.com/News/taiwan/archives/2010/02/10/2003465656>.

agencies and legislative sloth. [50]

COR Points 36-37 Right to Work (ICESCR Article 6)

130. The government has taken note that responsibility for family care is the main reason for the low female labour participation rate in Taiwan, but still has yet to promote measures to reduce the burden borne by women. For example, a system of "paid family care leave" should need to take care of their family. Civil service employees only have five days "paid family care leave" and the preconditions for taking such leave are very stringent, but ordinary workers do not even have one day of "paid family care leave." Moreover, affordable, quality and universally accessible public childcare or long-term care services are severely deficient[51] and as high as 90 percent of infants of three years of age or less are still cared for by the family alone. [52] The Awakening Foundation estimates that 80 percent of incapacitated senior citizens over 65 years old who also depend on their families for care. [53]

131. The government mentioned the establishment of nationwide employment service centres, the provision of mobile services and other employment promotion measures, but it is not clear whether the State report's data for the number of women who secured employment through these channels refers to actual number of women assisted or "person times" and it is therefore difficult to see the effect of these measures on the promotion of employment among women.

132. In 2015, the government finally initiated its first "Survey of Unpaid Parental Leave

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50 In the wake of the announcement by then President Chen Shui-bian in his May 20, 2004 second inaugural address that his government would promote the inclusion of a special chapter on indigenous peoples in the Constitution, the Committee of Indigenous Peoples convened forums of scholars and experts to formulate a draft "Special Chapter for Taiwan Indigenous Peoples." Many of its provisions and values are still worth consideration today. See Shih Chung-shan, "The Constitutional Special Chapter for Indigenous Peoples in Taiwan's new Constitution," Taiwan Thinktank < http://goo.gl/57zKPh>.

51 In 2013, the average monthly expenditure for a household child attendant was NT$16,565; for a privately owned day care center, NT$14,071; and, for a public nursery, NT$8,802 (however, there are only 77 public day care centers in Taiwan). For day care during daytime during the work week, the average monthly expenditure would be NT$15,443. At the same time, the average monthly wages for female workers between the ages of 15-64 was NT$32,491 in the same year; in other words, monthly payments for child care would take 47.53% of the average wage of a woman worker. For more information, refer to Directorate-General of Budget, Accounting and Statistics (DGBAS),"Report on Women's Marriage, Fertility and Employment," April 2014

52 Directorate-General of Budget, Accounting and Statistics (DGBAS),"Report on Women's Marriage, Fertility and Employment," April 2014, Chart No.4.

53 This is an estimate by Awakening Foundation based on data contained in Ministry of Health and Welfare's "2010 National Survey on Need for Long-term Care," the "2014 Yearbook of Social Welfare Statistics" published by the MOHW and the "2014 Yearbook of Labor Statistics" published by the Ministry of Labor since the government has not disclosed this type of statistic or survey.

for Raising Children and Care Employment." [54] The parent population of the survey is limited to workers who "have already requested subsidies for childcare leave or unpaid childcare leave." Consequently, there is a huge gap between the results of the survey and the personal life experiences of Taiwan female workers. Many female workers have told civil society organizations that employers will deliberately give pregnant workers a hard time and refuse to grant applications for infant-care leave or demand that workers who want infant-care leave should accept demotions, wage reductions or deductions in performance evaluations or even demand that the worker resign at her own initiative after the end of the infant-care leave period. In summary, such difficulties may not be reflected in the survey results due to the design of the government survey.

133. Due to their insufficient and scattered nature, official statistical data, professional surveys and research cannot accurately reflect the trials faced by people (especially women who have difficulty obtaining regular employment due to their family care responsibilities. Civil society organizations proposed to the Department of Gender Equity in 2014 that the Directorate-General of Budget, Accounting and Statistics undertake a special survey on "work and life balance, " but the government did not accept this suggestion. [55]

134. Despite the above-mentioned difficulties, the government has adopted "policy proposals on the flexibility of women's employment to create measures with regard to working during certain hours and certain jobs" (Table 2 in the State Report) as its core policy to improve the female employment rate. This strategy may encourage women to rush into temporary or part-time employment and thus expand the gender wage gap and lead to greater gender inequality.

135. To promote gender equity at the workplace and in homes, we urge the government to conduct a special survey on "work and life balance" every three years to provide necessary data for public discussion and effective review of policy planning.

136. The government should implement the Act of Gender Equality in Employment and ensure that measures adopted by enterprises can reduce the burdens of parents. In addition, in order to improve the environment for public childcare, we suggest that the government adopt the following measures: (1) actively promote the extension of affordable "non-profit nursery schools," carry out annual evaluations of the results of such efforts and carry out regulation to ensure that preschool teachers and caregivers have reasonable wages or salaries and that

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54 Ministry of Labour, "Survey on Unpaid Parental Leave for Raising Children and Employment," < http://goo.gl/oix35M >.

55 For the reasons see the record for the seventh meeting held July 25, 2014 by the Employment and Economics Subcommittee of the Department of Gender Equality, Executive Yuan. <http://goo.gl/Gnioa0>.

surplus earnings are only be used within such nursery schools; (2) use idle space in schools to link with childcare facilities and services. Such installations and services should be price controlled to avoid price-gouging and profiteering by private interests. Their supply of services should be coordinated with employment needs and night-time and holiday childcare be added; (3) make better use of existing public day-care space and even establish more community childcare centres and set up caregiver matchmaking platforms to allow families to apply for childcare services that can be supplied by interested preschool teachers or caregivers. After making a match, the services can be provided through public childcare centres.

COR Points 38-39 Migrant Labour and Other Labour Conditions (ICESCR Articles 6-7)

Migrant household service workers are not protected by the Labour Standards Act

137. The Experts emphasized that the conditions of migrant household service workers need improvement, but the Migrant Empowerment Network (MENT), which proposed a civil society version of a draft "Household Services Act" in June 2003, noted that the Ministry of Labour had not taken any action to improve the conditions for household worker after the Experts issued their Conclusions and Observations in 2013. [56]

138. In August 2015, five countries which export labour to Taiwan jointly demanded that the wages of household migrant service workers be raised. Effective September 1, 2015, the MOL raised the wages for household migrant workers, which had been frozen for 18 years, but even after the hike, wages for migrant household workers have not reached the level of the basic wage mandated by the Labour Standards Act.[57] Meanwhile, the draft "Domestic Worker Protection Act" proposed by the MOL in June 2014, remains stranded in the Executive Yuan. The draft bill's stipulations on work time, vacation and other conditions for household workers were relegated to "mutual agreement between labour and management." This feature completely ignores asymmetric power relations between employer and employee in households and will render the draft act unable to resolve the long-standing problems of excessive work time and insufficient vacation time for migrant household workers.

139. Taiwan's Long-Term Care System administered by the MOHW does not encompass household migrant workers. The MOHW has been responsible for

56 The draft Household Services Act proposed by MENT can be seen at < http://goo.gl/Fu2Tmz>.

57 The Ministry of Labour announced on August 28, 2015 its decision to raise of the monthly wages for household workers to NT$17,000 effective September 1, 2015 <http://www.mol.gov.tw/announcement/2099/23599/.

promoting two laws, namely the Long-Term Care Service Act which was enacted in June 2015 and the Long-Term Care Insurance Act submitted to legislative review in June 2016, as the legal framework for the long-term care system. However, migrant household workers are not included in the human resource planning for the long-term care and the promotion of the long-term care system may therefore be unable to improve the "blood and sweat" conditions for migrant household workers.[58]

140. Beginning in 2013, MENT and the Taiwan International Workers' Association (TIWA) have called on MOHW and the MOL to definitely bring migrant household workers into the human resource planning for the new long-term care system[59] and for the elimination of the individual person homecare system and its replacement by institutional employment of "foreign careworkers." Only in this way can the problems of the exploitation of migrant household workers and the shortage of human resources for the long-term care system be resolved in tandem. However, the two ministries have ignored these calls and are instead even considering marketization of long-term care.[60] Marketization would inevitably lead to "bad money driving out the good" and injure both the receivers and givers of care services.

Fishery Workers Face Dire Conditions

141. The channels for recruitment of fishing workers or crew are divided into hiring inside Taiwan and hiring outside of Taiwan's borders. Crew hired in Taiwan are covered by the Employment Service Act, while crew hired outside of Taiwan come under the purview of the "Regulations on Overseas Employment of Foreign Crew Members by Owners of Fishing Vessels" under the authority of the Fisheries Agency of the COA. The types of overseas hiring arrangements are also divided into two categories. One type involves workers directly employed by Taiwan employers but whose work contract is signed outside of Taiwan. The second type concerns temporary workers on assignment in which the worker is first hired by a Taiwan or foreign company or by a labour brokerage and then assigned to Taiwan fishing boats as crew. However, the fishing boat in question may be flying a flag of convenience (FOC) due to fishing in other waters and the involvement of numerous people of different nations may lead to many problems as the labour-management rights and obligations may involve laws and regulations on labour service in multiple countries. For example, whether the labour contract must be in

58 The Long-Term Care Services Act was promulgated on June 3, 2015. An English translation can be seen at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070040>. The draft Long-Term Care Insurance Act was submitted by the Executive Yuan for legislative review on June 4, 2016. A detailed explanation (in Chinese) is available at <http://goo.gl/ZgE1Tw>.

59 See < http://goo.gl/gB14DV>.

60 See Taiwan International Workers' Association, "Don't Let Long-Term Care go into the Dead End of 'Marketization," Liberty Times, December 1, 2015 (in Chinese) < http://goo.gl/HQnYIv>.

accord with the LSA and whether the conditions for crew on fishing vessels can be worse than allowed by the LSA can be very much open to question. At present, the MOJ, MOL and COA have divergent views on whether to require the protections of the Labour Standards Act for foreign crew working on Taiwan fishing vessels.

142. The Giant Ocean Trafficking Case: The dismal conditions faced by foreign fishing workers and the loose state of legal frameworks and enforcement has been concretely exposed by the International Labour Organization (ILO) and international NGOs such as Greenpeace as well as being reported by international media such as the British Broadcasting Corporation (BBC). Foreign workers encounter unreasonable conditions as crew on fishing vessels, including infringements on human rights and labour rights. For example, unscrupulous labour brokers may use the cover of recruiting labour to actually engage in human trafficking or forced labour or slavery. In the Giant Ocean case, the Taiwan manager of the Giant Ocean International Fishery Co. Ltd illegally trafficked over 1,000 Cambodian fishing workers who were beaten, starved, tortured and even threatened with death. As a result, Giant Ocean was indicted by the Cambodian government and six Taiwanese were charged by the Cambodian government with human trafficking. However, only one Taiwanese was arrested and is serving a prison term in Cambodia. The other five Taiwanese are fugitives, but the Taiwan government has yet to arrest or indict them. [61]

143. The labour rights of fishermen hired in Taiwan are not protected. Under the protection of the Labour Standards Act, migrant fishing workers should at least receive the basic wage and should have a ceiling on work time and, if work time exceeds the limit, the employer should pay overtime. However, due to the lack of sufficient government labour inspectors and a shortage of labour, almost all fishing crew are unable to receive overtime payments for excessive work. Most labour contracts have provisions for "profit-sharing" from the catch, but it appears that no fishing crew have every received any "dividends." The employer should enlist employees in the national labour insurance program, but many employers substitute commercial insurance. In addition, after deductions of fees for domestic and overseas labour brokers and for room and boarding, just over half of the basic wage is actually the highest wage that foreign crew can expect.

144. On the grounds that "it's difficult to protect documents when working on the seas," foreign fishermen are required to sign "since most foreign fishing boat crews are required to sign "voluntary agreements" of "requests to the employer/broker to take custody" of personal documents. As a result, the foreign worker does not have key identification documents such as his passport, Alien Registration

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61 Great Ocean International Fishery Co Ltd general manager Ms Lin Yu-hsin was sentenced to 10 years for human trafficking on April 29, 2014 by the Phnom Penh Municipal Court. Five other Taiwanese shareholders were convicted in absentia and given 10-year sentences as well. See "Trafficker Gets 10 Years," The Phnom Penh Post, April 30, 2014 < http://goo.gl/TZpFzo >.

Certificate (ARC) and seafarer's certificate on him when he is at sea. Moreover, wages are often not paid on time every month for reasons of being "at sea," not to mention failure by the employer to provide employees with bilingual wage payment certificate as required by both the LSA or the ESA. In terms of living costs, the employer/broker may use an interpretation of the LSA made by the then Council of Labour to the effect that "wages can be paid in kind." In recent years, cases have been reported in which up to NT$5000 a month (about one-fourth of the nominal monthly wage or one half of the actually received wage) is deducted for "room and board." Foreign fishing boat crew whose wages are deducted for "room and board" often face actual problems in basic living such as not being able to sleep or to eat full meals. The rights to food, housing and health care are all mentioned in the Concluding Observations and Recommendations as fundamental rights that are frequently unobtainable for foreign fishing workers even if they pay for them. All of these situations are subject to various laws and regulations, but the reality that "laws and regulations cannot be realized" is the prime reason why the labour and basic living rights of foreign fishing workers are being sacrificed.[62]

145. We advocate that all fishing workers, whether hired in Taiwan or abroad, should be covered under the LSA and other related labour laws and regulations. The LSA and other laws and regulations originally did not distinguish the nationality or background of workers or whether they were legal residents but applied to all persons in the territories under Taiwan's legal jurisdiction, including Taiwan - registered fishing vessels. The Fisheries Administration has used two administrative regulations (such as the Regulations on Overseas Employment of Foreign Crew Members by Owners of Fishing Vessels), which have lower status than laws, to exclude foreign fishing workers and Chinese fishing workers from the scope of application in violation of legal principles. We call on the Executive Yuan to convene as soon as possible a cross-ministerial conference and invite the MOJ, the MOL, the COA and other concerned agencies to resolve the disputes over the question of the scope of application of these laws and restore the legal protections of the LSA and other Taiwan laws and regulations.

146. Labour on the high seas has special and unique characteristics compared to other types of work and there are also huge differences among work at sea among the different types of fishing operations. The government should promptly launch consultations with scholars, civic organizations and representatives of fishing workers on whether Taiwan should enact a special chapter in the LSA or even a special law to regulate work at sea. Such consultations can refer to the stipulations of the ILO Work in Fishing Convention (No. 188) regarding the provision of minimum working conditions, housing, food, occupational safety, medical and

62 These conditions are described in a TIWA news release on "Slaves at Sea; Blood and Sweat on the Oceans" August 24, 2015 <http://www.tiwa.org.tw/blog/index.php?itemid=567>.

health care and other social protections.

147. Carrying out labour inspections and monitoring of fishing vessels at sea is a very difficult task that involves not only the applicability of law but how such duties can be feasibly implemented. Besides intensifying education among fishing boat owners, the MOL and COA can also use bilateral agreements and joint cooperation with the mother countries of the fishing workers to raise awareness of fishing workers' rights. Taiwan agencies can also use in tandem regulatory documentation (such as registration and notifications) and the implementation of actual labour inspections within the scope of their capability. They should also proactively cooperate and coordinate with international and regional government and non-governmental organizations to find the most feasible mechanisms for labour inspection and monitoring.

148. The government has already ratified several core international human rights covenants and conventions and, as early as 1964, ratified ILO Convention No. 118 concerning "Equality of Treatment of Nationals and Non-Nationals in Social Security." The government must abide by its obligations under the convention and protect the basic human rights of all fishing workers.

The Problem of High Brokerage Fees

149. High brokerage fees have always been the heaviest burden borne by blue-collar migrant workers in Taiwan. Article 8 of the Act to Implement the ICCPR and the ICESCR which entered force on December 10, 2009 mandated that: "All levels of governmental institutions and agencies should review laws, regulations, directions and administrative measures within their functions according to the two Covenants. All laws, regulations, directions and administrative measures incompatible to the two Covenants should be amended within two years after the Act enters into force by new laws, law amendments, law revocations and improved administrative measures." However, the Taiwan government has not taken any concrete action with regard to "high brokerage fees." Even after the Concluding Observations and Recommendations were issued in January 2003, related government agencies (including the MOL) have remained indifferent.

150. On August 12, 2013, TIWA held a news conference in Taipei City exposing the upgrading of cross-border cooperation among brokers to a "2.0 version" that not only forced migrant workers coming to Taiwan to sign large "individual/family loan contracts" but also compelled them to sign promissory notes. After foreign workers arrive in Taiwan, they would be required to deposit the notes, at an additional fee of NT$500 per note, with debt collection company and thus allow Taiwan courts to become the "accomplices" of brokers charging illegally high fees.

[63] On May 19, 2015, the Control Yuan disclosed the results on an investigation and issued a recommendation that "promissory notes should be revoked." However, although there have been numerous suits filed on such cases in the past three years, only one resulted in a victory for the foreign worker plaintiff, further demonstrating the lack of any positive action on the part of government agencies (including the MOL and MOJ).

Workers cannot freely change employers

151. According to stipulations of the Employment Service Act, blue-collar foreign workers still cannot freely change employers. Moreover, given the ineffectiveness of labour inspections and the MOL's "1955" protection hotline for foreign workers and the manner with which local government officials handle complaints, migrant workers often encounter situations in which they do not really receive assistance after filing complaints. Therefore, "flight" often becomes the only option for self-protection. Even more important is the fact that even if employers themselves believe that "agreement to transfer" is a better choice, the problems in the design of the blue-collar migrant worker system ensure that every carrot will have its own pit. The departure of a blue-collar migrant worker will cause the factory owner to lose one of his quota of foreign workers, while employer of a household care worker will have to wait until the departing migrant worker finds a new employer before being able to hire a replacement.

152. "Flight" leads to other trials. The result of a system that turns migrant workers into virtual slaves is that migrant workers who are "in flight" are commonly subject to discrimination. If an "escaped foreign worker" gets ill or gets involved in a labour - management dispute or other situations that threat his or her health or labour rights, he or she will usually choose not to go to the hospital or to file a complaint since entry into any system or facility which requires identification documents could lead to deportation. Therefore, "informing on an escaped foreign worker" constitutes a kind of institutional abnormal exploitation that allows illegal employers or anyone use the threat of exposure of his or her "illegal" status as a club to threaten an "escaped foreign worker" to do anything that the potential informant wants. Indeed, besides failing to fulfil the requirement of the implementation act for the two covenants to carry out a review and improvement of all laws and regulations within two years after the implementation act's promulgation, the NIA has actually made matters worse! On June 21, 2015, the NIA introduced a new smart phone "Anti-ARC Counterfeiting APP." Thanks to this application, anyone can at any time check the valid dates and other personal data on any "Alien Resident Certificates" issued after 2002 by scanning their

63 The TIWA news release (in Chinese) can be seen at the following site: <http://ppt.cc/HsZEA>. See also Loa Iok-sin, "Activists demand action on employment agencies," Taipei Times, August 13, 2013 <http://www.taipeitimes.com/News/taiwan/archives/2013/08/13/2003569595>.

barcodes. We believe this system encourages "everyone to arrest escaped foreign workers" and constitutes concrete evidence of the hostility toward blue collar migrant workers on the part of State authority and is furthermore an incentive for society at large to view all "foreign workers" and "foreign spouses" as "suspects." We demand that this unrestricted expansion of executive power be revoked immediately.[64]

The right to emergency medical care for childbirths of migrant workers who have overstayed their residency period (related to ICESCR Article 12)

153. According to Article 14 of the Protection of Children and Youths Welfare and Rights Act, persons who deliver babies must report relevant birth information to the local health authority within seven days after the delivery of the baby. In 2004, the reporting system for new births was fully put on the internet. Household registration and immigration agencies and other different agencies can link to the notification system and obtain information on childbirths and the parents of the new infant.

154. The original intent of the above-mentioned regulation was to gain an accurate understanding of population trends and to provide a factual basis for the provision of subsequent health and sanitation services for women and children. However, given the occurrence of pregnant women who were migrant workers who were overstaying their residence periods, the actual operation of this regulation turned hospitals, which should have protected the health of mothers and newly born infants, into informers against missing migrant workers and forced the latter to worry that going to the hospital could result in deportation instead of proper pre-partum and childbirth care. This state of affairs is not healthy for the expecting mother and may well threaten the health or even life of the fetus or newly born infant.

155. To avoid causing children of overstaying migrant workers to become unregistered persons, we believe the government definitely must adopt effective preventative and intervening measures. However, using health care systems or immigration databases to find migrant workers who have lost contact could make it impossible for such workers to feel safe to approach hospitals or clinics when they need medical assistance. Such a situation will neither represent a solution nor protect the best interests of the children in question.

64 Pictures of the application can be seen at Chang Chi-chun, "Cell phones can distinguish between true and false; the NIA introduces 'Check ARC APP,"' China Times, June 21, 2015 (in Chinese) <http://www.chinatimes.com/realtimenews/20150621002680-260402>. See also Abraham Gerber, "Activists brand ARC-checking app discriminatory," October 7, 2015, Taipei Times <http://www.taipeitimes.com/News/taiwan/archives/2015/10/07/2003629483>.

COR Points 40-41 Minimum Wage and the Poverty Gap (ICESCR Articles 6-7)

156. Although Taiwan has had a basic wage system since 1985, its legal foundation is only the stipulation in Article 21 Paragraph 1 in the Labour Standards Act that "(a) worker shall be paid such wages as determined through negotiations with the employer, provided, however, that such wages shall not fall below the basic wage." The organization and proceeding of the Basic Wage Committee mandated by the same article was left entirely up to administrative regulations which require that the amount of the basic wage has to finally be approved by the Executive Yuan. Hence, from the start the basic wage system has lacked complete legal foundation, thus allowing the government to possess considerable power to control the basic wage.

157. Due to the lack of a clear formula of calculation, the basic wage determination system has long been nothing more than a market for bargaining between competing forces. The Regulations for the Deliberation of the Basic Wage clearly state that factors such as national economic development, the wholesale price index, consumer price index, national income, per capita income, industry labour productivity, employment status, labour wages in every industry, household income, and other data be considered in adjusting the basic wage. Nevertheless, it is usually difficult to reach consensus as representatives from labour, management, government and academia on the Basic Wage Committee routinely each stick to their own predetermined positions.

158. On occasion, members of the Basic Wage Committee have publically stated that "the trend is not to adjust" the basic wage even before the MOL (or its predecessor Council of Labour Affairs) had even convened a BWC meeting. Indeed, in 2012, based on price indices, BWC members decided to adjust the monthly basic wage from NT$18,780 to NT$19,047. Even though this marked an increase of only 1.42%, the Executive Yuan delayed the monthly increase by imposing two new conditions to block the adjustment, namely that Taiwan's inflation-adjusted gross domestic product had to show growth of at least 3% in two successive quarters and that the unemployment rate had to drop below 4% for two consecutive months before the adjustment could be implemented.[65] In 2013, under pressure from business and the government, the BWC itself resolved to wait until the accumulated rise in the consumer price index (CPI) reached 3% before convening a meeting. The MOL promptly agreed and the Executive Yuan rushed to approve this illegal resolution which constituted a self-imposed freeze on the basic wage.[66] From these examples,

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65 See Meg Chang, "Taiwan raises minimum hourly wage," Taiwan Today, September 27, 2012 <http://taiwantoday.tw/ct.asp?xItem=196738&ctNode=453&mp=9>.

66 Shih Hsiu-chuan, "Premier set to bind minimum wage to CPI, amid criticism," Taipei Times, September 25, 2013 <http://goo.gl/v7owzM>.

it can be seen that the lack of robust legal foundations has caused the current basic wage system to become nothing more than a tool for the government to arbitrarily control the basic wage rate.

159. In order to avoid the minimum wage from becoming a sacrificial offering for political pressure, the government and legislature should enact a "Minimum Wage Act" to legally institutionalize the minimum wage. Such a law should clearly define the standards for the calculation of the minimum wage, the composition of its deliberation committee and its scope of coverage. A new minimum wage deliberation commission should meet annually and resolve on its level based on a range for an annual change calculated by the Ministry of Labour that matches the need of labour to maintain a stable livelihood in a time of rapid change in the social environment.

160. Based on the "minimum wage spirit" of the International Labour Organization (ILO), labour movement organizations utilized data from the Survey of Family Income and Expenditures and other related national statistical reports from the DGBAS to separately define "employment dependency" and "labour power dependency" (with the labour population defined as including the employed and unemployed) to propose two formulae for calculating the basic wage. If the spirit of "employment dependency" is adopted, the basic wage should be increased to NT$25,997 a month or NT$161 an hour. In August 2015, the MOL Basic Wage Committee resolved not to adjust the basic wage, which is currently NT$20,008 a month or NT$120 an hour. There is evidently a large gap between these figures and the spirit manifested by the international covenants.

161. If the basic wage level of NT$25,997 a month advocated by labour organizations is adopted, statistics of the Bureau of Labour Insurance indicate that the number of workers who reported income less than basic wage was 4,611,301 or 46 percent of the total number of persons participating in the labour insurance system in 2014. If the current basic wage of NT$20,008 a month is used as the standard, this figure would be 26 percent. Even if these statistics may not be entirely accurate due to under-reporting of labour insurance payments by employers, this data confirms the fact that low wages are extremely prevalent in Taiwan.

162. At present, household family care workers and maids, including 223,000 social work migrant workers, whose wages are lower than the basic wage because they are not included in the scope of application of the Labour Standards Act.

163. Labour economy experts note that wages for sheltered employed persons are far below the basic wage. From 2011 through June 2015, the ratio of sheltered workers who received wages of less than NT$6,000 a month was declining, but, as of June 2015, 42.6% of sheltered workers had monthly incomes of less than NT$6,000 and 76.7 percent had monthly wages less than NT$9,000. Since the average per capita monthly living expenses in Taiwan were NT$10,869 in 2015, the income of

sheltered workers is still inadequate to meet their daily needs.[67]

164. Wage and salary data for employees indicate that persons with disabilities receive on average 52.3% of the national average wage and salary and that woman receive 20% less than men (See Table I)

Table I Average income of different groups from 2003 to 2014

		2003	2006	2009	2011	2014
National	Male	46,691	48,015	46,376	50,045	51,464
	Female	36,371	38,032	37,206	40,160	42,481
	Average	42,065	43,488	42,182	45,508	47,300
People with Disabilities	Male	26,474	29,956	24,868	24,968	25,651
	Female	22,329	22,374	19,626	20,306	21,462
	Average	25,129	27,367	23,076	23,512	24,340

Unit: New Taiwan dollars (NT$)

Sources: Report on Physically and Mentally Disabled Citizens Living and Demand Assessment Survey, Ministry of the Interior and Council of Labour Affairs, 2003, 2006, 2009, 2011; 2014 Report on Labour Conditions for Physically and Mentally Disabled Citizens, Ministry of Labour <http://statdb.mol.gov.tw/html/svy03/0342menu.htm>; Gender Labour Statistics Search Engine, Ministry of Labour <http://ppt.cc/KggJF>

165. The government maintains that sheltered workers are special employees and that employers can pay them based on their actual production capability and, therefore, their wages can be less than the basic wage. Since they cannot obtain basic living guarantees, the shortfall should be covered by subsidies for physically and mentally disabled.

166. However, the current monthly subsidies issued for physically and mentally disabled citizens are NT$3,500, NT$4,700 or NT$8,200, depending on the degree of disability and the economic situation of the recipient. Although sheltered workers can obtain such subsidies, the combined value of wages in sheltered workshops and official living assistance payments is still lower than the basic wage and insufficient to maintain basic living standards.

67 Please refer to data collected by the MOHW Department of Social Assistance and Social Work <http://ppt.cc/rDsT6>.

COR Points 42-43 Access by Persons with Disabilities to Appropriate Employment

167. It is difficult for physically and mentally disabled persons to secure employment. According to the 2014 Report on Labour Conditions for Physically and Mentally Disabled Citizens, the labour participation rate for physically and mentally disabled persons rose slightly from 19.1% in 2011 to 19.7% in 2014, but remains far below the average labour participation rate of 58.54%.

168. The low labour participation rate for disabled persons is not entirely due to the incapabilities of physically or mentally disabled persons. In a labour market in which prices (i.e., wages) are determined by production performance, physically or mentally disabled persons do not meet the expectations for production efficiency in the labour market and are relegated secondary labour markets if not excluded from the labour market entirely. Although the government has provided employment promotion measures, these programs are insufficient to allow physically or mentally disabled persons find suitable employment.

169. From the 2014 data it can be seen that 31.3% of the physically or mentally disabled persons who have work are engaged in low-skilled or physical labour, regardless of their age or degree of education and that most are either janitorial or manufacturing workers. The character of the occupations in which disabled persons are employed is closely linked to the character of the employment promotion measures adopted by the State. For example, the range of categories of vocational training offered to disabled persons is limited and mostly concentrated in food and beverages, baking, cleaning, computer literacy, visually impaired massage, automobile washing and other such stereotyped categories. Since competition in these occupations is already intense in most ordinary employment markets, it is often difficult for provide effective employment guidance to disabled persons after such vocational training and easy for disabled persons to be find themselves in the ranks of the unemployed.

170. In addition, the State has established special quotas for the employment of disabled persons. Current regulations mandate that in public sector agencies which have 34 employees or more, at least 3% must be physically or mentally disabled persons and that, in private sector agencies which have 67 or more employees, at least 1% must be persons with physical or mental disabilities. As of July 2015, the legal minimum quota was 53,421 persons but the actual number of employed physically or mentally disabled persons was reported at 75,252. Nevertheless, Taiwan's physically or mentally disabled labour force amounted to 212,171 in 2014, of which severely disabled persons accounted for 97,843. Hence, the number of persons employed due to official quotas was unable to ensure employment to severely disabled persons and many public or private agencies were willing to pay fines instead of employ physically or mentally disabled persons.

COR Points 44-45 Trade Union System (ICESCR Article 8)

The right to organize labour unions (the right of solidarity) is still subject to unreasonable restrictions

171. Teachers are still banned from organizing enterprise labour unions (i.e., school unions) but are only allowed to organize city or county level "professional" or "industrial" unions.

172. Most private school teachers do not are to join unions out of fear that they will be harassed by employers. Since Taiwan suffers from a gravely low birth rate and recruiting new students to private schools is difficult, school managements arbitrarily reduce salaries and research funding for teachers. Under such pressure, there is virtually no room for unions to represent staff or engage in collective bargaining with management.

173. Public service employees are still prohibited from organizing labour unions. Firefighters have struggled for over two years to organize a union, but as yet have been unable to form a labour union but only organize a "National Association for Firefighters' Rights." In 2014, Hsu Kuo-yao, a firefighter with the Kaohsiung City Fire Department who initiated the association, was given over 40 demerits in three months, resulting in his eventual dismissal from the force.[68]

Officers in teachers' unions lack legal guarantees to engage in union work and are subject to other unreasonable restrictions

174. Article 36 of the Labour Union Act only ensures official leave for officers (i.e., directors or supervisors) of "corporate unions" to carry out union affairs and officers of non-corporate unions must negotiate with employers on whether they can have official leave for conducting union affairs. During the four years that this stipulation has been in effect, there has not been any progress in negotiating official leave for officials of "national" and "city or county" professional or industrial teachers' unions to obtain official leave for the conduct of union affairs. As a result, such unions have had to resort to continuing to use the period of "teacher association meetings" to conduct union affairs. However, this procedure has no legal guarantees and there have been cases in which city or county mayors or principals have threatened to revoke official leave for teacher association meetings. In addition, on August 14, 2014, the Control Yuan issued a "correction" to the Ministry of Education maintaining that "there is no basis in law for the

68 For more information, see <http://ppt.cc/XRw8J/> and Loa Iok-sin, "Firefighters protest at DPP headquarters over firing," September 13, 2014 <http://www.taipeitimes.com/News/taiwan/archives/2014/09/13/2003599632/>.

conduct of affairs in teacher associations to be granted official leave."[69] Subsequently, in September 2015, the mayor of Nantou County revoked official leave for the operations of teacher associations and has also delayed any negotiations with the teachers unions on the granting of official leave for the conduct of union affairs.[70]

175. The Labour Union Act mandates that directors and supervisors of unions can have official leave to carry out union affairs, but does not stipulate that such leave cannot be granted to union officers who are not directors or supervisors. The MOL has expressed agreement with this view. However, in a report on an investigation issued regarding "union affairs leave for teachers' unions" issued August 14, 2014, the Control Yuan took it upon itself to interpret the Labour Union Act and determine that only union directors and supervisors were entitled to official leave for the conduct of union affairs. [71] Various city and county mayors or school principals have used this finding to refuse official leave to union officials for the conduct of union affairs in evident violation of the autonomy of union personnel management. The above-mentioned Control Yuan "correction" even maintained that the mere holding of consultations between Ministry of Education and the National Federation of Teachers' Unions on "the principles of handling leave for union affairs" was illegal.

176. In November 2014, the Nantou Teachers Union (NTU) because it disclosed that a junior high school in Nantou County was engaging in illegal discriminatory "ability grouping" of classes. Subsequently, after the Nantou County government did not issue a correction order, the NTU submitted a petition for the Control Yuan to conduct an investigation. However, members of the Nantou County Assembly criticized the NTU during an assembly session on the grounds of "how can you sue the mayor while taking salary from the county government?" and for "using official leave to conduct union affairs to disrupt education" and demanded that the county government revoke official leave for the NTU. The Nantou County mayor agreed to the demand on the spot. [72]

177. The NFTU makes the following recommendations: (1) If teachers cannot organize corporate unions, the Labour Union Act could be revised to provide guarantees for official leave for the conduct of union affairs to "professional unions" and "industrial unions" and for space for union meetings depending on the size of

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69 The Control Yuan issued Correction No 103-Education-00115 on August 14, 2014. See <https://www.cy.gov.tw/CYBSBoxSSL/edoc/view/3978/> (in Chinese).>

70 See Chang Chia-lo, "Union Officials Have No Leave; Teachers Union Protests Against County Government," United Daily News, April 7, 2016 (in Chinese) <http://goo.gl/lu0mIh>.

71 The Control Yuan issued Educational and Cultural Investigation Report 103-0050 on August 14, 2014. It was on the basis of this report that the "correction" referred to above was issued. See (in Chinese): <http://www.cy.gov.tw/sp.asp?xdUrl=./di/RSS/detail.asp&mp=1&no=2798/>.

72 The Nantou Teachers Union issued a statement on the affair on January 28, 2015 (in Chinese) <http://www.ntu.org.tw/webs/index.php?account=admin&dt=pub&pubid=655.>

membership; and (2) the Control Yuan should be asked to revoke the above - mentioned investigation and correction which restrict granting of official leave for union business to directors or supervisors in violation of the ICCPR and ICESCR. Progress in "collective bargaining" has been slow and the MOE and the MOL have permitted the stigmatisation of the right of collective bargaining for teachers

Slow progress of collective bargaining

178. According to the MOL, the number of collective bargaining agreements increased from 75 in 2006 to 300 in 2014. However, nearly 200 of these cases were agreements signed by the Kaohsiung Teachers Union and various schools in Kaohsiung City which only had one stipulation, namely that schools should deduct union fees from salary of teachers on behalf of the union. Hence, these agreements should really be considered as only one case which has far greater symbolic than substantive significance for collective bargaining. If these 200 or so agreements with public schools are deducted, the number of "collective bargaining agreements" signed with unions by other public or state enterprises is reduced to a handful.

179. In 2015, the Yilan County Teachers Union signed a "collective bargaining agreement" with the Yilan County government which explicitly stipulated an "eight-hour working day." However, this stipulation was attacked in major news media, the Secondary and Elementary School Principals Association of the ROC, the National Alliance of Parent Organizations and Yilan County assemblypersons as "interfering with the right of children for education." The then education minister Wu Ssu-hwa stated that "(i)f students are still around, teachers should be too" as if teachers had right to time off work. The MOL remained silent in the face of these distorted statements and did not offer any public explanation of the values of importance of collective bargaining for labour and the eight - hour working day. On November 26, 2015, Yilan County Mayor stated during question period in the Yilan County Assembly that he "cannot agree that teachers are workers."[73]

180. The Labour Union Act was revised to allow teachers to organize unions four years ago, but only three private schools have signed collective bargaining agreements with teachers' unions due to the assistance of the NFTU.

The right to strike and arbitration

181. Teachers' unions still do not have the right to strike and there has been no progress on resolving this issue during the past two years.

182. In its response to the Concluding Observations and Recommendations to the first State review, the MOL stated that a new "arbitration" mechanism had been added

73 Sean Lin, "Groups criticize Yilan's plans for teachers," Taipei Times, August 29, 2015 <http://www.taipeitimes.com/News/taiwan/archives/2015/08/29/2003626461/>.

to the "Act for Settlement of Labour-Management Disputes',' included in revisions to the act, which took effect in May 2011, to compensate for the fact that the right to strike has not yet been granted to teachers. However, the NFTU has discovered that since the implementation of this system to this date, regardless of whether arbitration or adjudication is adopted, most of the members of the arbitration or adjudication committees are appointed from government agencies and have pro-government positions that are unfavourable to the NFTU. After the Control Yuan's Correction No.103 (Education) 0115 was issued in August 2014, the judgments in adjudications have been even more unfavourable to union. In order to avoid the application of this correction in future adjudications, the NFTU would prefer that adjudication be dropped.

183. Teachers' unions believe the right to strike should be placed in the hands of the unions and that it is unsuitable to depend on "external assistance" mechanisms such as arbitration or adjudication.

COR Point 46 Protection and Assistance to Family (ICESCR Article 10)

A rational naturalization system

184. Besides Article 9 of the Nationality Act which is notorious as a generator of stateless persons,[74] the Ministry of the Interior (MOI) in 2012 proposed revisions to the act which raised several of the thresholds for naturalization. In late 2014, during discussions in the Interior Affairs Committee of the Legislative Yuan[75] regarding Article 3 of the Nationality Act,[76] the MOI persisted in using the abstract phrase "decent and correct conduct" as a prerequisite for foreign citizens, including foreign spouses, for naturalization. Moreover, the package of draft revisions added a new explanation indicating that the MOI possessed the highest degree of discretionary power in deciding whether an applicant's conduct was "decent and proper." Such a declaration was tantamount to an unlimited expansion of the executive branch's power to judge whether the people should be granted Taiwan nationality. Moreover, its impact also affected foreign spouses who had already obtained naturalization as the MOI Department of Household Registration (DOHR) has the power to revoke the nationality of any foreign citizen who has obtained Taiwan nationality in the first five years after naturalization at any time if the DOHR determines that his or her conduct has not been "decent and proper." We urge the MOI to revise the definition of "decent and proper conduct"

74 Article 9 of the Nationality Act requires applicants for naturalization, except those from the People's Republic of China, to provide certification of their abandonment of their previous nationality before applying for naturalization.

75 Proceedings of 28th Meeting of the Interior Affairs Committee of the Legislative Yuan, December 18, 2014 <http://ppt.cc/kovWC>.

76 See Article 3 of the Nationality Act <http://goo.gl/G6U7rW>.

in Article 3 of the Nationality Act and reduce its own arbitrary administrative power to revoke the nationality of naturalized citizens and, in tandem, shorten the probationary five year period for naturalized citizens during which their nationality can be revoked. In addition, Article 4 of the Nationality Act [77] mandates that foreign spouses who divorce after suffering family violence or are widowed turn into ordinary foreign citizens and must meet the harsh fiscal certification requirements.[78] In the above-mentioned package of draft revisions, the MOI proposed that Article 4 be amended to permit the government to recognize that foreign spouses who are victims of family violence or are widowed should have a naturalization standard for certification of sufficient fiscal capability that is more relaxed than ordinary foreign citizens.[79] The precondition is that the now single foreign spouse must "furnish maintenance" for the parents of the deceased spouse. However, this draft stipulation does not provide a clear definition of what the term "furnish maintenance" means. If the foreign spouse suffers harassment from the Taiwanese family or the method used to 'furnish maintenance" for the parents of the deceased spouse is not recognized by the government, he or she could lose the special right for naturalization, a development that could in turn affect the question of child custody. In addition, according to Article 1115 of the Civil Code regarding the obligation to furnish maintenance,[80] the parents of the spouse are ranked in seventh place in the order in which persons are to perform such obligation. Since this article provides that the foreign spouse should place a higher priority on furnishing maintenance to her own children and not the parents of her deceased spouse, the MOI should delete the term "furnish maintenance to parents. "

185. The MOI's version of draft amendments to the Nationality Act establishes layer upon layer of barriers to the naturalization of widowed foreign spouses in contravention to Articles 23 and 24 of the ICCPR which requires States parties to ensure protection of families and children as well as Articles 2 and 5 of CEDAW[81] and General Recommendation No 21 for CEDAW[82] regarding protection for the nationality of women and Article 9 of the Covenant for the Rights of the Child

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77 See Article 4 of the Nationality Act <http://goo.gl/G6U7rW>.
78 See Article 7 Paragraph 2 of the Enforcement Rules for the Nationality Act <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0030022/>.
79 See Article 7 Paragraph 1 of the Enforcement Rules for the Nationality Act <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0030022/>.
80 See Article 1115 of the Civil Code <http://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?PCode=B0000001/>.
81 See Article 2, Paragraph 5 of the Convention on the Elimination of All Forms of Discrimination against Women <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>.
82 See Paragraph 6 of General Recommendation 21 on the Convention on the Elimination of All Forms of Discrimination against Women <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

(CRC) [83]C:\Users\USER\Desktop\影子報告最終版\<http:\www.ohchr.org\en\professionalinterest\pages\crc.aspx>.] which mandates that States Parties to "ensure that a child shall not be separated from his or her parents against their will."

Protection for family unity

186. Family unity is not simply limited to the situation of foreign minor children coming to Taiwan and applying for residency. The government still needs to deal with the inability of minor children of Taiwan nationality whose fathers or mothers are unable to accompany them to reside in Taiwan. According to Article 31 of Immigration Act,[84] the residence rights of divorced foreign spouses is decided by the guardianship of his or her own children with registered permanent residence in Taiwan even if the divorced foreign spouse in question does not have certification of strong fiscal capability.[85] If the children are successfully naturalized before they become adults, the foreign spouse can only legally reside in Taiwan until they reach 20 years of age. On one hand, according to Article 23 of the Immigration Act and Article 13 of the Enforcement Rules for the Issuance of ROC Visas to Foreign Passport Holders,[86] "the foreign parents of minor citizens" cannot use "residence visas" or "visitor visas" issued by overseas mission to enter Taiwan because the foreign national's status in applying for "residency based on familial relations" must be "the spouse of a citizen of our country" or "a minor child of our country." Based on Article 23 of the Immigration Act, the MOI National Immigration Agency (NIA) issues "alien resident certificates" (ARCs) based on the above-mentioned standards. This state of affairs contravenes Articles 17 and 23 of the ICCPR and Articles 3, 9, 12 and 18 of the CRC.

187. There is no conflict between the objectives of combatting human trafficking and improving the right of unity of genuinely married families. The Enforcement Rules for the Issuance of ROC Visas to Foreign Passport Holders should be revised as soon as possible in order to expand the scope of application of resident visas or visitor visas transformed into resident visas. In addition, the MOI should relax the regulations on residency in Articles 23 and 31 in order to allow foreign parents who are actually furnishing maintenance for Taiwanese minor children to apply for residence or extended residence in Taiwan to take care of and nurture their children. Only in this way can the State guarantee the right of family unity for immigrant families and avoid marriage immigrants from falling into statelessness.

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83 See the Convention on the Rights of the Child <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

84 See Article 31 of the Immigration Act <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080132>.

85 See Article 7 of the Enforcement Rules for the Nationality Act <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0030022/>.

86 See Article 13 of the Enforcement Rules for the Issuance of ROC Visas to Foreign Passport Holders <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=E0030003>.

COR Point 47 Right to Housing (ICESCR Article 11)

188. Paragraphs 189-193 report the situation regarding informal settlements in Taiwan, including the Huaguang and Shaoxing communities mentioned in Point 47 of the Concluding Observations and Recommendations after the first State report as well as discussion of informal settlements which rent public National Land.

Basic facts on informal settlements in Taiwan

189. In recent years, under fiscal difficulties, governments often resort to the sale of public lands to secure needed revenues, so the informal settlements on the lands become the target of large-scale evictions. Due to the flood of refugees from China to Taiwan in the wake of World War II and the Chinese civil war as well as the rapid rise of the number of rural-urban immigrants in the wake of Taiwan's economic take-off in the 1960s, informal settlements formed on public lands. The residents in these informal settlements live in a mostly crowded and deteriorated environment and have a high proportion of physically or mentally disabled, elderly or economically disadvantaged persons. Based on official and probably under-estimated data, there were 37,794 buildings dating from before 1963 in informal settlements as of August 2015,[87] not including indigenous peoples communities in urban areas. As of September 2015, there were still 6,562 such buildings (with 10,994 households) in Taipei City.[88] In March 2013, shortly after the review of the first State report, then Premier Jiang Yi-huah publically rejected the Concluding Recommendations and stated that the right to housing for people living in such housing was not guaranteed since they did not have property rights[89] and stated that the government would that same month demolish the Huaguang community which was mentioned in Number 47 of the Concluding Observations and Recommendations. In the follow-up discussions on the Concluding Observations and Recommendations on June 27, 2013, members of the Presidential Office Human Rights Consultative Committee called on related government agencies to hold administrative hearings to re-examine laws and policies that led to the eviction of residents in informal settlements, but such

87 See Monthly Bulletin of Statistics, Construction and Planning Agency, Ministry of Interior, August 2015 <http://www.cpami.gov.tw/chinese/index.php?option=com_content&view=article&id=19209&Itemid=102>.

88 Statistics on the situation regarding old buildings constructed without licenses, Taipei City Construction Management Office, September 2015 <http://dba.gov.taipei/lp.asp?ctNode=32419&CtUnit=4822&BaseDSD=7&mp=118021>.

89 See: Loa Iok-sin, "Jiang gets flak for housing rights comments," Taipei Times, March 21, 2013 <http://www.taipeitimes.com/News/taiwan/archives/2013/03/21/2003557615>.

hearings have yet to be held.[90]

Informal settlements lack guarantees for rights

190. At present, informal settlements still lack security of tenure in Taiwan's domestic law. Court judgments at most only recognize property rights and are not concerned with the rights to housing of the residents, a stance which is tantamount to endorsement by the courts of the eviction notices. Therefore, after the eviction of the residents of the Huaguang community, the related government agencies and the courts absolutely refused to grant administrative or judicial remedies based on the right to housing mandated in the international covenants (see Paragraphs 29-33 above). In the case of the Shaoxing community, executive agencies did not engage in any genuine consultations with residents in accordance with the obligation to find alternative solutions as the "right to housing" of the residents was not recognized by domestic law and the logic of the existing Civil Code and administrative regulations is to place respect for property rights above all other considerations. Even though the land management agency (National Taiwan University) is holding informal discussions on remedial plans with residents, this channel may collapse at any time and then the residents will be deprived of all feasible paths for legal remedy.

Informal settlements on leased public property

191. With regard to informal settlements for which the State had concluded lease agreements, based on the leases for public property, the leasing agency can retract the leased property and terminate the lease agreement in cases of urban land consolidation, or urban plans, etc. and the renters cannot demand any compensation from the leasing agency. Such a lease agreement is unfair to residents. Residents who have not leased land are seen as illegally occupying public property, while those who have rental agreements do not know from one day to the next when their agreement may suddenly be terminated and they may face forced eviction. This state of affairs obviously infringes on the right to housing.

Huaguang Community

192. The Huaguang Community comprised about 600 households, mostly refugees from the Chinese Civil War and urban immigrants, occupying an area of 4.9 hectares in the Daan District of Taipei City. Beginning in 2007,[91] residents began to receive notices of the demolishment of the houses and demands to return "unjust enrichment." Even though the Experts expressed concern over this case in the

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90 Presidential Office Human Rights Consultative Committee, "Records of the First and Second Round of Meetings to Respond to the Concluding Observations and Recommendations" and "Follow-up on the Actions taken by Competent Agencies," June 27, 2013.

91 See "MOJ under attack for brutal treatment of its own people," China Post, December 24, 2007 <http://www.chinapost.com.tw/print/136107.htm>.

January 2013 review of the first State Report, the community was nonetheless razed and all the residents evicted in August of the same year and left without fixed residences.[92] Moreover, they also continued to bear heavy economic and psychological burdens due to official measures to return "unjust enrichment," including the freezing of their bank accounts and deductions from wages or salaries. In July 2014, the Huaguang Community cited the two covenants in an administrative law suit filed against the Taipei City government, the Ministry of Justice, the National Property Administration of the Ministry of Finance and the Ministry of the Interior. However, the suit was dismissed by the Taipei High Administrative Court on November 19, 2014.[93]

Shaoxing Community

193. The Shaoxing Community is located in Taipei City's Zhongzheng District on public land administered by National Taiwan University. As in the case of Huaguang, most of the community's population of approximately 100 households are post-war or urban migrants. In 2001, NTU filed suit to demolish the houses and regain the land and "unjust enrichment." After years of resistance, NTU finally agreed to hold consultations with residents on alternative settlement plans. However, due to the inadequacies of the legal system, the current consultations are entirely informal and residents can depend only on NTU's arbitrary goodwill and have no legal channels or rights to ensure that they can secure adequate housing. In other words, the possibility that Shaoxing Community residents may be forcibly evicted in the future cannot be excluded.

Airport Mass Rapid Transit (AMRT) A7 Station Development Project

194. With regard to the "pre-auction sale" system, [94]C:\Users\USER\Desktop\影子報告最終版\<http:\www.taipeitimes.com\News\taiwan\2014\01\28\2003582337\>.] and the concern expressed by the Experts that "the tenants were not meaningfully consulted prior to the sale of their properties to the construction companies," the State is unwilling to acknowledge that this policy was wrong or that any officials

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92 Five Huaguang Community residents who resisted the demolitions in April 2013 were arrested and convicted for obstructing police officers. See Jason Pan, "Huaguang Community Five see verdicts upheld," Taipei Times, June 16, 2016 <http://www.taipeitimes.com/News/taiwan/archives/2016/06/16/2003648748/>.

93 Hung Hsing-cheng, "Huaguang Community Demolished; Residents Lose Suit against National Property Administration," Storm Media (in Chinese), November 19, 2014 <http://www.storm.mg/article/24771>.

94 "Pre-auction sale" is a system under which developer designated by the government can begin to use an auction-method to sell residential or industrial -use land to investors before the actual completion of the zone expropriation process. This system has no legal foundation. See Lee I-chia, "EPA gives green light for projects," Taipei Times, January 28, 2014 <http://www.taipeitimes.com/News/taiwan/print/2014/01/28/2003582337/>.

should bear responsibility. In other words, just as pointed out by the Experts, the subsequent planning for the Airport MRT A7 Station expropriation case will remove the original residents to slope land which is near cemeteries and difficult to use and through an excessively drawn-out process which will render them unable to return to their homes. Although the officials who were bribed in this development project are under investigation, the project itself is still going forward.[95]

The community sovereignty of urban indigenous peoples and the right to housing

195. Indigenous peoples' districts have faced chronic unequal distribution of national development resources for a long time. Consequently, large numbers of indigenous people have migrated to urban areas in order to search for employment opportunities or satisfy needs for education, medical care and other vital functions. As of May 31, 2016, 253,745 indigenous persons, or 46.2% of Taiwan's total indigenous population, were registered as living in urban areas and this figure continues to rise.[96] Nevertheless, most of the indigenous people who have migrated to urban areas during the past few decades are engaged in low-skilled and high-risk manual labour occupations and do not find it easy to obtain adequate residential environments. The residential situations for urban indigenous peoples can be roughly divided into urban indigenous communities which have created their own settlements and indigenous households which are scattered throughout urban areas. Regardless of which type, all face common difficulties of disadvantageous economic conditions, insufficient social expenditure systems and neglect of ethnic subjectivity and identity.

196. Based on economic factors and cultural habits, some urban indigenous people choose to build self-help housing in locations which have environments similar to their original homes and form urban communities with indigenous people as the main body of residents. These communities are informal settlements and most of their members are indigenous labourers who have worked in urban areas for the medium-or-long term. However, since the protection they receive from labour laws is insufficient and they are also detachment from the protections of their original social safety system, these indigenous people can only depend on the culture of mutual help in the community to compensate for the overall lack of social security.[97] However, the government lacks appreciation for the collective

95 See Chang Wen-chuan and Jake Chung, "Yeh Shi-wen's corruption trial closes," Taipei Times, February 3, 2015 <http://www.taipeitimes.com/News/front/archives/2015/02/03/2003610694>.

96 See Chart 6 at the webpage on "Statistics Regarding Indigenous Peoples Population" (in Chinese) at the Council for Indigenous Peoples portal <http://www.apc.gov.tw/portal/docList.html?CID=940F9579765AC6A0>.

97 In Points 47-49 of the Concluding Observations and Recommendations for the first State report and subsequent follow-up discussions, the Council for Indigenous People had the following response to the question of unlicensed settlements of indigenous people: "Our council has already collated basic data on illegally built indigenous communities and found that there are 20 such communities in six

character and social functions of this kind of indigenous community and official agencies often arbitrarily carry out their own evictions based on a single administrative order.[98]

197. When urban indigenous communities suffer eviction, indigenous peoples administrative agencies in central and local governments alike often only refer the resulting problems to social welfare agencies which provide social welfare services based on individual status.[99] In the wake of resistance by indigenous communities, local governments at most promote social housing policies and thus mistakenly oversimplify the problem into a question of housing.[100] Such methods risk depriving disadvantaged or elderly indigenous persons who depend on the mutual support within the community of their basic guarantees of survival since certification of individual status becomes a question of exclusion and divides the indigenous community.

198. Ultimately, "tribal community residence" is the foundation of "tribal sovereignty"

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cities and counties with about 2,041 persons in 618 households. The above-mentioned communities all belong to the self-governance responsibility of local governments. However, our council will in principle actively assist local governments administer guidance and resettlement subsidies for indigenous settlements." The reference to these communities as "indigenous unlicensed settlements" indicates and that they are seen as "illegal buildings" and that their demolition is necessary. The formation of these illegal buildings encompasses factors such as "the situation for ownership rights for land upon which they are built," "the building construction violates related laws and regulations on construction methods" and "the construction of these structures was not licensed through the legal application procedures." Once these structures are defined as "illegal," they become matters for "building regulation" and thus come under the authority of local governments.
However, in most cases the land actually belongs to rivers, coasts and protective forests that are public lands. Moreover, what is called a "village" is not simply a group of buildings as the basic essence of the villages is a clustering of indigenous peoples culture. Therefore, the CIP should take further steps to assist in clarification of the special character of the formation of these groups of buildings and help other ministries and agencies understand the cultural factors underlying the formation of indigenous peoples communities and avoid having to relegate itself to only providing "settlement guidance" and "resettlement subsidies" in the wake of the demolition of informal indigenous settlements.

98 Central government agencies including the National Property Administration of the Ministry of Finance and the Water Resources Agency of the Ministry of Economic Affairs and water supply departments, construction management departments, tourism bureaus or environmental protection bureaus of local governments can on their own authority mobilize police to carry out evictions of "illegally built" communities.

99 Not all members of indigenous communities have identification status as indigenous persons and some of them may include family members who do not have such identification and residents who are not indigenous persons but are organized into joint organizations. Social welfare systems which provide service based on the type of status of individuals frequently exclude community members who do not have status as indigenous persons and thus neglect the integrated nature of the community and its members and therefore generate divisions within the community.

100 During the past few years in New Taipei City, social housing policies have been promoted focussed on Shijhou Village and Sanying Village. Indigenous communities which did not show strong resistence were often ignored. These housing projects squeezed out the basic human rights of elderly residents who were excluded from the projects because they could not pay the down payment on the housing loans and thus became even more isolated.

since such settlements are formed based on the character of indigenous peoples' culture differently from other clusters of buildings and are therefore called "villages." Indigenous villages have cultural rights, educational rights, political rights and economic rights which can only be maintained through "group residency." However, existing cultural institutions, educational systems, local political systems and capitalist economic systems are unable to appreciate or support the significance and meaning of village sovereignty and even infringe on indigenous peoples and village rights.[101] The government's use of policy tools such as "resettlement subsidies," "settlement guidance" or "illegal housing demolition" as means to solve the "problem" of urban indigenous villages or settlements again and again manifests the government does not realize that the uniqueness of urban indigenous villages is also the essence of villages as "village sovereignty." Therefore, the government over-simplifies the problems faced by urban indigenous villages in community care, cultural inheritance and resident autonomy as issues of housing.

199. Urban indigenous villages still face severe challenges even if the right to housing is guaranteed. For example, in the summer of 2015, the Shijou Community in New Taipei City suffered damage due to severe floods caused by the onslaught of a typhoon. In the process of reconstruction, the community relied heavily on assistance from private capital, while government agencies did not provide any related assistance measures for indigenous residents who were anxiously waiting for the completion of construction of social housing. In December 2015, there was even an incident in which the New Taipei City government attempted to uproot the village garden that exposed the contempt with which government agencies look upon informal settlements.

200. In addition, urban indigenous villages lack far behind the living standards of ordinary people in terms of the right for water. The Shijou Community in New Taipei City or the Kanjinniyaro and Sa'owac villages in Taoyuan City and over 10 other urban indigenous villages lack facilities for clean running water or even are the recipients of pollution from urban economic development and industrial needs. Neither the central or local governments have provided any assistance to resolve

101 For example, in the Sa'owac Village of Amis Tribe located in the Dahan River Area in Taoyuan City, the village's community cultural sovereignty has always been ignored by agencies under the Water Resources Administration of the MOEA. Despite the requirement in administrative procedures, WRA construction agencies deliberately neglected to hold any explanatory meetings to the village. Only when the construction budget was allocated and a public tender issued and work on the project was about to begin did they directly issue an official notification for the razing of the village. In 2009, without giving the community any advance notification, the Taoyuan County government directly sent excavators to uproot and demolish peas and other vegetable gardens that were just about to be harvested on the pretext of broadening a water conservancy canal.

these problems, which are set aside "due to the limitations of existing laws. "[102]

201. To summarize, we recommend:

(1) The CIP should take the initiative to investigate and clearly explain the difference between the collective sovereignty of urban indigenous communities and the right to housing enjoyed by individuals to avoid the oversimplification of the problems of urban indigenous communities into merely issues of the residence of individuals or social welfare subsidies. The CIP should also provide needed policy assistance to urban indigenous communities.

(2) Central and local government agencies should work together to bolster protections for the right to housing and right to access to water of urban indigenous communities. Such agencies must incorporate related policies in normal legal procedures and allow residents to have substantive participation and actual influence in government policy making and in the recommendation of revisions for related laws in order to realize good living environments for urban indigenous communities.

COR Point 48 Right to Housing (ICESCR Article 11)

202. The State report only lists the principles of revisions to the Urban Renewal Act that have been proposed by the Executive Yuan. The State report does not mention the following: (a) the number of persons evicted due to urban renewal plans during the past five years; (b) details on how the proposed revisions would realize and bolster citizen rights and what methods will be adopted to avoid forced evictions; (c) a detailed comparison of the existing Urban Renewal Act and the draft package of revisions showing which articles still retain stipulations for forced eviction and bulk reward (the additional floor area permitted by the government as incentives); (d) details on the corrective mechanisms in the draft revisions to ensure the rights of effective participation for property owners, land owners, informal settlers and tenants; and, (e) methods adopted for the disposition of existing disputes. The above five points show that the Ministry of the Interior still neglects the rights of residence of residents in informal settlements and of tenants and has yet to carry out a re-examination of equality in rights of participation.

203. Although the Urban Renewal Act is in the process of revision, existing situations which contravene the ICESCR have not been resolved. Due to the principle of non-retroactivity, it will be impossible to apply the revised act to existing urban renewal cases and the right of residents will continue to be infringed in violation of the ICESCR even after the act is revised. However, neither legislative or executive

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102 See Sawmah, "Struggling for a drink of water; an urban peripheral village's war for water," The Reporter, February 18, 2016 (in Chinese) <https://www.twreporter.org/a/amis-war-of-water>.

agencies have proposed plans to deal with infringements, as described in Paragraphs 204-207 below.

204. Article 36 of the existing Urban Renewal Act which regulates forced removals or relocation is vague on the issue of necessity and thereby grants excessive administrative discretionary power, only permits objections to be raised about the timing of removal, the methods and negotiation of compensation and neglects the question of the rationality of removal. If consultations fail, residents only have the option of accepting forced removal. This situation contravenes Point 12 of General Comment 4 and Points 8, 9, 10 and 13 of General Comment 7 of the ICESCR.

205. Point 13 of General Comment 7 for the ICESCR mandates that "(S)tates parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons with a view to avoiding, or at least minimizing, the need to use force." The term "consultation" if unintentionally becomes the last narrative before forced eviction, then it must be interpreted as a kind of equal dialogue without the threat of coercive methods as a shield. The existing Urban Renewal Act adopts a system under which a vote by the property-owning residents can decide whether to participate in urban renewal. If the majority is for participation, those residents who did not want to participate will face forcible eviction since their homes will be demolished. There may be some consultative processes before the evictions, but if we use the above interpretation of "consultations," it is clear that if one side has the power to carry out forcible demolition, what is happening is not "consultation" but a kind of coercion. Therefore, the continuation of this system will contravene Point 13 of General Comment 7 of the ICESCR.

206. Article 6 of the ICESCR and Point 6 of General Comment 18 clearly stipulate that State parties recognize the right to work for each person. The current urban renewal system usually treats the original independent buildings as a new residential complex, causing residents who previously operated shops to be unable to continue to do business. The government has not put forward any measures to protect the right of work from harm due to urban renewal projects in contravention to the ICESCR.

207. Revisions of laws or regulations are still insufficient to meet the demands of the ICESCR. At present, the Legislative Yuan may approve draft revisions to the Urban Renewal Act which have at least three aspects which violate the two covenants: (a) In the draft revisions, it is the government to decide the scope of urban renewal projects, aiming to justify the public interest and necessity of the provision which led to compulsory demolitions, but there is no correlation between the subject delineating the scope of urban renewal projects and the public interest or necessity of any particularly urban renewal project. This provision will continue the existing act's contravention of Point 13 of General Comment 7 for the ICESCR;(b) See Paragraph 175; and, (c) See Paragraph 176.

COR Point 49 Right to Housing (ICESCR Article 11)

Persons without Property Rights

208. We should first review the situation of persons without property rights. All land development systems and land clearance projects may affect persons without property rights and persons without property rights are the most disadvantaged if they encounter forced evictions.

Persons without Property Rights on Public Land

209. After the review of the first State report, the Ministry of Finance revised the "Directions for Disposal of Occupied National Public Use Real Estate Managed by Administration Authorities," which mandated the expulsion of informal settlements on public land, effective June 17, 2014.[103] However, the new version only requires officials to refer persons who meet rigorous requirements for access to social welfare to the social welfare agencies of local governments for resettlement and does not make the land development agency responsible for finding alternative housing. In fact, local governments do not have adequate supplies of suitable housing available for use in such resettlement and it is also not the case that all of the residents who are evicted can meet the official standards for access to social welfare. For example, only a relatively small minority of the residents in the Huaguang Community were able to participate in the resettlement program and thus receive short-term and unaffordable accommodation while the overwhelming majority of residents were evicted without having any alternative housing.

Persons without Property Rights in Cases of Urban Renewal

210. With regard to the question of evictions and removal before development, both existing Urban Renewal Act and the draft package of revisions now under review allow construction companies in the process of carrying out urban renewal projects to apply for building dimension incentives if they provide housing units to persons without property rights.[104] As far as the construction company is concerned, the provision of housing units to persons without property rights offers little benefit and they may not necessarily be able to obtain the volume incentives offered through this process for which there is also a ceiling. Construction

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103 See <http://gazette.nat.gov.tw/EG_FileManager/eguploadpub/eg020112/ch04/type2/gov30/num4/Eg.htm> (in Chinese)

104 Local governments offer building dimension incentives based on commitments to increase a certain number of floors, such as embodied in Article 19 of the "Urban Regeneration Local Ordinance of Taipei City <http://uro.gov.taipei/ct.asp?xItem=660700&ctNode=12899&mp=118011>.

companies usually proceed through the exercise of rights under the Civil Code to first expel persons without property rights and then carry out the urban renewal plan.

211. Regarding affordability, both the existing Urban Renewal Act and the draft revisions do not establish measures to evaluate the capability of persons without property ownership rights or title holders to afford participation in the project. This shortcoming causes the problem that even when resettlement plans through leases, purchases or rights transfers are proposed, they are often beyond the financial capability of persons – especially those without property rights for the reason that the newly constructed building, even there are discounts on the housing unit purchasing price, will have higher management fees. In cases of resettlement for tenants, the cost of rent is not based on the wages or salaries of the resettled persons, which is also in contravention of Article 11 of the ICESCR and Point 8(c) of General Comment 8 on the ICESCR as well as Point 49 in the Conclusions and Recommendations.

Persons without Property Rights in other development methods

212. Land expropriation, land consolidation and other development systems set up rights holders always as landowners. As a result, when encompassed in the scope of a development project, tenants who are not landowners and informal residents have little or no room to express their views and may even face eviction suits from other landowners even though they are as equally stakeholders as other homeowners. In land expropriation or land consolidation or clean-up systems, tenants without property rights or informal residents also do not have alternative housing and can at best depend on meagre cash compensations from local governments for goods or belongings on the demolished land.

The Legitimacy of Land Development and Clean-up and Alternative Housing or Compensation

213. We believe that the government should evaluate whether land development or clean-up projects have legitimacy before discussing alternative housing. Points 184-191 respectively discuss the types of land clean-up and development methods. The first section explains what we believe is legitimate and the second section discusses how to resettle or compensate people who are affected by these systems.

National Land Clean-up

214. On November 27, 2009, the Executive Yuan established the "National Land Clean-up and Reactivation Squad" whose purpose was to bolster the efficiency of

national land use, create asset value and accelerate development.[105] In the eyes of the government, public lands, which cover over 60 percent of Taiwan's land area, are seen as real estate commodities whose value exceeds NT$20 trillion.[106] Even though a large number of informal settlements occupy public land (Refer to Point 160), this policy did not take into consideration the rights of residence of these existing residents. Civil society organizations believe that this kind of policy often arises out of considerations of economic development or government fiscal conditions and indirectly turns public land to the use of conglomerates for their own use and profit and that the legitimacy of the evictions of people for such purposes should be reconsidered.

215. The government has yet to comprehensively clarify the situation regarding residents on public lands. Moreover, the government has not conducted evaluations of the necessity and public interest prior to demolishing illegal buildings and during the process of demolition and eviction in light of the provisions of the two covenants. The government has also failed to provide related resettlement or compensation after such removals.

Urban Renewal

216. The existing Urban Renewal Act features provisions for construction companies to be qualified as urban renewal project "implementers" and bulk rewards which lead most urban renewal projects to be adopt the method of complete reconstruction out of considerations of "asset value" and not to consider questions such as cultural asset preservation, the form or texture of the original housing or the degree to which existing residents can afford to buy or rent the new housing units. In addition, Article 22 of the Urban Renewal Act sets agreement of landowners with at least 75 percent of the existing land area and floor area as the standard for approval of an urban renewal business plan, but does not clearly stipulate participatory mechanisms through which households which do not agree can effectively express their views and does not establish dispute resolution mechanisms. As a result, the legitimacy and necessity of such projects do not receive comprehensive consideration.

217. Please refer to Point 211 above.

Zone Expropriation

218. Public interest, necessity and the lack of other options are necessary preconditions

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105 Directions Concerning the Establishment of the National Land Clean-up and Reactivation Squad as revised as of May 20, 2015: <http://ppt.cc/NRTrh>.

106 Wang Hsin-jen, "Chu Li-lun named Convenor; To Clean Up NT$20 trillion in National Land," Commercial Times, December 1, 2009 (in Chinese) <http://news.twhg.com.tw/trend_content.php?ojb=17876>.

for land expropriation. However, at present, most zone expropriations are conducted for economic objectives. There are no clear and precise standards for the evaluation for key preconditions such as the public interest, necessity and lack of other options. The absence of open and transparent review procedures also results in the evaluation of public interest, necessity and the availability of other options to be arbitrarily determined by the developing agency or so-called expert and professional committees and thus to gravely lack foundation in social consensus.[107]

219. Article 44 of the Land Expropriation Act adopts a formula for "entitled value" calculated by the responsible municipal, city or county authority for "the value of land a landowner is entitled to receive," which is calculated in proportion to the ratio of his entitled compensation for land value and the total compensation for land value for the zone expropriation, divided by the unit value of the actually distributed land. This method mechanically takes the land of the original residence and transforms it into a pure price and does not consider the needs of the original resident for residence, work and essential needs and also does not consider the possibility of the return of the original resident to the land in question. This method is naturally unable to substantively provide the resident with alternative housing to resolve living needs. In addition, given the limitations caused by the narrowness of streets and the small areas, original residents who have relatively small property rights will find it impossible to obtain land in relatively ideal locations through lotteries. Hence, the system is designed entirely to the advantage of large property owners and developers.

Urban Land Consolidation

220. Urban land consolidation is one type of land development method under the framework of urban planning. Therefore, once an urban plan is finalized, urban land consolidation is a matter of time that depends only on surveys to select the scope and the actual timing of implementation. Regardless of whether the urban consolidation is conducted by public or private sector agencies or even if decades have passed since the passage of the urban plan, the implementation can be decided by the implementing agency without any further evaluations of the originally approved plan or reconsideration of whether it is in accords with the needs of residents and without any further public hearings or review by the city assembly. It should be evident that such a process gravely lacks due consideration for public interest and necessity. [For information regarding citizen participation in the land consolidation process, please refer to Point 43]

221. The threshold for private-sector urban land consolidations is favourable to large landowners and squeezes the room for small landowners to express their views

107 For information regarding citizen participation in the land expropriation process, please refer to Point 42.

(please refer to Point 43 above). Regardless of whether the land consolidation is conducted by the public or private sector, there are no procedures for resettlement (for either property owners or non-property owners) and the result is to both evict residents and render them unemployed. Moreover, compensation for the demolition of residences and belongings is also insufficient to allow most such residents to buy new homes or even cover their losses in the eviction process.

COR Point 50 The Right to Housing (ICESCR Article 11)

The Government does not have a Unified Standard to Define Homelessness and Underestimates the Number of Homeless Persons

222. It is impossible to grasp the actual degree of homelessness based on the Taiwan government's existing legal definition of homeless and the government gravely underestimates homelessness.

223. Taiwan's current legal construction and policy methods regardless homelessness are based on Article 17 of the Public Assistance Act.[108] Article 17 of the Public Assistance Act does not have a definition of homeless but only refers to "homeless persons who have no home." This vague, sweeping and unclear definition of homeless leads city and county governments to formulate their own definitions of homeless and thus creates a multiplicity of "standards for homelessness." For example, many cities and counties have enacted homeless shelter and guidance regulations (or self-governance statutes) which define beggars as homeless persons or, as the State report mentioned, uses the number of street people on the streets, in parks, train stations or tunnels to calculate the number of homeless, but does not include people who are staying in shelters in such estimates.

Homeless Shelter Agencies Are Gravely Inadequate and Lack Pluralistic Guidance Mechanisms

224. The State report's response (see Paragraph 162) to Point 50 of the Concluding Observations and Recommendations relates that, from January through September 2015, cities and county governments in Taiwan registered a total of 2,644 homeless persons. However, a research report written by Professors Cheng Li-an and Lin Wan-Yi of the Department of Social Work of National Taiwan University on commission for the Ministry of the Interior found that 10 shelter institutions set up on eight cities and counties where homeless people congregate had a total of 340 beds regularly available for homeless persons and, at most, 415 beds. From this finding, it is clear that the number of beds in shelters is gravely deficient. At the

108 See <http://law.moj.gov.tw/Eng//LawClass/LawContent.aspx?pcode=D0050078>.

same time, the shelter services in homeless shelter institutions in Taiwan mainly provide only living resettlement services and gravely lack differentiated services, such as female shelters and assistance for rehabilitation from drug or alcohol addiction. Shelters should be established with distinct focuses to cope with different types of needs faced by homeless people.[109]

225. The international Experts recommended that the government should provide homeless persons with basic living assistance, including housing. According to Article 4 of the Housing Act, homeless people are suitable subjects for social housing. In addition, the "Housing Subsidies in 2013" program of the Construction and Planning Agency of the Ministry of the Interior was administrated by the development bureaus of city and county governments and included rent subsidies for which homeless persons could apply. [110] Even though the Housing Act clearly identified homeless persons as being suitable subjects for its application, the settlement policies adopted by most government agencies remain focussed on short-term shelter services. In addition, the Public Assistance Act and regulations to facilitate assistance to homeless persons (or self-governance acts) adopted by local administrations still do not include housing agencies among the key government offices responsible for implementation.

The Difficulties faced by Homeless Persons in the Rental Housing Market

226. The rehabilitation services mentioned in the State Report' response to Points 50-51 of the Concluding Observations and Recommendations (Paragraph 163 Section 3) require homeless persons to link their rental location with their household registration before they can apply for rent subsidies. However, homeless people frequently are unable to find housing due to excessively high rents, refusals by landlords or excessive distance from their place of work.

Requirement for Household Registration Restricts Access to Welfare Services

227. Many cities and counties only provide homeless people who do not have household registrations in their jurisdictions with emergency services when the physical safety of such homeless people is threatened or provide short-term emergency shelter services. Local governments usually require homeless people who need other social welfare resources to return to the place of their household registration and allow those local governments provide assistance.

Expulsions of Street People

228. Besides providing assistance for the essential needs of homeless persons, the

109 Cheng Li-chen and Lin Wan-yi (2013), "Research Studies on the Situation of Homeless People" (research report commissioned by Ministry of Interior in Chinese), p.53.

110 See < http://goo.gl/teI6MT> (in Chinese).

government should also ensure that the fundamental right of survival of homeless persons is not subjected to infringement. In recent years, the government has often used the pretexts of maintaining the appearance of the city or the promotion of urban development as justification for the use of all kinds of methods, including water cannon, adding rails to chairs, throwing away the family belongings of homeless persons or other means to drive away homeless people. In 2015, there was even a case in which a homeless person attempted to commit suicide after being expelled by government and private companies.[111] This kind of "out of sight, out of mind" expulsion policy cannot make the poor disappear and will instead further infringe on the basic human rights of the poor.

229. Civil society organizations have frequently urged the government to provide lockers or other facilities for homeless persons to store their belongings. On October 20, 2015, the MOHW stated in the sixth meeting of the second round of discussions for the Second State Report on the two covenants that it had an administrative policy to "provide locker storage services" as an essential need for homeless people. However, most homeless people have not yet heard of the locker services mentioned by the MOHW and still lack any place to safety store their belongings and thus constantly live under the fear that their belongings could be thrown away as garbage. On November 5, civil society organizations asked the MOHW to provide a concrete explanation of its locker storage service for homeless persons, including the locations, number of lockers and their format. On November 17, the MOHW issued an official document stating that it had invited all city and county governments to take their own actions to respond to the query by CSOs. Obviously, the MOHW did not have a clear grasp of the situation and its statement that it had already provided locker and storage space services was only a hypocritical response to the question raised by CSOs.[112]

COR Point 51 Right to Housing (ICESCR Article 11)

230. Please refer to Paragraphs 1-2 of Point 50 of the Concluding Observations and Recommendations. Regarding the definition of homeless persons, the government should revise Article 17 of the Public Assistance Act to add standards for the determination of homeless persons and remove language about homeless persons which is outdated, discriminatory and infringes on the human rights of homeless persons. The government should refer to the experience of other regions or

111 See "No Place to Store: The Only Option is to Pull Your Baggage and Run," Apple Daily (Taiwan), December 8, 2015 (in Chinese) < http://goo.gl/I7LHtT>

112 The document issued by the Taipei City Department of Social Welfare on November 25, 2015 to the Taiwan Homeless Society related that the department had no plans to build locker facilities but was based on a document No. 104004013 issued by the Ministry of Health and Welfare on November 17, 2015. Please refer to <http://ppt.cc/9UX0K>.

countries, such as the European Union, the United States, Japan and South Korea, and develop definitions of homeless people from the standpoint of lacking permanent homes or living in locations unsuitable for human residence.

231. Please refer to Paragraphs 3-6 of Point 50 of the Concluding Observations and Recommendations. The central government should take responsibility for integrating national plans for homeless persons and break through the welfare localism based on household registration. In addition, the government should adopt policy thinking that places priority on the disadvantaged and construct medium-to-long-term resettlement service measures that are in accord with the needs of homeless persons and fix a timetable, arrange fiscal resources and evaluate the effectiveness of implementation. The government should also remove the obstructions blocking access by homeless people to the housing resources promised in the Housing Act.

232. Please refer to Paragraph 7 of Point 50 of the Concluding Observations and Recommendations. We urge the government to cease dispersals of homeless street people and instead take action to provide homeless street people with housing and public services that actually are in keeping with their real life needs.

233. Finally, in reference to Paragraph 8 of Point 50 of the Concluding Observations and Recommendations, the MOHW, as the responsible central government agency, should substantively respond to issue and take note of the needs of homeless people and provide necessary assistance to help city and county government overcome difficulties in furnishing services to the homeless.

COR Points 52-53 The Right to Health and the Right to Education (ICESCR Articles 12-13)

Emotional and Sex Education

234. The Health Promotion Administration (HPA) of the MOHW has conducted a surveys of health habits of senior and junior high school students, but the object of such surveys has changed from year to year. Even though the surveys have used anonymous questionnaires, the topics are often quite sensitive, such as whether the student has engaged in sexual activity or whether the student has used contraceptives, and it is impossible to know whether the surveys receive fully accurate or reliable answers.

235. The government has used these surveys of the health habits of senior high-school and junior high school students as reference material for the formulation of policies toward juvenile sexual behaviour. However, since there may be grave inaccuracies in the data used, it is also impossible to accurately evaluate the effect of sex education efforts.

236. School sex education is limited to basic knowledge and lacks treatment of emotional education and intimate relationships and also avoids review or exploration of related power or domination relationships. In addition, such courses also lack instructional materials with content on diverse sexual orientations.

237. We recommend the following:

(1) The government should as soon as possible evaluate the effectiveness of sex education for minors and should especially adopt policies to cope with the high rate of pregnancy among female senior high-school students in certain areas;

(2) The government should comprehensively review and revise content on sex education in the instructional material on "Health and Physical Education" in public junior high-schools and elementary schools. The process of revision should include correcting gender stereotypes and gender prejudices and re-examine the content of sex education instructional material from the development needs and experiences of students and from the perspective of cultural pluralism; and,

(3) The government should develop sex educational content on diverse sexual orientations and gender identities (LGBTI) and when such content appears in textbooks, should take note of the experiences and needs of LGBTI students and include discussion of such topics in classes.

Female Reproductive Health

238. Health care services related to female reproductive health provided by the Ministry of Health and Welfare are mainly oriented toward "fetal health" and not "women's health." For example, content of the HPA's handbook for pregnant women focusses primarily on how to care for the fetus and does not provide information on the situations and risks that a woman may face during her pregnancy and during delivery. The HPA has also not established any joint decision-making mechanism for puerperal and doctors and thus may create situations in which pregnant women overly rely on medical care or encounter unnecessary health risks.

239. Even more worrisome is that over half of Taiwan's rural townships or villages lack gynecologists and that the average age of gynecologists in Taiwan is five years higher than for doctors generally. By 2022, 49% of gynecologists in Taiwan will be over 60 years of age. In December 2015, the Legislative Yuan enacted the "Compensation Law of Childbirth-related Injury" under which the government will allocate budgetary funds to share the risks of childbirth.[113] However, as the

113 See "Ministry of Health and Welfare, "Striking Results in Three-Year Trial Period; Legislative Yuan approves third reading of Compensation Law of Childbirth-related Injury," December 12, 2015

government has passively responded to the chronic problem of excessively low payments, this system may actually cause harm to women's health rights.

240. Besides providing reproductive care and cervical cancer screening, the government has not realized the threat posed to women's health from gender gaps in the medical profession, such as the considerable amount of research showing differences between the clinical performance and treatment for men and women suffering from heart disease.

241. In addition, while the overall rate of child pregnancies in Taiwan has maintained a level of 0.4% during the past five years, 2014 data shows that the rate of child pregnancies in eastern Taiwan (Hualien and Taitung counties) exceeded 1%, followed by Nantou County and Miaoli Counties with 0.7%. These figures indicate significant urban- rural gaps.[114]

242. Taiwan still lacks any legally authorized reporting system for abortions and only can depend on estimates based on surveys of student health behaviour. A comparison of student health behaviour surveys conducted by the MOHW Health Promotion Administration of juveniles between 15 and 17 years of age carried out in 2011 and 2013 had the following findings: the rates of persons who had sexual experience were 11% and 10.2%, respectively; the ratio of those who used contraceptives in their most recent sexual experience increased from 75.6% to 85.2%; and, the percentage of persons who had been pregnant rose from 0.4% to 0.6%.[115] Analysis of the surveys showed that the ratio of juveniles who use contraceptives during their first sexual experience is clearly rising. We urge hospitals and gynecological clinics to carry out pregnancy registration and to provide data necessary to help estimate the number of abortions.

243. We recommend the following: The government should provide "women-oriented" reproductive health care policies and bolster the efforts to raise the gender awareness of medical personnel in disease diagnosis and treatment in order to avoid causing unnecessary risks for women. We also urge the government to follow the recommendation of the Experts and carry out an evaluation as soon as possible of the effect of educational policies with regard to child pregnancy, particularly in areas where the rate of child pregnancy is especially high.

<http://www.mohw.gov.tw/news/531953145>; Full text (in Chinese) can be found at < http://goo.gl/ehrXlZ >.

114 See Executive Yuan Department of Gender Equity, "Database of Important Gender Statistics," <http://ppt.cc/Mn9Xg>.

115 The surveys were conducted by the MOHW Health Promotion Administration and can accessed (in Chinese) at <http://ppt.cc/HjNyD> for the student health behavior survey for 2011 and <http://ppt.cc/95qlp> for the 2013 survey.

COR Points 54-55 The Right to Health and the Right to Education (ICESCR Articles 12-13)

Diverse Gender Identities (LGBTI) and Human Rights

244. Data provided by the government are unable to concretely show the current government's educational efforts on LGBTI human rights. The LGBT health centres mentioned in the MOHW's response are actually concerned with AIDS prevention and do not have direct links with LGBTI mental or physical health. From the perspective of ending stigmatization, the high degree of linkage between LGBTI identity and AIDS should be discontinued.

245. We offer the following recommendations:

(1) Government statistics should concretely express the differences in sexual orientation, gender identity and gender expression. For example, the MOHW should provide data on the ratio of gender equity education that is aimed at LGBTI groups; the Ministry of Education should provide data on suicide prevention guidance counselling categorized based on sexual preference, gender identity and gender manifestation; and, the MOE should provide related data regarding LGBTI human rights education at all levels of the educational system. Before the provision of such data, it is impossible to judge whether government actions are related to the promotion of LGBTI rights in education and mental and physical health rights;

(2) Besides concrete actions in the field of education, the government must adopt further measures in employment, social welfare, medicine and health and other fields and, based on Article 12 of the ICESCR and Article 17 of the Yogyakarta Principles, maintain the education and health rights of LGTBI persons through clear and standing policies and expenditures;

(3) The government should work to bolster awareness among medical and education workers in their professional education and first line provision of medical assistance. For example, serious discrimination which in grave cases can result in the loss of medical care rights, can take place toward LGBTI persons with regard to the titles (such as Mister or Miss) used toward transsexual persons, the degree of understanding of the pluralistic groups among LGBTI persons, the LGBTI-friendly character of medical or health facilities (such as the degree of privacy and provision of LGBTI friendly rest rooms) and the recording of medical records.

(4) In the short term, the MOE should collect and formulate LGBTI human rights instruction programs and establish internet resource webs for persons seeking education, medical and health or social welfare assistance; in the medium to long-term, more multimedia public programs and public databases should be established.

COR Points 56-57 The Right to Life (ICCPR Article 6)

246. In response to Point 56 of the Conclusions and Recommendations, the MOJ has yet to follow the recommendation to immediately cease execution of death penalties and make efforts toward abolition of the death penalty in compliance with related United Nations resolutions. "The current policy of the MOJ regarding abolition of the death penalty is to maintain the death penalty but reduce its use."[116] In 2013, six persons were executed; in 2014 five persons were executed; in 2015, six persons were executed, for a total of 17 persons since the beginning of 2013. It is evident that the number of executions has not declined. However, there appears to be a declining trend in the number of finalized death sentence issued by the judiciary: three death sentences were finalized in 2013, one in 2014 and none in 2015.

247. Point 57 in the Conclusions and Recommendations urges that the Taiwan government "should ensure that all relevant procedural and substantive safeguards relating to the imposition and execution of capital punishment are scrupulously adhered to." However, a review of the 17 executions since the beginning of 2013 shows the following: (1) Courts in Taiwan still adopt a relatively conservative stance regarding the question of the suitability of issuing death sentences to persons with mental or intellectual disabilities and have not arrived at a consistent standard. We propose that an article should be added to the Criminal Code that explicitly and clearly stipulates that persons with mental or intellectual disabilities cannot be given death sentences; (2) In 2013, 26 petitions for amnesty for confirmed death penalty sentences were submitted to the President, but were ignored by the President who neither approved or denied these petitions. Four of the 26 petitioners for amnesty subsequently were executed.[117] Therefore, we recommend that the Amnesty Act be revised to add procedures for the confirmation of applications for amnesty or commutation of sentences and to establish a consultative committee in the Office of the President regarding amnesty or commutation of sentences; and, (3) Since December 2012, the Supreme Court has begun to allow oral arguments in death penalty cases. This action has ensured that all condemned convicts can have verbal defence from their lawyers in appeals to the trial of third instance, namely the Supreme Court. However, observation of the 14 cases of appeals to the Supreme Court with oral argument indicate that there are no definite procedures or guidelines and that there is a huge gap between promise and reality.[118] A minority of cases have been returned to the Supreme Court without hearings; in cases where hearings have taken place. In cases for

116 See Point 57 in the State's Response to the Concluding Observations and Recommendations Second State Report.

117 These four persons were Wang Chun-chin, Tai Wen-ching, Wang Hsiu-fang and Liu Yen-kuo.

118 The Judicial Yuan has yet to publish related data. These figures were collected by the Taiwan Alliance Against the Death Penalty (TAADP) through a variety of channels and may not be complete.

which hearings are being held, most have initiated preparatory procedures and oral arguments, but preliminary proceedings or oral arguments have not yet been held for a minority of such cases and there have been cases in which the Supreme Court delivered its verdicts even though there had only had preliminary proceedings but no oral arguments. The focus of argument in the Supreme Court usually concerns sentencing, but the defendants are not allowed to appear in court. Therefore, we urge the Supreme Court to formulate guidelines for oral argumentation with substantive content and permit defendants to appear in court hearings.

COR Point 58 The Prohibition of Torture (ICCPR Article 7)

248. An investigation by the Control Yuan discovered in May 2010 that Air Force private Chiang Kuo-ching had been wrongly executed on August 13, 1997 after being accused of raping and murdering a young girl in September 1996. The Control Yuan investigation report found that the then Air Force Political Warfare Section Commander and later defense minister (from May 2008 to September 2009) Chen Chao-min, had violated the Code of Court Martial Procedure by entrusting the investigation of the case to the Air Force headquarters counter-intelligence section which did not have the status as military police officers. This squad tortured Chiang Kuo-ching, who was not linked with the rape-murder, to extract a confession. The squad paid no heed to the confession by another Air Force enlisted man named Hsu that he had committed the crime and rapidly sent Chiang to court-martial and execution in gross violation of his judicial human rights. There has of yet not been any concrete action to pursue the responsibility for Chiang's wrongful execution. Prosecutors have repeatedly decided not to indict the responsible persons in substantive contradiction to Point 58 of the Conclusions and Recommendations which mandates that there can be no immunity for perpetrators of torture and who must be brought to justice.

249. On July 4, 2013, the case of the death through mistreatment of Army specialist Hung Chung-chiu erupted. On July 31, 2013, military prosecutors indicted several officers and non-commissioned officers on suspicion of abusing Hung. Subsequently, due to a changes in the legal system, the case was transferred to civilian prosecutors. The case is still in legal process with some officers pursuing conciliation through compensation with the family of the deceased while others are still appealing convictions on convictions. Amnesty International issued a declaration which stated that the case and the government's response demonstrated the need for Taiwan to ratify the Convention Against Torture" and realize its provisions in domestic law through enactment of an implementation

act.[119]

250. On May 1, 2013, 23 Democratic Progressive Party Legislators introduced a draft "Act for the Prevention of Crimes Against Humanity and Torture." Article 3 of the draft act mandated that "the deliberate causing of extreme pain or suffering to other persons by public employees or public officials, regardless of their nationality or citizenship, when carrying out their public duties or intending to carrying out public duties, within our country's borders or in any other location, will be defined as torture." This definition is still not as precise as written in the CAT and does not clearly state which agency would be responsible for investigating such crimes. This draft bill has many problems and we would not welcome its rushed enactment in a third reading. The draft bill was not passed before the end of the term of the Eighth Legislative Yuan in December 2015 and would require reintroduction into the current Ninth Legislative Yuan which took its seats February 1, 2016.[120]

COR Point 60 Administration of Justice (Articles 9, 10 and 14)

251. On February 11-12, 2015, a riot erupted at the Kaohsiung Prison during which six convicts took the warden hostage. The six prisoners issued five demands,[121] involving many issues on human rights treatment in the prison. The demands concerned standards for review of applications for medical parole and questions about "special privileges, " the so-called "three strikes" clause in the parole system, the disbursement of labour income and the human dignity of inmates. All six prisoners ultimately committed suicide.[122] The Kaohsiung Prison Incident stands as a warning which showed that neither the Ministry of Justice or the Ministry of Health and Welfare had taken positive actions to implement the Conclusions and Recommendations made by the international human rights experts during the review of the first State report on the ICCPR in January 2013.

252. The Concluding Observations and Recommendations point out that simply

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119 The English language statement can be accessed at <http://www.amnesty.tw/?p=1618>.

120 The draft bill introduced by 23 opposition Democratic Progressive Party legislators during the Eighth Legislative Yuan can be viewed (in Chinese) at: <http://misq.ly.gov.tw/MISQ/IQuery/misq5000QueryBillDetail.action?billNo=1020419070201200> A similar bill had been introduced by 24 lawmakers in the Seventh Legislative Yuan on June 8, 2011.

121 See Jason Pan, "Prisoners take warden, guards hostage," Taipei Times, February 12, 2015 <http://www.taipeitimes.com/News/front/archives/2015/02/12/2003611377>; a report by the Central News Agency (in Chinese) is at <http://ppt.cc/437mP??>.

122 Article 77 Section 2 of the Criminal Code mandates: "The recidivist of an offense that carries a principal punishment of minimal five-year imprisonment intentionally commits during the period of parole, in five years after completing the execution of the punishment or after being pardoned after the execution of part of the punishment an offense that carries a minimum principal punishment of not less than five years" will not be eligible for parole.

building more prisons is not the best remedy to deal with the overcrowding of prisons. Moreover, during the period of this second State report, the huge social pressure triggered by case of the death by abuse of Army Specialist Hung Chung-chiu led the Legislative Yuan to enact legal revisions that abolished the use of military court tribunals and also led to the transfer of prisoners in two military prisons in Tainan and Taoyuan to civilian prisons under the MOJ Agency of Corrections. These two prisons, namely the Tainan Second Prison and the Bade Minimum-Security Prison, officially began operations on July 16, 2015.[123] Although these two prisons combined can hold a total of 1,600 inmates, the Tainan Second Prison was not yet able to accept prisoners as its guard force had not yet entered the grounds. Given the total capacity of 1,100 in the Tainan Second Prison and 500 in the Bada facility, these two prisons are unable to resolve the problem of overcrowding in Taiwan prisons.[124] In addition, due to the ceiling imposed on the total number of civil service employees in the central government agencies, the number of corrections personnel will not be increased to meet the manpower needs of new prisons. As a result, problems in deployment and shortages of staffing of correctional institutions will worsen.

253. Three civil society organizations established a task force on prisons named Taiwan Action on Prison Reform (TAPR) [125]In 2014, TAPR began a series of onsite prison inspections and on November 1, 2014 held a conference on the current status and reform policies for Taiwan's prison system.[126] TAPR issued a set of concrete reform demands on January 15, 2015, sent an official statement to the Agency of Corrections and requested a reply.

254. Regarding health conditions, the TAPR said that better ventilation was commonly needed for cells, supplies of water should not be restricted at night and water tanks should be added to toilets. In addition, the TAPR stated that the AOC should abide by international standards for periods for outdoor activities of at least one hour a day. However, in its reply, the AOC stated that the restriction of water supplies at night was adopted for reasons of the convenience of prison management and to conserve energy. The AOC also stated that if inmates were unable for various reasons to have outdoor activities for at least one hour every day, they were able to exercise during their own free time in their cells. From these replies, it is evident that the AOC has no sincere interest in improving health

123 See the news report by the Chinese Television System on July 16, 2015(in Chinese): <http://ppt.cc/roP7l>.

124 According to Agency of Corrections data as of November 30, 2015, the total number of inmates over prison capacity was 7,985 or 14.3 percent of total capacity. As of April 30, 2016, this figure had declined to 6,309 or 11.2 percent of the 56,095 capacity. <http://ppt.cc/AdpIo>.

125 The three organizations were the Taiwan Association for Human Rights, the Judicial Reform Foundation and the Taiwan Association for Innocence.

126 Written reports and the proceedings of the conference (in Chinese) can be found at the following website: <http://ppt.cc/eOJGI>.

conditions.

255. With regard to the right to medical treatment, the TAPR stated that the AOC should re-evaluate the impact of the second generation National Health Insurance System and assess whether the number of clinic visitations was sufficient to meet the needs of inmates (for example, the number of mental health clinic visits to the Taoyuan Women's Prison were obviously insufficient) and establish mechanisms whereby health agencies could take the initiative to carry out evaluations. The TAPR also stated that CSOs and professional medical NGOs should participate in the improvement of standards for review of applications for medical parole in order to establish a professional evaluation system and that remedial administrative procedures should be set up to handle appeals to rejections of applications for outside hospitalization under custody and medical parole. The TAPR also said the AOC should establish a system for psychological counselling and regular clinical visits to allow inmates to have counselling with fixed counsellors and to ensure realization of counselling ethics, such as the principle of confidentiality. The AOC replied that an increase in the frequency of clinical visits could be considered if they were insufficient and that channels for emergency access to outside medical treatment also existed. However, the AOC also stated that "inmates do not have the freedom of selection of medical treatment and the method of provision of medical services was a matter for the administration of correction institutions. Whether inmates should be treated in prison, sent outside for hospitalization under custody, sent to prison hospitals or granted medical parole were matters that correctional institutions can handle based on doctor diagnosis and recommendations." From this statement, it can be seen that the provision of medical services to inmates is still highly controlled by the prisons and not the responsibility of the Ministry of Health and Welfare as recommended by the independent experts.

256. With regard to the issue of privacy, TAHR stated that the right of privacy of defendants under detention was not protected. Each prison had different arrangements for the site of meetings with legal counsel, and sometimes there was no separation between defendants and defendants. Furthermore, litigation material provided by counsel to defendants should not be subject to surveillance or inspection. In its official reply, the AAC stated that, in accordance with Interpretation No. 654 issued by the Constitutional Court issued on January 23, 2009,[127] the policy of prisons at present is to "watch but not listen" when lawyers visit and to "open but not read" when inspecting documents. It is evident that the AAC's measures are still unable to fully protect the right of privacy between inmates and lawyers.

257. In the State report, the MOJ and the Judicial Yuan have replied to the

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127 See <http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=654>.

recommendation by the Experts to relax policies on drug use and introduce less restrictive provisions on pre-trial bail and parole. However, the data provided in the State report by these two agencies shows that they are unwilling to make such liberalizations. The MOJ believes that relaxing treatment of drug crimes is unacceptable since the high rate of recidivism in drug-related crimes would limit the effect of any relaxation on the overcrowding in prisons and that the release of persons convicted on drug-related crimes would harm social order. For its part, the Judicial Yuan only submitted an account of existing laws and statistical data to reply to the recommendations by the independent experts.

258. Lastly, regarding the question of former president Chen Shui-bian, the MOJ approved his application for medical parole for one month on January 5, 2015. As of the end of 2015, his parole has been extended three times. After being released on medical parole, former president Chen's health has improved.

COR Point 61 Administration of Justice (Articles 9, 10 and 14)

259. We affirm the actions during the past two years taken by the MOI, the Mainland Affairs Council and the Judicial Yuan in response to interpretations by the Constitutional Court and the Concluding Observations and Recommendations of the Experts of submitting and securing legislative approval for important revisions to the Immigration Act and the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, both effective July 2015, and the Habeas Corpus Act. The first two bills of revisions require that any restriction of the physical freedom of foreign citizens or their detention be in accord with the principle of the retention by a judge (See Paragraphs 212-215 of the State Report Response to the Concluding Observations and Recommendations). The Judicial Yuan's revised Habeus Corpus Act takes a further step in allowing persons whose physical freedom is restricted for non-criminal cases to gain opportunity for judicial review by filing a writ of habeus corpus. However, an analysis of cases of habeus corpus conducted by civil society human rights organizations showed that many courts simply wanted to ensure the legitimacy of the trial process and refused to substantively examine the necessity for detention.[128] This state of affairs is not in keeping with the requirement of Recommendation 61 that courts must have the power to "decide whether the detention is lawful."

260. The procedure for mandatory hospitalization for gravely ill patients in the Mental

128 See the news release of a news conference to review implementation of the revised Habeus Corpus Act held on January 6, 2015 (in Chinese): <http://ppt.cc/EtgIo??>. The Habeus Corpus Act had been revised in January 8, 2014 and took effect in July 2015. An English translation is available here: <http://law.moj.gov.tw/Eng/LawClass/LawHistory.aspx?PCode=C0010008>.

Health Act [129]also constitutes a situation in which the personal freedom of an individual is abrogated. However, the protections for severely ill patients who are subjected to mandatory hospitalization are still quite limited in terms of both the law itself and implementation. Article 42 of the Mental Health Act allows affected persons to petition courts to end mandatory hospitalization as a remedial channel. for remedial assistance, but, in fact, patients who are locked up in mental health institutions are subject to intense control and restrictions if they seek external assistance such as asking a legal aid lawyer for assistance. Therefore, it is almost impossible for affected persons to gain access to this remedial procedure. Even if he or she is finally able to file an petition to the court, the ratio of court decisions to halt mandatory hospitalization is extremely low.

261. Moreover, the Mental Health Act provision for petitions to end mandatory hospitalization are only applicable to after-the-fact review procedures to determine whether there is a need to continue mandatory hospitalization. As far as the decisions of the MOHW Mental Illness Mandatory Assessment and Community Treatment Review Committee are concerned, there are as yet no judicial review procedures unless the person affected files a habeus corpus petition.

262. Similarly, while the person subjected to mandatory hospitalization can file a petition to the court, it is difficult to exercise this right given the intense control exerted over patients in mental health institutions. Although the Legal Aid Foundation has a "I Want to See a Judge" habeus corpus project that can assist any needful person, its qualifications for review are excessively stringent. Affected persons need to wait until the court issues a habeus corpus writ before the legal aid project can provide assistance. Since persons who are subjected to mandatory hospitalization have difficulty seeking for help from the outside world, it would not be a simple matter to apply for a writ of habeus corpus with legal assistance. Even if the person concerned was finally able to succeed in submitting a petition for a writ of habeus corpus and the petition was able to make it into a court for review, the reality is that as of the present the number of successful applications for petitions for writs of habeus corpus filed by persons subjected to mandatory hospitalization is zero.

263. In terms of the legal dimension, we recommend that the Mental Health Act should be revised in accord with the principle of reservation by the judges and the spirit of the interpretations by the Constitutional Court and the Conclusions and Recommendations by the Experts. In practice, the MOHW and concerned mental health institutions should not use medical care as a pretext to restrict the fundamental rights of communication and to seek legal counsel or other assistance of severely ill patients.

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129 See <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0020030>.

COR Point 62 Administration of Justice (Articles 9, 10 and 14)

264. After the release of Interpretation No 708 by the Constitutional Court on February 6, 2013, the Immigration Act was revised to reduce the period of administrative detention to 15 days. If a detained person cannot be repatriated within 15 days, immigration authorities can apply to judges for an extension, but the period of detention cannot exceed 45 days. If repatriation still cannot take place, immigration authorities can apply for another extension of 40 days, but the grand total of days detained cannot exceed 100 and immigration authorities must allow detained persons who object to being detained the right to apply for "habeus corpus."[130]

265. Point 62 of the Conclusions and Recommendations and Interpretation No. 710 issued by the Constitutional Court issued July 5, 2013 maintain that the lack of a ceiling on the days of temporary detention and lack of provision for judicial review for citizens of the People`s Republic of China clearly constitute discriminatory treatment compared to persons of other nationalities. Therefore, the Act Governing Relations between the People of the Taiwan Area and the Mainland Area has also been revised so that its Article 18-1 mandates that the number of days of temporary detention cannot exceed 150 days. However, this provision is still discriminatory compared to people of other nationalities.

266. There are only three scheduled repatriations by ship between Taiwan and China annually and this number has been reduced to two in some years. As a result, the time needed for repatriation is extended and the days of temporary detention hereby increased. In order to ensure that the conditions of temporary detention for PRC citizens are consistent with those of other nationalities, the Mainland Affairs Council should carry out further negotiations with the Chinese government.

267. With regard to foreigners whose period of temporary detention has exceeded the legal ceiling or for whom there is no necessity for detention, the National Immigration Agency (NIA) should cooperate with civic organizations permit release on bond to the custody of others and provide alternative shelters.

COR Point 63 Administration of Justice (Articles 9, 10 and 14)

268. In Interpretation No. 655 issued on October 16, 2009, Taiwan's Constitutional Court stated that "Article 101, Paragraph 1, Subparagraph 3 of the Code of

130 See Article 38-4 of the Immigration Act at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080132>.

Criminal Procedure stipulates that the courts may order to detain a defendant in a criminal trial when he/she is the major suspect of the crimes specified, and there is a reasonable ground to believe that the he/she may escape, may destroy, fabricate or falsify evidence, or may conspire with accomplices or witnesses, and when it becomes apparent to the courts that there will be difficulties with respect to the prosecution, the trial process, or the enforcement of the final judgment without such detention." After the publication of this constitutional interpretation, "considerable suspicion of having committed a crime" cannot be the sole justification for detention.

269. In 2012, opposition DPP Legislative Caucus convenor Ker Chien-ming and 30 other lawmakers proposed to excise the provisions in Article 101 and Article 101-1 of the Code of Criminal Procedure regarding pretrial detention and detention for major crimes. However, this draft bill was opposed by the Ministry of Justice. The MOJ's reasons included the following: (1) every country has provisions for pretrial detention and from a comparative standpoint, there are no major problems in the current provisions; and (2) the revisions would require prosecutorial agencies to expend extra time, manpower, material and expenses in order to secure evidence, prevent escape or the destruction, fabrication or falsification of evidence end would thereby impose additional and inestimable fiscal burdens on the State. Moreover, the MOJ maintained that even if there is factual "evidence" that a defendant is under suspicion for having committed major offenses, prosecutors would not be allowed to detain such a defendant and the possibility of escape would thereby increase.

270. However, the above mentioned draft revisions did not address the provision of Article 5 of the Criminal Speedy Trial Act of 2010 that the total accumulated period of detention cannot exceed eight (8) years. In fact, numerous defendants detained in criminal trial proceedings have been under detention for longer than eight years before this act was passed. Even if the accumulated period of detention has not exceeded eight years, this type of long-term detention actually indicates insufficient evidence. However, the MOJ has yet to submit any revisions to these provisions in contradiction to the recommendations of the Experts.

271. In addition, there is no shortage of cases in which when a defendant is placed under pretrial detention, courts also demand that the defendant not be allowed to receive visits or communicate with other persons (with the exception of visits or communications with his or her lawyer). Such restrictions on contact and communications often make it impossible for the defendant to have sufficient contact with the files of evidence against him or her (sometimes even the defendant's legal counsel is not permitted to review the files of evidence). Moreover, defendants are also subject to rigorous restrictions when meeting with their lawyers and are unable to have full and free dialogue to prepare their defence. Therefore, this type of pretrial detention gravely violates the provision of Article

14 Section 3 Clause 2 of the ICCPR that every defendant should "have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing."

COR Point 64 Administration of Justice (Articles 9, 10 and 14)

272. As stated in the Experts' Concluding Observations and Recommendations, the existing Criminal Speedy Trial Act reduced the maximum length of criminal trials to eight years. Although this time limit is shorter than the time used in many criminal trial proceedings in Taiwan, it still signifies a waste of the lifetime of the people affected. Unfortunately, concerned agencies and the Legislative Yuan have yet to review this provision or propose revisions.

273. Examination of the original intent of the Criminal Speedy Trial Act shows that the eight - year restriction should include time used for appeals. Hence, the statement by the Experts that "there are no corresponding time limits imposed on the Supreme Court, which often repeatedly revokes the High Court judgements and remands the case back to the High Court for repeated retrials" may reflect a misunderstanding of the provisions of this act.

COR Point 65 Administration of Justice (Articles 9, 10 and 14)

Regarding the revision of Article 376 of the Code of Criminal Procedure

274. According to Article 376 of the Code of Criminal Procedure, cases involving the following offenses are not appealable to the court of the third instance once judged by the court of second instance: (1) offenses with a maximum punishment of no more than three years imprisonment, detention, or a fine only; (2) the offense of theft specified in Articles 320 and 321 of the Criminal Code; (3) the offense of embezzlement specified in Article 335 and Paragraph 2 of Article 336 of the Criminal Code; (4) the offense of False Pretense specified in Articles 339 and 341 of the Criminal Code; (5) the offense of breach trust specified in Article 342 of the Criminal Code; (6) the offense of extortion specified in Article 346 of the Criminal Code; and, (7) the offense of concealing booty or swag specified in Paragraph 2 of Article 349 of the Criminal Code.

275. Therefore, if acquitted in the trial of the first instance and convicted by the court of the second instance, the most that a defendant can do is resort to extraordinary remedial procedures such as filing a motion for a retrial or for an extraordinary appeal. However, in Taiwan, the preconditions for retrials or extraordinary appeals are quite rigorous. The way to address the root of the problem would be to

allow appeal to the court of the third instance for the offenses listed and thereby comply with the related requirements of the ICCPR.

276. Nevertheless, concerned agencies and the Legislative Yuan have yet to put forward any revisions or carry out any review of this provision, thereby allowing it to remain in effect to the present.

Regarding partial revision of Article 388 of the Code of Criminal Procedure

277. In its 1,358th meeting on May 28, 2010, Taiwan's Constitutional Court rejected a petition to evaluate the constitutionality of Article 388's exemption to the principle of mandatory defence.

278. In 2012, the Executive Yuan submitted a package of draft revisions to the Code of Criminal Procedure. The package included proposed revisions to Article 388 that intended to bring the trial of the third instance into the scope of mandatory defence. The stated reason for the revision was "(10), revise the provision regarding the applicability of mandatory defence in the trial of the third instance. . . Article 14, Paragraph 3 Clause (d) of the ICCPR states: '(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.' Therefore, the application of the provision for mandatory defence in Article 31 Paragraph 1 of the Code of Criminal Procedure should not distinguish between the levels of the trial: Consequently, verdicts may not be rendered for cases subject to mandatory defence under Article 31, Paragraph 1 unless the defence attorney submits an appellate brief or a statement of defence. "

279. Proposed revisions to this article have been submitted for review by the Legislative Yuan, but as yet have not been enacted.

COR Point 66 Administration of Justice (Articles 9, 10 and 14)

280. Article 33 of Taiwan's now defunct "Publications Act" mandated that "publications cannot comment on ongoing investigations or litigations which are still under trial, judicial officials handling such cases or persons involved in such litigations and cannot publish argumentation in court on cases which are banned from open disclosure." Subsequently, this law was revoked because of its excessive restrictions on freedom of expression. At present, Article 18 of Taiwan's Freedom of Government Information Law states: "Government information shall be restricted from disclosure or provision to the public making available to the public or provision in the following situations:....2. When disclosure or provision to the

public will obstruct the investigation, prosecution, or law enforcement of a crime, impair the fair trial of a criminal defendant, or injure other people's life, body, freedom or property." Therefore, under the scope of law, Taiwan still is attempting to prohibit news media from "trial by the media" and to realize the presumption of innocence before proven guilty through this provision which bans provision of further information to the media.

281. In fact, cases in which judicial trial proceedings are influenced by the media are still quite frequent. One example was the "Mama Mouth Cafe" murder case (also known as the Bali District double homicide in New Taipei City). Two persons, Lu Ping-hung and Ou Shih-chen, who were released for lack of evidence of their involvement, had difficulty sustaining normal lives due to intense pressure from the news media.[131] In addition, in January 2014, in the case of truck driver Chang Teh-cheng who rammed his truck into the Office of the President, it is also believed that concerned personnel informed the media that Chang had decided to ram his truck into the presidential compound due to difficulties in his marriage and with his family. However, most cases of family violence also involve structural social factors such as stigmatization of unemployment, gender stereotyping and class discrimination.[132] It was therefore unimaginable that the police could have, for the sake of slandering Chang Teh-cheng's motives for ramming the Office of the President, arbitrarily leaked information personal information about individuals involved in familial violence cases to the news media. This action not only gravely violated the right of privacy of all persons involved, but also fuelled even greater social stigmatization and absolutely violated the fundamental principles of coping with family violence.

282. Although some scholars and experts have proposed adding provisions to "severely sanction officials who leak information on criminal cases to the news media," there has not been any progress in this direction. No such bills have been submitted to the Legislative Yuan for review and neither judicial or executive government agencies have provided any such draft bills.

COR Point 70 Right to Privacy (ICCPR Article 17)

283. Statistics provided in the State report indicate that more women are fined for adultery than men. The criminalization of adultery in Article 239 of the Criminal Code creates substantive gender inequality and should be abolished as soon as

131 See "Bali double homicide suspect indicted," Taipei Times, April 13, 2013 <http://www.taipeitimes.com/News/taiwan/archives/2013/04/13/2003559527>.

132 See "Truck driver indicted in Presidential Office crash," China Post, March 7, 2014 <http://www.chinapost.com.tw/taiwan/national/national-news/2014/03/07/402235/Truck-driver.htm>.

possible. However, the government has repeatedly said in public meetings or in statements to the news media that it will not consider decriminalization of adultery until there is a consensus in public opinion regardless of the intense advocation by the Experts to decriminalize and in disregard of the substantive harm caused to Taiwan women by the criminalization of adultery.

284. In a joint news conference held March 19, 2013, the Awakening Foundation and Legislator Yu Mei-nu announced the initiation of a campaign to decriminalize adultery. This announcement received widespread support from many domestic legal scholars, judges, lawyers and social movement organizations. The bill, the first ever proposed in the Legislative Yuan to revoke the criminal penalty for adultery, was approved in its first reading in April 2013, but the Executive Yuan continued to delay and has neither taken new action or submitted any alternate bills.

285. On November 28, 2012, the Ministry of Justice held a public hearing during which experts and scholars from all circles in society were invited to express their views. However, this single and poorly publicized seminar was unable to realize effective dialogue or form any consensus. Although the hearing did not reach a conclusion to decriminalize adultery, it also did not reach a conclusion that "adultery should not be decriminalized" and the MOJ therefore should not be allowed to use this hearing as a basis to refuse to fulfil its human rights obligations. [133]

286. During the past four years, the MOJ has commissioned two public opinion surveys using on-line survey platforms which are not scientifically rigorous as its main response to this campaign. The MOJ continuously conflates the concepts of "the decriminalization of adultery" with "there should not be any legal consequences for adultery" to deliberately confuse the three different levels of responsibility in criminal law, civil law and morality and thus avoid discussion of existing provisions and protections in civil law. The MOJ has only a few public opinion surveys on this issue are rare. Some are online surveys which lack objectivity and fairness but the MOJ nonetheless uses their untrustworthy data to claim that "public opinion shows that the time (for decriminalization of adultery) has not yet mature since there is no social consensus."

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133 The MOJ's position on the decriminalization of adultery is expressed fully in a statement submitted by the MOJ to the Legislative Yuan on January 14, 2016. Besides presenting pro and con arguments, the MAJ said Taiwan was joined in criminalization of adultery by 23 of 50 states in the United States of America and by other countries such as Saudi Arabia, India, Indonesia, Cambodia, Libya, Afghanistan, Pakistan, Nigeria, Iran, Egypt and the Sudan. The statement noted that Germany, Japan, France, Italy, Austria, South Korea, Sweden, Denmark and the People's Republic of China had abolished criminal penalties for adultery. the MAJ said that the purpose of Article 239 was to "maintain the happiness and harmony of family life and ensure the purity of sexual relations between husband and wife and a healthy family system with one husband and one wife." The MAJ cited commissioned and on-line opinion polls as evidence that a majority of Taiwan citizens opposed decriminalization and in support of its stance to approach the issue "cautiously." <http://lci.ly.gov.tw/LyLCEW/agenda1/02/pdf/09/01/07/LCEWA01_090107_00166.pdf>.

287. Compared to the dereliction of duty and avoidance of responsibility on the part of government agencies, civil society organizations (CSOs) have continued to actively promote the decriminalization of adultery. In February 2015, the South Korean Constitutional Court issued its verdict that Article 241 of that country's criminal code on the crime of adultery was unconstitutional and reignited the calls by CSOs that our country should also decriminalize adultery. However, when asked by reporters on whether Taiwan should follow suit, MOJ spokesmen continued to use the claim that "a social consensus is lacking" as their only response and thereby persisted in avoiding to take proper responsibility.

288. We demand that the State should fulfil its responsibility and promptly hold public hearings on the question of decriminalization of adultery and provide a research report on the current situation regarding the criminalization of adultery in Taiwan.

COR Point 71 Right to Privacy (ICCPR Article 17)

289. Point 71 of the Concluding Observations and Recommendations by the Experts expressed two concerns over communication monitoring: (1) the excessively high number of applications for communications monitoring and the high rate of approval gives rise to concerns of misuse of such monitoring; and, (2) the existing process of judicial oversight may not be sufficient to discover cases of misuse and channels with wider access are needed to accept complaints of misuse.

290. Although communications monitoring is a measure of last resort in investigations, applications by prosecutors in recent years for communication monitoring have continued to be high. According to data collected by the Judicial Yuan for 2015, courts received 22,770 applications for monitoring for a total of nearly 30,000 lines, a figure which is over 100 or even nearly 1,000 times levels in countries such as the United States or Japan. The persistence of this high number of applications combined with the relationship between communications monitoring with no clear beginning or end and "convictions" leads to the inability of society to avoid anxiety over the misuse of communications monitoring and also poses the possibility of substantially influencing court trials.

291. In addition, the National Security Bureau (NSB), the intelligence agency responsible for carrying out communications monitoring, has to the present date failed to fulfil its obligation to disclose statistics on communication monitoring. The reason lies in the fact that the draft "Intelligence Surveillance Act" which is to be used to regulate the NSB, was under discussion in the Legislative Yuan for nearly two years, but had not yet entered the actual legislative agenda before the end of the Eight Legislative Yuan in December 2015. In a meeting on October 13, 2015, the NSB cited the claim that the Communication Security and Surveillance Act was still in need of revision in order to continue to delay the legislative process

for the former draft law. The NSB seems willing to allow most communications and data monitoring in intelligence surveillance to continue behind a black curtain, thus adding to the sense of distrust among citizens.

292. Given that concern over such surveillance has not declined, the limitation and unclear effectiveness of channels for redress only adds to citizen anxiety. Since revisions in the Communication Security and Surveillance Act were enacted and the right to file interlocutory appeals was added to Articles 404 and 416 of the Code of Criminal Procedure on January 29, 2014, there have been only nine cases of such appeals, all of which were rejected by various branches of the Taiwan High Court.

293. In summary, we recommend that courts should carry out substantive review of applications for communications monitoring in order to reduce the abuse of such applications by prosecutors and police. Moreover, the Legislative Yuan should complete the enactment of an Intelligence Surveillance Act to supervise national security and intelligence agencies and demand the regular disclosure of related information on communications surveillance.

COR Point 72 Freedom of Expression (ICCPR Articles 19-20)

294. To respond to civic concerns on the lack of legal foundation to regulate media monopolization, the National Communications Commission (NCC) submitted a draft "Act for the Prevention of Broadcasting and Television Media Monopoly and the Maintenance of Diversity" for review by the Legislative Yuan in April 2013. However, this draft bill impinged on a wide range of issues and interests and, although there was extended discussion in the Legislative Yuan, was not enacted. Subsequently, at the end of 2015, the NCC submitted five draft bills with the aim of integrating and bolstering information flows. However, the content of these bills unfortunately did not contain any regulation of media mergers.

295. The problem of media monopolization in Taiwan is an issue of private sector capital, but is not entirely a matter of individual capitalists monopolizing media. There is already a high degree of concentration of private ownership in Taiwan media and Taiwan's public media is unable to effectively compete with private commercial media and its scale is even smaller than that of public media in the United States, which has the smallest share of public media among countries in Asia, Europe, the Americas and Australia. It is also noteworthy that when the United Nations Education, Science and Culture Organization (UNESCO) adopted the Convention on the Protection and Promotion of the Diversity of Cultural Expressions in October 2005 used the concept of "utilizing public media services" to supplant "the prevention of excessive media concentration."

296. Besides opposing media monopolization, civil society organizations advocate the creation of a "Diversity Foundation" and "expansion of the scale of public media" to ensure the dissemination of diverse views.

COR Points 73 (Freedom of Expression) and 75 (Freedom of Assembly) (ICCPR Articles 19-21)

297. The response of the State report to Point 73 only collates the types of existing restrictions on freedom of expression and lists the legislative reasons for these limitations. In form, the State report offers Article 23 of the Constitution and Article 19 Paragraph Three of the ICCPR in support of its position that all of these existing restrictions are in keeping with the requirements of the ICCPR, but provides neither substantive discourse on each of these restrictions nor genuine response to the Conclusions and Recommendations of the Experts.

298. In addition, as noted in the State Report's response to Point 75, the new Legislative Yuan with a DPP majority began to revise the Assembly and Parade Act soon after taking their seats February 1. The draft bill, renamed the "Assembly and Parade Protection Act," completed its first reading in the legislative Interior Affairs Committee in May. The draft revisions replace the current requirement for permits and revoke all stipulations for special fines and penalties and shifts responsibility for administration from the National Police Administration or local police departments to the Ministry of the Interior or city or county mayors. However, the draft bill retains prohibition on assemblies in "safe distances," previously named "prohibited zones," and, although the zones are smaller, the number of places determined to need "safe distance zones" was increased. Hence, the overall effect on the locations for assemblies and marches has not changed. In addition, the unclear preconditions for utilization of new provisions for forcible dispersion of assemblies or marches may actually legalize police actions to disperse assemblies or marches.

299. Even though the Constitutional Court declared in its Interpretation No. 718 issued March 21, 2014 that the permit system for urgent or spontaneous assemblies was unconstitutional, related corrective draft bills have been shelved. The government has instead drafted its own administrative rules to manage urgent or spontaneous rallies. This directions mandate that police still have the power to judge whether a rally is urgent or spontaneous and determine the identity of the responsible persons on site. [134]There are cases in which the police have used the lack of a site

134 "Directions for Handling Occasional and Urgent Assemblies and Parades" issued by the Ministry of the Interior on December 29, 2014: <http://ppt.cc/lTLMV>.

permit as justification to reject an urgent registration of a rally.[135] It is evident that these directions do not really protect the right to hold urgent or spontaneous rallies.

300. Besides the legal issues raised by the Experts in the Conclusion and Recommendations, we believe that the restrictions on the freedoms of expression and assembly imposed by the Social Order Maintenance Act (SOMA) must not be overlooked. The provisions of this law regarding rumor-mongering, making loud noises that disturb public tranquillity or harassment are rarely applied, but still are utilized to curb freedom of expression and assembly. For example, on July 8, 2015, a man was fined NT$30,000 under Article 63 of this act for "spreading rumors in a way that is sufficient to undermine public order and peace" because he disseminated on the internet statements unfavourable to a certain political party. We must in particular point out that these articles in the criminal code and the SOMA are actually applied by the government, depending on the situation, in a targeted and instrumental manner to arrest, fine or indict people when it wants to suppress the freedoms of speech and assembly. These articles constitute a system for the criminalization of speech and protest and cannot be evaluated in isolation.

301. Besides the question of revision of the legal code, the problem of the accountability of the police when enforcing law also gravely threatens the freedoms of speech and assembly. For example, dispersal actions carried out by police on the evening of March 23-4, 2014 and on April 28 caused numerous injuries to peaceful demonstrators. In a protest held on July 23, 2015 at the Ministry of Education, three journalists were arrested on the spot and prevented from communicating with their news agencies even though they did not violate the instructions of police. [136] However, the police have yet to carry out any effort to ascertain responsibility, impose sanctions or adopt concrete remedial measures for these actions which infringed on the freedoms of speech and assembly. These examples show that while the government claims that it has done its best under existing laws to relax restrictions on freedom of assembly, the content of current related administrative rules is both unknown and unclear and have not been able to place effective restrictions on excesses in law enforcement actions.[137]

302. Moreover, the National Police Administration's internal affairs department, the

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135 See Taipei City Police Department Zhongzheng First Precinct, "Press materials on the Illegal Long-term Protest adjacent to Private Housing by Hydis Workers," <http://ppt.cc/XUAeC>. This website was accessed last on November 19, 2015 but is no longer available. See Taipei Times,"Hydis workers sent home," June 11, 2015 <http://www.taipeitimes.com/News/taiwan/archives/2015/06/11/2003620441>.

136 See the statement by International Federation of Journalists (IFJ) issued on July 27, 2015: "IFJ calls for the immediate release of three journalists in Taipei," <http://www.ifj.org/nc/news-single-view/backpid/53/article/ifj-calls-for-the-immediate-release-of-three-journalists-in-taipei/>.

137 For example, the ``Operating Procedure for Police Agencies in Handling Mass Actions`` is still listed by the police as a secret document.

Control Yuan and the judicial system have all been unable to investigate the responsibility for personnel involved in these incidents. The culture of impunity for the abuse of police powers continues to be a major threat to the exercise of the freedoms of speech and assembly in Taiwan.

303. In addition to ensuring that the recommendations of the Experts are concretely realized in re-examination of the criminal code, the election and recall law and the assembly and parade act, we recommend that the SOMA and other administrative laws as well as police administrative guidelines also be included in the scope of re-examination and revision. Moreover, such re-examination should also pay attention to the suppressive effect on disadvantaged groups of fines, administrative charges and injunctions as well as criminal punishment. At the same time, the government should formulate a concrete and feasible system of supervision and accountability mechanisms with regard to police behaviour. Policies to ensure the protection of human rights should just be empty talk but must definitely and clearly impose sanctions when law enforcement powers are misused.

COR Point 74 Freedom of Expression (ICCPR Article 20)

304. Since the fifth Legislative Yuan took office in early in 2004 to the present, lawmakers have off and on discussed the enactment of ethnic equality or other similar laws. In 2009, the "Fan Lan-chin" Incident sparked an especially intense debate about ethnic equality laws. At that time, lawmakers from various political parties put forward nine different bills, most of which were directed against the dissemination of hate speech.[138]

305. Since the seating of the ninth Legislative Yuan in February 2016, several lawmakers have separately submitted or announced intentions to draft anti-discrimination laws, including the prohibition of discrimination on grounds of race or ethnicity, status of immigrants, gender identity or mental or physical handicaps. A draft "ethnic equality act" was approved for its first reading by the

138 "Fan Lan-chin" was a pseudonym of Kuo Kuan-ying, a former journalist and official in the former Government Information Office who had also served as the information section chief for the Taipei Economic and Culture Office in Toronto, Canada. Kuo had published numerous commentaries on the ``Fan Lan-chin`` blog which were widely seen as having denigrated native Taiwanese, expressed hatred to Japan, incited divisions between ethnic groups, notably between immigrants from mainland China who came to Taiwan with the KMT forces under Chiang Kai-shek in 1949-1950, and expressed support for the ``White Terror`` imposed by the KMT martial law regime. In March 2009, the GIO suspended Kuo from his post and he later resigned from the agency. See Maubo Chang, ``GIO suspends controversial official from Toronto post,`` China Post, March 23, 2009 <https://www.google.com.tw/search?q=Fan+Lan-chin&ei=hMSpV4i4Esyo0ATlxIngDA&start=10&sa=N&biw=1143&bih=546&dpr=0.9>.

Legislature's Interior Affairs Committee on July 13, 2016.[139]

COR Point 76 The Right to Marriage and Family Life (ICCPR Articles 23-24)

The age of marriage

306. In democratic states with the rule of law, parliamentary organs exercise their powers based on the mandate of ballots cast by the people. In line with this principle, the Organic Law of the Legislative Yuan contains the principle of "no continuity between legislatures" so that when legislators' term comes to an end, all the bills, except budgetary (final account) and petition bills that have not been resolved upon, shall not continue to be examined in the next Legislative Yuan. After the new Legislature is elected, the new parliamentary representatives and the new central government will newly submit and review various bills in keeping with the current state of society and the principles of democracy and rule of law. The State report mentions that the Executive Yuan submitted relevant revisions to the Civil Code to the Legislative Yuan in 2011, but because legislators expressed differing views while reviewing these draft revisions, the government decided not to re-submit these revisions in order to "respect the Legislative Yuan." This explanation neglects to note that a new Eighth Legislative Yuan had been elected and had been seated in February 2012. the MOJ should have re-submitted the draft revisions and explained to lawmakers why the draft changes were necessary to be in step with the two Covenants. The MOJ's claim that the government needed to "respect the old Legislature" in the face of a new Legislature displays a transparent refusal to heed the fundamental principles of democracy and the rule of law and violated its own obligation to respect the Covenants. Furthermore, although lawmakers expressed different views when the draft revisions were under review in 2011, committee meeting nonetheless resolved that "the MOJ should again invite experts and scholars to discuss the suitable marriage age for men and women" and "carefully handle this issue." The State report only stated that the MOJ held a meeting to discuss the minimum age for engagement and marriage in March 2014, but did not relate what further actions were taken.

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139 See Tseng Ying-yu, ``Anti-Discrimination: Legislature Gives First Reading for Ethnic Equality Draft Bill,`` Apple Daily Taiwan (in Chinese), July 13, 2016 <http://www.appledaily.com.tw/realtimenews/article/new/20160713/907333/. See also Hsieh Ting-fan, ``Anti-discrimination draft review adjourned again,`` Taipei Times, July 1, 2016 <http://www.taipeitimes.com/News/taiwan/archives/2016/07/01/2003650106>.

COR Point 77 The Right of Marriage and Family Life

307. In early 2015, revisions to the Domestic Violence Prevention Act added the funding sources for the Violence Prevention Fund.[140] However, the budget for the prevention of gender violence in the central government budget for 2016 was not increased but actually cut to NT$241,085,000, compared to over NT$260 million in 2014 and over NT$240 million in 2015. Even more worrying is that fact that the tightening of budget resources had been made even more serious by the expansion of the scope of application of this act had expanded after the revisions (through inclusion of children and juveniles who have witnessed family violence and victims of violence who are 16 years of age or older and victims of violence who have intimate personal relations but do not cohabit.)[141]

308. According to a MOHW survey conducted in 2015,[142] 26 percent of Taiwanese women have suffered violence from intimate partners during their lives, with the most common form being psychological violence which 21% have faced.[143] We recommend that the government should estimate needed allocations for the prevention of violence based on the data of this survey and gradually expand the budget allocation to respond to the needs of society.

309. In recent years, the leakage and public dissemination of private sexual images without permission and the rise of new types of blackmail (such as revenge porn or sextortion) have worsened with the development of internet and social media technology have attracted the attention of the government. Official and unofficial studies in the United States, Japan, England, Australia and other countries have discovered that 80-90% of victims of revenge porn are women. Since revenge porn occurs most frequently as a means of revenge after the break-up of intimate relationships, such behaviour can also be considered to be a form of intimate violence.

310. An analysis of news coverage conducted by the Taipei Women's Rescue Foundation in 2015 found that an average of 5.17 cases of revenge porn were

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140 Revisions to the ``Domestic Violence Prevention Act`` were promulgated on February 4, 2015, including changes in Article 6 that authorized the central competent aency to establish a fund to reinforce the promotion of work related to the prevention of domestic violence and sexual assault. Financial sources for the new fund were to include government budget allocations, payments for deferred prosecution, payments for plea bargaining, dividends from the fund, donations, fines imposed in accordance with the act and other related sources of income.

141 Proceedings, "Meeting to Study the Management and Utilization Methods for the Domestic Violence Prevention Fund," Ministry of Health and Welfare, September 16, 2015.

142 Ministry of Health and Welfare, "A Survey of Violence Suffered by Taiwan Women from Intimate Partners," The survey was conducted in July-August 2015 and had 529 effective responses. http://www.mohw.gov.tw/MOHW_Upload/doc/%E8%A6%AA%E5%AF%86%E9%97%9C%E4%BF%82%E6%9A%B4%E5%8A%9B-%E9%99%84%E4%BB%B6_0053994002.pdf.

143 Lee I-chia, "A quarter of women have faced violence: ministry," Taipei Times, June 4 2016 <http://www.taipeitimes.com/News/taiwan/archives/2016/03/03/2003640708)>.

reported every week, showing that this type of crime is now quite widespread in Taiwan, and that the age of victims was declining to include minors between the ages of 12-18.[144] Once images of the victim are disseminated on the internet, they may rapidly spread to innumerable other websites and may be impossible to delete, thus causing irreparable pain to the victim. Nevertheless, the government has yet to take active action against such offenses and has failed to realize numerous obligations of the State under CEDAW, such as the following:

(a) There is no national statistical data that can be used to estimate the reasons for the spread and the impact of this kind of violence;

(b) Many victims have requested assistance from judicial agencies but have yet to receive active response and there are even examples of discrimination against victims on the part of judicial personnel, a situation which highlights the insufficient sensitivity in our country regarding the prevention of revenge porn and similar forms of sexual violence;

(c) In Article 235 on the crime of "distributing obscene material," the existing Criminal Code does not have provisions for responding to harm inflicted on the personality rights of the victim and the sentences imposed by the judiciary on perpetrators, often light sentences of less than six months' imprisonment which, under Article 41, can be can be directly commuted to a fine at a daily rate of NT$1,000 - NT$3,000, have little deterrent effect;

(d) Internet service providers should bear corporate responsibility for this kind of sexual violence, but the government has yet to use any binding laws or administrative orders to carry out effective monitoring of image downloading systems or internet service providers, thus making it very difficult for victims to demand the deletion of such images; and,

(e) Since the flood of sexual content on the internet and the behaviour of many internet users has encouraged the spread of revenge porn crimes, but society and public opinion remain sunk in the misguided myth of blaming the victims, leading victims to frequently not dare to request assistance. In this regard, the State has yet to take the initiative to create an environment that can encourage female victims to request assistance.

311. We urge that the State should take the following actions: (1) immediately conduct a national survey on the extent of revenge porn criminal activity and disclose the findings of the investigation; (2) adopt appropriate measures to cope with revenge porn and other sexual crimes and review the revise existing laws and policies to carry out relevant sanctions, provide suitable protection and support services for

144 Peggy Yu and Jonathan Chin 'Most victims of revenge porn targeted by partners' , Taipei Times, Apr 1 2016 <http://www.taipeitimes.com/News/taiwan/archives/2016/04/01/2003642946>.

victims and guide the social climate to eliminate this kind of violence against women; and (3) promote the enactment of laws that require internet service providers to fulfil their social responsibility to moderate the internet and establish mechanisms to assist victims delete harmful images.

COR Points 78-79

Diversity of Families and Marriage

312. The MOJ denies the statement by the Experts that existing law is "discriminatory" in its denial of legal recognition of same-sex marriages or cohabiting partnerships. With regard to the existing legal ban on same-sex marriage, the Taipei City government on June 17, 2015 announced that it would allow same - sex partners to register "civil partnership certificates" at city Household Registration Offices, following a similar move by the Kaohsiung City government in May. However, after household registration offices had rejected the applications of many same-sex couples to register on the grounds that such registration violated Articles 972, 980 and 982 of the Civil Code, the Taipei City Department of Civil Affairs on July 23 resolved to ask the Constitutional Court for an interpretation as to whether such refusal violated Articles 7, 22 and 23 of the Constitution and whether the Constitution forbids the government from restricting marriage rights for same-sex couples. [145] With regards to this issue, the MOJ advocates that the relevant provisions in the Civil Code do not conflict with the Constitution and stated that it had already provided its legal advice to the Executive Yuan. [146]

313. The MOJ has refused to submit related revisions to the Civil Code. Revising the Civil Code to permit same-sex marriages would not involve any technical problems. In the Legislative Yuan, two groups of lawmakers have submitted draft packages of revisions of the Civil Code for "equalization of marriage rights" (same-sex marriage) and both have had their first readings approved by legislative committee. Pressured by civil society organizations and lawmakers, the MOJ ultimately cited excuses to refuse to provide its own version of draft revisions such as claiming there was no social consensus and the proposed changes were too controversial and too far reaching in scope. Although the MOJ has put forward the concept of a "two-stage approach" to revision the Civil Code, it has yet to put forward even the first phase of concrete draft revisions to particular articles. With

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145 See Grace Wu, "Taipei will seek court action on same-sex marriage," China Post, July 24, 2015 <http://www.chinapost.com.tw/taiwan/national/national-news/2015/07/24/441502/Taipei-will.htm>.

146 "Taipei City petitions for constitutional interpretation on same-sex marriage; MAJ: Civil Code provisions do not violate Constitution," China Times (Chinese), September 30, 2015 <http://www.chinatimes.com/realtimenews/20150930004835-260407>.

regard to the second stage objective of "legalization of same-sex partnerships," the MOJ has not offered any clear direction or schedule.

314. The MOJ has attempted to use public opinion as a condition for the implementation of human rights protections and, in an exercise of self-contradiction, refused to acknowledge the results of an opinion survey which itself conducted. On August 3, 2015, the MOJ opened online polls on the issue of the legalization of same-sex marriage. We believe that questions of the realization of fundamental human rights for minorities should not be decided by public opinion polls. Nevertheless, the result of this online poll showed that a majority of the participants supported same-sex marriage. However, despite this result, the MOJ continued to insist on adopting a "two-stage" revision strategy and has continued to use all kinds of reasons to refuse to revise the Civil Code.[147]

315. Regarding the question of whether same-sex partners can register as "relatives," an official of the Ministry of the Interior stated in October 2015 that the MOI "will conduct another evaluation after this issue is reviewed by the MOJ." It needs to be explained that, under Taiwan's legal system, the rights and obligations and legal status of relatives is far lower than that of spouses. Under the relationship of "relatives," same sex partners cannot act on behalf of their spouse or decide cannot ensure that same-sex partners to resolve problems of discrimination or difficulties faced by their partner in life or law.[148]

COR Point 80

Abortion and Autonomy

316. In 2012, civil society organizations and the Executive Yuan Department of Gender Equality called on the government to carry out an impact assessment on proposed draft revisions to the Genetic Health Act, including proposed new important draft provisions regarding consent from the spouse, mandatory notification, mandatory consideration periods and consultations. Subsequently, numerous consultations and meetings were held but the gender impact assessment on women's health and reproductive autonomy has yet to be completed, a result which displays the government's laxity and shirking of responsibility.

317. The Executive Yuan submitted draft revisions to the Genetic Health Act to the Legislative Yuan in May 2012. The draft changes revise the framework for artificial

147 See "Poll finds support for gay marriage, law on adultery," Taipei Times, August 11, 2015 <www.taipeitimes.com/News/taiwan/archives/2015/08/11/2003625105>.

148 See "Record of the Proceedings of the Fourth Meeting of the Second Round Review Meetings for the Second Regular Report on the Two Covenants," October 14, 2015.(in Chinese) http://www.humanrights.moj.gov.tw/lp.asp?ctNode=37012&CtUnit=13274&BaseDSD=7&mp=200.

abortions and, if approved, would have changed the current requirement for married women wanting abortions to obtain their "husband's consent" to providing "advance notification to the husband." However, in operational terms, there would be no substantive difference between "mandatory notification" and obtaining consent from the spouse. In healthy intimate relationships, there would be notification without the legal requirement for mandatory notification. Moreover, the special circumstances listed under which mandatory notification is not required are in practice stifling and difficult to implement since there would be difficulty in certifying and providing evidence and therefore may cause situations in which doctors are unwilling to carry out abortions or delay at the risk of affecting the health of the woman in question. Any explicit legal requirement for "spousal consent" or "mandatory notification" will place the power of decision-making in the head of men and override the autonomy of women over their own bodies and thereby create gender inequality.

318. The existing act does not explicitly contain a "period of consideration" as a precondition for women to have artificial abortions. However, Article 11 of the May 2012 set of draft revisions submitted by the Executive Yuan to the Legislative Yuan contained a provision that women wanting an abortion had to submit to a three-day period of reconsideration arranged by the hospital before the abortion could be carried out.

319. According to a survey conducted in 2006 by the Taiwan Association of Obstetrics and Gynaecology (TAOG) on the experiences of women undergoing abortions, most women from the time they realize they are pregnant to the time that they request a doctor to conduct an abortion already have a "consideration" period of at least eight days and have continuously discussed and debated the issue with family and friends and even medical professionals. There are very few women who will immediately decide to have an abortion upon realizing that they are pregnant. Therefore, the demand that women return home for another period of reconsideration constitutes a serious denigration of the capability of consideration and decision-making of women.

320. The requirements in Taiwan's Genetic Health Act that married women must obtain the consent of their spouses for an abortion and that minor women must obtain the agreement of a legal guardian may force women to resort to unsafe methods of abortion, such as self-administration of RU486 or going to unlicensed physicians.

321. We again urge the State to respect the Recommendations of the Experts and immediately revise the law in a manner that allows pregnant women to decide whether to have an abortion based on their free will.

Revise the Artificial Reproduction Act

322. Article 1 of Taiwan's Artificial Reproduction Act, enacted in March 2007, states: "This Act is enacted for the purpose of fostering the sound development of artificial reproduction, maintaining social ethics and health, and protecting the rights and interests of infertile couples, children conceived through artificial reproduction, and donors." This phrasing, restricts the qualifications of persons eligible to use this act to "infertile couples," according to the Ministry of Justice unofficial translation. A more precise translation of the term "fuqi" (in the legally valid Chinese version) as husbands and wives" shows that this article transgresses the principle of gender equality[149] as it uses the framework of heterosexual marriage to bind artificial reproduction technology, uses the blood doctrine to consolidate patriarchy, and, in tandem, reinforces the reproductive legitimacy of the heterosexual relationship between husband and wife. This act masks its exclusion of non-marriage relationships and refuses to acknowledge the right of a woman to be a mother outside of the institution of marriage. A woman in Taiwan, whether she is single or in a relationship with a homosexual or heterosexual partner, can use the power of her uterus to have normal reproduction, but she will be barred from access to artificial reproductive technology unless she has entered into a heterosexual marriage.

323. The Taiwan government has convened "citizen deliberative seminars to discuss whether a comprehensive review should be first undertaken as soon as possible of the Artificial Reproduction Act itself in order to amend features that are not in keeping with the concepts of gender equity before considering the insertion of a special chapter on "surrogate reproduction" into that act.

324. If the government genuinely was concerned with women's reproductive autonomy, the use by single mothers of their own uterus for artificial reproduction should receive priority attention and discussion relative to the risky and controversial use of artificial reproduction technologies by surrogate mothers. The MOHW has truly put the cart ahead of the horse by remaining secretive and refusing to disclose its own draft set of revisions while calling on civic organizations to submit their recommendations on the details of complementary measures. The MOHW's failure to correct the patriarchal framework of the Artificial Reproduction Act also continues to violate the principles of gender equity and reproductive autonomy mandated by CEDAW.

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149 The Ministry of Justice`s English translation of the Artificial Reproduction Act can be found at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070024>, while the legally valid Chinese version is at <http://law.moj.gov.tw/Law/LawSearchResult.aspx?p=A&t=A1A2E1F1&k1=%E4%BA%BA%E5%B7%A5%E7%94%9F%E6%AE%96/>.

COR Point 81 Follow up

325. The panel of international human rights experts recommended that the Taiwan government "undertake a follow-up review." We affirm that the Presidential Office Human Rights Consultative Committee and its procedural affairs section have, in a very short period of time, convened 22 "follow-up meetings on the preliminary response to the Concluding Observations and Recommendations meetings by each agency." In addition, we supported the appeal by civil society organizations for an additional 28 public hearings regarding controversial issues. In response to the 81 Concluding Observations and Recommendations, the Presidential Office Human Rights Consultative Committee itself has formed four teams responsible for research and study regarding a national human rights institution, education and training, human rights evaluation systems and law and regulation re-examination, respectively.

326. However, we must point out that the above-mentioned official actions still have many structural problems and shortcomings. First, the Taiwan government has yet enacted a "national human rights action plan" based on the specifications recommended by the United Nations to face and handle the 81 Concluding Observations and Recommendations issued by the international human rights experts. Therefore, even if the government has within a short period of time intensely convened so many meetings, the level of the government representatives has mainly been only at the working level. As a result, it has been difficult to engage in policy discussions, especially on the many issues that require cross-ministerial coordination such as forced evictions, the provision of health and medical care in prisons or exploitative conditions faced by migrant fishing boat crew. As the participating government representatives confine themselves to speaking for their own agencies or departments, it is difficult to hold focussed discussion on core issues.

327. Furthermore, the teams formed by the Presidential Office Human Rights Consultative Committee were primarily active in 2013-2014 and afterward did not make any progress. The only exception was the team concerned with the review and re-examination of laws and regulations, but even this team held its final meeting in October 2015 and announced that it had completed its immediate tasks and would not carry out any further follow-up activities. In fact, there are many issues raised by these 81 Concluding Observations and Recommendations that merit further follow-up. These include the establishment of a national human rights commission and the questions of how to handle other international human rights covenants and conventions that have not yet been incorporated into domestic law, how to encourage judicial officers to be more willing to cite the standards of the covenants, how to correct the problems of the lack of transparency and the right of participation of the persons influenced in government policy making. No less significant are the questions of how to ensure the right of truth

through the promotion of transitional justice, how to implement the right of self-governance for indigenous peoples and the Indigenous Peoples Basic Law, how to raise the female labour participation rate, how to end the super-exploitation of migrant fishing boat workers, how to ensure equal employment for physically or mentally disabled persons and other issues related to labour unions, marriage immigrants and stateless persons, forced evictions and expropriations all across Taiwan, the government's continued execution of death penalties, discrimination suffered by LGBTI persons, access to health and medical care in prisons and judicial reform. In the past four years, numerous new human rights issues have surfaced in Taiwan (please refer to the Shadow Report on the two covenants). All of these problems require cross-ministerial and policy level follow-up and disposition by the Taiwan government through a "national human rights action plan" during whose implementation persons whose rights are affected must participate in discussions and decision-making.

328. Therefore, we recommend that, after the completion of the review of the Second State Report on the two covenants, the Taiwan government must respond to the concluding observations and recommendations with a four-year "national human rights action plan" formulated and implemented by the Executive Yuan to resolve problems step by step and implement the stipulations of the recommendations made by the review committee and the two covenants.