

2022 Parallel Responses of Taiwan NGOs to CRC LOIs

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民間司法改革基金會	Judicial Reform Foundation
台北市行無礙資源推廣協會	Taiwan Access For All Association
台灣廢除死刑推動聯盟	Taiwan Alliance to End the Death Penalty
台灣刑事辯護律師協會	Taiwan Criminal Defense Attorney Association (TWCDA)
台灣國際醫學聯盟	Taiwan International Medical Alliance (TIMA)

Covenants Watch
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Chapter I General Measures of Implementation

1.1 Para. 7 and 4. Please provide information on the progress made in amending Implementation Act of the CRC so that it enables precedence over conflicting domestic law. Please explain in more detail the position regarding ratification of the Optional Protocols to the CRC on the Children Involved in Armed Conflicts and on the Sale of Children, Child Prostitution and Child Pornography, specifying in particular if any elements of either Protocol would cause problems for full implementation in Taiwan.

Response of Covenants Watch:

1. Regarding the amendment of the Implementation Act of the CRC, the government has not conducted any serious review of the CRC to examine how giving the CRC precedence would create difficulties for the executive and judiciary branches of the government.
2. The government could have followed the example set by Art. 10(2) of the Implementation Act of the CRPD to give CRPD precedence over conflicting domestic laws. As a matter of fact, actions/policies adopted by the executive branch still follow domestic laws, so the CRPD can take effect only after the convention is incorporated/translated into domestic laws. So there shouldn't be any difficulty for the executive branch.
3. On the other hand, there are a handful of litigations (for example, suing the government agencies for not making reasonable accommodations for persons with disabilities) in which CRPD was directly referenced by lawyers representing the employees, and some judges ruled according to CRPD in the absence of comparable provisions in any domestic law. These cases are few but significant because remedies should be available for all violations of rights.
4. In summary, giving the CRC precedence over local laws is not expected to cause difficulties. The problem would not be solved simply by listing it in the National Action Plan. On the contrary, the Ministry of Health and Welfare should take prompt actions to set a positive example.
5. As for the two protocols, we recommend that the International Review Committee urge the government to adopt them since the government has not identified any problems.

1.6 Para. 26. Please provide information on the effectiveness of the National Human Rights Commission in overall promotion of the rights of the child and in addressing cases of violation of the rights of the child, in light of the basic requirements for a visible, child friendly, accessible, and well budgeted child rights.

Response of Covenants Watch:

6. The NHRC started to function on August 1st, 2020. The NHRC was established in the Control Yuan, Taiwan's ombudsman institution. Ten of the 29 ombudsmen are supposed to function as full-time human rights commissioners. One of the commissioners was nominated because of her past work experience on children's rights.
7. However, members of the NHRC prefer to exercise/enjoy their ombudsman functions/status (to conduct investigation based on individual complaints), and two years after its establishment the NHRC has not been able to clarify to the general public their goals and strategic plans.
8. It seems that there is inadequate coordination/communication among members, and a lack of clear chain of command (Chief, members, executive secretary, and the staff).
9. The NHRC has not been able to adopt/develop methodologies and tools required for their proper functioning, such as systemic monitoring of the status of human rights enjoyment (including children), the ability to conduct National Inquiries, or the capacity to conduct human rights education.
10. In the spirit of preparing for the function of the National Preventive Mechanism (pursuant to the Bill to Implement the Convention against Torture and other cruel, inhuman or degrading treatment or punishment and its Optional Protocol, which is still under review in the Parliament, with an article designating the NHRC as the NPM), the NHRC visited most juvenile detention centers (juvenile detention house and correction schools) in 2021. Unfortunately the NHRC has not developed strong recommendations regarding relevant laws or policies, or advocacy programs to induce changes after the visits, and has yet to develop a working protocol for its visiting procedures.
11. In summary, the NHRC is not visible (because it is confusing itself with the Control Yuan), not accessible to ordinary people (or children) apart from its role as ombudsman institution, and has failed the expectation of playing a major role in Taiwan's human rights matters.

Chapter III General Principles

3.1 Para. 53 Please provide further details as to how the promotion of gender equality is monitored in schools and not left to the discretion of schools and teachers.

Response of Covenants Watch:

12. The response of the Ministry of Education actually confirms the impression that works related to gender equality are left to the discretion of individual schools and teachers.
13. The operation of K-12 education is under the direction of local (municipal and county) governments, and the Ministry of Education does not seem to be a strong supervisory authority. The Ministry could have issued policy guidelines on gender equality education to all schools (K-12), but it has for unknown reasons refrained from properly exercising its power.
14. The Ministry of Education has not validated whether its “Examination Form” for promoting gender equality in high schools is effective, and the form is not applicable in K-9.
15. The response also demonstrates that the Ministry of Education has not established a mechanism to routinely consult with or collect information from children, particularly those who are vulnerable. The emphasis on “child representatives” in various councils/meetings (for example, in government’s response to issue Paras. 73 and 80) demonstrates the mere formality and tokenistic approach to children’s participation in policy making and evaluation.

3.5 Paras. 73 and 80 Please provide further details as to how the participation in local government and in the curriculum review is working? Please include details about how children are selected to participate and what steps are taken to ensure that the groups are as representative as possible. Please provide examples of how participation is monitored and what impact, if any, children had on policy and practice.

Response of Covenants Watch

16. When the government is confronted with children’s participation, it overly relies on the presence of “Child Representatives” in various councils/meetings. As the representatives are selected from a competitive process, they tend to be elites among their peers. This response reflects the fact that the government, including all relevant ministries, has not established a mechanism to routinely consult with or collect information from children, particularly those who are vulnerable. The singular emphasis on “child representatives” demonstrates the formalistic and tokenistic approach to children’s participation in policy making and evaluation.
17. The government has not demonstrated how the participation of these child representatives has resulted in any major changes or modifications in its policies and regulations. In particular, how the opinion of children in these meetings have been dealt with pursuant to the procedural requirements listed in general comment No. 12.

Supplementary topics not mentioned in the list of topics

Response of Taiwan Criminal Defense Attorney Association

18. As stipulated by Article 9(1) of the Convention on the Rights of Children, “States Parties shall ensure that a child shall not be separated from his or her parents against their will”; and as promulgated in paragraph 18 of the General Comment No.7 to the CRC, “States parties should respect the primacy of parents, mothers and fathers. This includes the obligation not to separate children from their parents, unless it is in the child’s best interests (art. 9). Young children are especially vulnerable to adverse consequences of separations because of their physical dependence on and emotional attachment to their parents/primary caregivers.” And regarding the best interest of children, point 69 of the General Comment No.14 stipulates that “In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children.” which implies that the courts shall consider the children who were raised by the defendant, and consider alternatives to avoid harm by sentencing and separation.
19. Further, point 28 of the General Comment No.14 indicates that “In criminal cases, the best interests principle applies to children in conflict (i.e. alleged, accused or recognized as having infringed) or in contact (as victims or witnesses) with the law, as well as children affected by the situation of their parents in conflict with the law. The Committee underlines that protecting the child's best interests means that the traditional objectives of criminal justice, such as repression or retribution, must give way to rehabilitation and restorative justice objectives, when dealing with child offenders. It can be then known that the right to best interest of the children whose parents were affected in cases of breakage of law, shall be considered in the criminal process.
20. With regard to “children affected by the situation of their parents in conflict with the law” mentioned in Point 28 of the General Comment No.14, can be referred as promulgated in Point 14 of the same Comment, “Article 3, paragraph 1, establishes a framework with three different types of obligations for States parties: (a)The obligation to ensure that the child's best interests are appropriately integrated and consistently applied in every action taken by a public institution, especially in all implementation measures, administrative and judicial proceedings which directly or indirectly impact on children;”. Point 19 of the same Comment also mentioned that “The legal duty applies to all decisions and actions that directly or indirectly affect children. Thus, the term “concerning” refers first of all, to measures and decisions directly concerning a

child, children as a group or children in general, and secondly, to other measures that have an effect on an individual child, children as a group or children in general, even if they are not the direct targets of the measure. As stated in the Committee's general comment No. 7 (2005), such actions include those aimed at children (e.g. related to health, care or education), as well as actions which include children and other population groups (e.g. related to the environment, housing or transport) (para. 13 (b)). Therefore, "concerning" must be understood in a very broad sense." which can be read in parallel with Point 69 which indicates that "In cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case-by-case basis, with full consideration of the likely impacts of different sentences on the best interests of the affected child or children", it can be deduced that in cases where children may be affected by cases of conflict with the law, the courts shall apply the principle of the best interest of children, and prioritize the rights of children in accordance to Art.3 of the CRC

21. As a state that retained the institution of death penalty, as a means of depriving life, this institution may render children permanently lose their biological parents, the right to closeness, and the right be cared. Regarding the limits of death penalty, Point 49 of the General Comment No.36 to the International Covenant on Civil and Political Rights (ICCPR) had stated that "States parties must refrain from imposing the death penalty on individuals who face special barriers in defending themselves on an equal basis with others, such as persons whose serious psycho-social and intellectual disabilities impeded their effective defense, and on persons that have limited moral culpability. They should also refrain from executing persons that have diminished ability to understand the reasons for their sentence, and persons whose execution would be exceptionally cruel or would lead to exceptionally harsh results for them and their families, such as persons at an advanced age, parents to very young or dependent children, and individuals who have suffered in the past serious human rights violations." which indicates that the presence of minor children may constitute a ban on a death penalty sentence. This is consistent with the aforementioned provisions of the CRC, and can be considered as a universal norm of the human rights instruments.
22. Under the sentencing structure under Article 57 of the Criminal Code, the incorporation for considering the best interest of the child was yet to be realized. In practice, while some precedents (Taiwan High Court 2017, Appeal Verdict No.3154; Taiwan High Court Tainan Branch Court 2019, Zhu Shang Chong Geng (1) Verdict No.18) did consider the Convention and relevant General Comments, in cases where the parents or primary caregivers were sentenced, some also refused to take the best interest of children into consideration (Taiwan

Supreme Court 2019, Tai Shang Verdict No.411; Taiwan Supreme Court 2021, Tai Shang Verdict No.6288). There is no clear and consistent standard for the application of the best interests of children to the sentencing instruments of criminal law in current judicial practice, and there are direct denials which are in violation with the principle of the best interests of the child.

Chapter IV Civil rights and freedoms

4.7 Para 107. Please clarify whether the regulations concerning privacy for children and youth in placement institutions conform with the relevant international standards such as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty or the UN Guidelines for the Alternative Care of Children.

Joint response of Covenants Watch and Judicial Reform Foundation

23. For the privacy of juveniles under detention (correctional schools and detention houses), several concerns were not addressed by the government:
24. Juveniles are housed in dorms which usually accommodate 8 persons in a room, or in even larger rooms. Enjoyment of privacy is limited as it is almost impossible to have even a moment of solitude, day or night.
25. For safety reasons, the detention facilities are under CCTV surveillance, except toilets and a few corners.
26. The facility management is required to check all mails (to detect illegal materials in envelopes), and there is no way of guaranteeing that the examiners do not read the content of personal correspondences.

Chapter V Protection of children from violence

5.4 Para. 126 (Attachment 5-23) Please provide your views on the increase of cases of sexual abuse of children in schools and in placement institutions despite the activities taken by Taiwan in the recent years. In addition, please elaborate on the information that the numbers might even be higher since victims tend to endure sexual violence “silently” and schools and institutions often “refuse or resist investigations.”

Response of Covenants Watch

27. According to data provided by the government (Table 5), the case number of sexual harassment is much less than sexual assaults. This is unreasonable and reflects under-reporting of cases.

28. Many factors contribute to under-reporting of cases. For example, concerns about confidentiality, lack of confidence in adults regarding how the intricacies of incidents will be handled, fear of retaliation by the perpetrators, false belief that silence is the best strategy, etc. Some of these factors are difficult to tackle, but we emphasize the importance of three actions:

- (1) More training and established protocols are necessary to enhance the capability of managers/staff to manage reported cases. There are incidents where the mishandling of cases by some schools caused secondary harm to children.
- (2) The institutions should not rely only on passively receiving complaints. A clear zero tolerance attitude should be emphasized, and likely incidents should be investigated even without a formal complaint.
- (3) Correctional and placement institutions MUST refrain from assigning children with management or order-keeping responsibilities. This is ABSOLUTELY an inappropriate way to deal with shortage of management manpower, because this is creating power imbalance and hierarchy among children and it is often the “peer leaders” who may abuse their powers.

5.6 Para. 140. As an indication that a child has been exposed to violence represents an important opportunity for protection, justice and recovery, please provide information on efforts to protect children victims and witnesses of crime by enabling their safe and confidential participation in the proceedings.

Response of Covenants Watch

29. Children with disabilities are particularly vulnerable to violence and require additional protection during investigation, trial, and recovery stages.
30. In the government's response (para. 82-89), nothing was mentioned about children with disabilities.
31. It is recommended that the government take full account of Article 7 and 13 of the CRPD, and “ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”
32. The government should consider establishing systems such as intermediaries to ensure that procedures are carried out in an age- and disability-appropriate manner.

Chapter VI FAMILY ENVIRONMENT AND ALTERNATIVE CARE

Children with mothers in prison

6.9 Para. 180-182. In addition to the information already given here in relation to the detention of pregnant women and facilities for children accompanying their mothers in detention, please indicate if there are any sentencing guidelines or other official texts that encourage or allow for alternatives to a custodial sentence for women with young children.

Response of Taiwan Alliance to End the Death Penalty:

33. As the government has responded, at present, there are no sentencing guidelines in Taiwan. “The mechanisms of fine, community services and probation” mentioned in the response of the government are all existing measures in the criminal justice system, which was not designed in accordance with the consideration regarding the separation of parent/primary caregivers and the child, nor did these measures consider the best interest of the child. According to information gathered by NGOs, the execution of Li Hongji in 2018 and the execution of Shen Wenbin in 2020 were commenced without consideration of the best interests and circumstances of their underage children.
34. Apart from the absence of a provisional guarantee for the rights of children in the sentencing process, as the government has clearly acknowledged, there is also no official document in Taiwan that encourages alternatives to incarceration of the parent/primary caregiver. The response of the government had stated that the stage of execution of the sentence, which was undertaken by the prosecutor, was carried out in accordance with the sentence announced in the main text of the court judgment. Namely, there are no laws, systems, or measures to ensure that the rights of children will not be infringed upon, in events of separation from parents/primary caregivers who are subject to punishment or imprisonment.
35. The State has not conducted surveys regarding the figure of children with parents/primary caregivers who were incarcerated, sentenced to death penalty, subjected to death penalty, or in ongoing trials; rendering it difficult to access the administering of relevant psychological, economic, social, and educational resources, its substantive utility, and its coverage; for governmental agencies and the civil sector.
36. Courts at all levels have yet to perfect relevant procedures for children to participate in the criminal processes of their parents/primary caregivers.

Besides the lack of appropriate and private spaces, capacity-appropriate assistance for the children to grasp the judicial process, the professional training for judicial professionals of children's expressions is also lacking.

Chapter VII Disability, basic health and welfare

7.1 Para. 184. Beyond the measures listed in paras 212 and 213, please clarify whether any additional measures have been taken to address any gaps in the 8 availability, accessibility, acceptability and quality of physical and mental health care services for children in rural areas relative to urban areas.

Response of Independent Living Taiwan:

37. The enduring lack of diversity in resources for early treatment services, rendering accessible early treatment centers might not be able to provide appropriate early treatment services; this is especially obvious in rural settings. This may increase the cost of transportation and time for parents to access the services.

7.3 Para. 205. Please clarify whether the increase in the training of medical specialists is sufficient to meet the specialist health needs of children and youth particularly among Indigenous children and children in offshore areas.

Response of Independent Living Taiwan:

38. The number of medical professionals in rural areas and outlying islands is outright unable to meet the actual needs. For children with disabilities, special medical needs can only be satisfied when they were removed from their familiar environment and their families. There are also cases where children who were removed from their upbringing environment experience generational gaps in culture and language.

7.5 Para. 217 Please clarify whether any special measures are taken to enable the participation of children with disabilities in sporting activities within school and outside school and whether any data is collected on the number of children (those with and without a disability) involved in sporting activities outside of school and whether this data is disaggregated according to age, gender, location and socioeconomic status.

Joint response of Disabled Children's Rights and Advocacy Association in Taiwan, Taiwan Access For All Association, and Covenants Watch:

39. The statistics provided by the government (Table 7 - 15) were mostly about sports teams and those who participated in sports clubs in the school. What is

more concerning is statistics on how students with disabilities were able to participate in physical education classes, what kind of special arrangement was provided, and what kind of educational/training physical activities can students engage in.

40. Results should be provided to demonstrate whether the policies described in Para. 132 have actually delivered expected results. Observations of parents of children with disabilities are that students with disabilities are clustered into one class in physical education courses, they are segregated and do not interact with other kids. If students with disabilities attend the ordinary physical education classes, they are often told to sit and watch. (And they may be given low scores for nonparticipation in the course!) Sports facilities outside schools, such as gymnasiums, swimming pools, or ball parks, are not better. There usually is no one qualified to coach children with disabilities to exercise, and the facilities are often inaccessible. For school activities such as camping out, the camping sites are inaccessible.
41. The funding provided by the Ministry of Education to renovate the school playground is scheduled to be implemented 4 schools per year (there are a total of 2,668 primary schools in Taiwan!), and the budget is limited to 3 million NT (approximately 100,000 USD) per school. That budget is not enough to reconstruct an inclusive playground, so mostly the school would opt for a wheelchair-friendly swing, plus a couple of equipment which often require body-lifting. As for local government, only rich municipalities such as Taipei could afford the project, but it is equally limited to 4 schools per year with a budget size of 4 million NT. Only 10% of primary schools in Taipei completed renovations. In addition, there are only a small number of playground designers with expertise in disabilities; so the common practice among schools was to purchase ready-made, look-alike equipment made in China. The progress is hardly adequate both in terms of quantity and quality.

Response of Independent Living Taiwan:

42. The plan of establishing inclusive playgrounds and athletic policies were included in the government's response, without presenting whether children with disabilities were substantially encouraged to participate in physical activities. There are also reports from children with disabilities that indicated accommodation for PE classes was submitted in the drafting of IEP, but was rejected by the Certification and Schooling Committee on grounds that PE classes cannot be included in the scope of accommodations, while unilaterally adopted the criterion of the diagnosis certificate, instead of observations of teachers regarding the physical and mental condition of the child.

[7.7 Para. 219. Please clarify whether the increase in mental care services for children and](#)

young people satisfies the demand for these services and whether any disaggregated data is collected on the number of children suffering from mental health conditions.

Response of Independent Living Taiwan:

43. Point 142 of the government's response contains the provisional regulations, while omitting that children can easily purchase tobacco products at traditional betel nut stands.

Chapter VIII Education, leisure and cultural activities

8.1 Please provide further details of the supports given to students with disabilities and children in remote areas to ensure that they had continued access to education, including access to online education during school closures related to the pandemic. What is the plan for possible future lockdowns?

Response of Independent Living Taiwan:

44. In addition to ensuring the continuation of education, the competent authority shall also assure the quality of education. For children with disabilities, cases arose where:
- (1) The domestic setting was determined as "not a school" thus ineligible for remote learning.
 - (2) Assistive devices were not provided for remote learning settings, rendering a decline of teaching quality.
 - (3) Due to various forms of inconveniences, the primary caregiver can only assist in the online roll call and cannot monitor the teaching itself, for cases where disability and grandparenting intersect, children with disabilities may face scenarios of short-term absence from school.

8.2 Please provide details on policy/ measures taken to ensure that students are not subjected to bullying from teachers and coaches.

Response of Independent Living Taiwan:

45. For preventing students with disabilities from being bullied by teachers, coaches and peers, and echoing Article 8 of the CRPD, awareness of different parties of concern shall be raised, to increase knowledge of persons with disabilities and their families, to promote the rights and dignity of children with disabilities, and to eliminate prejudice and discrimination.