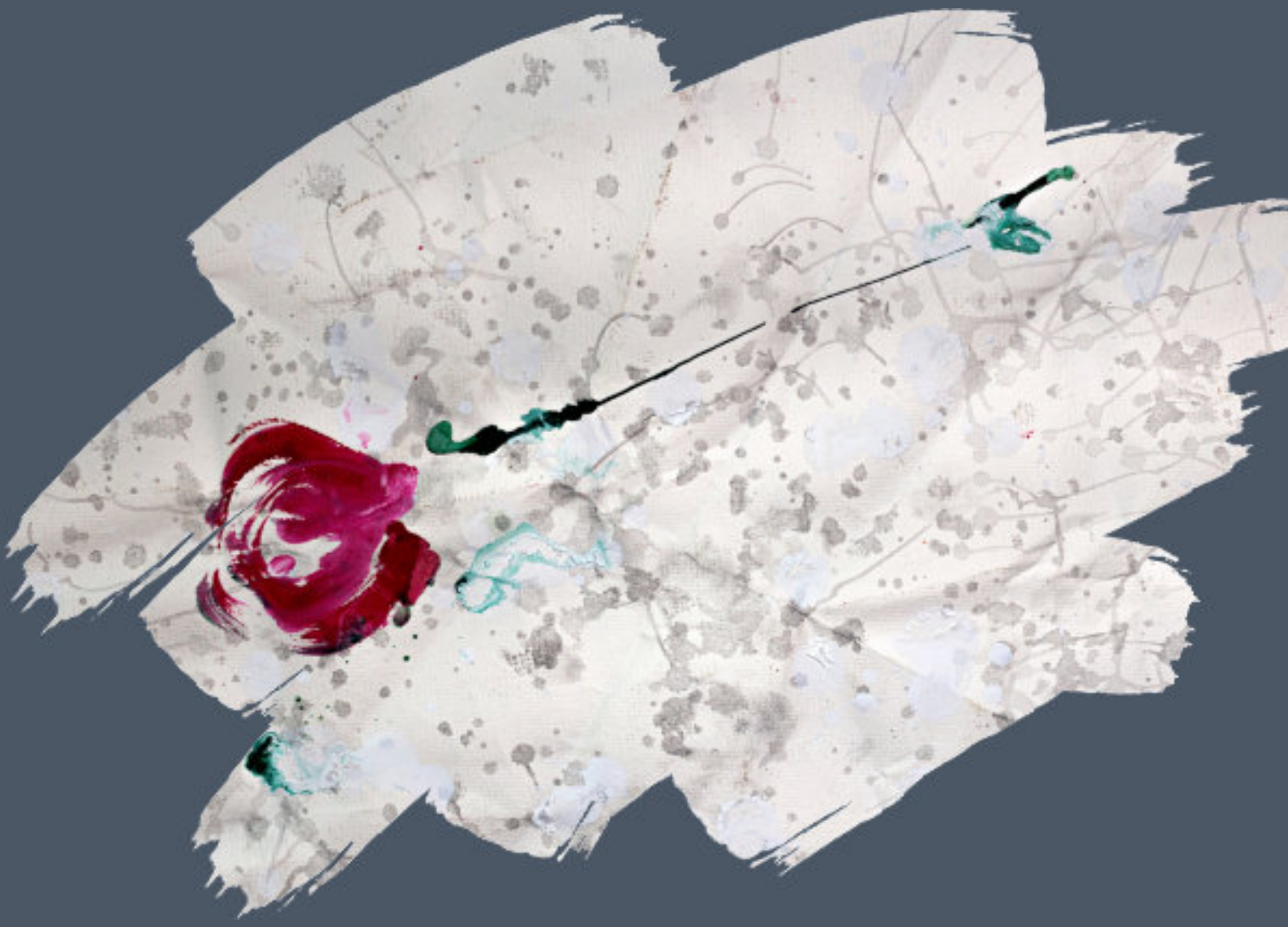

2020 Parallel Report

- On Government's Response to 2017 COR
- On the Implementation of ICCPR
- On the Implementation of ICESCR

Coordinated by
Covenants Watch

Parallel Report on the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights

Coordinated by: Covenants Watch

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(in alphabetical order)

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財團法人環境權保障基金會	Environmental Rights Foundation
手天使	Handangel
台灣關愛之家	Harmony Home Association Taiwan, Harmony Home Taiwan
台灣當代漂泊協會	Homeless of Taiwan
社團法人西藏台灣人權連線	Human Rights Network for Tibet and Taiwan
國際愛地芽協會台灣分會	International Association for Integration Dignity and Economic Advancement Taiwan
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財團法人現代婦女教育基金會	Modern Women's Foundation
社團法人台北市新活力自立生活協會	New Vitality Independent Living Association, Taipei
OURs 專業者都市改革組織	Organization of Urban Reformers (OURs)
中華民國愛滋感染者權益促進會	Persons with HIV/AIDS Rights Advocacy Association of Taiwan
監所關注小組	Prison Watch
財團法人天主教耶穌會台北新事社會服務中心	Rerum Novarum Center
社會住宅推動聯盟	Social Housing Advocacy Consortium

社團法人高雄市向陽自立生活協會	Sunny Independent Living Association, Kaohsiung
財團法人台北市婦女救援社會福利事業基金會	Taipei Women's Rescue Foundation
社團法人台北市行無礙資源推廣協會	Taiwan Access For All Association
社團法人台灣少年權益與福利促進聯盟	Taiwan Alliance for Advancement of Youth Rights and Welfare
台灣反迫遷連線	Taiwan Alliance of Anti-Forced Eviction (TAAFE)
台灣廢除死刑推動聯盟	Taiwan Alliance to End the Death Penalty
台灣障礙者權益促進會	Taiwan Association for Disability Rights (TADR)
台灣人權促進會	Taiwan Association for Human Rights (TAHR)
社團法人台灣民間真相與和解促進會	Taiwan Association for Truth and Reconciliation
台灣獄政工會	Taiwan Corrections Organization
台灣刑事辯護律師協會	Taiwan Criminal Defense Attorney Association (TWCDAA)
彩虹平權大平台	Taiwan Equality Campaign
社團法人台灣性別平等教育協會	Taiwan Gender Equity Education Association
社團法人酷兒權益推動聯盟	Taiwan Gender Queer Rights Advocacy Alliance
社團法人臺灣感染誌協會	Taiwan HIV Story Association
台灣國際醫學聯盟	Taiwan International Medical Alliance (TIMA)
台灣國際勞工協會 TIWA	Taiwan International Workers Alliance (TIWA)
台灣勞工陣線	Taiwan Labour Front
社團法人台灣同志家庭權益促進會	Taiwan LGBT Family Rights Advocacy
社團法人台灣露德協會	Taiwan Lourdes Association
臺灣失序者聯盟	Taiwan Mad Alliance
社團法人台灣同志諮詢熱線協會	Taiwan Tongzhi (LGBTQ+) Hotline Association
台灣聾人聯盟	Taiwanese Deaf Alliance
財團法人勵馨社會福利事業基金會	The Garden of Hope Foundation
自學生	The Homeschooler
天主教新竹教區移工移民辦公室	Vietnamese Migrant and Immigrant Office
台灣蠻野心足生態協會	Wild at Heart Legal Defense Association, Taiwan (WHA)
台灣數位女力聯盟	Women In Digital Initiative (WIDI)
宜蘭縣漁工職業工會	Yilan Migrant fishermen's Union

O c t o b e r , 2 0 2 0
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*Yi Chen HUANG had left the EJA before this report was finished. We thank her for the contribution on the Right to Adequate Housing section.

Editors' note

Founded on the International Human Rights Day (December 10) in 2009, the Covenants Watch called on human rights groups, human rights workers, lawyers, and scholars to join in alliance to monitor the domestic implementation of UN human rights conventions that have obtained legal status in Taiwan.

The reviewing and tracking of the government's human rights reports is a huge focus of what we do as well as a critical part of human rights groups' advocacy work. The Covenants Watch coordinated coalitions of NGOs (68 in 2012 - 2013, and 80 in 2016 - 2017) to co-author the parallel reports on the government's implementation of ICCPR and ICESCR. Building on prior experiences, beginning this year, we inquired with former co-authors their willingness to re-join forces for this report. Editing meetings were held in February, during which participants decided on the basic format, editing system, and the purpose of this report, which is to truthfully present in-the-field experiences and policy recommendations on various topics based on the consensus reached among co-authors, to provide the Review Committee with a clear and accurate understanding of the current human rights situation in Taiwan.

This report is a collaboration of 47 groups. In addition to human rights organizations that have long been engaged in comprehensive human rights issues, judicial reforms, the abolition of the death penalty, prison reforms, and the promotion of economic, social and cultural rights, many of those that participated in this report are stakeholders and their relevant groups that work on the front line, raising awareness, conducting rescue operations, providing counseling, etc. This report reflects the struggles faced by NGOs as well as the real-life events and cruxes they observed in the field. This report provides constructive criticism on the inadequacies of government policies and the law, and the non-compliances with international human rights covenants. In addition, during the production of this report, civil organizations had the chance to reexamine the compatibility and inconsistencies between human rights conventions and domestic laws, which could be useful in future advocacy work. For the detailed list of participating organizations, please refer Participating NGOs.

To produce this report, we formed several working groups each responsible for a particular theme or provisions of the previous concluding observations and the covenants. Each group has a leader, also known as the editor-in-charge, who convened members of the group for discussions and first drafts. The drafts were then integrated by executive editors, who would also cross-reference contents submitted by different groups and amend, if needed, to ensure coherence. In order to support organizations that did not have time to produce their own drafts, we developed a unique model to make sure their voices are presented in this report. Executive editors would conduct interviews with these groups, and along with the experiences and policy recommendations they shared, as well

as information gathered through extensive research and data compilation, complete the drafts, and finalize after receiving confirmation from the groups. The majority of the policy recommendations in this report are the consensus of the respective participating groups. In a few instances where consensus was not reached, either due to a lack of time or that there were fundamental differences in terms of perspectives, executive editors would coordinate and combine their opinions. It is worth mentioning that given the severity of the Covid-19 pandemic, we dedicated an entire chapter in this report to the human rights impact of government policies in response to the pandemic. The State Report failed to touch upon this topic in its report. It is hoped that the Review Committee could prioritize this in its List of Issues, and request the State to provide explanations to the social implications of its policies.

We would like to thank all participating groups for their valuable contributions, fellow executive editors, translators from home and abroad, and several friends and volunteers around the world who assisted in the translation and proofreading of this report. This report would not have been possible without support from many of CW's individual donors, as well as financial support from the human rights museum. We hereby express our deepest gratitude.

Secretariat of the Covenants Watch
October, 2020

Cover Story

Amaranth on the Frost

Ming-Kuang, SU

Thousands of rafts sailed, all enduring burdens singly.
Same ocean, yet ebbs and flows are distinct.
Standing side by side, yet my thoughts insulated.
In the void, a burning heart was halted.

Artist's Statement

In this piece, replacing brushstrokes, Ming-Kuang composed the contour of the flower with shoe prints, layering upon creased paper and free-flowing paints. The rose served as the vessel and projection of Ming-Kuang's covet on love, and the equal yearning of forming connection, intimacy and family, experienced by persons with mental disabilities and others alike. The creases on the paper symbolized the texture of struggles in live, and the limitations and detachments caused by mental illness. This piece paralleled its artistic instruments and its aspiration, as the shoes were made free from serving only as an article of apparel, the piece expressed the hope of a life as free as the flowing colors, and the longing for people with mental illnesses to be regarded as persons, rather than the labels of mental illness.

Scan the QR code for more description from Ming-Kuang as a peer worker at the Fountain House of Eden Social Welfare Foundation.

Editor's note

The first sentence of introduction from the Fountain House of Eden Social Welfare Foundation is "When you talk about a disease, you are talking about a distinction, but when you talk about life experiences, you are talking about things that are shared among all of us", which is also an elegant reiteration of the social model of disability in the Convention on the Rights of Persons with Disabilities. The social model emphasizes the elements amassing disability are not "impairments" per se, but the lack of flexibility in living environments, the adversities, and the exclusion from mainstream society caused by the insufficiency of social structure and policies. Hence, what we shall tackle is not the impairments on the personal scale, but the social environments, attitudes and regulations that "disabled" those peoples.

We featured this piece in our cover design, in the aim of urging the Taiwanese government to implement the norms and substances of the CRPD which was ratified in 2014, and to remind the government to include every single person in the implementation of the two Covenants.

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Covid-19 Chapter

1. For scheduling reasons, the State report does not contain a chapter on Covid-19. We urge the members of the International Review Committee to make inquiries to the State to respond to the concerns raised in this chapter
2. It has been over six months since the outbreak of the Covid-19 pandemic. We recommend

(1) that the state begins to aggregate, organize and analyze issues the people have encountered due to the pandemic, formulate corresponding measures in advanced deployment for potential future pandemic intensification for similar emergencies, and

(2) that additional attention be given to challenges and needs of women, persons with disabilities, children, the elderly and indigenous peoples in statistics aggregation, in order to ensure that the solutions formulated effectively safeguard the rights of these vulnerable groups.

Public opinion has not been thoroughly sought over the legislation of the Special Act, which consequently lacks a holistic perspective

3. During the ongoing pandemic, the State has acted to safeguard the people's health and at the same time alleviate the economic and social impacts in accordance with the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens* (hereinafter *Pneumonia Special Act*),[1] which involves relevant subsidies on remunerations, medical care, quarantine, control and prevention material, personal data usage, industry stimulation, income tax and pandemic awareness campaigns, as well as the subsidies' administration.
4. In retrospect, the legislation of the *Pneumonia Special Act*, given the time constraints, was not able to consult the public or seek its input in terms of daily experience and advice. This resulted in the *Act's* provisions potentially overlooking challenges encountered by vulnerable groups, and thereby inadequacies in safeguarding their rights, or even violations thereof.
5. Our recommendations:

(1) The State ought to seek input from a wide range of public experience and advice in legislation and policy making processes, and review its social aid programs for persons with disabilities and vulnerable groups, in accordance with para. 71 a) of CRPD's Concluding Observations: mandate that the eligibility criteria for persons with disabilities to obtain financial assistance and subsidies be independent of their and their families' means. This would increase the coverage of national policies to

[1] *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens*. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050039

benefit all, minimize possibility of anyone being left outside the scope of protection of laws and regulations, and, furthermore, increase the awareness of the people with regard to vulnerable groups through the legal provisions.

(2) The State ought to consult vulnerable groups especially for daily experiences and advice in formulating special legislations in response to emergencies, in order to ensure that the subsequent provisions actively safeguard their rights and prevent even greater challenges from occurring due to such emergencies.

(3) The State, in terms of policy making, ought to formulate plans to distribute medical resources in times of emergency on the basis of past experience, in order to alleviate social impact and unrest resulting from distribution of medical resources and their shortages.

Legal mandate for the use of private data and lack of clarity on phaseout (ICCPR art. 17)

6. The State's name-based masks distribution policy via NHI card has been met with wide acclaim, though not without the possibility of impacting people's privacy. The State has authorized access to people's basic personal information for convenient stores, thereby enabling close access for named base masks and stimulus voucher purchases; meanwhile, art. 16 of the National Health Insurance Act expressly stipulates that the NHI card is to store and send information on the insured,[2] and such information is often sensitive personal information of the card holder. When ordering masks or buying stimulus vouchers distributed by the State, what prevents unauthorized access to people's personal data stored within the NHI card? Furthermore, certain personal information already exists as base level information in the NHI card. Has the State explicitly mandated the principles and scope with which convenient stores are to access data, in order to safeguard the privacy of people's data stored within the NHI card?

7. To track Taiwan nationals returning from overseas for the purpose of disease control, NHI database is articulated against that of the Immigration Agency to provide first line medical personnel with the patient's travel history and relevant symptoms, which enables swift segregation measures in the event that symptoms occur leading to a suspected positive case. Medical institutions would retain access to the travel history data for 28 days after the subject has completed the 14 days home quarantine and 7 days self-health monitoring upon returning to Taiwan. Such measures are effective in terms of tracking the source of infection of a positive case, but may also violate the people's privacy given the lack of clarity, transparency and a thorough phase out

[2] *National Health Insurance Act:* https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0060001

mechanism, as well as the indefinite extension of access to data due to the volatile nature of the ongoing pandemic.

8. The State has established an "Intelligent Electronic Fences System" in order to be notified, via base station location data requested from telecommunications service providers, in the event of a person leaving the designated quarantine perimeter. While the State claims that the measure is in complete accordance with the law and does not violate human rights, concerns regarding potential violations to the people's privacy cannot be dismissed. For instance, does the State expressly inform the subject of the measure and the level and scope of access to his/her data before the measure is enforced? Has the State published limitations to the access of such specific data? Would the State excessively generalize the measure to the detriment of the people's privacy, given the lack of clarity to its legal mandate? Is there adequate oversight and confidentiality measures in relation to the vast amount of personal data to which contractors and telecom service providers are given access?
9. Our recommendations:

(1) The State ought to review legal mandates for the collection of Taiwanese personal data in response to the pandemic, in order to ensure that the collection of all relevant data complies with current laws and regulations. Additionally, clarity of relevant legal provisions should be enhanced to prevent excessive generalization of the use of personal data and thereby safeguard the people's privacy.

(2) The State ought to complete the rules on the utilization, scope and phase out mechanism in relation to the collection of Taiwanese personal data in response to the pandemic as soon as possible. Information on the corresponding public benefits and risks should be transparent and explained to the public. Special attention should also be given to information accessibility requirements in terms of policy publications and promotion.

(3) Comprehensive oversight mechanism, for instance the aforementioned rules on utilization, scope of application, duration limits and thorough, comprehensive phase outs, should be completed as soon as possible, in order to ensure the thoroughness and accuracy of the data collection procedures, as well as the security of the people's personal, private data.

Insufficient protection and support for jobs, minority rights overlooked (ICESCR arts. 6-7)

10. Affected by Covid-19, the number of unemployed people in Taiwan grew from 436,000 to 479,000 between January 2020 to July 2020.[3] However, for those who lost

[3] The Ministry of Labor's statistics on unemployment (2020): https://statdb.mol.gov.tw/html/mon/22010.htm

their jobs involuntarily during this time of crisis, the only extra financial support the government provided was education subsidies for children of unemployed workers.[4]

11. According to the Ministry of Labor, the number of business entities affected by pay cuts and reduced hours due to Covid-19 grew from 25 to 1,440 between mid-January 2020 and the end of June; whereas the number of people affected increased from 941 people to 31,816 people.[5] However, the government's assistance programs targeting workers experiencing reduced hours and unpaid leave, including the "Recharge and Restart Program" and the "Reliable Employment Program", are short-time work compensation schemes. They are incomprehensive, lack a thorough structure as a social safety net and fail to provide laborers with adequate protection. The Ministry of Labor rolled out a "Reliable, Instant Work Program", offering short-term employment opportunities for part-time workers, non-conventional workers and unemployed workers, aiming to reduce the impact of wage reduction or unemployment.[6] However, the responsibilities of these positions are mainly pandemic prevention and cleaning, disregarding workers' original field of work and long-term goals.[7]
12. Furthermore, Art. 12.3.(3) of the *Employment Insurance Act* stipulates that the government must initiate the "employment stability measure", a proactive employment promotion measure, when the unemployment rate reaches a certain threshold, to stabilize employment and avoid layoffs resulting from economic factors, however, according to Art. 5 of the Regulations Governing the Implementation of Employment Insurance and Employment Promotion, to be able to initiate this measure, the labor insurance unemployment rate must exceed 1% for 3 consecutive months. Not only is the threshold too high, using labor insurance unemployment rates as reference does not truly reflect the situation of the economy. As a result, the "employment stability measure" has never been activated since its passage in 2010, meaning the law has been made in vain.

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[4] The Ministry of Labor's Covid-19 Unemployment Benefits Plan is mostly identical to what the current Employment Insurance Act provides. An insured person who involuntarily leaves work, may receive a monthly allowance of 60% of the applicant's average monthly salary over the six-month period prior to leaving work, for a maximum of six months.
https://www.wda.gov.tw/cp.aspx?n=EEE6F90FF3A2CE86#block

[5] Ministry of Labor, Number of business entities, employees affected by reductions in pay and hours.
https://statfy.mol.gov.tw/index04.aspx

[6] The Ministry of Labor's "Reliable, Instant Work Program" webpage:
https://www.mol.gov.tw/announcement/2099/45294/

[7] UDN, Taipei City Government releases 757 Covid-19-related jobs,
https://udn.com/news/story/7323/4484769; Tainan City Government releases 200 short-term jobs
https://news.pts.org.tw/article/472760

13. In terms of specific worker groups, female non-conventional workers are one of the groups most severely impacted by the pandemic. Non-conventional workers are already profoundly affected by the pandemic due to insufficient labor protection laws or exclusion from the employment insurance system. And as more households face income decreases due to reductions in pay and hours, women are often forced to quit their job and go home to assume their responsibility to take care of the family because of traditional stereotypes.
14. Regarding people with disabilities:

(1) The government has yet to release statistics on the employment situation of people with disabilities. This makes it difficult for the public and NGOs to understand the scope of the impact of the pandemic on people with disabilities and to make policy recommendations.

(2) For people with hearing disabilities: Mandatory mask policies in the workplace have caused various communication issues. Video conferences, as an alternative to in-person meetings since the outbreak, often lack support measures for people with hearing disabilities.

(3) Regarding people with mental disabilities: While the Central Epidemic Command Center officially banned patient visits at all hospitals and medical institutions on April 3, 2020,[8] except under special circumstances as part of the pandemic prevention measures, some hospitals began to ban visitors as early as February. As a result of the ban, patients in inpatient or hospital settings due to mental disabilities were completely cut off from the outside world, causing prolonged treatment or hospitalization, making it more difficult to adapt to society and seek jobs after being discharged.

15. We suggest:

(1) Immediately convene scholars, experts, representatives from workers' and employers' organizations, and government agencies, to discuss and amend the legal prerequisite to initiate the "Employment Stability Measures", and to establish qualitative indicators, expert committee evaluations, and administrative agency identification systems. Instead of using the labor insurance unemployment rate as reference, the government should respond according to the issue at hand, for instance, when the international steel industry goes into recession, employment stability measures targeting steel businesses should be launched accordingly.

(2) At present, Taiwan's labor insurance policy includes general accident insurance and occupational accident insurance, each governed by separate laws, causing laborer's

[8] CDC guidance on hospital visitations during the pandemic: https://www.cdc.gov.tw/Category/MPage/I92jtldmxZO_oolFPzP9HQ. Central News Agency, Hospital visitation ban prolongs to end of April, with 3 exceptions: https://www.cna.com.tw/news/firstnews/202004020163.aspx

rights pertaining to insurance and occupational accident protections to be extremely fragmented. In addition, the two types of insurances have different purposes, insurers, methods, and contents, making it impossible to provide adequate protection for those suffering occupational accidents. This pandemic has highlighted the shortcomings of Taiwan's current labor insurance system. We recommend the government to complete the legislation of the Labor Occupational Accident Insurance Law as soon as possible,[9] and integrate with the current Act for Protecting Worker of Occupational Accidents to establish a comprehensive system that oversees the prevention, compensation and reconstruction of occupational hazards.

(3) It is suggested that the government review current laws and regulations, amend deficiencies, and integrate resources in labor and social administrations to provide essential social welfare support to non-conventional workers impacted by the pandemic, women in particular, as well as those employed at host and hostess clubs and ballrooms which were temporarily shut down during the pandemic per CDC orders.[10]

(4) Regarding people with physical and mental disabilities, there should be more comprehensive support measures, such as requiring employers who use video conferencing to provide support measures that allow employees with hearing disabilities to participate in work. In addition, when drafting various pandemic prevention measures, the government should actively collect the opinion of people with disabilities and realize the spirit of reasonable accommodations.

The housing guarantee program is ineffective in alleviating tenants' burden (ICESER art. 11)

16. As the pandemic devastated the economy, salaried employees at the base of the supply chain have been impacted significantly. While salary income is reduced as a result of the pandemic, daily expenses, among which housing is the greatest, remains the same.

17. The State's response to the pandemic in terms of the right to housing is to reduce mortgage interest rate by 0.5%, while there's no corresponding relief programs and resources targeting tenants. Typically, financial capacity and housing stability of a tenant is inferior to that of a homeowner, and rent would typically account for at least one-third of a tenant's salary income. Salary reduction or unemployment caused by the pandemic has severely affected their right to adequate housing.

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[9] The Ministry of Labor's draft bill on occupational accidents insurance: https://www.mol.gov.tw/announcement/2099/39964/

[10] CDC, All host/hostess clubs and ballrooms to suspend operations starting April 9, https://www.cdc.gov.tw/En/Bulletin/Detail/t_9Fjv6Xo7HpL_evvnsGUw?typeid=158

18. The focus of the State's relief programs are primarily relief and assistance to various industries. Subsidies targeting salaries employees are lacking by comparison (see paragraphs 10 and 11). Workers who come under financial strain, having become unemployed or see their work and salaries reduced, are highly likely forced to move out of their rented residence or even become homeless due to their inability to pay rent.
19. Our recommendations:

(1) The State, in accordance with the UN's statement,[11] ought to safeguard the right to housing for all during the pandemic via a stay of eviction resulting from overdue rent or mortgage payments, and an increase of accessibility of the homeless to medical resources and emergency shelter. At the same time, the State ought to provide rent subsidies or temporary housing complemented by rent cap or deduction measures, and a halt on utility and other additional charges at least during the pandemic.

(2) The State ought to offer "emergency rent subsidies" (hereinafter ERS) in order to assist tenants who are not under any other relevant housing subsidies program and whose salaries are reduced due to the pandemic. ERS is primarily an "emergency response", with the least stringent possible eligibility as a short-term relief measure, in order to cover the greatest amount of people impacted by the pandemic who are in need of such subsidies. To encourage tenant application, we recommend that ERS authority coordinates with tax authority to temporarily disconnect the measure from (lease income) tax inspections, and addresses the informalization of the rental market as soon as possible.[12]

(3) That, in the long term, the State attaches due importance to the informalization of Taiwan's rental market via, among other means, tax reformation and amendments to the Rental Housing Market Development and Regulation Act, in order to gradually enhance government oversight to the rental market. This would resolve the issue of landlord tax evasion, safeguard tenants' right to housing, and create the policy maneuverability for emergency measures such as rent reduction for tax reduction, rent freezing and eviction bans.

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[11] UNOHCHR, "Housing, the front line defence against the COVID-19 outbreak," says UN expert (2020): https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E

[12] The underground rental housing market means that most landlords in Taiwan currently do not declare their rental income, which not only causes tax evasion, but also makes it difficult for the government to control and monitor the situation of the rental housing market.

Lack of thoroughness for policies on right to health violates the rights of vulnerable groups (ICESER art. 12)

Negligence to right to physical and mental health

20. Isolation of in-patients in medical institutions: The Executive Yuan elevated the Central Epidemic Command Center to tier 1 in the government hierarchy on Feb. 27, 2020. Following this, a number of medical institutions began to ban visits to in-patients, and the CECC subsequently ordered a general ban of all visits on Apr. 3, 2020.[13] This measure has affected rare disease patients who require around the clock care, and has neglected the positive effects of the social support network to a patient in severing connection to friends and family.
21. Circumstances are even more challenging for persons with disabilities in psychiatric institutions. In addition to the ban from visitors, the institutions have also confined persons with disability within their rooms, even from getting sun and fresh air, citing disease control. Furthermore, some institutions even prohibited patients carrying cell phones into their rooms, which completely severs their connection with the outside world. Both these measures have severely impacted physical and mental health, even increased the challenges for persons with disabilities in their return to society.
22. Banning visits have also affected the right to family reunification of the patients' relatives.
23. Community and institutional services may also experience lack of caretaking personnel, in turn, people who usually rely on such services lose support, thereby affecting their physical and mental health. Furthermore, the State was not able to identify these issues and adequately supplement caretaking personnel, nor was the State able to provide these workers with adequate institutional safeguards, equipment or empowerment resources, which violates the rights of persons who rely on social services and resources in their daily lives.
24. Our recommendations:

(1) The State ought to formulate rules addressing special caretaking needs of hospital in patients or long-term nursing home residents, in order to safeguard their right to physical and mental health.

(2) In addition, adequate resources ought to be allocated and compensations made available to hospitals in patients or long-term nursing home residents to prevent their complete disconnection with the outside world in isolation, in order to safeguard

[13] The CDC's guidance on hospital visitations in response to COVID-19 https://www.cdc.gov.tw/File/Get/VrcyCkF49XaAAUuMV7i1xQ; News article on the CDC's ban on hospital visitations to implement till end of April, with three exempts, Central News Agency https://www.cna.com.tw/news/firstnews/202004020163.aspx

their mental health. Such compensations may be the establishment of online resources or other effective means to increase social connections and interpersonal interactions.

(3) For patients' relatives, the State should still formulate rules for visits in emergencies to safeguard the right to family reunification.

(4) The State ought to attach due importance to citizens' mental health and community/institutional supportive services, and establish application practices and corresponding remuneration standards, in order to take an active role in cultivating physical and mental health caretakers. Comprehensive social welfare safeguards, necessary equipment and sufficient human resource support also ought to be in place for entities offering supportive services, complemented with comprehensive empowerment resources, in order to safeguard the citizens' health.

Lack of safeguard for stable treatment for HIV patients

25. According to NHIA announcement, chronic disease patients could have their medication mailed to them after being collected by family members or friends.[14] However, since the identity of a postive is sensitive, family or friends may not be in the best position to assist. Positives who have a better understanding of the available resources have turned to Taiwan's civil organizations and social welfare institutions for assistance, which has increased the workload of the institutions. Those with relatively poor understanding of the available resources may be exposed to the risk of unapproved medication or disruption of treatment.

26. Taiwanese policy requires foreign positives bear the cost of testing and medication within the first two years of diagnosis.[15] Since HIV medication is expensive in Taiwan, foreign positives are unable to sustain both their daily lives and their

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[14] The National Health Insurance Administrations press release on the guidance on obtaining medicine for patients with chronicle illness who cannot return to the country due to Covid-19. https://www.nhi.gov.tw/Content_List.aspx?n=A902694FC23E2E8E&topn=787128DAD5F71B1A

[15] Guidance on medical fees for foreign patients of non-nationality are as follows: 1. Regarding foreign patients who have been taking medicine for less than two years, the CDC will subsidize the expense for those who meet the following qualifications as per art. 3 of the Regulations Governing Subsidies for Treatment Expenses of HIV-Infected Persons: (1) Foreign spouses (including the mainland China, Hong Kong, and Macau) (2) Overstaying descendants of nationalist military personnel from Thailand and Myanmar, and Tibetans overstaying in Taiwan. (3) Foreigners (including those from mainland China, Hong Kong, and Macau) who become infected during medical procedures in Taiwan. 2. Regarding foreign patients who have been taking medicine for more than two years, should they meet the requirements as stipulated in the National Health Insurance Act art. 9 and qualify for national health insurance, their expenses will be covered by the NHI.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0050033
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0060001

respective stable treatment, and have to travel overseas or back to their home countries to access regular follow up testing, medication or other medical resources, which is now rendered impossible due to pandemic border control.

27. Therefore, during the pandemic, foreign positives may need to seek imported medication by mail order to receive stable treatment, given the inability to travel overseas. However, Taiwanese regulations require TFDA import licenses before personal medication could be imported.[16] Given their lack of experience with the procedure, foreign positives in Taiwan may fail the application for the license, which may result in their inability to purchase personal medication from overseas and disruption of treatment.
28. Our recommendations:

(1) The State ought to actively promote collaborative relations between Taiwanese foreign missions and local medical resources and establishes local medical alternatives in times of emergency, in order to provide overseas Taiwanese positives with stable treatment. In addition, case managers and overseas Taiwanese societies and groups ought to be integrated in order to combine the former's tracking mechanism and the latter's contact network and effectively promulgate information on local medical alternatives to overseas Taiwanese requiring chronic disease medication. This approach would provide locally accessible medical resources to Taiwanese expatriates, negating the costs of family and friends collection and mailing. Additionally, this would also reduce possible omissions due to gaps in access to relevant resources.

(2) For foreign positives who are not covered by Regulations Governing Subsidies for Treatment Expenses of HIV-Infected Persons or the National Health Insurance Act (especially migrant workers and stateless persons),[17] the State ought to provide reasonably priced HIV medication and testing, in order to safeguard their right to health in Taiwan, and ensure the vulnerable groups are not neglected.

(3) The State ought to actively coordinate personal medication import practices between TFDA and Customs Administration, and formulate emergency responses to ensure that individual treatments are not delayed or disrupted by complex import management procedures.

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[16] Regulations on Management of Medicament Samples and Gifts：
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0030005

[17] Regulations Governing Subsidies for Treatment Expenses of HIV-Infected Persons ：
https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=L0050033

Women, Children and Juveniles

Increased exposure to domestic violence

29. The pandemic's impact on Taiwan's overall economy has led to an increase in unemployed or underemployed workers.[18] Groups that are economically vulnerable suddenly find their primary source of income compromised, creating hidden domestic stress factors.
30. Meanwhile, recreational facilities such as schools and parks have implemented access controls or have closed altogether, depriving children of an outlet for their abundant energy. These children, with no space for leisure, are enclosed in their homes for prolonged periods of time with their parents who must remain indoors longer and may have become unemployed. Such stress and energy, with severely reduced breathing space, may lead to increased familial conflicts and even domestic violence.[19]
31. The State's disease control measures prohibit police or social worker visits for domestic violence cases if the individual is in home isolation/quarantine. The only available approach under these circumstances is a non-binding, verbal agreement that separates the perpetrator and the victim in different rooms during the quarantine and requests each use communal spaces at separate times. However, if any one party is unwilling to observe the agreement, this non-binding approach is easily compromised and rendered useless. As police and social workers are restricted from visiting or understanding the victim's situation, applying for a protection order would be a challenge, thereby violating the victim's right to be free of domestic violence.
32. The groups vulnerable to domestic violence are often those especially sensitive groups in an already disadvantaged position. In addition to women, children and juveniles mentioned above, these also include persons with disabilities and indigenous peoples.
33. Our recommendations:

(1) As para. 25 of 2017 Concluding Observations noted: The Review Committee further reiterates its earlier recommendation that the impact of the various initiatives be assessed, and on the basis of this assessment a comprehensive plan be developed to address domestic violence by adopting an interdisciplinary and multi-sectoral approach. It also recommends that the Government pay additional attention to the vulnerable groups of women, such as women with disabilities and the new immigrants who arrive as brides.

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[18] Between mid February and end of June, 2020, the number of workers affected by "management-labor agreed reduced hours" increased from 869 to 31,816. Source: https://statfy.mol.gov.tw/index04.aspx

[19] MOHW press release indicates that the number of reported domestic violence cases between January, when the pandemic first occurred in Taiwan, and March, 2020, was approximately 32,000, an increase of about 5% compared to the same period in 2019. https://www.mohw.gov.tw/cp-4633-52850-1.html

(2) According to the UN's statement,[20] the State ought to attach additional importance to preventing and addressing domestic violence. Existing assistance resources for domestic violence victims must not be suspended, and additional police human resources must be allocated to respond to emergency incidents. In addition, using a telephone helpline would create risk exposure concerns for domestic violence victims under home isolation. The government may consider online or texting services, or other new channels to assist domestic violence victims.

(3) The State ought to enhance the awareness of first line service personnel (teachers, judicial workers, social workers, medical workers, etc.), and offer training on sexuality of persons with disabilities and gender equality, which would enable them to detect danger and understand various protective and assistance measures. In addition, relevant government services such as various channels for assistance, emergency shelters, protective relocation, physical and mental healthcare and legal assistance also ought to be reviewed for consideration of the varying needs of persons with disabilities, and ought to be promoted more expansively via a wide range of media and channels.

(4) The above also applies to other vulnerable groups such as women, children and indigenous peoples.

(5) The State is advised to, emulating the "quarantine hotel" measure, offer (potential) victims "quarantine shelter" which removes both disease and exposure to violence, in order to safeguard the disadvantaged from suffering domestic violence.

Persons with disabilities

Impediments to accessing disease control information

34. The NECC has violated the right to know of the disabled in its disclosure of real time pandemic development information. Only sign language interpreters were arranged at each press conference, without multiple accessibility channels. This has neglected that a wide range of approaches are required for persons with hearing, mental, visual or other disabilities who do not understand sign language may access information, and highlighted the lack of dimensions in the State's understanding of persons with disabilities.

35. Meanwhile, the State's knowledge in the approaches with which persons with hearing disabilities communicate with the world is limited. This results in the ineffectiveness in conveying disease control information and offering assistance. For example, announcements at the entry to Taiwanese borders are not made in a manner

[20] UNOHCHR, States must combat domestic violence in the context of COVID-19 lockdowns – UN rights expert (2020): https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E

comprehensible to persons with hearing disabilities, hence they would be unaware of the inspection requirements. In addition, the 1922 disease control helpline has no hearing aid service, and those who require it need to be redirected via the 1999 general helpline. Also, relevant agencies, despite knowing that some individuals under home quarantine possess hearing disability, there is no viable alternative approach to telephone interviews.

36. Continuing the above, the same challenges have also occurred in relation to persons with other disabilities. Information on national disease control and assistance measures are not articulated. For instance, the difference between home quarantine and home isolation are not immediately clear, thus difficult to comprehend for persons with disabilities. Such lack of simplicity and clarity leads to challenges for citizens to comprehend national policies immediately upon accessing relevant information. Furthermore, the announcements have not been made in multiple accessible forms, creating impediments for persons with disabilities to access disease control information, and to access such information firsthand from the authorities.

Accessibility impediments to medical resources during the pandemic

37. Temporary outdoor inspection areas in medical institutions have increased the barriers for persons with disabilities to seek medical assistance during the pandemic. For disease control reasons, patients with respiratory symptoms or fevers must access the institutions via the ER, which implements inspections in temporarily erected outdoor inspection areas. Since only one patient and one medical worker may be present within an inspection area, persons with disabilities are not able to receive timely and appropriate assistance from their caretakers since the latter are excluded from the inspection area. In addition, for infection prevention reasons, no mobile accessible lavatories are provided within the inspection areas, which impact the basic rights within these areas for persons with disabilities. (Even regular lavatories were removed upon relevant suggestions by a number of people with disabilities.)
38. These challenges for persons with disabilities to access medical resources have also occurred in relation to negative pressure isolation wards. The many examples highlighting the medical institutions' lack of appropriate adjustments to medical services, in relation to persons with disabilities in these wards, include: lack of Commode chairs, transfer beds or space for their maneuvering, lack of accessible bathroom design, lack of bathroom space (there are even thresholds), disadvantaged call button placement for persons with disabilities, and the specific and limited times during which medical personnel may enter such wards.
39. The inconsiderate design of the negative pressure isolation wards has severely violated the privacy of persons with disabilities within these wards. To provide medical workers with "easier" access to the patient's condition, all partitions are removed within these wards, and each is fitted with a panoramic surveillance camera

active at all times. In addition, since bathrooms in these wards are not designed for accessibility (even with a threshold at the door), those bound to wheelchairs are only able to change with no cover at all. Within the negative pressure isolation wards, there is no privacy to speak of for wheelchair bound persons with disabilities.

40. Medical workers and medical institutions in general do not possess adequate knowledge in relation to patients with rare diseases, and thereby lack the capacity to adjust medical procedures accordingly in times of emergency. For example, there was an incident where medical workers, to acquire a sample of a rare disease patient's sputum for examination, attempted an invasive procedure with which a tube would be inserted into the patient's throat. This however is likely to induce pneumonia symptoms and exacerbate the patient's condition.

Impediments of access to disease control supplies

41. In April, the NECC announced measures in relation to social distances and facemasks. The latter is required on public transportations and in certain public places. However, the design, access, application and utilization of public transportations/places have all created different levels of impediments to persons with disabilities.
42. The design of regular facemasks reflected the policymakers and manufacturers' lack of understanding of the circumstances of persons with disabilities. For example, regular facemasks cannot be worn appropriately by microtia patients due to their ear physiology; those with cerebral palsy are unable to keep their masks dry due to drooling thus affecting disease control effectiveness; the design of regular facemasks prevents lip readers with hearing disabilities from communicating properly. Furthermore, masks designed for the mute and the deaf are designed and made from the perspective of those with normal hearing.

43. In terms of access to disease control supplies, name-based rationing has ensured that everyone has access to facemasks, but disability friendly purchasing measures are still lacking. Initially when the masks were purchased at pharmacies, persons with disabilities were required to find one with accessible design. Since navigating the accessibility ramps is more time consuming than regular access and deviates from the normal que, it has been challenging for persons with disabilities to purchase facemasks successfully. Following policy adjustments, face masks could now be ordered from the NHI mobile application, which has seemingly resolved the issues with physical ques. However, the visually impaired assistance function did not come online until April, 2020,[21] and the interface remains unfriendly to the elderly, which

[21] The National Health Insurance Administrations press release on the launch of customer support app Ken (2020) https://www.nhi.gov.tw/News_Content.aspx?n=FC05EB85BD57C709&s=246C24A9734A9FCD

have inadvertently created challenges for persons with disabilities and the elderly to access disease control supplies.

44. The requirement to wear masks on public transportation and enclosed public places has severely impacted the rights to transportation, access to public places and public services for persons with disabilities, even to the point of affecting their ability to live independently. Some persons with disabilities are not able to wear masks due to their conditions, such as persons with Alzheimer's, mental disabilities or inferior respiratory capacity, or with microtia mentioned earlier. The uniform request that people must wear masks when accessing public services, without offering persons with disabilities the disease control supplies required for them to live independently, reflects a clear lack of understanding in the variety of the citizenry's composition.
45. These "circumstantial and institutional impediments" are not created by the pandemic but existing issues highlighted by it—those omitted by the public health disease control network are the same people normally omitted by the social security network.

Neglect of right to physical and mental health

46. Paras. 20 to 24 have explained the circumstances under which hospital inpatients with mental disabilities are confined within their respective institutions.
47. Psychosis patients' stable treatment is especially vulnerable: The deterioration of job security and familial economy as a result of the pandemic, combined with concerns in relation to the potentially higher infection risks at therapy facilities, may impact or even disrupt treatment for psychosis patients. In practice, these patients and their families are considered socially vulnerable, having to choose between basic daily expenses and medical expenses. The inadequacy of NHI coverage and other general medical support for psychosis patients under normal circumstances has become more pronounced under the pandemic, and has exacerbated their vulnerability.
48. Our recommendations:

(1) As noted by para. 57 (b) of the 2017 CRPD Concluding Observations, the State ought to "adopt and take the necessary measures to enforce legislation on access to all public and private information and communication so as to facilitate access in all formats and technologies appropriate to all kinds of disabilities." The State ought to, as its normal practice, incorporate multiple forms of accessible communication channels when planning policy announcements and implementation. All formats and technologies appropriate to all kinds of disabilities ought to be offered for the purpose of rapid adjustments and implementation, accommodating for unexpected incidents such as the pandemic.

(2) Continuing the above, legislations ought to be in place that compels the State to incorporate multiple accessible forms in information disclosure, public policy announcements and public news channels. These include sign language

interpretation, subtitles, simultaneously provided generally compatible electronic files, voiceovers and reader-friendly versions. These forms of information dispersal would enable persons with disabilities to comprehend relevant information in a timely manner.

(3) In addition, accessible technical design and formats ought to also be incorporated in websites and various internet-based service information established in response to the pandemic. Relevant accessible information ought to be integrated as well, in order to facilitate navigation.

(4) Waiting areas, consulting areas and equipment of medical institutions ought to be suitable for persons with disabilities. This includes wheelchair accessible changing rooms and separate, quiet waiting areas for persons with disabilities who require emotional stability.

(5) Medical institutions ought to offer a proportionate number of accessible wards, which are equipped with assistive equipment such as transfer beds, transfer areas, caretaking beds, air mattresses and bathing beds catering to various forms of disabilities. Call button placement in the ward must also account for patients with inferior arm and hand strength.

(6) The State ought to, as noted by para. 65 (d) of the 2017 CRPD Concluding Observations, "revise standard medical training so that it includes modules on how to provide healthcare to persons with disabilities". Training courses on persons with disabilities and rare disease patients ought to be organized for first line medical workers in order to improve their awareness, and ensure that persons with disabilities and rare disease patients may receive equivalent medical treatment.

(7) Medical institutions ought to deploy communication assistive personnel and equipment, in order for persons with disabilities to understand medical advice and communicate their respective needs.

(8) In accordance with General Comment No. 14 to the Covenant on Economic, Social and Cultural Rights, the State ought to consider essential elements such as availability, accessibility, acceptability and quality in respecting, safeguarding and implementing relevant obligations to ensure citizens' right to the highest possible standard to health.

(9) The State ought to offer a wide range of face masks in different forms, so persons with disabilities may select from them according to their respective conditions. If the range of coverage of disease control supplies on the market is insufficient, the State ought to allocate sufficient resources for relevant research and development with a public timeline. Such R&D efforts ought to be completed as soon as possible without compromising quality, in order to ensure that the State's disease control supplies cater to all without omitting any specific group.

(10) The State, as noted in para. 33 (a) of the 2017 CRPD Concluding Observations, ought to "draft a comprehensive action plan with consistent standards, monitoring and

enforcement mechanisms including penalties for noncompliance, timelines and budget for implementation of uniform accessibility across the public and private sectors in urban as well as rural areas regarding offices, workplaces, infrastructure, pedestrian environments, and public transport including taxis." For public facilities (including tourism accommodation facilities such as hotels), the State ought to offer necessary support in deploying assistive equipment and communication assistive measures. Furthermore, laws and regulations in relation to accessibility ought to also be reviewed and revised, in order to incrementally address circumstantial and institutional impediments and ensure the people enjoy substantive equality.

(11) Medical support for psychosis patients ought to include financial support for the economically vulnerable, and the long-term, incremental improvement of access to therapy treatment initiated by the government. On the other hand, studies have indicated that long-acting injections are beneficial to the patient's chance in returning to school or work, and improves patients' willingness for stable medication.[22] The government ought to, referencing relevant studies, formulate medication measures that improve the patients' chances in returning to the society.

Detention facilities

Inappropriate supply, space, personnel planning and response measures

49. Taiwan has no confirmed covid-19 case within its detention facilities, which in retrospect may be considered an achievement. However, during the disease control process, the Agency of Correction (AoC) has not provided adequate face masks for inmates or staff:

(1) The AoC does not offer name-based face mask supplies within the detention facilities. Despite Taiwan producing an adequate number of face masks, the AoC only provides three masks per week for every inmate, as well as additional masks when receiving family visits, without offering name-based face mask supplies which has been in place since February 2020. Meanwhile, inmates have been included in Taiwan's NHI since 2013, and are entitled to the same services as all others. The AoC ought to provide an explanation for not allowing inmates to purchase face masks with their NHI cards during the pandemic.

(2) In March 2020, the AoC announced that it has recruited inmates with sewing skills in prisons in Taipei, Taichung, Hualien and Penghu to produce adequate number of face mask covers for their respective inmates and staff, in order to extend the face masks' effective period. However, inmates and staff members in Taichung prison each have

[22] Tang, Tze-Chun, et al. Taiwanese Journal of Psychiatry 33.4 (2019), p.198. : https://www.e-tjp.org/article.asp?issn=1028-3684;year=2019;volume=33;issue=4;spage=198;epage=203;aulast=Tang;type=0

access to only one cloth cover, which may be inadequate given the weekly quota of three masks per person per week, as well as the limited space and inability to maintain social distancing within a prison environment.

50. The longstanding issue of overcapacity becomes especially urgent during this time. Any group infection would cause psychological stress to both inmates and staff. Internationally, discussions in relation to temporarily release a portion of the inmates to address overcapacity have already occurred. Meanwhile, the status quo for Taiwan's detention facilities requires further attention to the adequacy of isolation space and the appropriateness of routes to medical resources in the event of a suspected or confirmed case. In the past, the AoC addressed transmittable diseases (such as scabies) by placing all infected inmates in the same complex. While this provides segregation from uninfected inmates, placing infected inmates with varying state of health and degrees of seriousness deviates significantly from public health and disease control principles.
51. Delayed medical evacuations have been the cause of many incidents of inmate deaths in the past. One key reason is the inadequate medical staff presence in detention facilities, which results in challenges in medical assessments and, combined with security concerns, leads to additional stress for staff members. During the covid-19 pandemic, such inadequacy has led to challenges in understanding the inmates' respective conditions and prevented professional assessments for inmates. In addition, staff members' awareness and training in disease control, such as the appropriate staff lodging adjustments and health management measures in response to suspected cases, remain lacking in intensity and breadth. Also, management of a detention facility requires not only managing confinement but also alleviating the inmates' psychological stress in a timely manner, in order to prevent negative group behavior caused by fear. However, the AoC currently does not offer any counselling resources and measures for the inmates.
52. In March 2020, the Minister of Justice requested respective disease control exercises from Taipei prison and Taichung prison,[23] as well as a response plan with which other correction facilities are advised to follow. However, only NECC's "Preparedness and Response Plan for Correction Facilities in Relation to Covid-19",[24] formulated on August 3, 2020 has been in place. The AoC ought to further explain the lack of public information in relation to its own disease control plan and subsequent exercises and implementation by respective detention facilities.

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[23] AoC press release
https://www.moj.gov.tw/cp-21-127818-301cc-001.html

[24] Preparedness and Response Plan for Correction Facilities in Relation to Covid-19
https://www.cdc.gov.tw/File/Get/jxo9NjqMDNcIGaocRAwtHg

Lack of transparency in income and hours of prison labor

53. Beginning in February, the AoC has recruited inmates with sewing skills to produce both face masks and mask covers for sale. In addition, upon the launch of the government's stimulus coupon initiative, inmates have also worked on processing and packing. However, the AoC has not released any information in relation to the income generated by such work. Whether working inmates have worked extensive hours to meet the demand remains unclear as well.
54. Our recommendations:

(1) Name-based face mask allocations ought to be implemented in all correctional facilities as soon as possible, in order to enable inmates' purchase of masks via NHI cards.

(2) MOJ's Agency for Correction ought to publish the inmates' income and working hours for making cloth face masks and packaging stimulus coupons. It is imperative that inmates are not compelled to work for free for "public benefits", and inmates' hours and workload ought to be monitored to prevent prolonged working hours under time constraints.

(3) Sufficient medical assessment resources ought to be introduced, and psychological support programs offered: apart from screening new inmates and visitors with fevers, lower respiratory symptoms and travel/contact histories, those who exhibit symptoms ought to be assessed by medical professionals. In addition, responsibility for disease control preparedness at a prison extends beyond prison staff. Prison administrators ought to use this opportunity to communicate relevant procedures and strategies to the inmates, in order to reduce fear. Meanwhile, isolations ought to be approved by professional medical assessment in order to prevent unassessed, unnecessary isolation, which may cause the inmate unnecessary anxiety or other forms of psychological stress.

(4) Implement thorough and transparent disease control exercises in order to address concerns from inmates' families. In addition, while the MOJ has stated that segregation measures are in place,[25] reviews ought to be made to determine whether there is enough space for isolation purposes, and medical assessment resources ought to be introduced. Proper standards, personnel and workflow ought to be in place for external medical treatment under guard as well.

(5) For visits, the MOJ currently encourages video calls by family and friends in place of physical visits. However, these calls take place at the prison's designated area, and access to which still requires travel and is subject to the risks of entering an enclosed

[25] AoC's internal segregation measures include separate rooms, lodgings, working and lecture areas, establishment of operational perimeters, routing and controls, and adjustments to staff deployment and leave in response to the pandemic. AoC press release https://www.moj.gov.tw/cp-21-127818-301cc-001.html

community. Therefore, approval for visits via mobile application ought to be facilitated, in order to achieve disease control by segregation.

(6) The pandemic ought not to prevent access by external oversight entities. WHO's ad hoc directive (Preparedness, prevention and control of COVID-19 in prisons and other places of detention) has also expressly noted that,[26] third party oversight entities should not be prevented from visiting prisons, in order to prevent torture or other forms of inhuman treatment. More importantly, we must note that closing a facility for its own sake cannot be an appropriate approach for public health or disease control. On the contrary, the focus ought to be placed on timely and decisive adjustments to various disease control strategies, as well as thorough epidemiological investigations and control measures.

[26] WHO, Preparedness, prevention and control of COVID-19 in prisons and other places of detention, Interim guidance, 03/15/2020: https://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf

Special Chapter on Indigenous Peoples

Foreword of the Special Chapter on Indigenous Peoples

55. The Special Chapter on Indigenous Peoples in this report mainly focuses on following up with recommendations made by the Review Committee in its 2017 CO, as well as responding to the 2020 State Reports. While many issues concerning the rights of indigenous peoples were not listed in the 2017 CO, there have been no significant improvements in these aspects since 2017. It is recommended that the Review Committee refer to the Special Chapter on Indigenous Peoples in the 2016 parallel report coordinated by the Covenants Watch to have a comprehensive understanding of the human rights status of the indigenous peoples in Taiwan.

Responding to the State's Response to 2017 COR

COR Points 19-20

On enacting a comprehensive anti-discrimination law

56. In response to para. 42 of the 2020 ICESCR State Report, Taiwan is a country composed of diverse ethnic groups. However, discrimination against indigenous peoples is not uncommon in mainstream society. Many incidents of discrimination are even led by the public sector. For instance, at the Taiwanese historical drama performed at the presidential inauguration in 2016, indigenous peoples were described as "rough and wild." In 2020, at the Golden Bell Awards finalists press conference held by the Ministry of Culture, the head of the jury panels made a "ho ho ho ho ho" noise when announcing that the FM96.3 Alian Radio (Indigenous Radio) made the finalists, and said to the Indigenous Radio representatives "This is how you yell, right?"
57. These two cases are the rare few that caught the attention of mainstream media. This goes to show that contemporary discrimination often stems from the lack of cultural sensitivity rather than malice. Although these cases of microaggression did not cause harm to life or body, they reaffirm the rooted stereotypes of indigenous peoples in mainstream society, leading to incessant collective trauma and unfair treatment against indigenous peoples. The public sector took the lead in presenting these stereotypes of indigenous peoples, which were then spread by the media, deepening public misunderstandings and impeding equal understanding and respect for diverse ethnic groups in Taiwan.
58. Constructive suggestions and recommendations were made in paras. 8 to 10 in the 2016 ICCPR Parallel Report coordinated by the Covenants Watch, calling on the

government to enact a comprehensive anti-discrimination act as soon as possible, in which the forms and penalties for both direct and indirect discriminations must be defined. Moreover, the State should adopt and actively implement, through domestic legalization, the Convention on the Elimination of All Racial Discrimination (ICERD), which Taiwan had signed before withdrawing from the United Nations in 1966, taking reference from the domestic legalization of relevant United Nations human rights conventions such as ICCPR, ICESCR, CEDAW, CRPD, CRC.

COR Point 27

On the implementation of the Indigenous Peoples Basic Law

59. In response to para. 57 of the State's response to 2017 CO, the government has repeatedly claimed that they have completed the review and coordinated tasks as stipulated in the Indigenous Peoples Basic Law, however, the fact is that the so-called "revisions" were mostly adjustments to the terms, for instance, changing "Indigenous People" to "Indigenous Peoples". Meanwhile, there is no progress on the amendments to sub-laws concerning major rights of the indigenous peoples, such as the Indigenous Peoples Land and Sea Law, the Indigenous Peoples Autonomy Law. Furthermore, regarding the very critical matter of the delineation of traditional territories and the implementation of consultation and consent rights, administrative regulations have seriously infringed the rights of the indigenous peoples, and have misinterpreted the legislative intent of the Indigenous Peoples Basic Law. See discussion below for more details.
60. As for the Indigenous Peoples Basic Law Promotion Committee, following its establishment in 2013, it convened for three times that year and then ceased to operate for years. After the Democratic Progressive Party (DPP) took over the reins in 2016, the Committee convened three times each year in 2017 and 2018, and then twice in 2019. In 2020, no meetings have been held at time of writing. Although there were reports on laws that should be revised, there has been no progress on laws having been substantially revised or formulated.

On the delineation of traditional territories

61. First of all, we must clarify that under current Taiwanese laws, the only item of rights extended in the traditional territories is "right to consult and consent." It is stipulated in art. 21 of the Indigenous Peoples Basic Law, [27]that when conducting "land development, resource utilization, ecology conservation and academic research" on indigenous land, one must "consult and obtain consent from the indigenous peoples

[27] See art. 21, The Indigenous Peoples Basic Law
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0130003

or tribes, even their participation, and share benefits with indigenous people." This has nothing to do with the return of land, and it will not impact the land rights of existing public or private ownerships.

62. In response to paras. 58 - 60 of the State's response to 2017 CO, the government has repeatedly claimed that they have made a lot of effort, but the most serious problem is that the Regulations on the Delineation of Indigenous and Community Land (hereinafter referred to as the Land Delineation Regulations) announced in 2017 misinterpreted the definition of traditional territories by excluding private lands from the realm of traditional territories. In other words, if or when the delineation of indigenous lands is completed, lands that have been lost to private hands within the traditional territories remain lost. The indigenous peoples' rights to consult and consent are forcibly forfeited along the way. The Land Delineation Regulations completely surpassed the authorization of its mother law, seriously infringing on the rights to traditional territories of the indigenous peoples.
63. When the Land Delineation Regulations were first made public, indigenous groups staged numerous protests and voiced complaints, but the Executive Yuan and the Council of Indigenous Peoples, the competent central authority, were reluctant to amend the misinterpretations. After the official announcement in February 2017, some indigenous activists camped in front of the Presidential Palace to protest. In the process, they were constantly harassed and driven away by the police. In the end, they could only continue the protests in a manner similar to guerrilla warfare in the adjacent park. This continued for more than three years, yet there has been no positive response from the government. What the State claimed in para. 60 of the State's response to 2017 CO, that "the Council of Indigenous Peoples will conduct a comprehensive review after the Land Delineation Regulations have been under implementation for a certain period of time" and that "opinions from all sectors must be collected and consensus reached through discussions before any related legislation is implemented" never happened.
64. Moreover, after the announcement of the Land Delineation Regulations, there were many large-scale development projects, which, through various methods, avoided going through the indigenous peoples for consultation and consent. For example, the ATT Group, by way of private land acquisition, managed to surpass the consultation and consent procedure and acquired land within the traditional territories of the Amis 'Atolan Community in Taitung County, upsetting the locals.
65. In addition, in the "Golden Sea Resort Development Project" located in the traditional territories of the Karoroan Community and the Fulafulangan Community of the Amis Peoples in Taitung City, nearly half of the targeted area of the development project belonged to public lands, which should have been acquired in accordance with the provisions of the Indigenous Peoples Basic Law and obtain consent from the aforementioned two communities. However, after the development project was

submitted for review, all public lands in the area were purchased by the consortium through negotiations, resulting in a situation where the entire area of the development project is located in traditional territories but is on private land. According to current regulations, which is incorrect in this aspect, the developers are then no longer required to consult with and get consent from the local indigenous peoples.

66. Legally speaking or practically speaking, aforementioned evidence shows that the Land Delineation Regulations misinterpreted the definition of traditional territories, wrongly limited the implementation of the consultation and consent rights, seriously violating indigenous peoples' land sovereignty. The government cannot ignore the fact that the rights of indigenous peoples continue to be infringed, and should correct related errors with no further delay.

COR Point 28

On indigenous peoples' rights to consult and consent

67. In response to paras. 61 - 63 of the State's response to 2017 CO, the government published the Regulations on Obtaining Consent and Participation of Indigenous Communities through Consultation (hereinafter referred to as the Consultation and Consent Regulations) in January 2016. Based on the name of the Consultation and Consent Regulations, it seems to conform to the Free Prior Informed Consent principles disclosed in the UN Declaration on the Rights of Indigenous Peoples, but in substance, there are many problems.
68. First, the Consultation and Consent Regulations only regulates how the indigenous peoples and communities exercise their rights to give consent, while having no stipulations on the developer or the government to fulfill consultation requirements. Moreover, one has to be a member of a community to enjoy the right to consent. However, the identification of community members is based on the government's household registrations, rather than the indigenous peoples' self-identification, nor the actual and current situation of the community.
69. Secondly, the Consultation and Consent Regulations require communities to establish community councils in accordance with government requirements, before they are eligible as a subject of consultation and consent. But the problem is that most communities have their own decision-making mechanisms. This requirement stipulated in the Consultation and Consent Regulations prevents the indigenous peoples from acting in accordance with their norms, forcing them to comply with government requirements that do not conform to their traditions and cannot reflect their actual will.
70. Thirdly, the right to consent is decided by a majority vote. This approach is inconsistent with the way many communities make their decisions, which require

absolute consensus. The Consultation and Consent Regulations make it impossible to implement the spirit of the way decisions were usually made, forcing the indigenous people to choose between yes or no, causing internal conflicts.

71. Fourth, if the community is unwilling to convene a meeting to exercise the right to consent, the government can surpass the community and hold the meeting on its behalf. The fact that the government can override the community is a serious infringement upon the indigenous peoples' and the community's exercising of collective rights.
72. Take the photovoltaic (PV) power BOT project at the Katratripulr Community of the Pinuyumayan Peoples in Taitung as an example, which received great public attention in 2019. Many Katratripulr Community members who had registered their residency in the metropolitan area due to school or work were not allowed to participate in voting, while many households that were eligible to vote were only eligible because they registered their residency in the administrative area where the community was located and they had indigenous status, even though they did not belong to the Katratripulr Community. The incident above shows great absurdity.
73. In this case, because the community council found the procedure disputable, and that consultation with the community was insufficient, the council refused to convene a meeting to exercise the right to consent. The Taitung City Office then held a meeting and voted on the community's behalf, and in the end passed the BOT project by a vote of 187 to 173. The 14 vote - difference was even less than that of "delegated votes", causing a great divide within the community.
74. Another problem is regarding remedies. Even if litigation is possible, by the time the court renders its decision, relevant development projects might have already been completed, and irreversible damage may have already been made. There have been cases as such in the past, for instance the BOT development project at Taitung Shanyuan Bay and Miramar Resort, hence we ought not to repeat the same mistakes.
75. It is made abundantly clear that the current set of deficient Consultation and Consent Regulations does not comply with the 2017 CO, in which the Review Committee stated that it "strongly recommends that the Government urgently develop, together with Indigenous peoples, effective mechanisms to seek the free, prior and informed consent of Indigenous peoples on development plans and programs that are affecting them to ensure that they do not infringe on the right of indigenous peoples, and to provide access to effective remedies in instances where such infringements have already occurred. Such mechanisms should comply with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards." The Consultation and Consent Regulations should be amended immediately to stop the infringement of the rights of Indigenous peoples and communities.
76. To sum up, in the process of legalization of the right to consultation and consent, if the current bureaucratic logic is applied in a perfunctory method, it will once again

forfeit and distort the rights of indigenous peoples. How to design a regulatory framework that is effective, enforceable, and fully respects the differences between communities and ethnic groups is not an easy task, but it is not impossible to achieve. What's important is how this government, which is still operating in Han Chinese logic, can rid the colonial paradigm, earnestly yearn for the implementation of the rights of indigenous peoples and treat them as equals. This will not constrict the livelihood of non-indigenous peoples on this land. Instead, the people can benefit from a level of experience and wisdom that's more reflective of the land we all live on and move towards a more equitable and prosperous future.

COR Point 29

On the identity of indigenous peoples

77. Responding to paras. 64 - 65 of the State's response to the 2017 CO, we spent a lot of effort in 2017 during the Review Meeting explaining that the current political classification of highland indigenous peoples and lowland indigenous peoples originated from a colonial perspective, ignoring the subjectivity and particularity of each ethnic group, and restricting indigenous members from participating in politics. We also wish to offer a special reminder that while endeavoring to restore the legal status of various Ping-Pu plain indigenous peoples, we ought not to perpetuate this erroneous method of classification.
78. Then again, responses from the government made us feel as if we have never discussed this issue, and even declared that "the current system of rights of indigenous peoples is designed based on the long-term objective needs of the indigenous peoples of the mountains and the plains." In the regulatory design, the government also insisted on establishing "Ping-Pu plain Indigenous Peoples" as a special category of the indigenous peoples, which specific grouping has not been recognized by national laws, and their rights and obligations will be determined separately.
79. But we utterly cannot comprehend what the so-called "objective needs" could be at all? We believe that such a response from the State Report has not addressed the substantive content of the 2017 CO at all, obviously avoiding the core issue. We can understand the difficulties or restrictions that may be encountered in policy implementation and changes, but we should not evade the problem in a perfunctory manner.
80. We solemnly reiterate that terms of distinction such as "highland indigenous peoples" and "lowland indigenous peoples" are intrinsically flawed, carrying colonial-undertone, and should be reviewed. No further rights or responsibilities ought to be tagged onto such meaningless classification as "Ping-Pu plain indigenous people", which only serves to divide indigenous peoples and deepen colonial scars.

COR Point 30

On the cultural relevance of indigenous health care and education

81. In paras. 66 - 69 in the State's response to 2017 CO, relevant agencies responded that they have drafted the Indigenous Peoples Health Act, set up Indigenous Community Health Promotion Centers, and pushed for a special chapter on long-term care for indigenous peoples, however, in practice, the measures mentioned above are far from what was recommended by the Review Committee.
82. Practical problems occurred include: (1) Difficulty in integrating resources (the long-term care fund for indigenous areas is divided by the Council of Indigenous Peoples and the Ministry of Health and Welfare); (2) the lack of professional training to improve the competency of caregivers; (3) the regulations and restrictions on constructions and buildings on indigenous regions continues to pose as an obstacle for the establishment of long-term care institutions; (4) lack of self-determination mechanisms for indigenous peoples and locals to take measures according to their culture and tradition of caretaking; (5) the needs of indigenous people with disabilities should be further addressed and the relevant measures should be improved. After the Long-Term Care Plan 2.0 hit the road, the Ministry of Health and Welfare, though having already set up community care support spots, long-term care support spots in the alleys, were unable to coordinate with the Council of Indigenous Peoples. What's worse, the plan occupied some of the spare spaces in the indigenous communities.
83. It is recommended that the Ministry of Health and Welfare must first start with surveying and compiling data on fundamental information regarding indigenous regions and communities, take stock of the existing official and private care resources, and then study the needs of different ethnic groups and regions, in order to make comprehensive considerations. The second step is to respect communities' autonomy, and invite local organizations and indigenous people to participate in relevant projects.
84. Responding to paras 70 - 71 in the State's response to 2017 CO, despite having enacted the Education Act for Indigenous Peoples, established the Indigenous Curriculum Development Collaboration Center and the indigenous education policy meetings, the government still fails to establish an indigenous peoples-centered educational system with the core concept of indigenous peoples as subjectivity.
85. According to art. 15 of the Education Act for Indigenous Peoples, governments at all levels can set up schools for indigenous peoples as needed. However, the most important sub-law, the Indigenous School Act, has yet been passed. Some educators can only set up "experimental schools" centered on the culture and knowledge of the indigenous peoples, trying to break through the restrictions through "experimental education".

COR Point 44

On issues concerning the indigenous peoples' right to decent housing (taking into account the culture and collective needs of the indigenous peoples)

86. In response to paras. 106 - 109 in the State's response to 2017 CO, regarding the indigenous settlements in non-indigenous regions, such as Happy Mountain, Lavac, etc., questionably accused of violating current national laws and regulations by the government, the government has not yet provided a proper solution.
87. Regarding post-disaster reconstructions, the Review Committee suggested that "temporary resettlement of any indigenous peoples will not lead to permanent land deprivation." However, after the Morakot disaster in 2009, the government's replacement measures were to require the relocated people to "permanently abandon their lands in their original homelands" in exchange for a permanent house. Therefore, post-disaster reconstruction has so far led to more controversies, including problems such as the poor living condition of the permanent houses, unsustainable livelihoods after leaving the original homeland industry, and discontinuity of cultural heritage of the indigenous peoples.

COR Point 47

On nuclear waste on the Orchid Island

88. Responding to paras. 128-135 in the State's response to the 2017 CO, while art. 31 of the Indigenous Peoples Basic Law clearly stipulates that "the government may not store toxic materials in indigenous peoples' regions contrary to the will of indigenous peoples," and the Review Committee has clearly suggested that "the Ministry of Economic Affairs formulate specific plans and timetables for the final disposal of radioactive waste", the government's actions on dealing with nuclear waste is unbelievably delayed and inappropriate.
89. The Daren Township in Taitung County is set by the government as the candidate site to relocate the nuclear waste removed from Orchid Island. Although there have been voices and protests against this decision, the Ministry of Economic Affairs is "still working on communication" to obtain more than 50% support from the indigenous peoples. This action not only violates the provisions of the Indigenous Peoples Basic Law, but also seriously conflicts with the FPIC principle set up by the United Nations Declaration on the Rights of Indigenous Peoples.
90. Regarding the strong demand of removing the nuclear waste from Orchid Island, the "Investigation Report on the Facts in the Establishment of the Nuclear Waste Storage Facilities on Orchid Island" published by the government clearly proposed four recommendations: damage compensation, acceleration on the relocation of the storage facilities, replenishment of medical resources and facilities on Orchid Island,

and planning for the island's future development. However, the government failed to proactively deal with the four recommendations, instead, it proposed a 2.55 billion "retroactive compensation" package in a situation where the legal foundation is vague and procedures inadequate, causing more confrontation and confusion to the Tao Peoples on the Orchid Island and stigma against them from the mainstream society.

Responding to 2017 COR

COR Point 9

91. NGOs in Taiwan had advocated for the establishment of a National Human Rights Commission (NHRC) since 1999, yet the Government was unable to decide how the commission should be formed. Several options were proposed, including setting it up under the Presidential Office, the Executive Yuan, Control Yuan or as an organizationally independent institution. The progress was stagnant as the government seemed unable to decide among the proposals. The concluding observations and recommendations following the review of the Initial State Human Rights Report on ICCPR and ICESCR in 2013 brought government's attention to this issue but again there was no effort to break the impasse. Through the invitation by Covenants Watch, the Asia-Pacific Forum supported a task force led by Ms. Rosslyn Noonan to visit Taiwan for a scoping assessment in August 2017. This mission recommended that under the framework of the current Constitution, the most likely path to establishing the NHRC was to substantially modify the structure and functions of the Control Yuan to accommodate the mandates of both good governance and human rights. NGOs leveraged on the recommendations of the Noonan Report to advance their work in the Presidential Office Human Rights Consultative Committee. The message seemed to have worked its way to the President, and a decision was made to start preparatory works in the Control Yuan. The Legislative Yuan passed the "Organic Act of the Control Yuan National Human Rights Commission" on December 10, 2019,[28] and the NHRC was inaugurated on August 1, 2020.
92. There are in total 29 Control Yuan members. The president of the Control Yuan will serve as the Chief Commissioner of the NHRC. According to the Organic Act, 7 of the 29 Control Yuan members will be ex-officio NHRC commissioners with a 6 - year term, and the President will assign 2 out of the remaining 21 members as NHRC commissioners every year. As stipulated in the Control Act, "The Control Yuan shall exercise the powers of impeachment and censure through its members and propose corrective measures through its committees."[29] The NHRC commissioners shall exercise the powers and functions as per art. 2 of the Organic Act.
93. As of time of writing (September 2020), the NHRC has yet to hold any public events. The following are issues we believe require some attention:

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[28] Organic Act of the Control Yuan National Human Rights Commission ： https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0010119

[29] Control Act: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0030199

(1) The identity of NHRC: Though the NHRC is established within the Control Yuan, the commission must develop in the direction of a fully independent institution, rather than "a unit under the Control Yuan" in order to function independently. At the moment, the NHRC's relationship with the Control Yuan remains undetermined. Traditional bureaucrats tend to regard the NHRC as a standing committee under the Control Yuan. (Unfortunately, the words "committee" and "commission" translate the same in Mandarin.) Moreover, the Control Yuan participates in the drafting and has the final say on the Act on the Exercise of Powers of the National Human Rights Commission, which upon passage, will become the legal foundation of how the NHRC operates.

(2) The roles and identities of the Commissioners: As NHRC commissioners are simultaneously members of the Control Yuan (serving primarily ombudsman functions), by law, they can initiate investigation on individual civil servants or governmental agencies and exercise the power of impeachment and censure. If commissioners put too much emphasis on this role, it would not only make it difficult to separate their unique identities as NHRC commissioners from traditional Control Yuan members, but also place themselves in a confrontational position with the government. While the NHRC is encouraged to cooperate with the government (as prescribed by the Paris Principles), it must avoid turning into a supervising agency to the government, should it acquire powers to suggest and to impeach at the same time. On the other hand, cooperation with the government should not jeopardize the role of the NHRC as a monitoring body demanding accountability of the government.

(3) While the NHRC is still working on defining its institutional characteristics, 3 NHRC commissioners have already assumed the role of ombudsperson and collaborated with other Control Yuan members on investigations. Actions like these do not help in shaping the unique functions of the NHRC and may hamper NHRC's independence from the Control Yuan.

(4) The NHRC should adopt working methods different from traditional Control Yuan members. These include systematic monitoring of national human rights situations, national inquiries into systemic human rights violations, and utilizing tools such as human rights indicators, statistics, and impact assessments. In addition, according to CRPD, general comment #2 of the Child's Rights Committee, general comment #10 of the Committee on Economic , Social and Cultural Rights, and general comment #17 of the Committee on the Elimination of Racial Discriminations, the NHRC should bear the responsibility of monitoring these international treaties, all of which enjoy the status of domestic laws. It is unclear whether the commissioners realize the full scope of their mandates, and whether they command the knowledge and skills to develop the methods to achieve these goals.

(5) Relationship with the Legislative Yuan: The Control Yuan used to have very limited interaction with the Legislative Yuan, and the Control Yuan was proud to say that it

did not have to answer to anyone. However, in the future, the NHRC must submit annual reports to the Legislative Yuan to meet its minimum requirement of accountability. In addition, these two Yuans should build a platform of cooperation according to the Belgrade Principles to facilitate communication on legislations and amendments.

(6) Relationship with the Judiciary: The relation between Control Yuan and the Judiciary has been tense because of the dispute over whether Control Yuan members could initiate investigations on judges based on the application of laws. Control Yuan's investigations were regarded by the judiciary as intervening legal opinion formation, a privilege granted exclusively to judges. New models of interaction have to be built if the NHRC is to take up the role of amicus curiae and intervene in legal cases, and the legal opinions have to be cautious and professional enough to earn the respect of judges. While some NHRC commissioners expect to compete with the Grand Justices for the interpretation of human rights values, the commissioners and the staff must be well prepared to produce convincing legal opinions and analyses.

(7) The nomination process: Commissioners were nominated by the President and approved by the Legislative Yuan. While members of civil society were allowed to submit nominations, the Selection and Recommendation Committee, which was in charge of reviewing the nominations and was chaired by the Vice President, failed to consult with the public after the preliminary stage of the nomination process, nor did it make public the criteria required to make the short list. Originally, there was supposed to be a final opportunity for candidates to take questions from legislators and the civil society, but the event did not take place because the KMT used it to boycott the Control Yuan president nominee.

(8) The draft bill of the "Act on the Exercise of Powers of the National Human Rights Commission" has yet been submitted to the Legislative Yuan, and it is unclear at time of writing whether the bill will fully comply with the Paris Principles thereby endowing the NHRC the legitimacy and authority to exercise its power to protect and promote human rights. Furthermore, it is also unclear whether the Act can give the NHRC a unique profile that is different from traditional supervisory powers.

(9) The structure of NHRC: Currently the Commission is staffed with 26 full-time employees, while sharing 80 investigation officers with the Control Yuan. The law should clearly stipulate how resources, including manpower, are shared and collaborated between the NHRC and the Control Yuan.

94. A related issue is that the Presidential Office Human Rights Consultative Committee (POHRCC) has ceased to function after the establishment of the NHRC. Although the POHRCC is consultative in nature, it served as a platform for high level officials of the Executive, Judiciary, and Control Yuans to meet regularly and coordinate on interdepartmental issues. The government needs to create a mechanism that operates

similar to the POHRCC, in order to deal with interdepartmental issues such as business and human rights and National Human Rights Action Plans.

95. Currently there is no institutional mechanisms in the Legislature to protect human rights. We suggest that a Human Rights Committee be established in the Legislative Yuan to discuss and resolve any disputes on provisions in laws which potentially may pose a threat to human rights.
96. The bill on the "Act to Implement the Convention Against Torture and its Optional Protocol" the Executive Yuan is currently drafting sets to place the National Preventive Mechanism (NPM) against torture within the NHRC. Please refer to Responses to Point 11 of the 2017 Concluding Observations and Recommendations.
97. We suggest that the NHRC:

(1) Further examine its relationship with the Control Yuan, and strive to develop into an independent institution.
(2) Evaluate and re-orient its relations with the Executive, Legislative, and Judicial Yuans, and develop mechanisms of accountability.
(3) NHRC commissioners hold the power to impeach, rectify and correct. Should the NHRC make recommendations to government agencies on human rights policies, it must clarify clearly the nature of these recommendations, so as not to become a threatening guide. At the same time, the boundaries of the relationships and interactions between the Commissioners and government officials must be carefully set, in order to maintain the NHRC's objectivity and supervisory role.
(4) Commence discussions on the draft bill on the Act on the Exercise of Powers of the National Human Rights Commission and make sure to consult with international experts and the civil society in the process.
(5) Engage civil society in strategic planning for the next 2-3 years.
(6) Engage with the international human rights system and its knowledge, and build these capacities within the Commission to avoid over-delegating.
(7) Establish methodologies for conducting national inquiries, compiling human rights statistics, indicators, and impact assessments.
(8) The government should consult with the NHRC during drafting of laws and regulations. The Legislature should establish mechanisms in compliance with the Belgrade Principles to maintain communication with the NHRC
(9) Set up a Human Rights Committee in the Legislative Yuan.
(10) In case progress can be made on constitutional reform, it should clearly stipulate that the NHRC is a fully independent constitutional body.

COR Point 11

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OPCAT)

98. The draft of the "Act to Implement CAT and OPCAT" submitted by the Executive Yuan was read in the Legislative Yuan in early 2020, but it has been removed because of the Legislative Yuan's practice of "discontinuity by terms". Since then, the National Human Rights Commission (NHRC) was established in August 2020, and the responsibility to set up a National Preventive Mechanism (NPM) has since been altered to the NHRC, instead of the Control Yuan, which was stipulated in the original bill. A new version of the "Act to Implement CAT and OPCAT" is currently being developed by the Executive Yuan.
99. At present, the authority responsible for the implementation of the "Act to Implement CAT and OPCAT" is the Ministry of the Interior, while the actual responsibility is the Criminal Investigation Bureau (CIB) under the National Police Agency. Torture and cruel, inhuman or degrading treatment or punishment are most likely to occur not at police stations, but in prisons under the control of the Ministry of Justice, long-term care institutions and psychiatric institutions supervised by the Ministry of Health and Welfare, and special education schools established by the Ministry of Education. The CIB responsible for the implementation of the CAT will face many challenges in cross-ministerial coordination.
100. The NPM will be set up at the NHRC, not the Control Yuan as planned in the original draft. However, in the past years the Control Yuan did not plan the operation of NPM in detail, for example, how many institutions will fall within the scope of regular visits by NPM, and did not plan the human and administrative resources required by NPM. If this work is transferred to the NHRC, which has fewer human and administrative resources, NPM visits will be a huge burden to NHRC.
101. Although NPM is set up in the NHRC, the organization and operation of NPM should strive for independence. The function of "preventive visits" should be clearly distinguished from the nature of the complaint-based investigations by the Control Yuan for the purpose of impeachment. The Control Yuan's bureaucracy still treats the NHRC (and NPM) as a unit under its jurisdiction without recognizing its independent status, an attitude that would hinder the functioning of the NPM.
102. In order to exercise its functions fully, there should be laws establishing the organizational structure and exercise of its powers, rather than just a task group in the NHRC. It should be explicitly specified which NHRC members are responsible for NPM's tasks.
103. Suggestions:

(1) The responsible authority of the implementation of CAT should preferably be the Ministry of Justice or the Ministry of Health and Welfare. If the Ministry of the Interior is designated, the Ministry of the Interior is directly responsible, not the CIB, given the inter-ministerial nature of the CAT.
(2) The Government is considering giving effect to the OPCAT in the form of the "Conclusions of Treaties Act", but this approach does not respond at all to the question of how NPM should be set up. The Implementation Act approach is clearer and more effective.
(3) NPM should have adequate human and administrative resources and should operate independently of the Control Yuan.
(4) The NHRC and the Control Yuan should consider laws for establishing an independent organic law and exercise of power law for NPM.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

104. The Republic of China was a formal party to the ICERD before it was forced to leave the United Nations, and the Government recognized ICERD as an effective domestic law. However, unlike the conventions that have been in force since 2009 through domestic-implementation acts, the ICERD has no primary authority and lacks the various relevant government obligations expressly required by the Implementation Acts of other conventions, and therefore has not had any practical effect for a long time. It was not until 2013 that the Ministry of the Interior was requested to promote ICERD in accordance with the resolution of the Presidential Office Human Rights Consultative Committee
105. In 2018, the Ministry of the Interior designated the Department of Immigration as the responsible agency, and in 2020 the "Plan to Promote ICERD" approved by the Executive Council will begin four operations in 2021: (1) reviewing laws and regulations on its compliance with the ICERD, (2) education and training, including teacher training, training materials and agency courses, (3) the national report on ICERD and international review, (4) promotion, including website construction, advocacy operations. These efforts are carried through "executive program" and lack a legal basis.
106. The Ministry of the Interior designates the Immigration Department as the primary authority, but racial discrimination in the country includes discrimination against indigenous peoples, new immigrants, and migrant workers. The Council of Indigenous Peoples and the Ministry of Labor should be involved in the planning process.
107. To deal with the problem of racial discrimination, the Anti-Discrimination Act is needed as a basis for clarifying the various forms of racial discrimination, regulating the specific duties of the Government in eliminating discrimination, and providing

the basis for judicial remedies. Although para. 19 of the 2017 Concluding Observations Recommendations asked that the Government establish anti-discrimination laws, the Government did nothing more than commission a study.

108. Suggestions:

(1) The Ministry of the Interior should invite the Council of Indigenous Peoples and the Ministry of Labor to participate in the planning and discussions on implementing ICERD and pay attention to inter-ministerial coordination.
(2) The Government should expedite the legislative work of the Anti-Discrimination Act.
(3) Establish a legal basis for the work currently being carried out in the form of an executive program.

COR Points 12-13

109. In Taiwan's legal order, it is through the Act on the Implementation of the Two Covenants that rights enshrined in the two Covenants are given domestic legal effect.[30] While the legal priority of the Covenants can be derived from the provisions of the Implementation Act which stipulate that "domestic laws not conforming to the Convention shall be amended within a limited period of time", not all judges agree.
110. If the two Covenants are to become part of Taiwan's constitution, the very high barriers to constitutional reform must first be overcome. The Legislative Yuan established the “Constitutional Amendment Committee” in October 2020, and the draft constitutional amendments proposed by NGOs include the incorporation of the rights enlisted in the two Covenants to the list of rights in Chapter II of the Constitution, and an article to establish the status of the United Nations human rights conventions in domestic legal order.
111. In para. 6 of the State Report Responding to 2017 CO, the Government states that Justices of the Constitutional Court cited the Covenants and other human rights conventions in their constitutional interpretations. However, some of these citations misused the Covenants. For instance, interpretation No. 709 quoted art. 11 of the ICESCR to justify evictions associated with urban planning; interpretation No. 728 cited art. 2 and 5 of CEDAW and held that women were reasonably disqualified as successors of ancestor worship guilds. On the contrary, in No.752 (A Defendant’s Right to Appeal a Higher Court Guilty Decision Reversing a Lower Court Not-Guilty Decision Cases), although apparently inspired by the concluding observations of the Covenants, failed to mention the ICCPR in the interpretation. It is obvious that statistics on the number of citations cannot represent whether the Covenants have been correctly applied domestically.

[30] Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=I0020028

112. Taking the point above into account, we can examine more closely the application of the Covenants by the Administrative Courts. Most of the government agencies are located in Taipei, so the Taipei High Administrative Court deals with the largest number of disputes over the rights and obligations between the state and the people. The Court closed a total of 3,365 cases in 2018, of which only 25 cited the Covenants, indicating a low percentage.
113. The Judicial Yuan has often held that due to the principle of "non - interference in independent trials", only indirect means, such as the education of judges, is possible. However, Justices of the Constitutional Court and judges of the Grand Chambers of the Supreme Court and Supreme Administrative Court should lead by example and cite the Covenants more often, to encourage judges in lower courts in doing so.
114. We recommend:

(1) In interpreting the Constitution, the Justices cite the Covenants more.
(2) Both the Supreme Court and the Supreme Administrative Court have just established the Grand Chamber system to unify the interpretation of statutes. As the interpretation will have influence over judges at all levels, we suggest that the Grand Courts cite the Covenants more.
(3) The civil court and criminal court of the Supreme Court should regularly select, compile, and publish judgements that are worth future referencing, and include judgements that applied the Covenants in their selections.

COR Points 14-15

115. The State's response reaffirms the 2013 and 2017 Review Committees' insightful observation on Taiwan's human rights education: "over-emphasis on quantity rather than quality".
116. Common challenges in human rights education include:

(1) Planning of human rights education: There is no government agency that has the authority, resources, manpower or skills to coordinate, plan and set standards for the content. The government has never regulated the content of human rights education or produced practical examples for teaching. These important tasks are usually entrusted to scholars, but most scholars are not properly trained.
(2) The implementation of human rights education in various government agencies:

i When inviting human rights educators, the implementation agencies usually don't communicate with the educators regarding the essential components that should be included in the course; thus, the lecturers are left to decide what and how human rights topics are taught in the classrooms.
ii Many lectures are given based on the provisions of the Covenants, lacking inference of human rights principles or discussion on the relationship between different rights.

iii Classes are usually large in size (tens to 200 students), resulting in insufficient discussions and interactions.

(3) Evaluation of human rights education:

i The evaluation is only carried out by way of after-class tests, many of which focus heavily on the description of facts and questions are often inappropriate.

ii There is no formal assessment for the quality of the classes or the effectiveness of learning.

117. We recommend the government to:

(1) Form a team that consists of scholars and government officials, to draw up blueprints and curriculum maps for human rights education;

(2) Conduct research and development for teaching materials, including case studies and appropriate multimedia teaching materials;

(3) Train the educators;

(4) Develop appropriate evaluation tools.

COR Point 16

The National Action Plan on Business and Human Rights (Responding to para. 19 of the State's Response to 2017 COR)

118. Observation of the formulation of the National Actions Plan (NAP)

(1) During the drafting of the NAP by the government, we observed that the government is not familiar with the development of corporate social responsibility in the international community. Government authorities still cannot fully understand the spirit of CSR even after reading the UNGP. Therefore, the majority of the agencies do not think that the laws and regulations that they are in charge with violate the UNGP. On one hand, it is because the government cannot fully understand the actual spirit of state obligation, "respect, protection and fulfillment". On the other hand, it is because Government authorities are way more sensitive to "violation by commission" than to "violation by omission". This may be due to the fact that Government personnel are merely given the authority to review existing laws and regulations and conduct limited revisions, and are unable to take the initiative and adopt measures that conform to active duties. For instance, the Investment Commission, Ministry of Economic Affairs is responsible for reviewing foreign investment in Taiwan and Taiwan's outward investment. However, neither of the reviews need explanations regarding human rights impact an investment may have and measures or remedies to such impact.

(2) According to Taiwan Stock Exchange Corporation Rules Governing the Preparation and Filing of Corporate Social Responsibility Reports by TWSE Listed Companies of

the Taiwan Stock Exchange Corporation,[31] companies falls into categories of the food industry, chemical industry, financial and insurance industry, and food and beverage service, or companies with a share capital of NT$5 billion or above should prepare and file a Corporate Social Responsibility Report of the preceding year in accordance with the Global Reporting Initiatives (GRI) Standards every fiscal year. The content of the report should include environmental, social and governance risk assessment, and relevant performance indicators should be set to manage major topics identified.

i Human rights issues are included in the "social standards" of GRI. However, GRI 412 standards require only "the total number and percentage of operations that have been subject to human rights reviews or human rights impact assessments, by country", which means that if a company fails to conduct human rights reviews or human rights impact assessments, its human rights issues will not be shown in the report.

ii Many companies still mistake organizing charity or non-profit activities for fulfilling human rights obligations.

(3) The Taiwanese government hasn't developed operational guidelines regarding human rights impact assessments. Government authorities themselves do not conduct assessments, and do not require companies to conduct assessments.

(4) The government commissioned a law firm which often represents corporations to draft the National Action Plan on Business and Human Rights. There is a lack of professionals in the field of human rights in both Government authorities and the commissioned agency.

(5) NGOs only had a few opportunities to speak briefly about the NAP in roundtable forums. The government never looks seriously at the fact that several organizations have had actual experience with corporations.

(6) During the drafting of the National Action Plan on Business and Human Rights, several areas were interrelated to the NAP such as the children's rights impact assessment, human rights education, and the overall National Action Plan of the Executive Yuan. And yet they seem to be developed separately with little or no horizontal coordination.

119. Recommendations:

(1) Prioritization should be sorted out in execution and implementation: it is suggested that the focus should first be state-owned enterprises and enterprises in which the government is the major shareholder. Also, state-owned banks should request companies to conform to certain human rights standards and conduct human rights reports when companies apply for loans.

(2) Human Rights Impact Assessment: the government should

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[31] Taiwan Stock Exchange Corporation Rules Governing the Preparation and Filing of Corporate Social Responsibility Reports by TWSE Listed Companies: http://www.selaw.com.tw/LawContent.aspx?LawID=G0100517

i establish a human rights impact assessment procedure that regulates government authorities.
ii promulgate operational guidelines on human rights impact assessments for corporations to follow (Guidelines published by the Danish Institute for Human Rights can be considered).
iii specify under which situations should corporations provide human rights impact assessment reports.

(3) The government should refer to Guidance on National Action Plans on Business and Human Rights by the UN Working Group on Business and Human Rights (December 2014) and once again educate government authorities on business and human rights.
(4) Provide training to corporations to increase awareness, including publishing relevant publications and collecting best practices around the world.
(5) Expand the participation of NGOs/CSOs and stakeholders in the NAP.
(6) The government should establish a National Baseline Assessment (NBA). In the area of law review, the government should fundamentally review the compatibility of domestic laws and regulations with the UNGP and General Comment No. 24 of the ICESCR.
(7) The Ministry of Economic Affairs should form a human rights task force within the ministry.
(8) National Human Rights Commission (NHRC) should closely pay attention to business and human rights and play the monitor role.
(9) CSR reports should disclose sanction records and remedies to violations of labor laws and regulations (including but not limited to Labor Standards Act, Labor Pension Act, and Labor Insurance Act) and environmental laws and regulations.
(10) At present, banks that signed the Equator Principles in Taiwan include E.SUN, Cathay, Fubon, CTBC, Taishin, and SinoPac. All six banks mentioned above are private banks, and it is suggested that Bank of Taiwan and Land Bank of Taiwan be an example and sign the Equator Principles.
(11) Labor Retirement Fund and Public Service Pension Fund should establish clear investment principles and make socially responsible investments. Methods include formulating a negative list (prohibit investing in companies in pornography, gambling, tobacco and alcohol, and arms business, etc.) and a positive list (active investing in CSR related index such as FTSE4Good TIP Taiwan ESG Index and Dow Jones Sustainability Index), and following shareholder activism as well as playing the role of a government investor and requesting invested targets to fulfill their CSR.

Corporate responsibilities on gender equality (Responding to paras. 17-23 of the State's Response to 2017 COR)

120. On a 2020 survey regarding LGBTI+ people in workplaces conducted by Taiwan Tongzhi (LGBTQ+) Hotline Association and Taiwan Equality Campaign, it was found that:

(1) Businesses in Taiwan largely showed apathy to the issue of gender and sexual diversity. In the 2,121 responses recorded by the online questionnaire,[32] more than half of the respondents stated that their workplaces were never equipped with any form of gender-friendly measures, including, but not limited to, expressions of general tolerance and friendliness, the introduction of LGBTI+ friendly policies, and training programs on inclusion and diversity.

(2) In the survey, three quarters of respondents were aware of the protective measures stipulated in the *Employment Service Act* and the *Act of Gender Equality in Employment* which prohibits unequal treatment based on sexual orientation and gender expression.[33] However, 30% of respondents were not familiar with internal grievance mechanisms for gender-related incidents, while 25% of respondents expressed their distrust of such mechanisms. 60% of respondents stated that their complaints ended up with no definitive resolution regarding gender-related incidents. In the current situation, where the corporations had yet to propose an extensive implementing policy in accordance with the protective clauses specified by the acts, skepticism from LGBTI+ people in regard to the internal grievance mechanisms was abundant.

(3) The State failed to include variables of LGBTI+ related categories, data and information in its labor statistics.

121. We suggest:

(1) To foster the implementation of laws and regulations, the State shall undertake rigorous measures, such as incorporating gender-friendly workplace measures into labor training programs, formulating equitable policies on gender equality in the labor market, and administering more resources to assist smaller corporations.

(2) The State shall conduct related research and surveys on unreported cases of gender-related incidents in the workplace.

(3) At present, the State's apprehension and advocacy for corporate social responsibility has been limited to sustainable development policies from an environmental perspective. The State should also propose specific policies for sustainable gender equality development.

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[32] 74.5% of the respondents are homosexual, 22.4% are bisexual, 3.0% are transgender male, and 4.7% are transgender female.

[33] Employment Service Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001 ; Act of Gender Equality in Employment: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014

The Formosa / China Steel Ha Tinh Steel pollution incident

122. In April of 2016, Formosa Ha Tinh Steel, a steel plant co-invested by Taiwanese corporations Formosa Plastics and China Steel, discharged toxic chemicals into the ocean, causing a large number of fish to die in the Vietnamese Ha Tinh Province and nearby coastal areas. The total volume of dead fish amounted to over 140 tons, severely impacting the livelihood of local fishermen. On June 20th of the same year, Formosa Plastics apologized and paid a sum of $500 million to the Vietnamese government. However, in turn, the Vietnamese government only paid a small number of the victims with an unreasonably low compensation amount. Thousands of victims thus filed a lawsuit in the Vietnamese district court between July and September of 2016 but the lawsuit was dismissed by the court.[34]
123. In addition, when victims, human rights and environmental activists took to the streets and protested, they were treated violently by the Vietnamese government. Many protesters were arrested, wrongly detained, and even prosecuted and sentenced. This series of events caught the attention of the UN and was solemnly condemned by the international body.[35] Paragraph 24 of the report submitted by the OHCHR at the third UPR also condemned the Vietnamese government for this incident.[36] Victims who failed to receive effective judicial remedies thus turned to Taiwanese courts and filed a transnational lawsuit. However, the Taiwan High Court dismissed the case on the grounds that Taiwan does not have jurisdiction with reference to the Doctrine of Forum Non Conveniens.[37]
124. At present, Taiwan Code of Civil Procedure regulates only domestic jurisdiction and not international jurisdiction, which raises problems in application. Some scholars and court rulings suggest that through substantive equality and procedural economy of parties (jurisprudence) and applications by analogy, the Taiwan Code of Civil Procedure can serve as ways to determine international jurisdiction. However, since no clear standards are defined, applying jurisprudence or applying by analogy may lead to different case results, causing material dispute in practice, such as the above-

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[34] Environment-rights.org, The Formosa environmental disaster in Vietnam, available at: http://www.universal-rights.org/wp-content/uploads/2017/05/Viet-Nam.pdf

[35] Office of the United Nations High Commissioner for Human Rights, Viet Nam: UN Rights Experts Urge Release of Activists Jailed for Protesting Toxic Spill, available at: https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22696&LangID=E

[36] UNOHCHR, Reports of the Office of the United Nations High Commissioner for Human Rights (A/HRC/WG.6/32/VNM/2) (2018), para.24: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/341/13/PDF/G1834113.pdf?OpenElement

[37] For Civil Ruling 2019 Kang Zi No. 1466 of Taiwan High Court, please refer to: https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TPHV,108%2c%e6%8a%97%2c1466%2c20200316%2c1

mentioned case.[38] However, according to General Comment No. 24 of the ICESCR,[39] obligations of State parties, according to the Convention, are not limited within their own territories. When victims cannot receive effective remedies in the country where tort occurs, extraterritorial jurisdiction becomes critical. In terms of remedies, in order to avoid situations where courts adopt the Doctrine of Forum Non Conveniens, and victims can neither file a lawsuit in the country where the transitional corporation is located nor receive effective remedies in the original country when the first file the lawsuit, Comment No. 24 of the ICESCR specifically states that when applying such doctrine, the court should first consider the level of effective compensation of another jurisdiction. If the other jurisdiction fails to provide effective compensation, the court cannot dismiss the case under the Doctrine of Forum Non Conveniens. Therefore, Taiwanese courts should follow Comment No. 24 of the ICESCR and accept relevant cases involving foreign elements.

125. The Taiwan Supreme Court shares the same interpretation and considers that Article 184 of the Civil Code on tort actions also applies to legal persons,[40] meaning that people can ask for tort compensation directly from corporations. This better protects tort victims and the basic human rights of those victims. However, relevant regulations regarding the burden of proof and remedy procedures are still insufficient.
126. At present, Taiwan Taipei District Court does not provide a definition to "high-profile cases", and the process of classification is not open nor transparent, and does not provide parties involved an opportunity to express opinions. However, whether a case is classified as a high-profile case determines "whether judges can stop getting assigned new cases" and "whether court trials can apply Taiwan Taipei District Regulations on Safety and Order Maintenance Measure over Court Trialing High-Profile Cases", and has significant impact on the quality of judges ruling cases and the personal safety of parties during litigation. The Formosa Ha Tinh Steel Pollution Case has attracted great attention from the international community and Taiwanese society as some of the victims were violently attacked in protests. However, this case was not classified as a high-profile case initially. As a result, the judge who undertook this case was thus under great pressure and parties were also left with no safety protection measures.

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[38] Ibid.

[39] CESCR, GC No.24 (2017). https://www.refworld.org/docid/5beaecba4.html

[40] Refer to the press release of the Supreme Court 2019 Tai Shang Zi No. 2035 request for compensation of torts. The Supreme Court, after the consultation procedure, reached a unanimous interpretation and determined that Article 185 of the Civil Code (revised on May 5 of 2000) also applies to legal persons. https://www.judicial.gov.tw/tw/cp-1888-269402-dfe87-1.html

127. Paragraph 4 of Point 3 in Taiwan Taipei District Court Directions for Civil Case Assignment stipulates that "principles for deduction and stop assignment of cases, and assignment of cases for new judges are as follows: (4) One case can be deducted for every ten people (the total of plaintiffs and defendants) but with the maximum of deducting two-month cases." Based on this, although one case can be deducted for every ten people, no more than two-month cases can be deducted. This may not be sufficient for special cases that include a great number of parties; thus, judges who undertake such cases may still be under too much pressure and the quality of ruling may be impacted. The Formosa Ha Tinh Steel Pollution Case involves 7,875 plaintiffs and 24 defendants, but the judge who undertakes this case can only deduct a very limited number of cases, which greatly reduces the willingness of judges to deal with this case.
128. Point 1 of Directions for Taiwan District Courts Convening Judicial Panels and Strengthening Monitoring Responsibility of Chief Judges stipulates that "cases regulated by Subparagraph 1-9 of Paragraph 1 of Point 3 of the Directions should be reviewed by chief judges or presiding judges before case assignment. If it is found necessary to have a judicial panel, the case should be trialed by a judicial panel after approval by the president of the court. If it is found unnecessary for a judicial panel, the case shall be trialed by a single judge in rotation". Point 3 of the Directions also stipulates that "the following civil cases, except for those that go through summary procedures or cannot be appealed to the third instance, are classified as major cases: (3) litigation cases that involves marine pollution, industrial pollution and environmental protection; (9) the amount or premium of the subject matter of the litigation exceeds six million New Taiwan dollars". Major cases are more complex and therefore, having them trialed by judicial panels can reduce the pressure of judges and reduce the possibility of misjudgment. The Formosa Ha Tinh Steel Pollution Case is a case that involves marine pollution, industrial pollution and environmental protection and its premium of the subject matter of the litigation even exceeds 100 million New Taiwan dollars; therefore, the case conforms to the criteria of a major case. It was determined, though, by Taiwan Taipei District Court that the case was "unnecessary" to be trialed by a judicial panel and could be trialed by a single judge. The determination procedure was not transparent and the parties were not given opportunities to express opinions.
129. In addition, according to the UN Guiding Principles on Business and Human Rights, the government's duty includes protecting against human rights abuses from businesses, regulating businesses to respect human rights, and providing effective

remedies.[41] However, Article 6 of Regulations on Corporate Overseas Investment stipulates that the competent authority may disapprove of overseas investment if the overseas investment involves one of the following situations: 1. impacting national security; 2. negatively impacting national economic development; 3. violating obligations of international treaties or agreements; 4. intellectual property infringement; 5. unresolved major labor disputes from violation of Labor Standards Act; 6. tarnishing the national image". However, elements in these subparagraphs are all ambiguous legal concepts. Therefore, to this day, the competent authority has never disapproved of any investment applications based on the regulations of this article. And after the Ministry of Economic Affairs approves major overseas investment of Taiwanese businesses (with investment amount of over NT$1.5 billion), there are no further monitoring and approval revocation regulations other than the first part of Article 7, which states that "after the approval of overseas investment, if a company fails to realize all or a part of the investment within the approved period, the approval is deemed invalid for those unrealized investment". Furthermore, the regulations do not request companies to provide risk assessment of the investment, nor information transparency and carbon emission, showing a lack of human rights protection.

130. Paragraph 20 of State's Response to the 2017 CO mentioned that Taiwan's revised Company Act includes the concept of corporate social responsibility; however, actual regulations only apply to listed companies as regulated in the Corporate Social Responsibility Best Practice Principles for TWSE/GTSM Listed Companies, and no regulations are formulated for companies of similar categories.[42] This runs the risk of inadequate protection.

131. Our recommendations:

(1) In terms of the judiciary system, Taiwanese courts should face the reality of transnational corporations operating across borders and actively find ways to respond. The judiciary system should adjust its concept regarding jurisdiction and strengthen international judicial collaboration when necessary to hold Taiwanese corporations accountable. In addition, in terms of remedies, we are seeing more filing of civil litigations and yet existing remedy regulations are inadequate and require further discussion from the Judicial Yuan.

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[41] United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31. https://www.business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-chinese-21-mar-2011.pdf

[42] Corporate Social Responsibility Best Practice Principles for TWSE/GTSM Listed Companies: http://eng.selaw.com.tw/LawArticle.aspx?LawID=FL052368&ModifyDate=1050728

(2) In addition, the Taiwan Taipei District Court should clearly define "high-profile cases" and allow parties to express opinions on whether their cases classify as "high-profile cases". Furthermore, the process and determining reasons of whether a case is a high-profile case should be made public and should notify the parties. The definition of high-profile cases can refer to the determination criteria of high-profile cases of the Hsinchu District Court: reported by two of the three major newspapers (Liberty Times, China Times, United Daily News) and determined by the criminal division chief judge.

(3) The Taiwan Taipei District Court should refer to Principles of Special Stopping of Case Assignment of High-Profile Civil and Criminal Cases of Taiwan High Court and establish its own principles. If a judge undertakes a high-profile case of great complexity or with a massive amount of the subject matter of the litigation, they should not be given other new assignments.

(4) Lastly, the parties should be given opportunities to express opinions regarding whether such a major case is "necessary" to be trialed with a judicial panel. Also, the determination process and the reasons should be made public and relevant parties should be notified.

(5) In terms of administration, the Ministry of Economic Affairs and Financial Supervisory Commission should refer to the Ten Principles of the UN Global Compact and the Guiding Principles on Business and Human Rights and conduct an overall revision on relevant laws and regulations in the fields of governance, securities and investment to help companies to realize their responsibility in human rights. Furthermore, it is suggested that the National Action Plan on Business and Human Rights increase information transparency of businesses and carbon emission, and request disclosure of investment risks, risk mitigation plans and mitigation measures. Also, if companies fail to provide a plan, is there a follow-up monitoring mechanism?

(6) Article 6 of Regulations on Corporate Overseas Investment should also be revised and a clear set of criteria for disapproval should be established.[43] Monitoring and approval revocation regulations should also be established, and the competent authority should be given the authority to request companies to submit human rights reports.

(7) In terms of legislation, the Legislative Yuan should request competent authorities to strengthen environmental and social impact assessment on overseas investment. Approval should not be given to investment cases with potential major harm, and approval should be able to be revoked for investment cases that cause major harm. Article 2 of the Taiwan Code of Civil Procedure should also be revised so that foreigners can file a civil litigation in Taiwan against overseas Taiwanese-invested

[43] Regulation: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0040052

companies (whose parent companies are located in Taiwan and have offices).[44] In addition, the Legislative Yuan should also refer to foreign legislation and formulate laws and regulations that govern overseas activities of Taiwanese companies. Human rights violators should be criminally prosecuted and held accountable (current international human rights conventions do not require State parties to regulate overseas activities of businesses but neither do they prohibit such an approach), and establish relevant complaint mechanisms, especially when it comes to protecting foreign stakeholders seeking remedies and rights in Taiwan.

WPD Taiwan's offshore installation in Yunlin violates economic rights and environmental rights of the local coastal fishing communities

132. WPD Taiwan plans to densely install 80 large offshore wind turbines in the coastal sea area of Yunlin County. The planned wind farm not only highly overlaps with important traditional fishing grounds of Yunlin's coastal fishery and is a hotspot for valuable fishery products such as Taiwan white pomfret, fourfinger threadfin and mullet, but also is the habitat of the endangered Indo-Pacific humpback dolphins (Sousa chinensis). The situation has led to serious conflicts and confrontation at sea between WPD Taiwan and local fishermen. There was even an outrageous incident when an engineering contractor, commissioned by WPD Taiwan, hired gangsters with knives and the gangsters disguised themselves as fishermen and joined a three-party coordination meeting held by the local government. Fortunately, the incident ended with the police catching the gangsters.
133. Indeed, WPD Taiwan reached a compensation agreement with the local fisherman's association. However, the majority of the association members are aquaculturists whereas the main stakeholders, coastal and inshore fishermen, are left with no agreements. In June of 2020, WPD Taiwan unilaterally began construction and provided no construction explanations to fishermen working in the fishing grounds. The construction severely disrupted and destroyed the seabed, causing a great amount of fish to die, and destroyed the fishing nets of local fishermen, drawing backlash from fishermen. What makes matters worse is that during the evaluation and installation phase of turbines, the fishermen were not given comprehensive information by the competent authority and WPD Taiwan. Therefore, they did not know in advance that the installation zone of the 80 turbines completely overlaps with their traditional fishing grounds, and they were unable to participate in the environmental impact assessment analysis and the power generation permit review procedure.

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[44] Taiwan Code for Civil Procedure:
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0010001

134. This highlights the fact that the Taiwanese government does not fully consider the impact on inshore fisheries and fishermen when it comes to regulations regarding offshore wind power installation zones and development permits of individual wind farms. The environmental impact assessment and licensing process also lack protection for the information disclosure and participation rights of stakeholders. In addition, the government fails to establish an operation manual regarding communication with stakeholders in green energy development, rendering it unable to regulate offshore wind power developers to fulfill their corporate social responsibility duties to minimize their impact on local fishing communities, which impacts the economic and environmental rights of the fishing village greatly.
135. Our recommendations: In terms of administration, the government should establish operation manuals regarding communication with stakeholders based on different green power generation categories such as offshore wind power, onshore wind power and ground mounted photovoltaic power. Regulations and guidelines on information transparency and civic participation procedures should be established, which may include time, methods, and subjects of notification, etc., to avoid stakeholders' basic rights such as the right to work, property rights and environmental rights from being violated.

COR Point 17

136. As promulgated in the ICCPR Article 2, paragraph 3, the State has undertaken the obligation to grant any person whose rights have been violated an effective mechanism for the pursuance of remedy, notwithstanding that the violation has been committed by the State. While the report "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", issued by the Secretary-General of the UN in 2004,[45] indicated that the practice of transitional justice contains three elements of justice, peace, and democracy, which contribute to the rule of law. Taiwan has undergone more than 40 years of authoritarian rule. After the second party alternation in 2016, the Ill-gotten Party Assets Settlement Committee (hereinafter "CIPAS") and the Transitional Justice Commission (hereinafter "TJC") were established and the responsibilities of the State for political oppression and authoritarian rule were gradually put under scrutiny. We propose the following comments and suggestions on relevant legislative and executive measures in the past three years:

[45] United Nations Security Council, The rule of law and transitional justice in conflict and post-conflict societies (2004): https://www.un.org/ruleoflaw/blog/document/the-rule-of-law-and-transitional-justice-in-conflict-and-post-conflict-societies-report-of-the-secretary-general/

Ensure effective access to all archives for victims and researchers

137. Discovering the truth is the primary task of transitional justice. However, since most victims of Taiwan's authoritarian violence have passed away or are too old to provide testimonies, the historical conditions of Taiwan have made it challenging to follow the Chilean or South African models of "story-telling"as transitional justice remedy. Therefore, discovering the truth, as a part of transitional justice in Taiwan, relies on the research of past archives.
138. However, almost all of the documents and archives were kept by military justice agencies and secret service authorities during the martial law period. Therefore, whether the contents of said archives can restore the whole truth, requires prudent appraisal. According to the *Political Archives Act* which was implemented on July 24th,[46] 2019, the access to political archives is open to victims, perpetrators, and the general public. The archives will be available for all to apply for access, 30 years after the archives' expiration. More than 30 years have passed since the lifting of Martial Law, and this, thus, behooves all archives to be available to be applied for access, in accordance with the act. In the State's response to the 2017 CO paragraph 31, the State had quoted its emphasis on the privacy of third party personnel and its protection of freedom of information, however, as mentioned above, in the context where the contents of the archives have yet to be verified, it is possible to cause secondary harm to the victims and surveilled people by publicizing the archives.
139. In January 2018, the National Archives Administration initiated the sixth-round of requisitions of "political surveillance archives" and obtained a large sum of surveillance and monitoring data on various groups (religious groups and student associations, for instance) and individuals compiled by the former authorities. Although an enormous volume of documents and information had been obtained, it was still in the phase of being catalogued. The TJC has publicized the "surveillance archives" to be accessed and utilized. However, there are still doubts as to the possibility of finding a balance between recovering the truth and protecting privacy.
140. The 2017 CO had stated that "the process of truth and reconciliation should include the national security authorities, in order to approach and to reflect upon collective memory." However, in many occasions of handling classified documents, discordance persists in the integration and coordination of Ministries and Agencies. For example, the National Security Bureau once unilaterally classified documents relevant to the Chen Wen-chen Incident and the Lin Family Massacre as "classified

[46] The *Political Archives Act* was implemented in July 24th 2019, governing provisions such as the requisition, catalogue, perseverance, access, research, and educational purposes of the political archives. For English translation, refer to: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030312

permanently",[47] and declined to transfer the archives to the TJC on this basis until 2020, when President Tsai Ing-Wen instructed the agency to treat the political archives with "maximum openness and minimum restrictions" at the memorial event for the 73rd anniversary of February 28th Incident. The dispute was resolved after the National Security Bureau completed the declassification and transference of the files in late March 2020.

Initiating the process of truth and reconciliation

141. Article 6 of the *Act on Promoting Transitional Justice* had pledged that under transitional justice,[48] past cases of jurisprudence would no longer be limited by the provisions of Article 9 of the *National Security Act* and judicial wrongs made in the era of the martial law period shall be rectified through legislative measures.[49] In addition, the TJC can also accept applications from the general public to revoke verdicts. However, the TJC has been stagnant on processing applications for revocation. As of November 30, 2019, 63 cases have been accepted with 49 remaining unprocessed. Furthermore, only verdicts from military trials can be revoked. There are no existing remedy mechanisms for those who have not been sentenced, those who were transferred to probationary education by an administrative decision, or those who have not been charged with sedition or treason.

To approach and reflect upon collective memory

142. Despite having only been established for six months, the TJC was quickly embroiled in political turmoil. Regarding the nomination of TJC commissioners, the State rashly and hastily nominated inappropriate candidates, including politically nominated candidates who were not aware of the concept of transitional justice, candidates who could not validate their political ethics to the Taiwanese society, and candidates who could not uphold the organizational operations by effectively communicating with the Ministries. Under such a composition, it is difficult for the TJC to lead the society

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[47] The Chen Wen-chen Incident occurred on July 3rd, 1981 when assistant professor of mathematics at Carnegie Mellon University was found dead on the campus of National Taiwan University after being interrogated by the Garrison Command. The cause of the incident and the subsequent investigations were thought to be linked to surveillance from the State. The true cause of death was never confirmed. The Lin Family Massacre occurred on February 28th 1980 when the family of Lîm Gī-hiông, a defendant of the Kaohsiung Incident, was murdered in his domicile. Besides severely injuring one, the massacre took the lives of Lin's mother and his two young daughters. The identity of the murderer was never clarified.

[48] Act on Promoting Transitional Justice: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030296

[49] National Security Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030028

to reflect on the history of political oppression and to prompt the society to discuss its collective memory. The reassessment of authoritarian landscapes, including the transformation of Chiang Kai-shek Memorial Hall and the removal of statues of Chiang, have been unable to move beyond proposals, namely, implemented for the sake of societal communication.

143. Regarding the reflection on collective memory, in addition to a consolidated civil society and public deliberations, relevant authorities should also drive public discussions which extend beyond the terrain of historical justice and compensational justice. The relevant authorities shall also strive to clarify misinformation and resolve disputes in order to avoid societal discord which leads to distrust of the transitional justice project. During the elections in the past two years, the "Eastern Depot Incident" had been a consistent target of vehement discussions.[50] In addition, the polarizing and closed nature of online spaces had made it onerous to conduct objective and rational discussions on transitional justice, in an era when social media is all the more prevalent.
144. The mandate of the CIPAS is to investigate improperly acquired property of political parties before the lifting of the Martial Law, of which the KMT filed multiple litigations against. At present, there are 12 cases of litigation under the competence of the Taipei High Administrative Court. Among the trial judges, seven expressed opposition to the composition of the CIPAS, its procedures for formulating administrative sanctions, the operation of party property recovery, and even the concept of transitional justice. The judges also questioned the constitutionality of *The Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations*.[51] According to the *J.Y. Interpretation No. 793* (August 28, 2020), it is recognized that the act is not unconstitutional as it "does not involve the dissolution of unconstitutional political parties, nor does it deprive political parties of the property they rely on for survival and operation, and thus is not prohibited by the *Constitution*." The CIPAS which was authorized by the act was also admitted as constitutional, as its mandate of "investigate, restitution, levy, recover rights, and other matters stipulated in this act on the improper acquisition of property by

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[50] Taipei Times, Deputy chairman resigns from Transitional Justice, 2018.09.13: https://www.taipeitimes.com/News/front/archives/2018/09/13/2003700317
The Eastern Depot Incident connotes the incident where the controversial speech of then TJC deputy chairman Chang Tien-Chin was leaked by a participant of an internal meeting. Please refer to: Taipei Times, Deputy chairman resigns from Transitional Justice, 2018.09.13: https://www.taipeitimes.com/News/front/archives/2018/09/13/2003700317

[51] The Act Governing the Settlement of Ill-gotten Properties by Political Parties and Their Affiliate Organizations: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030286

political parties, affiliated organizations and their trustees." does not violate the principle of separation of powers.

145. The transitional justice process in Taiwan still needs to shift its focus to the issues of perpetrators which requires more delicate handling, as well as the appropriately executed personnel lustration mechanisms which are based on the context of Taiwanese society. When responding to the COs of the Committee, the State shall not be satisfied with it being "in compliance with the minimum standard", but should have a more prospective outlook.

146. We suggest:

(1) Even if the competent authorities conduct a review of declassification in accordance with Article 5, Paragraph 3 of the *Political Archives Act*,[52] it must still thoroughly review the consensual, discretionary, and consistent handling procedures of its superior agency to prevent incidents where files are designated as "confidential" resulting in a failure to transfer or the missing of files in transference.

(2) Article 7 of the *Act on Promoting Transitional Justice* had stipulated that "ill-gotten party assets shall be transferred to State ownership and used by a special fund established by the central government to promote transitional justice, human rights education, long-term care, social welfare policies, and transitional-justice-related cultural matters". Thus, we recommend the State to consider the statutory rules in Article 6 of the act upon establishing said fund, and expand the scope of investigation and compensation to victims of political cases who had been persecuted by public authority. In addition, further discussion is needed regarding the appropriate restitution mechanism for properties improperly confiscated during the martial law period: to adopt an exclusive law or amend the *Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law*.[53]

(3) Promote discussions on transitional justice among civil servants and judicial personnel.

(4) The State shall be more attentive to the negative (or beneficial) impact of social media on societal discussions on transitional justice.

(5) After the completion of its provisional tasks, the State shall transfer relevant vocations of the TJC to the National Human Rights Museum, Academia Historica, the National

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[52] Article 5, Paragraph 3 of the Political Archives Act: The agency that originally classified the archives, and its superior agency, shall complete the review referred to in the preceding article within six months of completion of the inventory process required by paragraph 1 of the preceding article; if archives remain permanently classified after the review, the agency that made the original classification shall report the matter to its superior to seek its consent.

[53] Although mentioned in the 2015 parallel report, this dispute remains unsolved; Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000007

Archives and/or other appropriate organs. The State shall also propose unequivocal statutes to ensure the project of transitional justice can receive lasting emphasis from all organs of the State.

COR Point 18

Responding to paras. 38-40 of the State's Response to 2017 COR

The widening wealth gap

147. Income inequality in Taiwan has continued to grow in the past few years. The State mentioned in its response to 2017 CO, Paragraph 38, that Taiwan's Gini coefficient has been decreasing since 2010, and reached 0.338 in 2018. However, according to statistics compiled by the Executive Yuan's Directorate General of Budget, Accounting and Statistics, Taiwan's Gini coefficient has been increasing since 2016, as shown in the following table.[54]

Table 1

Year	2016	2017	2018	2019
Gini coefficient	0.336	0.337	0.338	0.339

148. Responding to 2020 ICESCR State Report Para. 176, while government measures between 2015 and 2018 did help reduce each year's quintile ratio of household income, the fact remains that the quintile ratio of household income has continued to increase every year during that time frame, even with government intervention.[55] Moreover, based on income tax data from the Ministry of Finance,[56] pre-tax income of the top 5% of households has been 100 times more than that of the bottom 5% since 2015, and the gap has since continued to widen.

[54] Reports on the survey of family income and expenditure, Directorate General of Budget, Accounting and Statistics, Executive Yuan. 2015 https://win.dgbas.gov.tw/fies/doc/result/104.pdf; 2016 https://win.dgbas.gov.tw/fies/doc/result/105.pdf; 2017 https://win.dgbas.gov.tw/fies/doc/result/106.pdf; 2018 https://win.dgbas.gov.tw/fies/doc/result/107.pdf; 2019 https://www.stat.gov.tw/public/data/dgbas03/bs4/ninews/10908/news10908.pdf.

[55] See Table 13 of the 2020 ICESCR State Report.

[56] Individual income tax return assessment https://www.fia.gov.tw/multiplehtml/43#gsc.tab=0

Table 2

	2015	2016	2017	2018
difference of the top and bottom 5% income before tax	101.2	104.7	109.9	121.9

Ineffective tax reform

149. In 2018, the Income Tax Act underwent major changes which seemed on the surface like tax reduction for all.[57] However, the reforms only slightly helped to increase annual disposable income. Overall, the amendment still benefits the rich the most, and fails to effectively solve income inequality and narrow the wealth gap.[58]

(1) Art. 17 of the Act increased three types of tax deductions. Ostensibly, it seemed like universal tax reduction. However, the fact is that this change in the law fails to narrow the wealth gap and even exacerbates it. For instance, among households (two adults) that qualify for an increase of NTD 144,000 in a special deduction of income from salaries under the amended act, households belonging to the 5% tax bracket enjoy a NTD 7,200 - reduction in taxes, while households belonging to the 40% tax bracket enjoy a NTD 57,600 reduction. In other words, the higher income group enjoys more of a tax reduction than the lower income group.[59] Being that Taiwan is a low tax rate country, there is little tax burden on the financially underprivileged and regular workers. However, increasing the amount of tax deduction in the progressive tax system is more beneficial to the rich and does little to narrow the wealth gap.

(2) In addition, the amendment to the act removed the 45% tax bracket (art. 5) and replaced the "partial imputation tax system" with a new system dividend income tax (art. 15, 71 & 100), both of which benefit the rich, favor capital gain thus creating inequality in taxation.

(3) While the amendment to art. 5 increases the profit-seeking enterprise annual income tax rate from 17% to 20%, narrowing the difference between profit-seeking enterprise annual income tax and individual income tax, the amendment to para. 1 of art. 66-9 reduces the additional profit-seeking enterprise annual income tax rate of undistributed surplus earnings from 10% to 5%. The amendment to para. 1 of art. 66-9 not only reduces the potential outcome of narrowing the wealth gap amendment to

[57] Income Tax Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0340003

[58] Executive Yuan passed some of the draft amendments of the 'Income Tax Act': https://www.ey.gov.tw/Page/9277F759E41CCD91/ab6c97d3-1713-48df-8946-f97edad0e488; Income Tax Act Amendments - Taiwan first, Everyone benefited: https://www.ey.gov.tw/Page/5A8A0CB5B41DA11E/1441bc9b-704f-4935-b3f0-cb34ccd2f552

[59] Column of Lu Shao-wei: Tax reform helps reducing wealth gap? See the average to learn about the reality: https://www.storm.mg/article/326304?page=1

art. 5 could have achieved, but also has the potential to affect corporate management,[60] since companies now have lower incentive to share the profits with employees and shareholders. As a result, workers will have less opportunities to benefit from economic growth.

The setting of minimum wage not legislated

150. Although the debate on whether increasing minimum wage can solve income inequality remains unsettled, the ILO Global Wage Report 2014/15 indicated that increasing minimum wage can effectively reduce income inequality, and that such policies have been widely adopted in both developing and developed countries.[61] Currently, Taiwan does not have a Minimum Wage Act.[62] It is only stipulated in art. 21 of 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."[63]
151. The Ministry of Labor convened the Basic Wage Deliberation Committee on August 18, 2020, after which the committee decided to raise the monthly basic salary by 0.8%, from NTD 23,800 to NTD 24,000; the hourly rate by 1.2%, from NTD 158 to NTD 160.[64] This decision is conservative compared to previous years. Moreover, as the government has suppressed the rise of the basic wage for decades, it is still low despite recent increases. According to the statistics compiled by the Ministry of Labor, as of Q2 of 2020, as many as 2.8 million people are paid the basic salary.[65]

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[60] [Interviewing Joe Chen, the planner of tax reform draft] Three reminders of tax reform - the unfair Plan A of dividend income tax has to be removed!: https://www.twreporter.org/a/interview-tax-reform-planner

[61] ILO, Global Wage Report 2014/15 Wages and income inequality (2015), p.78, Executive Summary Part III. Policy responses to address wages and inequality Labor market policies to address wages and inequality https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_324678.pdf

[62] A 'Minimum Wage Act' was passed in 1936. However, because of the political turmoil, the Act was never implemented. In 1986, the government abolished the Act, claiming that 'the Minimum Wage Act becomes unnecessary as the Labor Standard Act and its subsidiary regulations is implemented'.

[63] Labor Standards Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001

[64] The Basic Salary Review Committee decided in today's (18 Oct 2020) meeting, that the monthly basic salary will be increased to NTD 24,000 and the hourly basic salary will be increased to NTD 160 starting from 1 Jan 2021. The decision is handed in to the Executive Yuan for approval. https://www.mol.gov.tw/announcement/2099/46305/

[65] Ministry of Labor, statistics: https://statdb.mol.gov.tw/statis/jspProxy.aspx?sys=100&kind=10&type=1&funid=q0801&rdm=mlqiiicq

152. The way the basic wage is set is regulated by the Regulations for the Deliberation of Basic Wage.[66] Each year, the Basic Wage Deliberation Committee consisting of representatives of the employees, employers and the government convene, deliberate, and decide on the basic salary. However, the Regulation provides a vague idea on which indicators should be used when setting the basic wage. Moreover, the data from which the Committee is suggested to take reference as per art. 4 of the Regulation are mostly economic indicators, which may not reflect the actual commodity price and minimum cost of living. In addition, the current review procedure is lacking in transparency and comprehensiveness. There are no meeting minutes, only summarized records of the meetings held by the Basic Wage Deliberation Committee. The public has no way of knowing whether the decision reached by the committee was a consensus, hence lacking credibility.
153. In addition, while the basic salary requirement has legal binding, the enforcement is weak. As stipulated in art. 79 of the Act, violations against art. 21 is punishable by a mere NTD 20,000 to 1,000,000 in fines. Furthermore, according to the Act for Settlement of Labor-Management Disputes, those who wish to be reimbursed for underpaid work must apply for a mediation meeting with the local Department of Labor,[67] then, should the mediation turn out unsuccessful, that person will have to request for a payment order or file a civil lawsuit in court.
154. In response to paras. 53 and 54 of 2020 ICESCR State Report, while the government has implemented measures to assist and reward corporations to raise employees' salary, including adding art. 235-1 to the Company Act in 2015,[68] requiring a company to state in its charter that a certain amount or proportion of the annual profit has to be distributed to employees; and then in 2016, the government amended art. 36-2 of the Act for Development of Small and Medium Enterprises,[69] in which it stipulates that if a small or medium enterprise raises the average salary paid to the domestic junior employees during the period when the Composite Leading Indicators are above certain levels, that company can enjoy taxation benefits. However, the former amendment has little binding force to companies that fail to comply. As for the latter, while the intent was decent, the results have proven ineffective due to

[66] Regulations for the Deliberation of Basic Wage: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030003

[67] Act for Settlement of Labor-Management Disputes: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020007

[68] Company Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080001

[69] Act for Development of Small and Medium Enterprises: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0140001

complicated application procedures and strict prerequisites.[70] As a result, the two amendments not only failed to effectively increase salaries, but also were not able to reduce income inequality.

155. We recommend:

(1) Formulate a practical tax reform plan that would effectively redistribute income, including increasing taxation on capital gains such as stocks, bonds, real estate, land or land use rights.

(2) Broaden the tax base and increase the sources of taxation by cutting income tax deductions. Invest tax on public services and welfare policies for the disadvantaged, and build a comprehensive social safety net.

(3) Legislate a Minimum Wage Act as soon as possible. Minimum wages should provide workers with a decent living for themselves and their families, as required by art 7 of ICESCR. In contrast, the setting of basic wages in Taiwan at the moment is based on economic growth. The Minimum Wage Act should stipulate the way basic wages should be calculated, the composition of the Deliberation Committee, and the effective period of the minimum wage. The review committee should meet annually. Moreover, the Committee should convene once annually and decide on the minimum salary after receiving a carefully calculated report on the appropriate range of increase from the Ministry of Labor. The annual adjustment must allow workers to maintain a stable living in the rapidly changing society.

(4) Increase the number and the quality of inspections, and the severity of punishments on violations of the basic wage requirement. In addition, upon drafting the Minimum Wage Act, include criminal penalties and mechanisms to reimburse underpaid workers. At the same time, regarding violations against the minimum wage requirement, take reference from para. 14 point. d of the ILO Recommendation R135,[71] and consider stipulating in the Act that apart from fines, workers should have the rights to demand reimbursement as well as extra compensation for the underpaid hours, in hope to fully realize workers' protection.

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[70]'Small and Medium Enterprise Employee Salary Increment and Reduction Regulation' Article 2 Paragraph 1 Subparagraph 2 defines 'economic climate index reaching a certain level' as 'the monthly unemployment rate announced by the Directorate General of Budget, Accounting and Statistics, Executive Yuan reaching a certain level for 6 consecutive months, while approved by Central Competent Authorities': https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0140016

[71] ILO, R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135): https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R135

COR Points 19-20

Establishing an Anti-Discrimination Law (Responding to para. 42 of the State's Response to 2017 COR)

156. Following the release of the 2017 COR, the Executive Yuan commissioned a study on "whether to enact a comprehensive anti-discrimination law", but otherwise the government did not take much action. In view of the ubiquitous occurrence of discrimination and the inadequate protection against discrimination in Taiwan's current laws, we strongly believe that the Government should draft a comprehensive anti-discrimination law without delay.
157. Regarding the legislation of a comprehensive anti-discrimination law, in Paragraph 42 of its "Response to the Concluding Observations and Recommendations," the Ministry of Justice stated that a commissioned research report had been completed and the Ministry had initiated consultation with relevant Ministries and Bureaus. The report specified that not only were existing provisions limited to certain domains, the advisory nature of said provisions also limited their regulatory effects. The lack of a unified competent authority had led to onerous remedy procedures as well. The research stated that it is indeed necessary to legislate a comprehensive anti-discrimination law. We are content with the effort of the State, but we have yet to observe a definitive legislative schedule. We look forward to the State's expeditious explanation.
158. At present, aside from the provisions of the Constitution guaranteeing the right to equality, anti-discrimination policies exist within many different laws, principally those which are related to labor and education. For instance, the *Employment Service Act*, the *Act of Gender Equality in Employment*,[72] and the *Gender Equity Education Act* are all regulations targeting "people in specific scenarios", such as the fact that **employers** must not discriminate based on the gender or sexual orientation of their **employees**. Apart from work and education, the rights and interests of LGBTI+ people in common social life such as daily transactions and renting property, have not been protected by the current laws. Current laws are also insufficient for the protection of specific groups and insufficient in addressing intersectional discriminations they face. Before the referendum of 2018, the LGBTI+ community suffered immense stigmatization and hate speech attacks on social media. However, most of the discriminatory and hateful speech were not directed at a single LGBTI+ individual, but rather to the entire community, examples being the perceived relationship between the LGBTI+ community, AIDS, illicit drugs and the treatment of transgender identities as a disease. In the 2020 legislative election, many candidates and political parties openly expressed their opposition to same-sex marriage in their campaign

[72] Gender Equity Education Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=H0080067

flyers and billboards. They repeatedly emphasized that "if same-sex marriage were to be passed in Taiwan, the country would have no more descendants" and Taiwan would become the "Island of AIDS".[73] The aforementioned stigma against LGBTI+ peoples and the incitement of social prejudice and discrimination cannot be held accountable under the current law. Even if the State and fact-checking units mobilize their task forces to tackle defamation, they cannot protect the LGBTI+ community from suffering discrimination.

159. According to Art. 26 of the ICCPR, all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

160. We suggest:

(1) At present, discriminations based on gender, disability, and ethnicity grounds are regulated by different laws, and we recommend that the government conduct a rigorous legal review similar to the process of combining different anti-discrimination laws into the Equality Act in the United Kingdom.

(2) The anti-discrimination law should take reference from UN human rights conventions, and clearly define the various forms of discrimination, for instance, CRPD Committee's General Comment No. 6 provides a detailed description of discrimination on the basis of disability, and can be used as a reference for discrimination based on other grounds.

(3) In addition to prohibiting discrimination, the anti-discrimination law should stipulate the government's obligation to proactively promote equality, and establish a human rights (and equality) impact assessment mechanism. Additionally, a Human Rights Department under the Executive Yuan should be forged and serve as the agency to oversee the implementation of the anti-discrimination law.

(4) The law should state clearly the role of the National Human Rights Commission in the elimination of discrimination and the promotion of equality.

(5) Taking as an example the provision of reasonable accommodation, its practice requires precedents for reference and guidance, and it is suggested that the anti-discrimination law refer to the practice of the UK's "Code of Practice" and empower either the National Human Rights Commission or other executive authorities to produce operational guidelines to the benefit of the executive agencies, the Petitions Committee (which handles the petition before administrative litigation against governmental bodies can be filed), the Employment Discrimination Review Board of local governments, and the courts in determining whether discrimination arises.

(6) The training of administrative bodies, petition committee members, employment discrimination review committees and judges on anti-discrimination laws should be conducted on an ongoing basis.

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[73] QUARTZ, Taiwan's president is battling a deluge of election-linked homophobic fake news (2020): https://qz.com/1780015/taiwan-election-tsai-ing-wen-faces-homophobic-fake-news/

(7) The State shall promptly promote the legislation of a comprehensive anti-discrimination law which encloses gender identity, sexual orientation, and gender expression. The law shall explicitly define discrimination and its patterns and shall stipulate a competent authority equipped with mechanisms for accountability and relief. This is necessary so that the State can fulfill its obligation to further protect the substantive equality of its citizens.

COR Point 21

Responding to paras. 43-46 of the State's Response to 2017 COR

Gender equity curriculum and teaching oblivious of LGBTI+ themes

161. Although the *Gender Equity Education Act* specifically stipulates that in addition to integrating gender equity education into the curriculum, there should be at least 4 hours of gender equity education related courses or activities in each semester. While the *Enforcement Rules for Gender Equity Education Act* had specified the contents ought to be included,[74] religious conservatives, aroused by the 2016 revision of the same-sex marriage law, had organized a referendum on LGBTI+ related themes in gender equity education in 2018. Conservative groups, in the name of parents, had strongly urged the withdrawal of gender-diversity education from school campuses, the comprehensive review and blocking of teaching materials and supplementary teaching materials related to sex education and gender-diversity education, had severely interfered with teaching autonomy. The said groups also prohibited teachers from teaching related topics such as the gender spectrum, sexual orientation, gender identity, and LGBTI+ related themes. All of the aforementioned seriously violated teaching autonomy, students' right to an education, and the wellbeing of LGBTI+ and gender non-conforming students.
162. The newly launched 12-Year Compulsory Education curriculum has adopted a "topic integration" approach to gender equity education. The transforming of curricula of various subjects and integrating gender-related topics only has limited capacity to promote issues in teaching. We have yet to establish a related inspection mechanism to audit whether teachers have adequate teaching expertise to properly integrate LGBTI+ related issues into the curriculum. In particular, how the actual teaching was conducted, how well the implementation is performing, and how to prevent the problem of "integration to disappearance".

[74] Enforcement Rules for the Gender Equity Education Act:
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=H0080068

The teaching material lacks understanding of LGBTI+ people and their right.

163. In response to paragraph 45 of the State Report, it is insufficient by addressing the doubts about textbook terms while indicating that the National Academy for Educational Research had convened an academic term review meeting and a gender equity advisory group meeting to discuss and recommend textbook publishers to prioritize the usage of resources on government agency websites to ensure the source of information is correct and appropriate. Whether the publishers had integrated the content related to gender education and human rights education into their curriculum, especially after the *Act for Implementation of J.Y. Interpretation No.748* had been formally implemented,[75] was not made known. Some textbooks have yet to include content such as relevant LGBTI+ laws and regulations, LGBTI+ people, couples, and families. Some textbooks still contain gender stereotypes and/or misinformation regarding LGBTI+ people. The content of LGBTI+ textbooks has been subjected to various forms of erasure and distortion from various anti-LGBTI+ groups.
164. In response to misinformation campaigns against gender equity education in textbooks, the National Academy for Educational Research (which is tasked with the review of textbooks under the authorization of the Ministry of Education) has been vague with its policies. This has caused rumors to spread, at the same time violating the Ministry of Education's *Dispute Handling Process for Gender Equity Education Textbooks* thus enabling publishing houses to bear undue pressure from conservative groups. As a result, many publishing houses drastically revised the LGBTI+-related content in textbooks that were not considered to be controversial. In response to this situation, instead of intervening, the National Academy for Educational Research chose to concede with such amendments in many review processes.

Clarification regarding gender education shall be more active and effective

165. In response to paragraph 46 of the State Report, and as stated in paragraph 77 of the preliminary report, even though the Ministry of Education has continuously issued press releases, set up web pages, provided basic infographics, and publicly responded in press conferences to clarify the actual contents of gender equity education, misinformation regarding gender equity education is still prevalent in chatrooms among older people including parents of students, indicating a gap in information regarding gender equity education.

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[75] Act for Implementation of J.Y. Interpretation No. 748:
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=B0000008

Gender equity education deteriorated in local administrative areas

166. For a long time, the directors of Bureaus of Education in counties and cities in Taiwan have lacked a correct understanding and an active attitude toward LGBTI+ rights and gender equality (Taipei), which has frequently hindered or even regressed the implementation of the *Gender Equity Education Act* in local areas. The ignorance presented by these heads of governments has created a negative learning template.
167. The Director of the Bureau of Education in Hsinchu is a strong opponent of gender equity education and LGBTI+ advancement; many self-government ordinances were proposed in the councils of Taichung, Kaohsiung, and Hsinchu with the aim of obstructing gender equity education. Subsequently, parents opposed to gender equity education were selected as members of the Gender Equity Education Committee in virtually all counties and cities. The central competent authority had only passively reminded local governments to consider and actualize the purpose of the act, which led to the emergence of practices or policies which are obstructive towards gender equity education. This affected the professionalism of teachers, the rights of students, and it infringed on the rights and the wellbeing of LGBTI+ students on school campuses.

Parents opposed to gender equity education intervened on campus and obstructed the implementation of gender equity education

168. Anti-LGBTI+ conservatives had participated on the administrative boards and Gender Equity Education Committee of schools by serving as members of Parents' Associations. Through the boards and committees, teachers were prohibited from teaching or conducting activities related to LGBTI+ related topics.
169. For a long time, groups and volunteers with religious backgrounds have distributed content on the campuses of primary and secondary schools in various places around Taiwan, passing on an array of misinformation that violates human rights covenants and conventions, the *Gender Equity Education Act*, and stigmatizes LGBTI+ people. This grievously affects students' ability to learn about gender equity.
170. We suggest:

(1) The Ministry of Education should conduct detailed advocacy to teachers in various fields and train them to integrate gender equity educational materials, especially LGBTI+ related materials, into their teaching curriculum. In addition, the situation of integration should be included in the scope of administration of the Ministry of Education's Gender Equity Education Committee to improve the effectiveness of the implementation of gender equity education by teachers at all levels and in various fields.
(2) Regarding textbooks of various publishing houses which were related to gender equity education, the Ministry of Education should expeditiously re-examine and

supplement LGBTI+ related content such as the *Act for Implementation of J.Y. Interpretation No.748*, LGBTI+ human rights, and LGBTI+ families.

(3) The Ministry of Education should require publishing houses to implement gender equity education and human rights education in the curriculum in accordance with the *Gender Equity Education Act*, and further require the National Academy for Educational Research, which was tasked with the reviewing of textbooks, to conduct internal empowerment training on gender equity education. The National Academy for Educational Research should also re-examine the inappropriate and misleading points in its clarification statement, and strictly require it to comply with the *Gender Equity Education Act* and the *Dispute Handling Process for Gender Equity Education Textbooks* of the Ministry of Education.

(4) In response to major cases that discredited gender equity education (for example: "Don't teach children to be gay" during the election period, "oppose the syllabus of gay lust to enter elementary and middle schools" and other misinformative banners), the Ministry of Education should immediately convene press conferences to clarify and respond accordingly. The relevant clarifications shall be categorized and presented on a designated page on its website. The Ministry shall also distribute said clarifications in the form of official documents to the local Bureaus of Education, education-related agencies, schools at all levels, and all education-related civil organizations. The clarification should be publicized for accessible consultation and reference for all teachers, parents and the general public. The promotional and supervisory procedure can follow the mode of "prevention of sexual assault in the name of religion", to oversee contents of school websites, information circulating the PTA chatrooms and/or campus parenting activities, and to further the deliverance of correct and clarifying information on gender equity education. The percentage of parents contacted by said vectors can also be counted and quantified.

(5) The Gender Equity Education Committee of the central government, local governments, and schools at all levels should select and appoint members with a consciousness of gender equity. The central government should formulate a withdrawal mechanism for the members based on their awareness of gender issues. Regarding the contracted rules for the qualification of parental organizations, the central government also shall actively release administrative rules in order to correct and improve.

(6) Regarding volunteers entering the campuses to assist with administrative operations or teaching activities, the Ministry of Education should establish a regulatory system for the qualifications of volunteers, the content of service, and related gender, human rights and other civic qualities. Should volunteers utilize morning self-study sessions to stigmatize the LGBTI+ community in the name of “family education”, “life education” or “moral education”, relevant regulations should be formulated to punish the administrative personnel on education of said school, for it violated

human rights covenants and conventions, and violated the *Gender Equity Education Act*.

COR Point 22

Responding to paras. 49-51 of the State's Response to 2017 COR

171. Responding to State's response to the 2017 CO paragraph 49 (3), the Ministry of Education had commissioned a research project to formulate gender empowerment and gender education projects in the special education system, to facilitate the schools to develop individualized gender equality education programs, and to eliminate the mindset which desexualizes persons with disability. Sex education for persons with disability shall be attached with importance, themes related to persons with disability shall be included in sex education curricula, and then provide appropriate assistance and support at different life stages. According to the General Comment No. 22 of the ICESCR, regarding sexual health and reproductive health, it is stipulated in art. 2 (2) of the Covenant that no individual or group shall be discriminated against and shall enjoy equal rights. In terms of scope, quality and standards, all individuals and groups should be able to equally enjoy the same medical facilities, information, materials and services for sexual and reproductive health, and all individuals and groups shall be able to exercise their rights to sexual and reproductive health without any discrimination.
172. Responding to State's response to the 2017 CO paragraph 50, although the Ministry of Education has produced relevant outreach resources to explain the content of gender equality education to the public, immense amount of gender prejudice, discrimination, objectification, stereotypes, and hate speech can still be found in Taiwanese media and cyberspace. Such as: homophobic advertisements on major TV outlets when marriage equality was pushed forward at the end of 2016, advertisements that misinterpreted that lesbians do not wish to amend the Civil Code during the 2018 referendum, many news reports projecting a curious gaze or negative prejudices onto LGBTI+ people, and the fact that some media outlets assisted anti-LGBTI+ organizations in disseminating misleading information about gender equality education. According to the 26th and 27th points of the International Review Committee's Conclusions and Recommendations of the Review of Taiwan's Third Report on the Implementation of CEDAW, the committee specifically urged the State to adopt a comprehensive strategy to eliminate discriminatory gender stereotypes, and highlighted the efforts on media and public education.
173. Responding to State's response to the 2017 CO paragraph 51, regarding the orientation training for teachers, the mandatory elective subjects of "topics on educational issues" shall clearly stipulate the inclusion, the content and the minimum

hours of gender equality education and human rights education based on gender diversity. This plan should also be further extended to professional workers such as social workers, psychological counselors, advisors, and medical professionals. Whether medical professionals can comprehend LGBTI+ people's need for privacy and a non-discriminatory environment when accepting sexual and reproductive medical services is especially crucial. Although the State Report had highlighted its effort to advance the implementation of gender equality education for medical professionals, it was unclear whether a sensitivity training for serving LGBTI+ people was included in said training.

The State Report did not provide data concerning the training programs of 2019.

174. Regarding the circumstances faced by transgender students on campus, the Ministry of Education mentioned that it had commissioned a project titled "Regarding the Right to Space of Transgender Students in College Campuses". However, it is still frequently reported that the accommodation rights of transgender students were enchroached upon. The Ministry of Education shall publicize the effectiveness of said project, and to improve relative initiatives for learning rights of transgender students, including safe spaces, dressing and uniform standards, and accommodation rights. The Ministry shall also raise awareness and conduct sensitivity training amongst faculty members to foster a better understanding of transgender students' conditions, consequently preventing transgender students from being exposed to harmful speech of tone-deaf faculty members or even nefarious acts of discrimination.

175. We suggest:

(1) Reduce sensational depictions of LGBTI+ people and the human rights violations they induce by promptly strengthening gender sensitivity and gender awareness, especially the concept of gender diversity, which has been scarcely recognized by the general public, as well as all levels of media practitioners.

(2) Review the current passive practices such as "media self-discipline" or "empowerment on media literacy" regarding gender prejudices, discrimination, objectification, stereotypes, and hate speech in news, media, and advertisements. Formulate diligent practices of active reporting, correction, and dissemination of clarifications. The Ministry of Culture should adopt measures to "set a certain proportion of subsidies to promote the development of gender-equality multimedia works", and refer to "Inclusion Rider"[76], the important clause for the development of gender-equality multimedia works abroad. Promote similar clauses in the country and prompt

[76] The said clause was publicly urged by Frances McDormand, the 90th Oscar Best Actress. Warner Bros. Entertainment Inc. had publicly pledged in September 2018 to sign this clause, which will provide women, persons of color, LGBTI+ people, people with disabilities, and all underrepresented communities with more quotas on work both behind the camera and on the screen.

multimedia companies to sign, in order to present the actual circumstances and plights of LGBTI+ people in high-quality works of art.

(3) The severe inadequacy of gender equality education, especially in family education and lifelong learning among adults, has manifested itself in the societal and the media's spread of defamatory narratives and rumors around LGBTI+ people and gender equality education. In this regard, the Ministry of Education, the Ministry of Culture, and the National Communications Commission should actively cooperate and invest more resources and manpower to educate all citizens on the awareness of gender equity and civic literacy, and develop educational projects on general LGBTI+ issues, and LGBTI+ parent-child issues. Expand the content and service resources of existing family education, and to formulate/implement tangible improvement plans.

(4) In regard to gender equality education for the general public, each stage shall be accompanied with corresponding education policies. In addition to the content mentioned in the State Report, for "family education", the Ministry of Education's "Providing Parents' Gender Equity Education Courses" section was included in the important content of the Ministry of Education's subsidy implementation plans to local governments to promote family education. In the wordings such as "husband and wife co-education", it can be seen that the State still uses "husband and wife" as the model for family education while excluding other forms of families from assimilating into the family education implementation plan.

(5) It is recommended for medical facilities to conduct educational training on medical-related issues of LGBTI+ people, and specifically delineate the content of the courses, in order to guarantee LGBTI+ people would not be excluded or discriminated against by medical practitioners when they accept medical services including sexual health and reproductive health resources.

(6) For the assistants of people with severe disabilities, should they be in need for sexual relief, there is no existing channel for counselling or work rules to adhere to. The State shall attach importance to the sex education of people with disabilities at the education stage, sex education curricula should be adjoined with contents on persons with disabilities, support and appropriate assistance shall also be provided in different life stages.

COR Point 23

176. The Department of Gender Equality of the Executive Yuan (hereinafter "DGE") is insufficiently capable in practical integration and coordination. The State said in its response to the 2017 CO paragraph 53, that the administrative level of the DGE has been upgraded to the first level, enabling it to guide and instruct all second-level Ministries and Councils. However, given the director of DGE is of the same bureaucratic level of deputy directors or director generals of ministries and councils,

when the DGE propose gender-related policies to ministries and councils of the Executive Yuan in circumstances where ministers or higher-level officials have insufficient willingness on promoting gender equality, or when the Premier or Ministers without Portfolio are not serving as chairs of the meeting, it is common for the director of the DGE to be unable to lead or coordinate various ministries.

(1) For example, various inter-ministerial meetings on women's rights or initiatives of gender equality were led by Ministers without Portfolio serving as executive secretaries of Gender Equality Committee of the Executive Yuan (hereinafter "GEC") or the director of DGE, presiding as the chairperson and allocating tasks between Ministries and Councils, with commissioners of GEC participating and providing consultation.

(2) Although the DGE had supervised Ministers without Portfolio with profession on legal affairs and gender equality to actively participate in the promotion of implementation of multiple human rights conventions, and strived to stably implement the concluding recommendations of international review committees, a divergent level of willingness to actively promote gender equality persists amongst the Ministries and Councils, manifesting the necessity of strengthening the integrating and coordinating power of the DGE.

177. Insufficient flow of information between the State and civil organizations: Regarding the participation of civic opinions and the deliberation of emerging issues, Foundation of Women's Rights Promotion and Development, which is tasked with the formulation of a communication platform for the State and civil organizations, does not share the same governmental status with the DGE, its authority and budget are not yet statutorily regulated and authorized. As a result, whether civil organizations can participate in the political process is often determined by the degree of openness of specific administrative organs or the DGE. In recent years, civil entities have experienced limited participation in the political process of gender equality related policies and constrained grasp of relevant policy-related information.

178. We suggest:

(1) Enhance the inter-ministerial integration and coordination capability of the DGE and the GEC and raise gender-equality awareness of high-level executive officials and administrative officials.

(2) Strengthen the participation and communication mechanism of civil organizations in policy formulation processes, disclose the findings in Gender Impact Assessments of mid-term and long-term projects, and utilize multiple channels to provide information regarding gender-equality policies to relevant civil organizations.

COR Point 25

Responding to para. 54 of the State's Response to 2017 COR

179. According to the results found by "Survey on Intimate Violence of LGBTI+ Partners" conducted by the Taiwan Tongzhi (LGBTQ+) Hotline Association and the Modern Women's Foundation in 2012, 58% of LGBTI+ respondents did not know that the *Domestic Violence Prevention Act* had included LGBTI+ people in its scope of protection.[77] 35% of respondents have experienced violence in intimate relationships, among them, 42% have sought help from informal systems such as relatives and friends, but only 11% have sought help from formal systems such as the police station and social welfare, while 55% have never asked for help at all. The reason includes: "I believe it's unfavorable to ask for help" (73%), "Uncertain about the friendliness of the formal system" (62%), "worried about LGBTI+ identity being exposed" (47%). Taiwan passed the *Act for Implementation of J.Y. Interpretation No.748* on May 17th, 2019 which enabled homosexual couples to register for marriage. The State should be prepared for this, especially for the handling of domestic violence incidents of LGBTI+ families.

180. We suggest:

(1) The State should incorporate gender sensitivity training into the basic and advanced specialization courses for domestic violence and child protection social workers to enable said social workers to presume a heteronormative attitude in their service, or develop a checklist targeting the multicultural capability of said workers.

(2) The State should assist the domestic violence prevention and control agencies of governments at all levels, and private domestic violence assistance agencies, to add LGBTI+ friendly content on their websites, as a presentation of the competent authority's hospitality toward LGBTI+ people. This can promote the understanding that they are protected by the *Domestic Violence Prevention Law*, therefore increasing the willingness to seek help from the formal system.

(3) The State should include imagery of homosexual partners when planning and producing advertisements for the prevention of intimate violence, so that potential recipients of assistance can see that the intimate violence services provided by the State includes homosexual partners, therefore raising awareness of domestic violence and increasing motivation for seeking help.

(4) The State should assist domestic violence agencies to set up a fixed consultation window internally, to accumulate practical experience and knowledge of serving cases from diverse backgrounds, this can also become a support system for colleagues in the agency.

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[77] Domestic Violence Prevention Act:
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050071

(5) The State should include sexual orientation and gender identity in the checklist for intimate violence cases, and comprehensively investigate the current status of LGBTI+ intimate violence.

At present, there is no investigation and documentation on the parties' gender identity and sexual orientation, leading to the lack of statistical data on LGBTI+ intimate violence and the insufficiency of research on the causes and methods of treatment.

Responding to paras. 167-168 of the ICESCR State Report

Statistics unable to reflect the severity of the cases

181. According to statistics on reported domestic violence cases compiled by the Ministry of Health and Welfare,[78] the number of reported domestic violence cases had dramatically increased from 2016 to 2020. The increase is in part due to the amendment to the *Domestic Violence Prevention Act* which expanded the inclusion of children and adolescents who witness intimate violence, unmarried cohabitants, and non-cohabiting current or previous intimate partners; while also reflecting the deficiencies and ineffectiveness of government policies.
182. According to the 2019 statistics on the general situation of domestic violence victims and respondents, there were 70,362 female victims of domestic violence, accounting for approximately 67.7% of the total amount,[79] indicating domestic violence is still a form of violence concerning gender power relations.
183. According to statistics released by the Ministry of Health and Welfare by the categories of nationality and disabilities, from 1,725 people in 2007 to 8,240 people in 2019, the number of persons with disabilities fell victim to incidents of domestic violence has been incessantly increasing.[80] However, the State was not committed to conduct further analysis on the form of domestic violence suffered by persons with disabilities. Incomplete statistics on persons with multiple identities: At present, statistics on domestic violence disclosed by the Ministry of Health and Welfare can only indicate the original nationality, age, education level, occupation, type of disability and form of domestic violence, rather than the manifestation of violence experienced by persons in intersectional circumstances, including but not limited to

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[78] Ministry of Health and Welfare, Statistics on Reported Domestic Violence Cases: https://www.mohw.gov.tw/dl-22334-37cdd105-2256-420c-995f-42e8684c13f6.html

[79] Ministry of Health and Welfare, Summary of the Situation of Reported Domestic Violence Victims and Respondents: https://dep.mohw.gov.tw/dos/cp-2981-14054-113.html

[80] Ministry of Health and Welfare, Victims of Domestic Violence with disabilities, from 2007 to 2019: https://dep.mohw.gov.tw/DOPS/cp-1303-33743-105.html

women with disabilities, persons with multiple and extensive disabilities, or new immigrant women with disabilities.

184. As aforementioned, in addition to being unable to reflect the intersectional manifestation of domestic violence, the statistics were still counted in total number of reports, unable to reflect severity of individual cases. For example, two separate reports from one single victim could signify a drastically different circumstance. Furthermore, although the "other" option was added to the gender category, hateful violence or discriminatory violence was not added to the "forms of violence" category, neglecting domestic violence experienced by the LGBTI+ community.

185. We suggest:

(1) Statistical data on reported cases of domestic violence shall disclose the intersectional analysis across various identities and variables. Data collection, statistics, analysis and disclosure regarding intersectional violence experienced by victims shall also be included in the extensive research programs the State had commissioned from scholars and experts.

(2) In addition to descriptive statistics, the State shall improve its awareness of the manifestation of violence in reported cases and its sensitivity regarding diverse forms of intimate relations. In addition to actively intervening in domestic violence prevention, the State shall also update its domestic violence prevention programs in accordance with current research on domestic/intimate violence, to comply with the norms of CEDAW and the Covenants.

Persisted shortcomings in the domestic violence safety net

186. Persevered shortage of protective social workers: employed by the State, protective social workers are the frontline personnel for the urgent resettlement of children and adolescents, persons with disabilities and other victims of domestic violence. Albeit that in the State report, the State claimed it allocated subsidies to local governments for 342 additional posts for protective social workers, protective social workers in Domestic Violence and Sexual Assault Prevention Center of local governments were nonetheless tasked to process an aggregated amount of more than 160,000 cases in 2019.[81] The aforementioned hiring of additional 342 social workers is unable to address the encumbered circumstances. The turnover rate among protective social workers specializing on cases involving children and adolescents is especially high by virtue of the cumbersome administrative procedures and the highly constraining work environment.

187. The public-private cooperation had adversely overburdened civil organizations: the State had prolonged cooperation with civil organizations which are experienced in frontline service for victims of domestic violence, through the forms of commission

[81] Ministry of Health and Welfare, statistics: https://dep.mohw.gov.tw/DOPS/lp-1303-105-xCat-cat01.html

contracts and providing subsidies for resettling services. Yet, civil organizations are often understaffed and in financial predicaments, detailed reasons are as follows:

(1) To apply for subsidies, civil organizations are still required to raise part of the subsidy fund. Currently the maximum subsidy ratio for domestic violence resettlement projects is 80%, rendering civil organizations in need to raise a considerable amount of at least 20%of the total fund. During the pandemic, the accounting procedure of the State still requires organizations to advance the expected subsidized amount, forcing civil organizations to reduce the number of resettlement cases, even resulting in the deterioration of quality of services.

(2) Insufficient space for contract negotiation between the State and commissioned civil organizations: if the number of resettled cases were to be lowered under the necessary quota by reasons of cases falling ill, for instance, the government will directly attribute the responsibility to the commissioned organization. The Taipei City Government has levied fees on the basis of "breaching contract" with similar events. Though commissioned organizations and governmental agencies had agreed on the negotiated and discussed content, governmental agencies had never arranged discussions between agencies and the commissioned organizations, shrinking the space for negotiations upon constituting the contract.

188. Application for protection orders

(1) Average halt for application of protection orders has not decreased: According to the statistics of the Judicial Yuan,[82] the average number of days waited for the issuance of protection orders has remained at approximately 40 days in the past five years. Although the Judicial Yuan has claimed to have increased the number of family judges, the exact figure was not disclosed in its official website or the State report. Based on the aforementioned data, the increase in family judges did not remarkably reduce the cost of time for protection order applicants.

(2) Children and adolescents who witnessed intimate violence still need family members to apply for protection orders, and the issuance rate is low: The State bears the obligation to exhaust all efforts to minimize the pressure endured by children and adolescents who have witnessed intimate violence to apply for protection orders, however the provisions nevertheless require their parents to act as representatives when applying for said order. However, parents acting as representatives might be involved in incidents of domestic or intimate violence themselves, thus reducing the willingness to present themselves for the application. In addition to the existing thresholds for application, the issuance rate of protection orders for children and adolescents who witnessed intimate violence is still relatively low. It is improbable for

82 Statistics from the Judicial Yuan: https://www.judicial.gov.tw/tw/dl-86481-9b230e7ba9524054a1834b38bb3ab75d.html

children and adolescents who witnessed domestic or intimate violence to obtain protection orders if the concerned case was deemed as "not serious".

(3) Application and the procedure for appearing in courts: Protection orders can be divided into three categories: general, temporary and urgent, with the general protection order being the most complete in terms of protective measures. However, the general protection application process requires victims to appear in courts for review and issuance, potentially exposing the whereabouts of the victim to the respondent. This potential exposure can intimidate the victim from appearing in court, inducing the potential for them to obtain a protection order. The hostility of the statutory design of the State has resulted in a serious lapse of protection.

189. Shelters malfunctioned while the government regarded victims of domestic or intimate violence as a dependency population: The sheltering environment of domestic/intimate violence shelters has been persistently worrying. In addition to the lack of training resources on legal affairs, psychological counselling and vocational training, according to 2015 statistics, most of the victims of domestic/intimate violence only stayed in the shelter for around 2 weeks before returning to their original domiciles.[83] This indicates that the sheltering and empowerment function of shelters are not in effect. As of 2018, there are 41 emergency short-term shelters and 15 medium to long-term shelters in Taiwan. Certain administrative areas (Hsinchu County, Kinmen County, and Lienchiang County) were not furnished with a long-term shelter. Because of the limited number of beds in most local shelters, the victims are often asked prematurely to draw up a return plan, creating a situation wherein the victims may be unable to be financially independent, and leaving the victims outside of the social safety net despite their departure from a violent environment, which also adversely affects the rights or their children.

New immigrants under domestic violence

190. New immigrants may be repatriated consequent to filing a divorce: although the State amended article 31 of the Immigration Act,[84] permitting spouses of foreign nationality with children to be able to continue their residency status in Taiwan after filing a divorce due to instances of domestic violence. For new immigrants who have lived in Taiwan for less than 5 years and are childless, however, since they do not meet the qualification to apply for permanent residency, should they suffer domestic violence at this stage, they may lose their residency status, even face repatriation. For

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[83] See "Special column: women suffered domestic/intimate violence need diverse forms of shelters", published by the Garden of Hope Foundation on Thinking Taiwan (in Mandarin) https://www.thinkingtaiwan.com/content/6559

[84] The Immigration Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132

new immigrants from Vietnam, Indonesia and other countries, filing for divorce while in the process of naturalization might result in statelessness for the individual as a result of having lost their original citizenship and were denied legal residency status in Taiwan.

191. We suggest:

(1) Improve the labor conditions of protective social workers and increase the number of workers in accordance with the amount of cases: the State shall assist recruitment of social workers for local governments in accordance with professional opinion on the maximum burden for each social worker and the amount of cases in local administrative areas. In addition, regular reviews of work content of protective social workers shall be conducted, to discern the main reasons for the excessively high turnover rate, and to ensure a reasonable workload for protective social workers.

(2) Reduce the economic burden and reasonable mandate of the commissioned organizations: The commissioned civil organizations should be admitted to spaces for negotiation on the contents of said commissions on a regular basis, and the content of the contract must not include provisions on liquidated damages on the basis of insufficient cases of resettlement. The proportion of autonomous fundraising in subsidizing contracts shall be reduced, the administration process of review and issuance shall also be accelerated, to avoid overburden for civil organizations.

(3) Reduce the cost of time for applying for protection orders: The State shall disclose the number of increases of family judges and propose long-term programs and comprehensive measures to lower the average hold up time to acquire a protection order, provide various corresponding measures with all levels of courts.

(4) Establish an alternative mechanism for obtaining a protection order without appearing in court: For victims of domestic/intimate violence whose risk of exposure has been assessed as immense by social workers, relevant security and support measures shall be provided, the State shall ensure relevant awareness and sensitivity of social workers when handling cases in need of resettlement, and formulate temporary alternatives before the issuance of protection order to ensure that victims are free from the risk of exposure.

(5) Extend the duration of shelter and establish long-term shelters: The State shall cease the habitual regard of victims of domestic/intimate violence as a dependency population, and assist their reintroduction to community and workplaces in order to live independently by extending the duration of sheltering and provide mid or long-term shelters and accommodations for empowerment of self-reliance. At the same time, the sheltering system shall provide more training on psychological counselling, legal resources, vocational training for the victims to live independently, and education and childcare resources for children who have suffered from domestic violence.

(6) Residency status of new immigrant divorcees who suffered domestic/intimate violence shall not be adversely affected by their parental status. Amend provisions to relax restrictions on the residency status for childless divorcees who suffered domestic/intimate violence, enable extension of residency status depending on their circumstances, and provide vocational training and job-matching programs equivalent without regard to their original nationality, to enable their financial self-reliance when residing in Taiwan.

(7) Permit temporary residency status for new immigrants who filed divorce and were disallowed to retain their original nationality, and relevant restrictions to naturalization should be reduced by, for instance, enabling time spent in marriage residency calculated in naturalization qualification.

COR Point 26

192. The World Health Organization (WHO) and UNOHCHR estimates that 10-15% of the world's population live with some form of disability, [85]while in the UK and in the US, persons with disabilities (PWDs) make up between 19-20% of the total population. According to statistics compiled by the Ministry of Health and Welfare, as of the second quarter of 2020, there are approximately 1.19 million persons with disabilities in Taiwan, accounting for approximately 5% of the entire population.[86] It should be noted, however, that the Taiwanese statistics diverge hugely from those of the UK, the US and even the rest of the world. In fact, PWD prevalence depends on the availability of government resources as well as on how the State allocates relevant resources and manpower, but the Taiwan Government has never carried out any survey on the number of PWDs among the total population while conducting a census.

193. We recommend that during the next census, the government should adopt the "6-question disability measure" published by the WHO to obtain preliminary proportion figures of PWDs in Taiwan, and they should also, based on the above census data, launch the second phase of the survey focusing on demands of PWDs. Current surveys in this regard select only the PWDs with a disability card or disability certificates as sample subjects, which makes it rather difficult to obtain an accurate estimate of the resources required.

[85] WHO, World Report on Disability (2011): https://reurl.cc/VXdElZ ; UNOHCHR, Report on the Rights of Persons with Disabilities in Iraq (2016): https://reurl.cc/145YEm

[86] Quarterly statistics on number of people with disabilities, Department of Statistics, Ministry of Health and Welfare: https://www.mohw.gov.tw/dl-22091-0b3e384b-31ec-4c71-bf46-5bc5dcbe8098.html

COR Point 28

Solar panel construction project affected right to self-determination for indigenous nations (Responding to paras. 61-63 of the State's Response to 2017 COR)

194. The "Settlement of Solar Power Generation Equipment and Education Demonstration Zone Bidding Project in the Zhiben Chienkang Section of Taitung City, Taitung County" by the government of Taitung County affected the self-determination rights of the Katratripulr tribe of Puyuma people.

(1) The Taitung County Government intended to develop the land of Zhiben Chienkang Section of Taitung City as a designated area for solar power generation equipment and educational demonstrations, and proceeded into the bidding process without consulting the approval of the tribe.

(2) Although the winning bidder, Vena Energy, conducted votes in accordance with the *Measures for Consultation to Indigenous Tribes to Obtain Approval to Participate*,[87] the measures did not respect the tribe's traditional methods for deliberation, permitted non-tribe members to participate in the votes, and limited votes per household, which grievously infringed upon the right to self-determination of the tribe. When the tribe had doubts on the voting process regarding the scope of voting, total votes, and availability to cast delegated votes, the Taitung City Office unilaterally convened a vote on the tribe's behalf, infringing on their rights.

(3) This incident highlighted that the State has yet to formulate an effective system for indigenous nations to ensure that the rights and interests of indigenous peoples will not be infringed.

195. We suggest: Amend the *Measures for Consultation to Indigenous Tribes to Obtain Approval to Participate*, intensify the preliminary consultation process for developers, and acknowledge the diverse methods of self-determination of disparate indigenous nations and tribes by abolishing the singular procedural standard.

[87] Regulations: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0130031

ICESCR arts. 6-7

COR Points 31-32

Responding to paras. 72-76 of the State's Response to 2017 COR

Extremely poor working conditions without significant improvement for years

196. By the end of 2019, there were nearly 718,000 industrial and social welfare migrant workers in Taiwan, of which 246,000 were family caregivers and domestic helpers.[88] According to the Legislative Yuan's 2019 report,[89] there were nearly 80,000 people with disabilities and elders with dementia in Taiwan, of which 30% had hired foreign caregivers.

197. While the Review Committee repeatedly raised serious concerns regarding the situation of foreign workers in the household category in 2013 and 2017, little has changed.

(1) Regarding salary, according to the Ministry of Labor,[90] the monthly salary for a foreign caregiver averaged NT$ 17,550 in 2019, significantly lower than the basic wage requirement stipulated in the Labor Standards Act, which was NT$23,800 the same year. Comparatively, the minimum monthly cost for living in 2019 in Taipei and New Taipei City, the two cities with the highest number of foreign social welfare workers, was NT$16,580 and NT$14,666 respectively.[91] Current minimum wage requirements for foreign domestic workers fail to fulfill the right to an adequate standard of living as stated in art. 14 of ICESCR.

(2) Furthermore, Paragraph 73 of the State's response to the 2017 Concluding Observations and Recommendations mentioned that the government would "continue to review their salaries relative to their countries of origin, referencing consumer price indices and other data while also giving due consideration to

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[88] Statistics of Industrial and Social Welfare Migrant Workers from the Ministry of Labor： https://statdb.mol.gov.tw/evta/JspProxy.aspx?sys=220&ym=10908&ymt=10908&kind=21&type=1&funid=wq1401&cycle=1&outmode=0&compmode=0&outkind=11&fldspc=24,6,&rdm=efmmjjiN

[89] the Legislative Yuan, Study on Respite Care for Family Caregivers: https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=6590&pid=189428

[90] Press release on the 2019 Report on the management and employment of foreign labor: https://www.mol.gov.tw/announcement/2099/44042/ ；2019 Report on the management and employment of foreign labor: https://statdb.mol.gov.tw/html/svy08/0842all.pdf

[91] List of minimum cost of living, review criteria for middle and low-income households in 2019; list of category and conditions of low-income households in 2019: https://dep.mohw.gov.tw/dosaasw/cp-566-49606-103.html

employers' economic burden." However, the fact is that the legal minimum wage for domestic migrant workers remained the same for years: at NT$17,000 per month since 2015, while the basic wage for regular laborers under the Labor Standards Act was raised from NT$20,008 to NT$ 23,800 in 2019, growing 19.9%.[92] To make the situation worse, the health insurance premiums for domestic foreign workers have continued to increase along with the minimum insured salary.[93]

(3) Regarding daily hours, according to the aforementioned report, foreign family caregivers work approximately 10.4 hours per day. Though the government claimed in para. 72 in its response to the 2017 CO that sufficient rest time and at least one rest day every seven days are mandated in the written labor contract, which employers must sign when hiring domestic foreign workers, and again in para. 70 of the 2020 ICESCR State Report that "the migrant worker labor contracts specify working hours and days off", up to 81% respondents of the aforementioned report said that they did not specify daily working hours in their labor contracts.[94]

(4) Regarding rest time, the same report showed that 34.4% of foreign domestic caregivers have no holiday breaks at all, and 54.2% get some days off. This is not in compliance with art. 36 of the Labor Standards Act,[95] which states "(a) worker shall have two regular days off every seven days. One day is a regular leave and the other one is a rest day." For those who do not get days off at all, 86.5% of their employers claim that the reason for this is because "the caregivers want to earn overtime pay." While more than 98% of the employers stated that they do pay for overtime, the amount is less than NT$600 a day.

198. On educating employers, the State mentioned in para. 74 in its response to 2017 CO that first-time employers of domestic migrant workers must attend a mandatory seminar before hiring as required by art. 2 of the Implementation Regulations of Employers' Orientation Program Before Hiring a Foreign Worker to Render Home

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[92] The History of Enacting and Adjusting the Minimum Wage Policy https://english.mol.gov.tw/6386/6394/6402/26387/

[93] The health insurance coverage of domestic migrant workers as mandated in Articles 8 and 9 of the National Health Insurance Act-- https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0060001

[94] Statistics on working hours, rest time, etc. of foreign domestic workers by the Ministry of Labor: https://www.mol.gov.tw/media/5761507/1090113%e5%8b%9e%e5%8b%95%e9%83%a8%e7%b5%b1%e8%a8%88%e8%99%95%e6%96%b0%e8%81%9e%e7%a8%bf_%e7%b5%b1%e8%a8%88%e5%9c%96%e8%a1%a8.pdf

[95] Article 36 of *Labor Standards Act*： https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=N0030001&flno=36

Care or Household Assistance.[96] However, the format and content of such seminars are insufficient and incomprehensive, and has failed to effectively enhance employers' understanding of the culture and the rights of the foreign workers.

(1) In terms of format, the seminar takes merely one hour at minimum, and employers have the option to complete the training online - through watching a short video.

(2) In terms of content, the seminars touch upon only administrative matters such as relevant laws, of which which the government has failed to provide accurate and detailed clarifications.[97] Furthermore, the courses do not include lectures on the cultures, languages, religions of foreign workers.

199. In para. 75 of the State's Response to 2017 CO, it stated that the government expanded respite care services for families with foreign caregivers. However, only 641 people enrolled in the respite care services program, which was less than 0.26% of the total number of domestic workers. It goes to show how limited the results are.

200. Sexual harassment in the workplace: According to statistics compiled by the Ministry of Health and Welfare, between 2007 and 2019, a total of 1,141 sexual assault cases concerning foreign victims were reported, and about 70% of the victims were domestic caregivers.[98] In 2018, a report by the Control Yuan showed that some of the foreign workers who were victims of sexual assaults or harassment had no income and were burdened with huge loans while being placed in a shelter and were waiting for a new job.[99] Moreover, prior to their temporary placement, they still had to confront and deal with their predators -- the employers, who would demand outstanding wages, retrieve their identification documents, and sign conversion documents after applying for official mediations on labor disputes.[100] In 2018, the Control Yuan demanded the Ministry of Labor and the Ministry of Health and Welfare to build an effective monitoring mechanism to accurately compile and integrate the data and analyze the reasons behind the sexual assaults of foreign workers. At the same time, both ministries should develop supportive measures for

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[96] Art. 2 of the Implementation Regulations of Employers' Orientation Program Before Hiring a Foreign Worker to Render Home Care or Household Assistance: https://law.moj.gov.tw/ENG/LawClass/LawSearchContent.aspx?pcode=N0090049&norge=2

[97] Executive Yuan's press release on laborers' safety and welfare: https://www.ey.gov.tw/state/11AF2B1C6FB2676/1f08a03d-f2df-4a41-8e1c-97812bdde217

[98] Statistics of nationality and industry of foreign victims of sexual assault cases reported to the Ministry of Health and Welfare：https://dep.mohw.gov.tw/DOPS/cp-1303-33771-105.html

[99] The Control Yuan's investigation report urging the Executive Yuan to take a serious look into the processing of cases of foreign female workers' sexual assaults in order to protect the labor rights and their safety: https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=12830

[100] Ibid

the conversion of the foreign workers victimized in these cases. Nevertheless, there has been little to no improvement in this aspect.

No progress achieved on the legislation of "Domestic Workers Protection Act"

201. As stated in paragraph 76 of the State's response to 2017 CO, the Ministry of Labor has finalized the draft of "Domestic Workers Protection Act" on March 15, 2011 and submitted it to the Executive Yuan for further review on September 13, 2013. The Act has since been pending. The government has made excuses such as "the draft needs to be further reviewed in collaboration with the policy of Long-Term Care System" and "the lack of public consensus" to delay any further actions on the Act. The pending of the legislation means that 246,000 domestic workers' human rights continue to be ignored. It should be the obligation of the State to proactively promote, fulfill and protect human rights through legislation instead of passively waiting for public consensus.
202. Furthermore, the Domestic Workers Protection Task Force as mentioned in para. 76 of the State's Response to 2017 CO, failed to engage civil society or foreign domestic workers. It raises the concern of whether the voices of migrant workers are being taken into account. Besides, there are no minutes of said meetings, making it impossible for NGOs to garner a comprehensive understanding of the situation, let alone propose any policy recommendations related to this matter.
203. In addition to the lack of progress on the legislation, the government has failed to provide a detailed account of the progress achieved on this issue or the impact assessment of the legislation on migrant workers' rights. NGOs have no information regarding exactly why the bill is pending or its progress (if any), making it difficult for NGOs to provide policy recommendations.
204. We recommend:

(1) The government should enact the Domestic Workers Protection Act without further delay, and apply domestic migrant workers to the Labor Standards Act. The Domestic Workers Protection Act should incorporate personal safety protections to address and prevent the high frequency of sexual harassment in the workplace and the current issue of inadequate protection and safety measures.
(2) Regarding employer education, the option of watching online videos should be taken out. The content should include the comprehensive and precise labor-employment laws and regulations, administrative procedures, and the information about lives and cultures of migrant workers to protect the rights of both parties.
(3) The task force of domestic workers' protection should actively engage foreign workers' organizations. The meeting materials should be made public with detailed meeting minutes so that the public can understand and follow up on the progress of government policies and legislation.

(4) The government should proactively and regularly investigate the working conditions, physical and mental health, and occupational injury status of foreign domestic workers. The results of these investigations should be made public for the public to monitor and follow-up.

(5) The government should forbid individuals or individual households from hiring foreign caregivers themselves, but vigorously integrate foreign domestic care workers into the long-term care system. At the same time, it must be mandated that long-term care case managers pay monthly visits to households that hire domestic care migrant workers to understand the needs of the employers, the caregivers and the persons in need of care. The government should provide subsidies to employers to increase the incentives for them to apply for professional caregivers in respite care during foreign workers' day-offs, so as to avoid a gap in the caring for those in need while also ensuring foreign domestic workers' rights to rest.

COR Points 33-34

Responding to paras. 77-81 of the State's Response to 2017 COR, and paras. 85-90 of the ICESCR State Report

205. With over 1,100 fishing boats, Taiwan has the second largest fishing fleet in the world. According to the Fisheries Agency, in 2019 the total fishery production amounted to 1,039,383 metric tons, with 32,708 foreign workers employed on fishing vessels operating both within and without Taiwan's borders.[101] Despite this huge fishing industry and capacity, Taiwan continues to fail to protect the rights of workers hired both within and without the country through both the law and in practical measures. In fact, even those who have been convicted of human trafficking abroad are still free to hire migrant workers in Taiwan.

Overseas employment

206. Legal protections are currently lacking or overly lax, reducing fishermen to second-class citizens.

207. As mentioned in paragraph 78 of the CO State Report, the government introduced three pieces of legislation related to fishing in 2017 — the Act for Distant Water Fisheries, the Act to Govern Investment in the Operation of Foreign Flag Fishing

101 Fisheries Agency, Fishery Statistics Annual Report (2019), https://www.fa.gov.tw/cht/PublicationsFishYear/content.aspx?id=34&chk=45c1a506-e4ff-4f0f-9fad-c898cc1eae42

Vessels, and Amendments to the Fisheries Act, alongside 15 sub-regulations,[102] in an attempt to regulate the overseas employment of foreign workers on fishing vessels operating beyond Taiwan's borders. However, these new laws are still insufficient in providing fishermen adequate protection, making them second-class citizens:

(1) The Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members form the current basis for the protection of the rights of foreign workers employed on fishing vessels operating beyond Taiwan's borders,[103] as authorized by art. 26.3 of the Act for Distant Water Fisheries.[104] However, if compared to the Labor Standards Act, there is a vast difference in the stipulated labor conditions.

(2) In terms of salaries, the Article 6.1.2 of the Regulations stipulates that foreign crew members hired by distant water fisheries operators should be paid a minimum of US$450 (about NT$13,500).[105] This is less than 55% of the NT$24,000 minimum wage stipulated in the Labor Standards Act.

(3) As for working hours, Article 6.1.7 of the Regulations stipulates that "the foreign crew member shall not have less than ten hours of rest per day and less than four days off per month. In consideration of fishing operation,[106] compensatory leave(s) may be arranged in accordance with the agreement between the employer and the employee." Not only is there a huge gap between this and the basic standards as provided by the Labor Standards Act, the provision allowing for compensatory leave also creates a loophole that leaves foreign crew members vulnerable to exploitation.

(4) As for insurance, paragraph 86 of the CO State Report states that "foreign workers on fishing vessels enjoy the same health insurance rights and protections as local workers". This is not true. Foreign crew members hired by distant water fishery operators cannot be insured as workers as they are not considered under the Labor

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[102] Act for Distant Water Fisheries: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050051 ; Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050037; Fisheries Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050001

[103] Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061

[104] Act for Distant Water Fisheries, art24.3: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050051

[105] Items, amounts and means of payment of the cost or expenses to the foreign crew member. The monthly wage of the foreign crew member shall not be less than 450 US dollars.

[106] The foreign crew member shall not have less than ten hours of rest per day and less than four days off per month. In consideration of fishing operations, compensatory leave(s) may be arranged in accordance with the agreement between the employer and the employee.

Standards Act. Although Article 6.1.3 of the Regulations stipulates that the "distant water fisheries operator shall insure for the foreign crew member the accident, medical and life insurance",[107] the government has not specified penalties for the flouting of this rule, but only stated that "in case of failing to insure as required, insufficient insurance coverage, or failing to acquire a sufficient claim from an insurer, the distant water fisheries operator shall bear the loss or indemnity." There is a lack of guidance, investigation, or support for foreign crew members seeking to assert their right to such insurance from their employers.

(5) Although the protections in the regulations are already poor, many operators still fail to respect and protect the rights of foreign crew members. According to investigations by the NGO Taiwan International Workers' Association, many shipowners do not directly pay the salaries of crew members, leaving it up to agencies. After deductions for agency fees and costs for lodging, the remainder is issued to the foreign crew members. Not only are the salaries not issued on a regular basis, bilingual payslips, as stipulated under the law, are not issued.[108] For more details, please refer to paragraph 212 of this report.

(6) The Regulations do not specify penalties for those who breach its requirements. Under the Act for Distant Water Fisheries, only Article 42 stipulates penalties for those who violate the rights of foreign crew members, stating that those found to be in violation will be fined between NT$50,000 and NT$250,000, with the possibility of their fishing license being suspended up to and not more than one year. This penalty is overly light, and therefore has no deterrent effect.[109] Furthermore, the Act for Distant Water Fisheries does not clearly define what constitutes illegal activities, and therefore cannot really protect the rights of foreign crew members.

(7) not really protect the rights of foreign crew members.

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[107] The distant water fisheries operator shall insure for the foreign crew member accident, medical and life insurance, and the insured amount of the life insurance shall not be less than one million New Taiwan Dollars. In case of failing to insure as required, insufficient insurance coverage, or failing to acquire a sufficient claim from an insurer, the distant water fisheries operator shall bear the loss or indemnity.

[108] Taiwan International Workers' Alliance, Floating and Human Rights - the blood and sweat on the fishermen are on our dinner table (08/25/2016), https://www.tiwa.org.tw/%E9%A3%84%E9%9B%B6%E8%88%87%E4%BA%BA%E6%AC%8A%E3%80%8B%E6%BC%81%E5%B7%A5%E8%A1%80%E6%B1%97-%E5%9C%A8%E4%BD%A0%E6%88%91%E7%9A%84%E9%A4%90%E6%A1%8C%E4%B8%8A/

[109] Act for Distant Water Fisheries, art.42: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050051

The relevant authority lacks specialized knowledge about labor, and conflicts of interest are present

208. The government agency that oversees the employment of foreign crew members by operators is the Fisheries Agency and not the Ministry of Labor. Not only does the Fisheries Agency lack expertise in dealing with labor conditions, it also has vested interests and financial relationships with fisheries associations, intermediary companies, and fishery operators. For example, the vice-chairman of the Council of Agriculture is the chairman of the Overseas Fisheries Development Council of the Republic of China (OFDC). Furthermore, executives from organizations and companies like FCF Co, Ltd., Taiwan Tuna Association, and National Fishermen's Association Taiwan ROC, Taiwan Tuna Longline Association, and Fong Kuo Fishery Group sit on the board of directors of the OFDC. According to the Fisheries Agency's quarterly reports, the Executive Yuan's Council of Agriculture grants the OFDC more than NT$10 million in support every quarter.[110] It is therefore doubtful if the Fisheries Agency can really effectively guard the rights of workers employed on fishing vessels.
209. Under Article 34 of the regulations,[111] if a foreign crew member ends up in a dispute over rights or obligations with the shipowner, the municipal or county (city) government should facilitate and mediate between affected parties to reach a settlement. If a settlement cannot be reached, the matter should be sent on to the relevant authority. However, foreign crew members are often disadvantaged in terms of language proficiency and resources, and find it difficult to clearly represent themselves during mediation. If the case is sent on, the relevant authority is, once again, the Fisheries Agency.
210. Monitoring by maritime inspectors are often ineffective, with concerns about conflicts of interest:

(1) According to paragraph 77 of the CO report, the Executive Yuan has increased the number of maritime inspectors dispatched, thus increasing the number of inspections and coverage capacity so as to reach national targets. However, most of the maritime inspectors are hired, trained, and dispatched by the OFDC. If we take 2019 as an example: according to the final report of accounts from the Fisheries Agency, the agency, in the name of "increasing the coverage of maritime inspectors", paid

[110] Fisheries Agency, Fishery Agency's reports on subsidies paid or received annually and quarterly, https://www.fa.gov.tw/cht/GovAllowance/index.aspx

[111] Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, art.34: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061

approximately NT$77.95 million to the OFDC, designated as expenses for services and personnel provided.[112]

(2) According to a 2018 investigative report by a non-profit online publication, a former maritime inspector claimed that the OFDC responsible for recruiting and training officers required officers to serve tea to either the shipowner or the captain and bow to the dock before they board the ship. Reports by these inspectors are either tampered with by the Fisheries Agency, or are locked up. Some inspectors have also claimed that no shipowner has ever been penalized by the government for barring an inspector from boarding the vessel.[113]

(3) It is therefore apparent that conflicts of interest exist within the current maritime inspector system, and there are accusations of the relevant authority, the Fisheries Agency, shielding ship owners, intermediaries, and fisheries associations. They are thus unable to adequately supervise and implement the protection of fishermen's rights.

(4) Over the past few years, at least four maritime inspectors have been recorded as having died on board vessels registered in Taiwan, or Taiwanese ships flying Flags of Convenience.[114] One of these recorded deaths has been classified as a homicide. Most of these cases are still under investigation, but there has so far been no discernible action by the Taiwan government.[115]

211. Responding to paragraph 81 of the CO report, although the Execution Yuan's task force on the labor rights and interests of foreign fishermen included civil society organizations and scholars in its meeting on amending the Regulations, there were no fishermen, or civil society organizations that could adequately represent fishermen, present, which might be a sign of bias.

Frequent incidents of human rights violations at sea

212. International reviewers had expressed concerns about the situation of foreign crew members on Taiwanese fishing vessels or Taiwanese vessels flying Flags of

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112 Fisheries Agency, Fishery Agency's annual final accounts, https://www.fa.gov.tw/cht/GovAccount/index.aspx

113 The Reporter, [Live from Taiwan | Fraud Reports] Indiscriminate catching, fish washing, and fraud reports in the eyes of observers (12/19/2016), https://www.twreporter.org/a/far-sea-fishing-taiwan-truth

114 A "flag-of-convenience" (FOC) vessel is a fishing vessel that, in order to escape from management measures of regional tuna management organizations, will change its flag to that of a nation either: a) not a member of any of the regional organizations concerned; or b) a member, but with little capability of properly managing its fishing vessels.

115 Association for Professional Observers, Observer Casualties, Injuries, and Near Misses, https://www.apo-observers.org/misses

Convenience in reports as early as the one issued in 2013. They reiterated their concerns in 2017 as the situation had not improved. However, in the past four years, there have still been frequent incidents of human rights violations at sea, including fatalities, leading to repeated international sanctions on Taiwan's fisheries:

(1) On 30 September 2020, the United States included Taiwan's distant water fishing catches in their "list of goods produced by child labor or forced labor", mentioning in their report that foreign crew members "face hunger and dehydration, live in degrading and unhygienic conditions, are subjected to physical violence and verbal abuse, are prevented from leaving the vessel or ending their contracts, and are frequently not paid their promised wages or have food and lodging fees illegally deducted from their wages."[116]

(2) On 5 August 2020, the US Customs and Border Protection agency (CBP) issued Withhold Release Orders to two fishing vessels operated by Taiwanese, on the ground that there were cases of forced labor involving Southeast Asian crew members, including instances of physical violence, deception, salary deductions, overtime, and harsh working and living conditions.[117]

(3) In May 2018, the South African authorities detained the Taiwanese vessel Fuh Sheng 11 under C188 of the International Labor Organization's Work in Fishing Convention. Inspectors reported that the foreign crew members on board were paid less than the stipulated monthly minimum wage of US$450, did not have sufficient or clean drinking water, were not allowed enough time to sleep, and had breached the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members.[118]

(4) In 2016, the Taiwanese vessel Fuci Qun was implicated in the long-term abuse of an Indonesian fisherman, Supriyanto, who died at sea. According to the Control Yuan's investigations, [119]prior to his death, Supriyanto was subject to illegal salary

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[116] US Department of Labor, 2020 List of Goods Produced by Child Labor or Forced Labor, p. 76. https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf

[117] U.S. Customs and Border Protection, CBP Issues Detention Order on Seafood Harvested with Forced Labor (August 18,2020): https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor-0；CBP Issues Detention Order on Seafood Harvested with Forced Labor (May 11,2020): https://www.cbp.gov/newsroom/national-media-release/cbp-issues-detention-order-seafood-harvested-forced-labor

[118] Control Yuan, The Control Yuan's press release on the investigation into allegations of human rights violations on Fu Sheng 11 (05/09/2019), https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=13403

[119] Control Yuan, Control Yuan member Wang Mei-yu's speech on the labor rights of foreign fishermen (12/13/2016), https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=7882

deductions and beatings, and that the captain had failed to arrange timely medical treatment for him, resulting in his wounds becoming infected and leading to his death.

(5) In 2014, the Taiwanese operated Giant Ocean International Fisheries (known more commonly as Giant Ocean) illegally trafficked over 1,000 Cambodian fishermen. These fishermen were victims of deception, starvation, torture, and death threats. Giant Ocean was prosecuted by the Cambodian government over this matter. Six Taiwanese were convicted of human trafficking by the Cambodian government in 2014: one was sent to prison, whereas the other five are still at large. The Taiwanese government has yet to prosecute or convict them. Among the five at large, two remain on the list of trusted intermediaries on the Fisheries Agency's list,[120] and continue to engage in the employment of foreign crew members.

Domestic employment

Insufficient inspections on the labor conditions of fishermen, unable to implement rights and protections stipulated by law

213. The employment of foreign crew members on fishing vessels in Taiwan comes under the jurisdiction of the Ministry of Labor, with reference to the Employment Service Act and the Labor Standards Act. According to paragraph 79 of the CO report, since 1 January 2018, the Taiwan government has included the employment of foreign crew members in Taiwan in the Administrative Penalties Criteria on the Permission and Administration of the Employment of Foreign Workers. However, no relevant statistics have been released to the public, and the results are unknown.

214. Furthermore, due to a lack of human resources and inadequate labor inspections, fishermen are subjected to exploitative conditions such as working overtime with no overtime pay, and cramped living conditions.

(1) As paragraph 90 of the CO report says, on 1 October 2019, the Nanfang'ao Bridge collapsed, resulting in the deaths of six foreign fishermen, with nine injured. On 5 October 2020, the Nanfang'ao Bridge construction broke ground, and President Tsai Ing-wen announced that it would be completed in two years as scheduled. However, so far, compensation for worksite injuries, labour insurance, funeral allowances,

[120] Fisheries Agency, Evaluation results of agencies approved to conduct overseas employment of foreign crews, https://www.fa.gov.tw/cht/Announce/content.aspx?id=760&chk=B7E5AEF5-A239-42D5-8509-EF4CC8DD0895&param=

survivor annuities, and accident insurance for migrant workers are still being processed.[121]

(2) As mentioned in paragraph 89 of the CO report, there was a case of 81 foreign fishermen living in the most cramped quarters of 0.49 square meters, far below the minimum standard of 0.7 square meters for prisoners, and 0.968 square meters of foreign fishermen employed within Taiwan. These workers were also subjected to improper wage deductions (receiving only about US$50 every month), excessive working hours, confiscation of their passports and other documents, physical assault while working, and bans on communication. Although the Control Yuan has, as stated in the national report, asked in 2016 that relevant units in the Council of Agriculture and Fisheries Agency make improvements, there has as yet not been any progress.[122]

(3) On the issue of religious freedom for foreign fishermen, few fishing ports in Taiwan have prayer rooms. Due to issues with language, as well as a lack of funds, and a lack of clarity on the matter of who the relevant authority is, the fishermen's requests to have more prayer rooms have not yet been met.

215. In response to paragraph 80 of the CO report, although the Ministry of Labor has established a free, bilingual 1955 labor consultation hotline, allowing migrant workers to seek legal consultation and lodge complaints in their mother tongue, there is a low take-up rate due to a lack of interpreters and a poor quality of service. Please refer to paragraphs 568 to 577 of this report for further details.

216. Our recommendations:

(1) No matter whether foreign crew members are hired at home or abroad, the Employment Service Act and the Labor Standards Act should apply, and the relevant agency should be the Ministry of Labor and not the Fisheries Agency.

(2) At the same time, the government should ratify the International Labor Organization's 2007 Work in Fishing Convention (No. 188) as soon as possible to provide fishermen with minimum standards and conditions for work, accommodation, food, occupation safety, hygiene, healthcare and social security. In this way, Taiwan will have a legal basis for dealing with vessels flying Flags of Convenience, and will be able to board such ships when they enter Taiwanese ports to ensure that these minimum standards are adhered to.

(3) On the issue of Taiwanese operated ships flying Flags of Convenience, the Article 4 of the Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels should

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[121] News articles on Tsai Ing-wen personally presided over the ground breaking of the new bridge, a year after the accident, and declared that the construction of the new bridge was slated to be completed in two years. https://www.storm.mg/article/3085280

[122] The Control Yuan's press release on the illegal confinement, abuse and alleged human trafficking of foreign fishing crew members, https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=13006

be amended to require verification by the MOEAIC or the Ministry of Economic Affairs before Taiwanese citizens are allowed to invest in vessels not registered in Taiwan,[123] as opposed to verification by the Council of Agriculture's Fisheries Agency, which has close relationships with shipowners, intermediaries, and fishery companies.

(4) The Executive Yuan's task force on the labor rights and interests of foreign fishermen should actively invite the participation of fishermen or civil society organizations that can adequately represent their interests. Proper interpretation should also be provided. After every meeting, complete minutes should be translated into the foreign fishermen's native language, so that they will be able to keep track of the task force's progress. All relevant government departments should establish partnerships and cooperation with NGOs.

(5) Amend Articles 24, 25, 43, and 47 of the Labor Union Act to strengthen the promotion of the right of fishermen to establish unions,[124] so that they will have more opportunities to stand on an equal footing with fisheries associations, fishery operators, and intermediary companies, and participate in consultations and discussions related to their work.

(6) On the issue of human trafficking: Actively prosecute and convict offenders in accordance with the Human Trafficking Prevention Act,[125] and impose sufficiently severe penalties, including prison sentences, on those convicted. Also, actively investigate Taiwanese vessels flying flags of convenience or Taiwanese registered vessels suspected of engaging in forced labour. If the suspicions prove to be true, high-ranking members of the ship's crew and the ship's owner should be prosecuted.

COR Point 35

Gender pay gap still persists

217. While gender pay gap at 14.2% in 2019 marks a reduction from 18.6% in 2008,[126] as mentioned in para. 52 of the 2020 ICESCR State Report, the margin in reduction is limited, additionally, pay gaps as a result of occupational segregation are still somewhat severe:

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[123] Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels, art.4: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050037

[124] Labor Union Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020001

[125] Human Trafficking Prevention Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080177

[126] Ministry of Labor, Report on gender pay gap (2019): https://www.mol.gov.tw/media/5761848/108%E5%B9%B4%E6%88%91%E5%9C%8B%E5%85%A9%E6%80%A7%E8%96%AA%E8%B3%87%E5%B7%AE%E8%B7%9D.pdf

(1) According to the Ministry of Labor's 2019 report on gender and labor, the biggest pay gap among different industries is to be found in average hourly wages within the Healthcare industry, with NT$645 for men and NT$357 for women, amounting to a gap as high as 44.7%. This is followed by the Arts, Entertainment and Recreation sector, with a gap of 34.8%. The Manufacturing industry comes in third, with a gap of 25.8%.[127]

(2) In terms of the main monthly income of workers, the same report indicates that salaries for men and women employed as skilled workers, plant and machine operators and laborers, average at NT$35,376 and NT$26,762 respectively, amounting to a gap of 24.4%. The gender pay gap is also relatively high among professionals and among service and sales workers, at 22.0% and 19.2% respectively.

(3) In terms of job hierarchy as professionals, women who are in a middle- or upper-level white-collar jobs, or occupy an important position in an organisation, are far fewer than men in both proportion and absolute numbers. According to data in the 2019 White Paper on Small and Medium-sized Enterprises, 36.8% of small and medium-sized enterprises in Taiwan have women as business owners, whereas the proportion among large businesses would be 21.9%.[128]

Equal pay for equal work, or equal pay for work of equal value: lack of clarity in legal definition and legal protection

218. As mentioned in para. 25 of the 2020 ICESCR State Report, art.10 of the Act of Gender Equality in Employment clearly stipulates that "Employers shall not discriminate against employees because of their gender or sexual orientation in the case of paying wages. Employees shall receive equal pay for equal work or equal value."[129] However, the law does not clarify as to how "equal work or equal value" should be defined, and the law in Taiwan has no clear punishment for employers who violate the article as mentioned. This makes the law ineffective or even meaningless.

219. Furthermore, while art. 25 in the Labor Standards Act stipulates that "[a]n employer shall under no condition discriminate between the sexes in the payment of wages" and that a "[w]orker shall receive equal wages for equal work of equal efficiency",[130] and under art. 79 of the Labor Standards Act,[131] violations against art. 25 are

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127 Ministry of Labor, Statistics on gender and labor (2019): https://statdb.mol.gov.tw/html/woman/108/108woanalyze02.pdf

128 Ministry of Economic Affairs, White paper on small and medium-sized enterprises (2019), p. 49: https://book.moeasmea.gov.tw/book/doc_detail.jsp?pub_SerialNo=2019A01634&click=2019A01634#

129 Act of Gender Equality in Employment, art.10, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014

130 Labor Standards Act, art. 25. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001

131 Labor Standards Act, art. 79. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001

punishable to between NT$20,000 and NT$300,000 in fines. The penalty is too light and the burden of proof lies with the employees who, in general, lack resources and tend to be less advantaged. Therefore, this law is not effective in solving the problem of unequal pay for equal work. Female labor force participation rate is relatively low, while the number of non-conventional workers is on the rise.

220. According to statistics of the Ministry of Labor, while the female labor force participation rate has increased over the years, it remains relatively low compared to other democratic and advanced countries. It is also significantly lower than the male labor force participation rate in Taiwan, as seen in the graph below:[132]

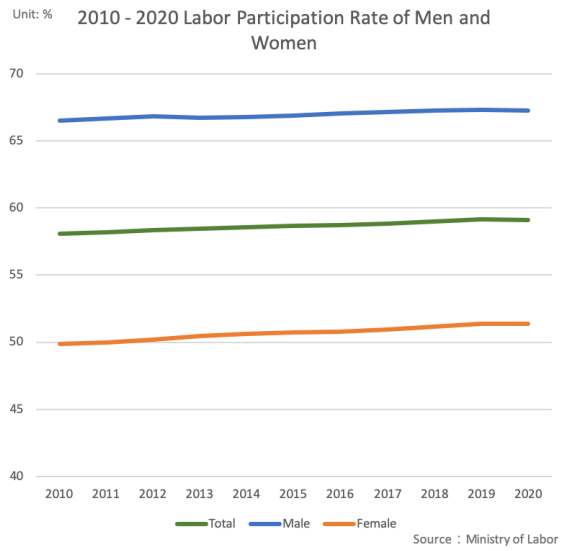

Figure 1

221. The female labor force participation rate peaks between 25 to 29 years-old, then begins to drop during the age of marriage and childbirth between 30 and 34.[133] According to a survey by the Labor Ministry, as much as 50.42% of the female non-worker population cite "to take care of the family" for the reason not to participate in the labor force, an increase by 1.65% from year 2009, and 26 times the figure for men (1.83%).[134]

222. In the meantime, the number of female non-conventional workers (including part-time, temporary and dispatch labor) has continued to increase in the last 10 years. According to a survey by the Labor Ministry, the number of female non-conventional

[132] Ministry of Labor, Labor statistics: https://statfy.mol.gov.tw/index01.aspx

[133] Ministry of Labor, Female participation in the country's labor force in recent years (2019): https://www.mol.gov.tw/media/5760640/%E8%BF%91%E5%B9%B4%E6%88%91%E5%9C%8B%E5%A5%B3%E6%80%A7%E5%8B%9E%E5%8B%95%E5%8F%83%E8%88%87%E7%8B%80%E6%B3%81.pdf

[134] Ministry of Labor, Statistical analysis on gender and labor: https://statdb.mol.gov.tw/html/woman/108/108woanalyze01.pdf

workers has increased from 330,000 in 2009 to 386,000 in 2019.[135]In terms of the proportion, female non-conventional workers constituted 7.54% of working women in 2019, higher than 6.8% for men. Survey reports of the Labor Ministry also indicate that taking care of housework has been the second most cited reason for women to be engaged in non-conventional employment, constituting 28.51% of all female non-conventional workers, just slightly lower than the top reason of being unable to find full-time, standard employment (28.54%). Both of these are significantly higher than the same reasons cited among men, namely 1.14% (for taking care of housework) and 14.32% (unable to find full-time, standard employment).[136]

Insufficient progress in eliminating gender division

223. In response to para. 84 of the State's response to 2017 CO, the Directorate-General of Budget, Accounting and Statistics, Executive Yuan, included in its report on women's marriage and employment for the first time in 2016, data on "time spent in daily unpaid care work". It found that among women aged 15 and above who have partners (including cohabitation), the average time spent on daily unpaid care work was 3.82 hours, which is three times that spent by the husbands (including partners in cohabitation). The latest report indicates that in 2019, women with spouses or partners in cohabitation spend an average of 4.41 hours in daily unpaid care work, which still is triple that of their spouses or partners in cohabitation who spend an average of 1.48 hours.[137] This shows that from 2016 to 2019, policies in eliminating gender stereotypes and leveling the workload among men and women in household responsibilities has not yielded significant results.
224. Measures taken by the government to induce better participation among fathers in household responsibilities have been inadequate. For example, art. 15 in the Act of Gender Equality in Employment stipulates 5 days of paid paternity leave for spouses of women giving birth, but there is no paid "paternity leave for pregnancy check-ups".[138] Only women are entitled to paid maternity leave for pregnancy check-ups. Spouses who wish to be present during pregnancy check-ups would have to apply for special leave or personal leave, which may not be paid. This may lead to spouses

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135 Ministry of Labor, Statistics on "number of part-time, temporary or dispatch workers": https://statdb.mol.gov.tw/statis/jspProxy.aspx?sys=210&kind=21&type=1&funid=q02112&rdm=Wlximddy

136 Executive Yuan, Statistics of survey on use of manpower, May 2019: https://www.dgbas.gov.tw/public/Attachment/91127145944J204GCI5.pdf

137 Ministry of Health and Welfare, Survey on lives of women aged 15-64 (2019): https://dep.mohw.gov.tw/dos/cp-1769-47735-113.html

138 Act of Gender Equality in Employment, art.15. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014

having difficulty in taking part in the process of the pregnancy if they are unable to take leave or their families are in desperate need of wages, thereby compromising the willingness or ability of fathers in participation of household responsibilities.

225. We recommend:

(1) Complete the checklist in equal pay for equal work as mentioned in para. 82 of the State's response to 2017 CO, by developing a "scale in calculation of work values" based on content of profession and nature of work, in order to evaluate and resolve the problem of unequal pay for work of equal value, and to stipulate clearly the definitions of equal pay for equal work and equal pay for equal value of work.

(2) Incorporate "equal pay for equal work and equal pay for equal value" as items subject to labor inspection, and to encourage employers of professions dominated by women to increase wages; also, to promote a system of pay transparency, so as to prevent pay gaps due to lack of transparency in information.

(3) According to data from the Labor Ministry, more women have taken unpaid parental leave to take care of the newborn (82.8%) than men (17.2%).139 We recommend that the government should not only advocate on this issue, but also introduce "effective law and economic incentives to encourage fathers to apply for parental leave", and incorporate this idea in policy measures.[140] This should include an amendment to art. 15 of the Act of Gender Equality in Employment as soon as possible, in order to stipulate that the spouse of a pregnant woman should also enjoy 5 days of paid paternity leave for check-ups.

(4) With reference to the provision in art. 4 and 5 of Convention No. 183 of the International Labor Organization (Maternity Protection Convention),141 the government should extend maternity leave to no less than 14 weeks. At the same time, fulfill the requirements of art. 6 of the Maternity Protection Convention by amending art. 50 of Labor Standards Act, to ensure female employees who have worked for less than 6 months at the company and wish to take maternity leave receive wages no lower than ⅔ of the person's salary during the leave.

(5) In order to ensure that female employees reserve the option of continuing to work while pregnant or taking care of their families, the government should improve public childcare facilities. This includes providing incentives such as subsidies to encourage childcare centers to adjust their business hours flexibly, or encourage community development organizations to assist in the functioning of childcare, so as

139 Ministry of Labor, Summary report on statistics of employment, termination and reinstatement for workers upon childbearing (2019): https://statdb.mol.gov.tw/html/svy08/0822summary.pdf

140 Gender Equality Department, 3rd CEDAW state report mid-term review: collation of written feedback, p. 298: https://gec.ey.gov.tw/Page/DEBC79210F1AC20D/488d1fda-b01d-466e-817c-ba56f747d419

141 ILO, C183 - Maternity Protection Convention, 2000 (No. 183): https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C183

to meet the needs of female employees who are required to go to work during public holidays or at night during weekdays.

(6) As non-conventional workers face greater uncertainties and lack the same comprehensive labor insurance opportunities that workers in standard employment have, the government should legislated protection for workers in non-conventional employment as soon as possible. The government should also periodically conduct extensive gender impact assessment studies in non-conventional employment in order to prevent female non-conventional workers from being exploited in more ways than one.

Sexual harassment in the workplace (Responding to para. 57 of the ICCPR State Report)

226. According to a survey on workplace equality conducted by the Labor Ministry in September 2019, 4% of female respondents indicated that they encountered sexual harassment in the recent year, which was 3% higher than male respondents, marking an increase of 2.4% from 1.6% in 2015.[142] Among women sexually harassed in the workplace, as many as as 77.5% have not lodged any complaint. The main reason for not lodging complaints was "ignoring it as a form of joke", which makes up 45.1% of all cases who did not lodge complaints; the second major reason cited was "fear of losing the job", making up 19.4%; another 3.2% cite that they "do not know the channel for lodging a complaint".

227. In Taiwan, art. 13 in Act of Gender Equality in Employment clearly requires employers to prevent any incident of sexual harassment; for employers with above 30 employees, "measures for preventing, correcting sexual harassment, related complaint procedures and disciplinary measures shall be established.[143] All these measures mentioned above shall be openly displayed in the workplace." Yet according to a 2019 survey of the Labor Ministry, in the period between 2015 and 2019, among enterprises or institutions with more than 30 employees, only 85% or 86% have taken measures to prevent and counter sexual harassment by their own initiative or upon prompting. This suggests that 15% of enterprises or institutions have yet to adopt any measure against sexual harassment, without the government demanding them to make improvements within a certain timeframe. Furthermore, this provision of the law cannot provide protection to employees in small-sized enterprises.

142Ministry of Labor, Survey report on employment equality in hiring and workplace (2019): https://statdb.mol.gov.tw/html/svy08/0825report.pdf

143 Act of Gender Equality in Employment, art. 13. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014

228. Where the perpetrator of sexual harassment happens to be the employer, current law and regulations make no provision for the employer's recusal, possibly leading to the victim feeling afraid to lodge any complaint, or even where complaint is lodged as per the law, one would not be able to receive effective help.
229. As stipulated in art. 29 of Act of Gender Equality in Employment, employees or applicants may claim compensation for damage which is not pecuniary loss,[144] but with non-economic damages being difficult to prove, and compensation for mental distress tending to be low, it is difficult to protect the rights and interests of the victim.
230. We recommend:

(1) Consolidate the Act of Gender Equality in Employment, Sexual Harassment Prevention Act and the Employment Service Act as soon as possible, to formulate a comprehensive and holistic anti-discrimination act. Considering that a comprehensive anti-discrimination act will take some time, it is recommended that the Act of Gender Equality in Employment be revised in the meantime.

(2) Amend art. 13 of the Act of Gender Equality in Employment, to require all employers, regardless of the size of their enterprises or institutions, to set up preventive and corrective measures against sexual harassment, related complaint procedures and disciplinary measures, to be openly displayed at the workplace. The "immediate and effective correctional and remedial measures" to be implemented according to the same article should be clearly defined, for example, measures to prevent recurrence of sexual harassment, assistance to employees in lodging complaints and in receiving medical or psychological consultation, and other supporting measures.

(3) While the current Act of Gender Equality in Employment places the responsibility in prevention, complaint and punishment of sexual harassment in the workplace on the employer, it does not take into account the situation where the employer or the highest-ranking person in charge is the perpetrator. In view of this, we recommend the government to specify in Act of Gender Equality in Employment the mechanism for investigation where the perpetrator is the employer or the highest-ranking person in charge, and to specify that the victim may file a complaint with relevant authorities of the municipality or county (city) where the institution, unit, school, organization or employer is located. Upon receiving the complaint, the local authorities responsible should hand over the case to the Committee on Gender Equality in Employment for investigation. art. 38 of the Act of Gender Equality in Employment should be

144 Act of Gender Equality in Employment, art. 29.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014

amended to include penalties where the employer is a perpetrator;[145] art. 21 of the Sexual Harassment Prevention Act may serve as reference for increase of penalty.[146]

(4) Amend art. 29 of the Act of Gender Equality in Employment, in order to specify the basis in deciding "reasonable amounts of compensation", such as the severity in the act of injury and damage, the effects on the victim's work and life, the likelihood of repeat offence by the perpetrator and so on.

ICESCR art. 10

COR Point 36

231. Regarding paragraph 86 of the 2017 CO State Report which referenced "The Survey and Research on the Outside-of-School Employment of Students Under 18 in Senior Secondary Continuing Schools", focusing on working students in Taiwan under the age of 18 in continuing education, was carried out by the Taiwan Alliance for Advancement of Youth Rights and Welfare, a legal entity commissioned by the state (hereafter referred to as the Alliance). The state should implement relevant policies based on research findings and recommendations from the Alliance, rather than merely repeating their research findings. In addition, the state should establish policies to regularly collect data on the characteristics of underage workers. However, the state has not yet conducted substantial policy research for this report.

There is insufficient protection of labor rights and interests of part-time student workers (Responding to paras. 88-92 of the State's Response to 2017 COR)

232. In terms of substantive implementation, the current laws and regulations still do not effectively protect the employment rights and safety of children under the age of 18. Crucially, only the working hours of 15-16-year-olds are regulated. According to the survey conducted by the Alliance in paragraph 86 of the 2017 CO State Report, as well as other nationwide surveys, it is clear that more than half of 15-19-year-old teenagers' weekly working hours exceed 40 hours; the Alliance pointed out in their study that 35% work more than 5 days a week. Long working hours cause physical and psychological stress for children and adolescents, and even affect their rights to education. In addition, research conclusions indicate that 25% of adolescents still

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[145] Act of Gender Equality in Employment, art.38. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030014 」

[146] Sexual Harassment Prevention Act, art.21: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050074

work more than 8 hours a day, 15% of adolescents work 7 consecutive days, and about 12% of adolescents work late at night or in the early morning.

233. In terms of salary, according to the research, only approximately half of underage workers' wages meet the basic wage; in 2020,[147] a report stated that the hourly salary of junior high school students in chain restaurants was only NT$60, much lower than the basic wage of that year, NT$158.
234. In terms of occupational safety and overall employment security, Article 29 of the current Occupational Safety and Health Act (hereinafter referred to as the Occupational Safety Act),[148] the Labor Standards Act and The Protection of Children and Youth Welfare and Rights Act cannot effectively capture the reality of work environments for adolescents.[149] Many adolescents are often taken advantage of in their workplaces. According to one news report from 2020, in order to support his family, a 17-year-old in Changhua dropped out of school. He found an ironworker job through an agency. However, he was then imprisoned and abused by his employer for more than 3 months; another news report from 2018 revealed that a 15-year-old Taiwanese-Indian dropout in Taoyuan City was beaten to death by his colleagues.[150]
235. The state's plan for "enhancing the students' knowledge of labor rights" is currently implemented in the form of related teaching materials, promotional materials, and regular lectures. The state's measure of the plan's success only focuses on the number of participants and the number of lectures. It is impossible to accurately discern the needs of participants based on their responses, let alone find out if the promotion has effectively targeted children and adolescents under 18 years of age. In addition, there is no individualized service provided to groups in need, for example, knowledge of specific employment rights that may be useful for adolescents who drop out of school.
236. We recommend: formulating the "Labor Education Act" and establishing a new universal basic labor rights strand within the curriculum; conducting thorough data collection and analysis of the employment status of students under 18; planning related courses based on the needs of different age groups, and establishing methods to evaluate the efficacy.

147"Employee from a famous fried chicken fillet shop reportedly worked overtime with hourly wage of NT$60" (UDN)

148 Occupational Safety and Health Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0060001

149 The Protection of Children and Youth Welfare and Rights Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050001

150 "15-year-old ethnically mixed teenager was tortured to death" (Apple Daily) "Teenager worked as ironworker in order to relieve his mother's financial burden" (UDN)

Labor protection from 15 years of age up to 18 years of age (Responding to paras. 254-257 of the ICCPR State Report)

237. In Article 46 of the Labor Standards Act, employees under the age of 18 should have an Agreement from a legal representative to work legally. According to the study in paragraph 86 of the 2017 CO State Report, only 40% of respondents replied that they followed this requirement; however, the state has not indicated the frequency of how often the penalties stipulated in the act have been implemented. Regarding the penalties for workers under the age of 15, although the state has provided the number of cases resulting in penalties,[151] according to the 2018 Report on the Survey of Children and Adolescents Living Conditions by the Ministry of Health and Welfare, it is estimated that there were as many as 73,778 junior high school students from 12 years of age up to 15 years of age with part-time job experience. The aforementioned number is much higher than the number of penalties implemented by the state. The state's report does not align with the actual situation, and it is clear that the state still needs to improve its understanding of the working conditions of underage workers.
238. According to state statistics, there are approximately 110,000 workers between 15-19 years of age, which reveals a huge deficit compared with the Labor Insurance data provided by the state. According to a survey conducted by the Alliance and other non-governmental organizations, approximately 50% of underage workers did not have Labor Insurance between 2015-2020. Among these underage workers, 30% did not know of the existence of Labor Insurance.
239. Please refer to the response in paragraph 232. The current Occupational Safety Act does not capture the reality of workplaces hiring a large proportion of adolescents, such as those in the food service and retail industries. News reports stated that, in 2017, a 16-year-old adolescent, who was working in a hot pot restaurant to support his family, suffered second-degree burns to 24% of his body when he helped customers to replace bottled gas which leaked and exploded. However, because the Occupational Safety Act does not apply to the food service industry, it cannot enforce employers to provide protective measures to their employees.
240. The current Labor Standards Act definition of 'adolescent' workers is narrowly defined to only those workers aged 15-16. Furthermore, the promotion of labor rights and interests for 16-18-year olds are only briefly discussed in Article 29 of the Occupational Safety Act and the Protection of Children and Youth Welfare and Rights Act. The aforementioned news events and research show that these laws and regulations cannot provide comprehensive labor rights and holistic personal development for the decent job for youth initiated by the United Nations.
241. We recommend:

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[151] For details, please see the Ministry of Health and Welfare's "107 Survey on Living Conditions of Children and Adolescents"

(1) Formulating legislation on the protection of adolescent workers under the age of 18, and revising existing labor regulations to improve conditions for late-night workers, meeting their actual needs in potentially dangerous workplaces.
(2) In the state's current report, there is no specific aged-based data segregation or analysis on how many labor inspections took place at underage workers' workplaces, nor the characteristics of contravening workplaces. We recommend increasing the number of adolescent labor inspectors or including private youth employment counsellors.

ICESCR art. 11

COR Point 37

242. The ICESCR State Report describes the realization of the right to adequate housing from various aspects: housing policies, minimum housing requirements, transparency of real estate information, and disposable income, but lacks a comprehensive explanation of the implementation of the right to adequate housing.
243. We suggest the government in the future include the Illustrative indicators on the right to adequate housing in its reports as issued in the Human Rights Indicators: A Guide to Measurement and Implementation in 2008 by the Office of the United Nations High Commissioner for Human Rights. These indicators could be used as tools to examine certain human rights issues, to avoid the state report from becoming too general or incomprehensive. Each category of the model indicators includes qualitative or quantitative indicators with clear and operable details. If there are no existing statistical results that can be directly applicable, the government can try to make inferences with similar statistics; however, should such inferences be likely to lead to inappropriate misunderstandings, the government could admit to having no existing statistics, and in the future include said statistics into relevant government tasks.

Comprehensive housing policy (Responding to para.93-94 of the State's Response to 2017 COR)

244. Although the government has comprehensive aims regarding housing policy, there are still problems with the implementation of such policy. These are as follows:
(1) Heavy burden on purchasing a house: As mentioned in para. 93 of the State's response to the 2017 COR, the government has employed resources to improve the rental and housing market, but the burden of buying a house is still heavy. According to data released by the Ministry of Interior, in the first quarter of 2020, the average mortgage-to-income ratio was 35.30%, while the house price is typically 13.94 times

the average income. Both figures are significantly higher than international standards. In Taipei, where houses are the least affordable nationwide, the loan burden rate increases to 56.28%, with the price-to-income ratio being 13.73. This is equivalent to paying a mortgage with more than half of one's monthly disposable income. Therefore, high prices, being far higher than what regular households can afford, is the fundamental issue of Taiwan's housing market. Should inaction from the government continue, it is unlikely that the policy to provide housing loan interest can alleviate citizens' agony in obtaining their own houses, let alone protecting and realizing citizens' rights to residency.

(2) Information on housing lacks transparency: Under current regulations, registered transactional information is compiled by the government, and then presented to the general public in a non-specific manner, making it difficult for the general public to identify and distinguish between housing items. Moreover, construction companies are not required to disclose the transactional information of presale houses they built and sold themselves. If a property is sold by a broker agency, that property, along with all other buildings belonging to the same construction project, need only be declared within 30 days of the expiration or termination of the brokerage contract. However, the termination of contract may be several years after the sale, meaning that buyers have no way of knowing the actual registered price of the presale house during this period of time.

(3) The rental market aggravatedly unregulated: the government mentioned in para. 93 in its response to the 2017 COR that it has employed measures to protect rental- and lease-related housing rights, plus *The Rental Housing Market Development and Regulation Act* and related laws have been passed, nonetheless, these methods failed to include and address the issue of increasing illegal activities in the housing rental market.[152] This results in not only the failure to realize basic rights to housing, but also with the market being too small and deeply involved in illegal transactions, insufficient protection on housing rights, affecting property registration, subsidies, and tax deduction rights.

(4) Relevant housing assistance policies unclear: Although the government has proposed plans for diverse housing assistance, measures like public housing and the guaranteed lease and management residences policy lack clear organization, and have failed to establish a set of standards to evaluate affordability as stipulated by the law, resulting in unfair and unorganized distribution of subsidies.

(5) Slow implementation of the guaranteed lease and management residences policy: In 2017, the government invested 700 million NTD in the pilot program of the guaranteed lease and management residences policy, with a plan to affect 10,000

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[152] Rental Housing Market Development and Regulation Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0060125

households in one year. By November 30th, 2019, only 6,826 households were engaged in this policy, showing that the implementation of the policy was too slow. The reason is that the rental housing market in Taiwan has gone extremely underground, and that housing tax has been seriously decoupled from the market price. On one hand, this policy is costly because it provides tax deductions, on the other, it fails to incentivize landlords with rooms not rented out. Consequently, the policy has so far failed to address the issue.

(6) Large amounts of empty houses yet to enter the market:
While the aforementioned issues are already severe, at the same time, Taiwan sees a large number of empty homes that have yet to enter the market. According to data from the Ministry of the Interior, between November and December 2018, 916,383 households with low electricity consumption, meaning that these houses could be empty or are rarely occupied, accounted for 10.56% of the national total, the highest proportion since 2013. There were 22,714 newly built homes in the fourth quarter of 2012, which then tripled in seven years, hitting 78,063 in the second quarter of 2019.[153]

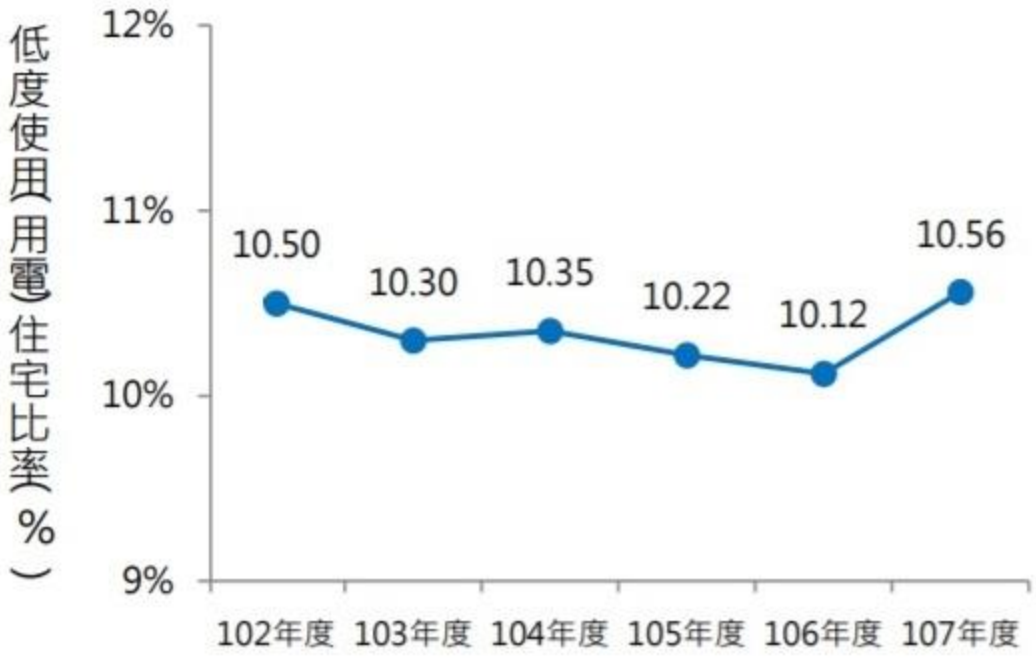

Figure 2

[153] Source: Statistics and Information on Low-Use Electricity Residential Buildings and New Residential Buildings for Sale, from the Construction and Planning Agency of the Ministry of the Interior, 2018 https://bit.ly/3jBhWi8

(7) High prices plus large numbers of empty houses:[154] Per the law of supply and demand, when supply increases, prices decrease. As such, with a large number of empty houses, house prices should drop, or at the very least, should halt to rise. At the same time, high real estate prices often indicate an increase in holding taxes, which should result in increased purchases of houses, meaning a decline in vacant homes. Yet in Taiwan, there is a substantial amount of empty houses, while house prices remain on the rise. In the first quarter of 2020, the total household number in Taiwan was 8,278,491 while the number of houses was 8,948,120, houses-household ratio was at sufficient supply of 108.09%. However, the holding taxes for real estate is too low, unable to pressure real estate owners to release said properties into the market for rental or purchase, causing the result of a high vacancy rate, high property prices and an unbalanced real estate market.

245. Our recommendations:

(1) The government shall comprehensively reevaluate and adjust its housing policies, and focus on reforming the home purchase market, the rental market, and housing subsidies. At present, the government focuses mainly on housing subsidies, particularly regarding building social housing, but given the structural aberrations created by high house prices and high numbers of vacant homes, the key is to guide and readjust the market mechanism. Core reforms involve: 1) Transparency regarding housing information (upgrade the housing transactional information registry M), 2) Reasonable adjustments to tax policies (taxation on multiple house owners), 3) Necessary financial regulations (reducing loans provided for owning more than three homes).

(2) A stick and carrot strategy is necessary when reforming a housing market that is incomprehensive in function and small in scale. Apart from incentivizing landlords and the rental industry through measures as stipulated in the *Housing Act* and the *Rental Housing Market Development and Regulation Act*, relevant measures should be employed to increase the costs of having vacant houses, in hope to induce holders to release those houses through rent or sell.

(3) Promote transparency in the reformed housing price registration system, in hope to update transactional information on pre-sale houses in a timely manner, and to avoid sellers taking advantage of information inequality and driving up house prices. Address the issue of vacant houses through reasonable tax reforms, and through the amended rental housing registration system, stop illegal activities in the rental housing market.

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[154] Source: Ministry of the Interior real estate information platform (2020 First Quarter Housing Statistics Report) https://bit.ly/3jNTKt7

Responding to paras. 191-193 of the State's Response to 2017 COR

On inspecting basic housing standards

246. The Basic Housing Standard policy is based on land and household registration data. The policy creates an illusion that all housing is legal, while the fact is that, it to address the needs of the most vulnerable. Moreover, houses with living concerns or those that have a negative impact on one's health, including those built with concrete containing excessive amounts of chlorine ions or radioactive contamination were not included in the regulations concerning basic housing standards.
247. No inspections have been conducted since the issuance of the basic housing standards in 2012, nor have there been plans to assist in improving the situation. The Construction and Planning Agency under the Ministry of Interior has been negligent in its duty and no other government authority has pointed out its errors. The basic housing standards were compiled in 2008, issued in 2012 and will expire in 2022 with competent authorities having no intention to make adjustments. In the past few years, Japan and South Korea have both raised requirements pertaining to the legal minimum floor space per person in each respective country, while Taiwan remains the same.[155]
248. It is stipulated in Article 13 of the *Housing Act* that houses in which applicants of government housing subsidies reside must meet basic housing standards.[156] The aforementioned subsidies exclude those for home renovation loan interests or simple home renovation expenses. In 2018, the government estimated that by bringing up the minimum required house size, 1,500 households (Around 3% of those that receive subsidies that year) would lose their qualifications to apply for subsidies. As such, the reason why the government fails to amend the basic housing standards is, ostensibly, in fear that it may have a negative impact on underprivileged households' right to apply for subsidies. In fact, the reason is that the government fears that subsidy applicants from underprivileged households would file large amounts of complaints. The bigger issue is why there are so many underprivileged households that did not apply for subsidies, and why the government fails to assist them in improving their housing conditions. According to statistics from 2018, there are about 82,729 low-income households nationwide that do not own a home. But only 16,383 low-income households applied for rental subsidies, accounting for a mere 19.5%. According to Article 40 of the *Housing Act*, the municipality, county (city) competent authorities should check the living conditions of households that do not meet the basic housing

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155 In 2016, the minimum size standard of Japanese residences increased to 7.56 ping, while South Korea's minimum residential area was still larger than in the Republic of China in 2011, at 4.24 ping. The building design data was 4.24 ping in 2015. The above standards are higher than our current standards (3.96 ping).

156 Housing Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070195

standards, and formulate guidance and improvement implementation plans. While the Ministry of Interior had conducted review and research meetings to amend the basic housing standards in 2008, 2013 and 2018, there has so far been no inspections on households that do not meet the standards.

Transactional information registration system

249. As described in paragraph 244, the current registration system for real estate transactions is quite unacceptable. In addressing this problem, President Tsai Ing-wen proposed "Three Policies for Stable Living" in 2016, in which a plan was introduced to ensure housing market transparency.[157] After her inauguration, the Ministry of Interior began planning the amendment to the law, which was passed by the Executive Yuan in May 2018 and sent to the Legislative Yuan for review. The amendment was termed, "Actual Price Registration 2.0." The main reform contents are "using house number or land number as presentation unit", "pre-sale housing self-built and self-sale included in real-price registration", "agent pre-sale housing real-time registration", etc. However, constrained by the opposition of vested interests, the majority party in the parliament did not actively promote the review. After the ninth legislator stepped down, the bill was returned to reform the actual vote.

Real estate tax

250. The real estate and land tax are currently first deducted from the amount (10%) allocated by the central government to local governments, then the remaining 90% is allocated to the Long-Term Care Fund. 7,300,000,000 NTD (7.3 Billion) were allocated to the Long-Term Care Fund in 2019, 3,300,000,000 in 2018 (3.3 Billion), 2,300,000,000 in 2017, and 800,000,000 (800 Million) in 2016, but these have not been used on housing policy.
251. Article 3 of the *Integrated Real Estate Taxation and Distribution Law* states that "The balance of integrated tax levied from income tax is deducted by the central government and allocated to local governments, this should be allocated for housing policy and long-term care policy, and the Executive Yuan will coordinate and allocate funding based on the needs and financial status of different bodies."[158] At present, there is no integrated fund for housing and real estate, leading social housing to self-compensate through rent prices, subsequently leading to more expensive rent prices for those in social housing. As such, this allocation ratio should be reviewed.
252. We suggest:

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[157] Source: Tsai Ing-wen Provides Three Living Policies: To Allow Safe Living to No Longer Be a Dream: https://news.ltn.com.tw/news/politics/breakingnews/1460931

[158] Integrated Real Estate Taxation and Distribution Law: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=G0340139

(1) The government should implement inspection plans, to have a better grasp of the number of homes that don't accord to basic housing standards and its reasons. This can allow for better amendments of plans and rent subsidies in the future, including charter rentals and residential subsidy policies, in order to produce plans on basic living standards every four years.
(2) In promoting the transparency of real estate exchanges, in order to fulfill President Tsai Ing-wen's election promise, the real estate 2.0 bill should be passed as soon as possible.
(3) The Executive Yuan should reinspect housing policy and proportional long-term care allocation.

COR Points 38 - 39

Land expropriation (Responding to para. 97 of the State's Response to 2017 COR, and paras. 199 - 201 of the ICESCR State Report)

Land expropriation

253. Taiwan's overall land development policy is still systematically causing forced evictions. While the government stated in para. 97 in its response to the 2017 COR that the government had taken stock of and made amendments to relevant laws and regulations, those measures have failed to bring about constructive changes. Additionally, administrative agencies have yet to conduct a thorough review in establishing a unified National Displacement, Resettlement and Rehabilitation Act. Below we provide explanations on land expropriation, urban land consolidation, and urban renewal policies. Land expropriation and urban land consolidation are often used as means of developing new metropolitan areas, however, the amount of designated urban lands is already excessive, plus the urban population estimation is way off the actual number by 6,719,508 people, per statistics compiled by the Ministry of Interior's Construction and Planning Agency in 2018, indicating that new urban plans are unnecessary.[159] In 2013, the Control Yuan asked the Ministry of the Interior and other relevant government agencies to rectify its "exaggerated" urban planning project.[160] However, this situation remains unresolved. Consequently, we believe that the incessant acquisitions of large areas of private land, as well as measures to expand

[159] Minguo 107 Report on Construction Statistics: https://www.cpami.gov.tw/filesys/file/chinese/statistic3/02-107.pdf

[160] The National Urban Planning Project exaggerated on the population by 6.4 million people, the Control Yuan corrects the Ministry of Interior and relevant local authorities (2013), the Control Yuan press release https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=6584

metropolitans that violate people's right to adequate housing are absolutely unnecessary.

254. The government mentioned in its response to the 2017 COR that the Ministry of Interior has been actively reviewing the *Land Expropriation Act*.[161] Nonetheless, said reviews were merely internal reviews, formal legal amendments were never put on the agenda. Additionally, these reviews failed to change the way and the standards with which administrative agencies review cases. Consequently, while most expropriation cases violate the principle of proportionality, there is no way for the general public to participate. The government's resettlement measures are often a mere formality and an excuse to say that people's right to adequate housing have been protected.
255. In the past few years, land expropriation has never ceased to create controversies. The cases that triggered disputes in the past are still underway, for instance, Taoyuan Aerotropolis plans to make administration actions on land expropriation shortly, and the Tainan Urban District Railway Underground Project was already carried out. Furthermore, the government launched new land expropriation projects, such as Taipei's Shezidao Project, Taoyuan's MRT Green Line, and Kaohsiung's Dalinpu. At the same time, the government also relaunched projects that have been postponed for years, for instance Hsinchu's Puyu land expropriation project.
256. The land expropriation case in Tainan which involved moving the railway eastward has been in dispute for many years, affecting more than 300 households. Households that refused to relocate have been demolished one after another since the summer of 2020. The demolition of the last two households began in the early morning on October 13, 2020. It is in clear violation of the ICESCR General Comment No. 7. Protest proceeds at the time of writing. We provide a brief explanation as follows: the residents were not given the opportunity to conduct genuine consultations with the demolition enforcement agency, and were, in July, forced to sign a "two-month delay in demolition" agreement. The government did not give the demolished households sufficient and reasonable notice beforehand,[162] directly putting those unwilling to relocate into a homeless situation;[163] and that the demolition contravened the "Basic

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[161] Land Expropriation Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0060058

[162] Para. 15 in the ICESCR General Comment No. 7 states that there should be adequate and reasonable notice for all affected persons prior to the scheduled date of eviction. However, after the period of forced demolition, in this case extended to September 2020, the Railway Bureau was unwilling to clarify when exactly the demolition was to take place. The bureau even claimed that "since the self-demolition period had passed, residents should have been mentally prepared, hence no further notice were to be given."

[163] There were two tenants residing in the house of the Huang family who were among those who refused to relocate. The economic situation of the two tenants was unstable and thus, they had difficulty in

Principles and Guidelines on Development Based Evictions and Displacement" on the norms during the eviction period.[164]

257. Responding to the government's plans to improve the current land expropriation system as mentioned in para. 97 in its response to the 2017 COR, there are several deficiencies:

(1) Legitimacy of development plans: requirements to initiate a land expropriation plan are too loose, plus the government usually fails to consider whether or not there are other options to obtaining land. Moreover, the general public is not included in the review process. As a result, citizens are more often informed of the situation at the final stage -- the expropriation stage of the plan.

(2) Land expropriation is not fully compensated: The *Land Expropriation Act* stipulates that compensation for the landowner should be of market value. However, in practice, the so-called "market value" is determined by a Land Value Evaluation Committee whose decision is based on assessments by a land price assessor from the competent authority in which the land is located. The reports and meeting minutes of the committee is not publicly available.

(3) The public does not have any means to substantively participate in this process and information about expropriations is not made public: While residents may be able to express their opinions at hearings held by authorities, these hearings usually do not have influence over the expropriation plans. As for the expropriation committee of the Ministry of the Interior, when conducting reviews, apart from the main plan for the expropriation, details of the plan are usually not available.

(4) Excessive zone expropriations: zone expropriation allows the government to, upon request, compensate the landowner with land post-expropriation, rather than monetary compensation. Under such design (hereinafter referred to as the "land for compensation" policy"), the government can obtain land excessively larger than required as laid out in the development plans. This leads to the government obtaining sellable public land, and lowering the cost for acquiring land for infrastructure, while almost inevitably causing large-scale evictions.[165] The original landowner is forced to leave the original place of living, whereas small landowners are usually not

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affording market rent. The Tainan City Government did not design a resettlement plan for them, but provided subsidies that could only pay for a hotel room for two months after the demolition.

[164] In violation of paras. 46 - 47 of the Basic Principles and Guidelines on Development Based Evictions and Displacement: there were no neutral observers during the eviction and police were deployed to use coercive force to confront opponents, causing several injuries.

[165] Bargain price land: Under the current expropriation system, the owner of the land expropriated can apply to the government for the land price compensation fee that should be paid by the government for the land expropriated. This conversion offsets the land available for construction after expropriation. The land covered by the land price compensation fee is bargain price land.

compensated with land. As for those with no property rights of their land (such as informal settlements, tenants), there are little to zero protections. Take the Taoyuan Aerotropolis as an example, some areas now designated for industrial use were originally residential areas. In these areas, some residents have refused to partake in the expropriation plan, resulting in fragmented spots of residential areas scattered in future industrial land. Cases like this are commonly seen in zone expropriation projects. Under such circumstances, the quality of living for the remaining residents is grossly affected, plus adversaries among local residents arise. This goes to show that since the so-called industrial land in fact partially allows for residential use, then expropriation of this area was unnecessary in the first place.

(5) Resettlement plans misled the government into thinking that expropriation plans do not infringe upon people's right to adequate housing: Upon reviewing expropriation plans, resettlement measures are usually incomprehensive and lacking in standards. The government is not obligated to conduct household surveys prior to the expropriation, resulting in resettlement measures that do not meet households needs. In practice, households are often required to make up for the difference in house prices, which is usually unaffordable for mid-to-low income families within the expropriated areas.

258. We suggest:

(1) Eliminate the zone expropriation system: Zone expropriation covers land far greater than what the government's development plans require, inevitably causing large-scale evictions. Moreover, Taiwan is already in surplus when it comes to urban and industrial land, and there are other possible measures for land development that creates lesser harm than zone expropriation. Therefore, there is no need for this system.

(2) Strengthen evaluations on the basis of public interests and necessity: Land expropriation is the government utilizing its power to forcefully acquire land from the people. Current standards applied for the evaluation of public interests or necessity are vague. Therefore, expropriation plans almost never show the negative impacts.

(3) Ensure fair land purchase negotiations: negotiations should be price value, with honest consultations rather than means of carrying out land expropriation.

(4) Special agricultural zones should be excluded from expropriation: Special agricultural zones are productive farmlands deemed by the competent authority that special protection must be performed. To ensure food safety, areas for expropriation should avoid these zones.

(5) Stipulate hearing processes in the law: currently, the government garners public opinion by way of public hearings, however the procedures of which are not rigorously regulated. It is recommended that the government take reference from the *Administrative Procedure Act*, and make public hearings a part of the official

administrative procedure in land expropriation, rather than allowing competent authorities the power to determine whether or not they hold the hearings.

(6) Ensure full compensation: Current compensations for land expropriation are incomprehensive and failed to consider the non-material impacts forced evictions bring, for instance, the impact on social connections, emotions, health and working conditions. The government to establish a way to provide full, holistic compensation.

Urban land consolidation

259. Urban land consolidation is an important, comprehensive land development method under the framework of urban planning to build new urban lands or renew old sections of the city. The area currently undergoing urban land consolidation measures approximately 2,400 hectares. For those affected in these areas, including landowners and residents, the administrative procedures have great deficiencies in terms of due process: firstly, at the public display of the urban plans, there were no channels through which the general public can create substantial changes over the plans; secondly, the public infrastructure embedded in one plan exceeds the responsibility landowners in that particular area should have to bear. [166] Consequently, such development projects are likely to cause forced evictions and violations against the right to adequate housing for small landowners and those with no land rights, such as tenants and informal residents. Moreover, while the government mentioned in its response to the 2017 COR that the Ministry of Interior is drafting an amendment to the Urban Land Consolidation Act, there has so far been no announcement of the revision direction and meeting agenda. Urban land consolidation can be initiated by the government or private landowners. Below we discuss how the right to adequate housing is violated under these two particular circumstances.

260. Government - initiated urban land consolidation: In terms of procedure, this type of urban land consolidation plan does not require approval from the landowner nor the residents, so long as it receives the go-ahead from competent authorities. Therefore, this is more or less equivalent to zone expropriation. The only difference is that residents under the former are entitled to a higher proportion of land as compensation. Even if more than half of the landowners whose lands constitutes

[166] The urban land consolidation system of the city is used to integrate irregular or fractional and narrow land into neat plots of land adjacent to the road, and to demarcate public facilities in the consolidation area for residents of the area. In practice, the public facilities in the planned area almost indefinitely exceed the need of the affected residents but the general public. In August 2020, the Taipei High Administrative Court (Vol. 105 No. 1849), the court ruled that the plaintiff won the case and stated that the public facilities of the urban land consolidation project of the city should be "mainly for the public in the land consolidation area". But a single verdict is insufficient to shake something that has been practiced for many years.

more than half of the consolidated areas gathered and voice their objections in accordance with the law, the government agency can still go ahead with the project as long as it provides an official response refusing to accept their objections.[167]

261. Landowner-led urban land consolidation: The amended Article 8 of the *Regulations Governing Landowner Incentives in Urban Land Consolidation Projects* raised the minimum requirement to form a landowner-led preparatory committee, and in Article 27 and Article 27-1 added procedures concerning public hearings, however, as stipulated in Article 13, all procedures must go through a majority vote, resulting in the problem of directly infringing the right to adequate housing using a majority vote.[168]

262. We suggest:

(1) Enhance civic participation: Allow those affected to effectively participate in the planning process.

(2) Scrutinize the plans to ensure that they are of public interest and meet the principle of proportionality: Development plans should be in accordance with the need of the reconsolidated neighborhood and not overextended.

(3) Eliminate the system where a majority vote can deprive the right to adequate housing: Review the process for landowner-led urban consolidation plans, where majority votes are used as means to advance in administrative procedures. Since the scale of urban consolidation plans is at community level, affected parties should not be forced to go through such plans should they have no intention in doing so.

(4) Ensure the security of tenure for those without property rights, such as informal settlements and tenants: The goal of improving the system should be to prevent displacement as much as possible, and to include resettlement plans in the initial development plan.

Urban renewal

263. Although the *Urban Renewal Act* was amended at the end of 2018 in the largest scale since its enactment, many structural issues have not been addressed. Urban renewal projects should be in the public interest, but in practice, there is a lack of an overall urban planning vision, resulting in overexpansion of urban spaces. This has led to the financialization and flipping of properties, damaging the resilience of urban ecosystems. Consequently, the system continues to infringe upon people's right to adequate housing.

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[167] This is specified in Article 56, Paragraph 3 of the *Equalization of Land Rights Act* https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0060009

[168] Awarding Land Owners for Replanning Land Act https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0060012

264. Though resettlement plans are required by law, the implementation of which is difficult in reality. Article 84 of the *Urban Renewal Act* stipulates that, "With economically or socially underprivileged people [...] end up becoming homeless after their homes are dismantled or relocated", the government is to provide them with social housing, rental subsidies, and to handle this on a case-based manner.[169] However, this design has the following issues:

(1) Under this system, those subject to resettlements must inevitably leave their original homes.

(2) Social housing is governed by another section of the law. Victims of forced evictions must take part in a lottery along with other applicants, of which the acceptance rate is usually less than 10%. As a result, upon demolition of their homes, those forced to relocate may not have found social housing in time.

(3) Applications for subsidies are open every July. This means that even for those who managed to find a new home on their own, and qualify for subsidies, they still cannot receive the financial support in a timely manner.

265. Forced evictions continue to happen: Article 57 of the amended *Urban Renewal Act* provides clarity in terms of the negotiation mechanism prior to demolition. It stipulates that local competent authorities must meet and negotiate with residents that do not wish to be evicted,[170] and without approval from each resident, demolitions cannot take place. However, as Article 57 does not stipulate that residents can be exempt from expropriation should they refuse, all negotiations are based on the prerequisite that demolitions will - one way or the other - take place. This contravenes the ICESCR's General Comment No. 7 on forced evictions and the right to adequate housing. Even after the amendments are passed and enacted, local governments continue to carry out evictions.[171]

266. Insufficient civic participation mechanisms, resulting in the inability to effectively influence urban renewal plans: Because hearings are held after plans are drawn up, public opinion has little chance of making effective changes. Moreover, even if Article 58 of the *Administrative Procedure Act* stipulates that the government can hold preliminary hearings to provide clarification on the topics in question, such hearings are rarely held in practice. Therefore, the hearing processes are often just a mere formality.[172]

267. The state is misleading in para. 201-2 in the ICESCR State report by saying that "if a reconstruction project is organized through consensual construction, the approval of

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[169] Urban Renewal Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070008

[170] Ibid。

[171] HouseFun News, "The First New Demolition in New Taipei! The Strongest Nail House in 30 Years Has Been Pulled" https://news.housefun.com.tw/news/article/199750261056.html

[172] Administrative Procedure Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030055

all owners must be obtained and there may be no forced relocation." According to Article 44 of the *Urban Renewal Act*, even when a joint construction project fails to obtain approval of all owners, the project can still be carried out as long as those approve own over 80% of the private land and private floor area. This means that under the framework of joint constructions, a majority vote is still used to forcefully pass an urban renewal plan.[173] As such, joint construction agreements may still cause parties to be forced to enter the urban renewal process, and may even lead to forced relocations.

268. We suggest:

(1) Resettlement plans must be able to provide shelter for those evicted: Ensure that those evicted are able to get social housing, or have other channels to obtain rental subsidies. Additionally, residents must not be evicted unless constructive resettlement plans are established.

(2) Prohibit the demolition of buildings that do not pose an immediate danger to the public: "Demolition" should not be the prerequisite of negotiations between local competent authorities and relevant parties, so as to allow for the possibility to readjust the urban renewal development plans.

COR Point 40

269. In the past when family was the basic unit of society, purchasing real estate properties was regarded as the only option to secure residency. However, high real estate prices, an ageing population, declining birthrate and population, social alienation, among other social changes, have made it impossible to keep up with the past trend. Co-housing, on the other hand, is a potential model for the future of housing in Taiwan. Co-housing is organized by intentional communities, designed through participation, and is democratically managed and de-commodified. Nonetheless, the government stance on co-housing is currently unclear.

270. The state has apparently misunderstood the concept of security of tenure in para. 99 of its response to the 2017 COR. The current land development system systematically causes forced evictions. Citizens are forced to partake in land development mechanisms, and consequently face evictions at the end of the administrative procedures. This action by the government also contravenes the Special Rapporteur on adequate housing's suggestion in 2013 in point. 3 of the A/HRC/25/54 reports that in situ solutions should be prioritized.[174]

271. We suggest:

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[173] Urban Renewal Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070008

[174] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik (A/HRC/25/54)：https://undocs.org/A/HRC/25/54

(1) In addition to providing assistance for securing homes in the housing market as well as social housing, the government should proactively create a comprehensive housing policy framework to include land, financing, tax concessions, specialized assistance, and educational promotions, and build on co-housing as a third option.
(2) Strengthen protections for various forms of security of tenure, in particular for people with no property rights under the current land development system and the maintenance of national lands.
(3) Regarding the underprivileged, people with no property rights, and the homeless residing in urban areas: the government should take reference from UN recommendation A/HRC/25/54, conduct a thorough review on the situation of their security of tenure, and implement improvement measures in the policy and legal aspects.[175]

COR Point 41

Responding to paras. 93 - 95, 101 - 102, 104 of the State's Response to 2017 COR

272. Responding to paras. 93-95 of the State's response to 2017 COR, while the government provided housing statistics in the diverse housing policy section, it failed to comply with the *National Report Writing Guidelines* paras. 51-54, as it did not provide the number of basic facilities, the number of people and households these facilities serve, and the number of people living in overcrowded houses or houses with dangerous structures. With regard to residents of informal settlements, the data the government provided does not present the scope of informal settlements in Taiwan, for instance, the number of households, population and locations. The lack of information has resulted from the government regarding informal settlements as illegal: [176] At the central government level, the National Property Administration provides fragmentary information regarding informal settlements, but lacks statistics on the total number of households, population, and locations. As for informal settlements at the local level, there is no data at all.
273. Based on data provided by the government, policies that force relocations through civil litigation still exist despite the fact that measures that better protect human rights

[175] Ibid.

[176] The main administrative rules for the central government to deal with informal settlements are the *Principles for the Treatment of State-owned Public Real Estate that is Improperly Occupied* (https://law-out.mof.gov.tw/LawContent.aspx?id=FL006985) and "Key points for handling the occupation of State-Owned Non-Public Real Estate" (https://law-out.mof.gov.tw/LawContent.aspx?id=FL020549). The framework of local government processing is also similar to this: it starts from the perspective of handling occupied properties.

have been introduced. There were also incidents where informal settlers were forced to relocate because the government declared that "national land is for public use".[177] Once the competent authorities decide to expropriate a piece of land, legally there is no way for the original occupant to fight eviction. In the civil lawsuits, the government demands occupants make restitution for their unjust enrichments, which is equivalent to the rent of said land, creating a huge financial burden for occupants. The government does not stop demanding restitution even after the demolition is completed. This fee is so high even in installments, causing a heavy financial burden, like the case with Huaguang Community.[178]

274. Informal settlers' right to adequate housing is not protected. The law does not obligate the state to provide shelter for those forced to relocate when dealing with national land occupants, nor does its stipulate ways for residents to seek assistance in fighting evictions. Even though the National Property Administration provides information on social services that government agencies offer, this information is of little use to those facing eviction as the agency that holds housing resources does not provide emergency housing for them. In other words, the act of providing information is merely a formality.
275. Due to insufficient statistics, the government does not have a comprehensive understanding of the scope of informal settlements. With what we have now, it is estimated that there are at least 320,000 informal settlements that have existed for at least 30 years. This goes to show how significant the issue is.[179]
276. We suggest:

(1) Conduct a comprehensive investigation into the number of informal settlements on public land, including public use and non-public use national land, and local government land. The government should provide a comprehensive view of the total number of households and the population living in places that do not meet the basic housing standards issued by the Ministry of the Interior.

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[177] News article by Civil media Taiwan, on the sports park development plan in Pingtung that allegedly infringes locals' right to residence. https://www.civilmedia.tw/archives/96787

[178] This comment was collected from local organizations and residents' first-hand experience. Residents in the Huaguang community are still paying for "unjust enrichment," and the plaintiff's legal department has also reissued the debt certificates to the court, and will reapply for enforcement when reissued, which shows that the state has not given up on its aims of recovering "unjust enrichment" from the residents of this place.

[179] The central government did not conduct inspections on informal settlements, with local governments only carrying out inspections on older illegal buildings, so the estimate here should still underestimate the total amount of informal settlements in Taiwan; Ministry of the Interior Monthly Report on Construction Statistics-Illegal Construction Cases Statistics.

(2) Form a legal framework to protect the informal settlers' right to security of tenure. Central and local governments should form policies and provide methods that ensure the sustainability of residencies, for instance, land rental policies.
(3) If evictions are necessary, due to public interests or immediate danger to the public, the government should negotiate with residents and provide resettlement plans in accordance with ICESCR General Comment No. 7.

COR Point 42

Responding to para. 97 of the State's Response to 2017 COR, and paras. 202-203 of the ICESCR State Report

Peoples' right to civic participation in public affairs in administrative plans

277. While mechanisms for civic participation and information transparency are stipulated in the *Spatial Planning Act* and the *Urban Planning Law*,[180] there are still three issues at hand:

(1) Apart from laws and regulations on administrative plans on spatial planning, there are no regulations that mandate public participation and information disclosure mechanisms for the remaining administrative plans, such as transportation planning and industrial planning, even though they also fall under the *Administrative Procedure Act*. This has led to frequent eviction cases caused by administrative plans, for instance, the Taoyuan Aerotropolis expropriation case was centered on the government transportation agencies' channel development plan; while the Tainan Railway underground expropriation case centered on the government's underground railway project.[181]
(2) For laws regarding the due process for spatial planning, it's required that there is a conference, a public hearing, and an information meeting to serve as mediums for public participation and public affairs. In terms of the legal effect of the three, none of these requires administrative agencies to respond to citizens' opinions, leading them to only have the appearance of allowing for public participation, meaning that they are not vehicles for civic participation.
(3) Members of the National Land Planning Council and the Urban Planning Committee are handpicked by the local chief. No details regarding the selection process are released to the public. Moreover, there is no standard for the review process, nor clear responsibilities, which makes the review process not conducive to civic participation.

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[180] Spatial Planning Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070230; Urban Planning Law: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0070001

[181] New Bloom, ANGER AFTER FORCED EVICTIONS FOR URBAN RAILWAY DEVELOPMENT IN TAINAN(2020): https://newbloommag.net/2020/07/21/tainan-railway-eviction/

Additionally, the *Urban Planning Law* lacks a clear set of standards for the planning and review processes. As a result, control over the review processes are taken over by local factions and interest groups, rather than taking the public interest as top priority. Therefore, the fairness of the review process is highly questionable.

Environmental impact assessments

278. Current Environmental Impact Assessments (EIAs) are not transparent nor legitimate:

(1) Up to now, the members of the committee that conduct EIAs are decided according to the Executive Yuan's *the Key Points for Auditing the Environmental Impact Assessment Review of the Environmental Protection Agency*. The committee is comprised of 12 members, half of which are government representatives, while the other half scholars and experts. In terms of how scholars are decided, lists are drawn up by official organs, colleges, academic research institutions, the recommendations of environmental welfare groups, and are approved by the head of the Environmental Protection Agency (EPA).

(2) Of the twelve members of this committee, government representatives constitute half of the seats, meaning that the government has the crucial influence in the decisions of this committee. The list of experts on the committee is also decided by the head of the EPA, resulting in a closed selection process that is lacking in transparency, and has unclear criteria for selection. This is lacking in legitimacy. When confronting development cases, this does not allow environmental concerns to take precedent, or for environmental skepticism toward development.

279. EIAs should include more civic participation from the beginning:

(1) There are two stages in Taiwan's EIA process. However, in the first stage of the process, written reviews are often used as the criteria for screening whether development activities are "probably of adverse effects on the environment," and citizen participation opportunities are quite limited. Citizens' participation begins in the second stage. Methods include on-site surveys, requests for a public explanatory meeting and definition of the scope of the plan, etc. Only now citizens have the opportunity for substantial participation.

(2) For a case to enter the second stage of EIA, the premise is that the case is determined to have a significant impact on the environment in the first stage of review; but in practice, the number of cases that can enter the second stage of EIA review is relatively small. There is insufficient space for the people to actually participate in the discussion.

280. Civic Participation in EIAs

(1) In February 2020, a task group of the EPA successfully prohibited the public from filming or livestreaming a meeting's proceedings, citing Point #8 of the Executive Yuan's *the Key Points for Auditing the Environmental Impact Assessment Review of the Environmental Protection Agency*, at a meeting on the "Sixth Environmental Impact

Analysis Report of the Zhangbin Industrial Zone Industrial Waste Resource Recovery Treatment Plant and Central Industrial Waste Comprehensive Treatment Center".

(2) In the past EIA review meetings, the EPA's live broadcast was optional, no files were kept, and it was not possible to watch it repeatedly afterwards. Even after the EPA stated that it would open all EIA review meetings directly starting late February 2020, and upload the video files to Youtube within a certain period of time after the meeting, video recording by the public is still banned. However, *the Key Points for Auditing the Environmental Impact Assessment Review of the Environmental Protection Agency* was formulated to implement the spirit of citizen participation. The principle of openness should be adopted. Why is it only unilaterally allowed for the administrative agency to record live broadcasts without justifiable reasons? Prohibiting people's live video recording obviously restricts citizens' right to participate.

The legal effect of the hearing system

281. According to article 108 para. 1 of the present *Administrative Procedure Act*, in rendering an administrative disposition based upon a hearing, the administrative authority shall, in addition to acting in compliance with article 43 hereof, take into consideration the entire result obtained from such hearing; provided that a disposition shall be rendered according to the minutes of the hearing if it is expressly required so by law." In current practice, there are no other regulations expressly stipulating that the administrative agency should impose sanctions based on the hearing records. As far as the administrative agency is concerned, the result of the hearing is only a reference for legal effect, and it is left to the administrative agency's free evaluation decision, resulting in the hearing procedure being reduced to a formal procedure and the hearing not being effective.

282. For example, although the Taoyuan Aerotropolis project held two formal hearings in accordance with the relevant provisions of the *Land Expropriation Act* and the *Administrative Procedures Act*, there are many flaws. According to para. 3 of Article 11-1 of *Enforcement Rules of the Land Expropriation Act*, [182]the holding of the hearing should have been handled by the Ministry of the Interior and the Ministry of Transportation and Communications. However, in practice, it was taken over by the relevant local transportation agency and Taoyuan City Government. In addition, ideally, the hearing procedure should be an opportunity between the Ministry of Transportation, the Taoyuan City Government, and the local residents in order to fully express their opinions and strengthen communication with the local residents. However, the government divided the people in the project area into binary

[182] Enforcement Rules of the Land Expropriation Act, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0060059

oppositions, letting the two parties argue, which failed to help clarify the facts and legal issues of the development case. The result of the hearing also only listed the opinions of the two parties, and did not produce the legal effect of restraining the subsequent decisions of the administrative agency. Instead, it consumed considerable administrative and social resources and failed to achieve the full communication and promotion of participation that the hearing intended. To ensure the purpose of administration according to law.

Relief rights for administrative plans

283. The *Administrative Litigation Law* specifies that Urban Planning Oversight Procedure preserves emergency relief rights,[183] but there are three issues with this:

(1) Except for the space planning, the rest of the administrative plans have not established a judicial review system, which is like restricting the right of relief when the people's rights are damaged.

(2) There is a special chapter on the Urban Planning Review Procedure in the *Administrative Litigation Law*, but it does not allow public interest organizations to initiate public interest litigation, showing that the plaintiff's litigation power has not been implemented.

(3) According to Article 11, Para. 3 of the *District Expropriation Implementation Measures*, "Before expropriation of an area, a notice should be issued one year in advance." [184] The current zone expropriation system uses "reviewed urban plans" as reference for expropriation. However, the special chapter of "Urban Planning Review Procedure" of the *Administrative Litigation Law* will be limited to "Urban Planning Published in accordance with the Urban Planning Law" in the future. That is, the approved version of the urban plan on which the expropriation of the advance section is based cannot be reviewed in accordance with the provisions of the special chapter. The system design of this special chapter did not take into consideration the expropriation system of the first section, so that the newly revised "Urban Planning Review Procedures" special chapter failed to fulfill the purpose of remedy for people's rights violations.

284. We suggest:

(1) For various administrative plans, including spatial planning, there should be set procedures and regulations for oversight specified in the *Administrative Procedural Act*. It is recommended that the relevant mechanisms formulate the criteria for EIAs. The selection of committee members should be opened up, rather than based on factionalism, in order to allow for open access to information for civic participation and public affairs.

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[183] Administrative remedy (CH): https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0030154

[184] Regulation: https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D0060062

(2) Regarding committee members chosen by the EPA, the number of committee members chosen from government agencies should be decreased, and the selection criteria for choosing such members should be made public. The final decision of the EIA committee is the decision-making power of the Director of EPA, and relevant regulations and standards should also be formulated and regulated instead of being arbitrary.
(3) The people should be allowed to participate in EIAs from the beginning and at a substantive level.
(4) Revise the Executive Yuan's *Key Points for Auditing the Environmental Impact Assessment Review of the Environmental Protection Agency* to abolish the prohibition of recording and recording, make EIA review meetings more open and transparent, and give the people a sound supervision and substantial citizen participation mechanism.
(5) The current legal system of hearings only requires administrative agencies to have the obligation to respond to citizens' opinions, but there is no explicit stipulation on whether the results of the hearings bind the administrative agencies. Article 108, Paragraph 1, of the *Administrative Procedural Law* stipulates that if there are laws and regulations that dictate that the punishment should be based on the hearing records, the provisions shall be followed; however, there are no other laws and regulations that regulate this way. It is recommended that the results of the hearing should be expressly given binding force to the administrative agency, rather than limited to a reference effect, and there should be a clearer standard for the conduct of the hearing procedure.
(6) In the *Administrative Litigation Law* and the judicial system, the review procedures for administrative plans should be updated. Judicial review and other mechanisms should be gradually established in the oversight process to allow for binding force on the administrative agencies and the rights and benefits of the people.

COR Point 43

Responding to paras. 96, 105 of the State's Response to 2017 COR

Lacking standards for homelessness, differing standards according to the current system

285. The current *Public Assistance Act* does not define homelessness. The closest it comes to this is Para. 1 of Article 18, which refers to "homeless persons", and which leaves it up to local authorities to provide for their resettlement and provide assistance to them.[185] Although starting from July 31st, 2014, the Ministry of Health and Welfare promulgated the *Autonomous Regulations on the Resettlement and Guidance of OO County*

[185] Public Assistance Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050078

(City), the definition of homelessness was expanded to include individuals who "often sleep on streets outdoors in public areas or who do not have fixed residences."[186] This formally included hidden vagrants, such as individuals without suitable residences, or without fixed residences," in this definition.

286. However, the above-mentioned example is only a guidance in nature. Many local governments do not have concrete definitions of homelessness. In October 2017, the Legislative Yuan promulgated research into the issue of a homeless resettlement system, pointing out that different local governments had different standards.[187] For example, Article 2 of the *Taipei City Autonomous Regulations on Resettlement* refers to "Those referred to as homeless are individuals who frequently stay overnight outside in public spaces or in public spaces that should not be entered."[188] The second point of the New Taipei city government's *Key Points of Homeless Housing Guidance* states that "Homeless refers to individuals that stay in the streets who lack identification and require guidance, suspected to have mental illness or physical disabilities and in need of guidance; consequently they stay in public areas requesting aid."[189]
287. Furthermore, because the definitions of local regulations are still unclear, it is difficult for practitioners to make judgments, and they have to decide on their own discretion or based on the past service experience of the organization. It has also led to the failure to accurately grasp the number of homeless people. According to statistics from the Ministry of Health and Welfare, as of June 2019, there are 2,776 registered homeless people in Taiwan. However, these statistics are based on the number of people who have been investigated and reported by the municipal and county (city) governments and provided services. The definitional standards are different, so it is impossible to accurately grasp the number of homeless people.

Housing needs of the disadvantaged and homeless persons are not guaranteed

288. Taiwan's homeless policy still favors social assistance. As mentioned above, each local government can customize the resettlement and counselling measures for the homeless, and the Social Bureau is responsible for implementation. In ensuring the basic right to life of homeless people, food, clean clothes, protection from the cold, access to clothing, haircuts, sleeping bags, medical treatment, emergency relief, etc. are all basic necessities. However, whether the current local government's

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[186] Letter from the Ministry of Health and Welfare: https://dep.mohw.gov.tw/dosaasw/cp-574-5039-103.html

[187] Research by the Legislative Yuan, https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=6590&pid=146951

[188] Taipei City Autonomous Regulations on Resettlement http://www.rootlaw.com.tw/LawArticle.aspx?LawID=B010080110000100-1030102

[189] New Taipei City Autonomous Regulations on Resettlement http://www.rootlaw.com.tw/LawArticle.aspx?LawID=B020070001009900-1000602

resettlement counseling method can effectively assist the homeless to escape from street-sleeping life and protect the homeless' right to adequate housing has limited effectiveness. An example of this can be found in the homeless resettlement service's intention to maintain the livability of and provide necessary facilities for homeless people. However, the lack of beds makes it difficult for homeless people to use the residential services provided and the management measures of the shelter, along with the remote location, reduce the willingness of homeless people to move into the shelter.

289. Article 4 of the *Housing Act* mentions that homeless people have the welfare status of "applicable to social housing". However, the number of social housing units is severely insufficient, and the security of easy access for the homeless to use social housing residences is insufficient; secondly, homeless people are categorized in groups with more than a dozen other types of disadvantaged people. Homeless people only account for one third of all housing subsidy allocations. Although the housing law provides housing-related cash benefits, the payment requirements and the review process do not take into account the fact that homeless residents are extremely vulnerable. The thresholds such as household registration, housing-related document review, and weighting systems are all out of touch with the unfixed status of homeless people in social housing residences, resulting in no guarantee for the homeless.
290. At present, there are no protections for the basic legal rights of individuals without homes. As a country that emphasizes diversity, protects human rights, and cares for the disadvantaged, Taiwan does not yet have a law that declares the basic rights of the homeless. On the streets, homeless people are constantly exposed to street violence, harassment, unreasonable interrogation by law enforcement agencies, and deportation, threatening their right to live on the street; homeless personal belongings and household belongings are often thrown away as garbage. Both the intermediate housing and the disadvantaged rental housing options are of low quality for a good standard of living. The insufficient number of low-cost housing residences, the unaffordable rent prices, and the poor living quality environment all prove that the housing rights of the homeless are not protected.
291. We suggest:

(1) Formulate the "National Vagrant Welfare and Human Rights Protection", focusing on the disadvantaged and marginalized groups, ensuring housing first, and protecting the human rights of homeless at three levels. The first level: the personal right to live on the street without being harassed, threatened, and free from forced eviction must be protected; Second: those living on the street must have possessions and property, and a certain degree of retention rights; Third: the right to live in a place suitable for human habitation in safety, peace and dignity must be guaranteed.

(2) Define the definition of homelessness in the special law, and monitor the number of homeless people. Ensure that the housing rights of people facing housing crisis such as "sleeping on the streets, public places, residential homeless shelters, and those living in unsuitable or unstable housing" can be protected.
(3) Establish the central government's responsibility for coordinating, planning, researching, budgeting, and strengthen the horizontal links between government departments, establish a rigorous and integrated team work model; and strengthen the cooperation mechanism between the government and private sector.
(4) Establish a special window for homeless occupational matchmaking, provide employment opportunities, emergency relief and short-term housing, and promote social reconstruction to assist in returning to the workplace and other related regulations.
(5) Urge the housing authorities to develop and gradually implement a plan to protect the housing rights of homeless people. According to the definition of homelessness as specified in the special law, the statistics on homelessness should be made clear. Residency rights should be protected. On the basis of protecting “Individuals that sleep on the streets, in public places, reside in shelters for the homeless, or people residing in unstable or inappropriate habitats.”

COR Point 44

Responding to para. 107 of the State’s Response to 2017 COR

292. In addressing social housing for indigenous peoples, the Ministry of the Interior has vowed to “provide financing and subsidies for the up-front planning fees, loan interest, and non-self-liquidating expenditures that local governments incur as part of public housing projects for indigenous peoples.” However, this assistance is available in all current social housing policies, and it is not a measure aimed at benefiting the social housing rights of indigenous peoples, specifically.
293. At present, the Taoyuan City Government is cooperating with the Shihmen Irrigation Association to provide land numbers 13 and 14 of Renwu Section Daxi township with planned expenditures to build social housing units devoted specifically to indigenous people. There are about 45 households in total. According to statistics from the Council of Indigenous Peoples, the number of indigenous peoples residing in Taiwan's metropolitan area is 274,352. Therefore, 45 households is obviously insufficient.[190]

[190] Council of Indigenous People’s Housing Statistics https://www.cip.gov.tw/portal/docDetail.html?CID=940F9579765AC6A0&DID=2D9680BFECBE80B6E96C3AC23828BFD0

294. Although Article 39 of the *Social Housing Act* states that, "Municipal and county (city) competent authorities or related industrial competent authorities may provide subsidies or incentives for the construction, addition, reconstruction or renovation of houses with local, ethnic or historic features for the purpose of developing housing landscapes and features." But up to now, there has not been one case in which this has taken place. This clause has not been implemented.
295. We suggest: Indigenous social housing rights should be incorporated into social housing policies. Tackling such issues should begin at the overall development of the original village (such as employment, infrastructure) and community construction.

COR Point 45

Responding to paras. 114-116 of the State's Response to 2017 COR

Insufficient resources for single mothers

296. As mentioned in para. 114 in the State's Response to 2017 COR, in 2019, there were seven low rent, short-term homes provided for single parents nationwide. By comparison, in the same year, there were 56 emergency short-term, medium- and long-term shelters for women who were victims of violence.
297. When women return to the housing market to rent a house, the problem of long-term unresolved landlords makes it difficult to apply for rent subsidies, coupled with the discrimination of landlords, increases the housing burden that single mothers face. While it mainly provides "affordable housing" that meets the qualifications of low-income households, there is only one "Yanji Flat House" left to apply for. The waiting time is as long as 5 years, and the rest will gradually be transformed into "social housing". The 30% of social housing in the vulnerable part of the residence adopts the "evaluation system" of the Social Bureau for evaluation. For a single mothers to be eligible to be placed in a social housing unit, the evaluation of her application is based on various evaluation points culminating in a total score. However, the total score of single mothers tend to be far lower than the scores of impoverished, elderly, and disabled people. These housing resources are not available to women.[191]

Homeless women

298. According to statistics from the Ministry of Health and Welfare, there are 419 homeless women in Taiwan, constituting 14% of all homeless individuals.[192] These

[191] Department of Social Welfare, Taipei City Government, Evaluation Form for Residents with Special Status Protection in Public Housing https://bit.ly/3daxjM8

[192] Ministry of Health and Welfare, Department of Statistics, https://dep.mohw.gov.tw/DOS/cp-1721-9439-113.html

statistics are primarily gathered from individuals that reside on streets or in shelters. Due to women's high need for personal privacy and safe space, in addition to street sleepers, female homeless people will also temporarily stay in 24-hour business places at night (such as fast food stores, Internet cafes, convenience stores, etc.). If these places are also included in the statistics, the number of the female homeless population is estimated to be closer to 30%.

299. The main cause of Taiwan women becoming homeless is due to the loss of family support (leaving home due to domestic violence, divorce, etc.). However, escaping from the harm of domestic violence and sleeping on the streets once again exposes oneself to high-risk situations where personal safety is threatened in ways such as violence, sexual discrimination, bullying, eviction, starvation, etc., affecting physical and mental health.
300. There are currently only two private facilities in Taiwan that provide same-sex shelter and placement services for women. Although Taiwan's public and private institutions provide some beds for women, most of them are occupied by men. The management of these facilities is based on humanitarian safety considerations, and women are more likely to be restricted in their activities. Taiwan's current homeless policies and services are clearly designed for the male homeless population, and the resettlement institutions are also mainly designed for homeless men; there is a serious lack of shelter and residential service measures built according to the special housing needs of female homeless people.
301. We suggest: Accommodate the housing needs of homeless women, provide sufficient safety, privacy, and friendly residential resources for women including shelters, rental subsidies, and social housing facilities.

Responding to paras. 194-195, 197 of the ICESCR State Report

Buildings accessibility is incomplete

302. *The Regulations of Grading Housing Performance* upgrades social safety qualities while displaying indexes of residential performance.[193] However, at present, this is merely deemed "advice", rather than a stipulation. Substantively speaking, the number of newly built residences or existing residences that such assessments have been conducted on are limited. In addition, when we look at subsidies provided for privately owned collective houses with 5 stories for improving accessibility and lifting equipment, and the number of "residential buildings with lifting equipment which subsidy applications have been handled and have improved other accessibility facilities", it is clear that policies in implementing, improving accessibility and lifting

[193] Regulations of Grading Housing Performance
https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=D00702077

equipment in the past few years are ineffective. For instance, in 2018, there were only eight applications for subsidies for privately owned collective houses with 5 stories for improving accessibility and lifting equipment, of which only one case was approved. In the same year, there were 19 applications for subsidies for "residential buildings with lifting equipment that improved other accessibility facilities", only five of which were approved.[194] Up to now, accessible housing is still a mere "recommendation" and not regulated in the *Housing Act*, nor relevant regulations. Because it is not mandatory, the barrier-free environment of many houses is unqualified, for example, there are steps at the door. As a result, the disabled cannot enter and exit, and the options for renting houses are restricted. Even if they have money, they cannot buy a house; even some homeowners will deny disabled people to move in for this reason.

Rental discrimination faced by people with disabilities

303. For a long time, disability rights groups have entered the community in the form of residential or shelter facilities. Even if the space used is government property and said groups have the right to use the facility, they encounter opposition from administrative committees, neighborhood chiefs, and public representatives, all of whom seek to obstruct the services being offered. An example is the Dongming Fuai Home in the Dongming neighborhood of Taipei's Nangang District, a lodging institution for individuals with disabilities that occupied the entire building. The facility saw protests from local residents, including hanging banners from their buildings. The building has encountered protests from local residents, requiring the facility to constantly make changes to try and maintain goodwill.
304. Apart from assisting in communications, the government has not taken any sufficient action to help individuals with disabilities when confronted by adversaries within various communities. This is a failure to implement Article 19 of the CRPD to ensure that people with disabilities fully enjoy their equal rights to live in the community and their rights to participate in the community. As a result, Articles 16 and 86 of the *People with Disabilities Rights Protection Act* seemed to be written in vain. [195] This has caused the same regrets to happen again and again. Incidents of rejection when attempting to rent a house for people with disabilities has occurred repeatedly. Due to various circumstances, landlords are afraid of accidents or fear that they will not be

[194] Construction and Planning Agency, Ministry of the Interior, 2020, "Procedures for Improving Facilities for Individuals with Disabilities and Improving Equipment for Existing Residential Buildings from 105-107", https://reurl.cc/ygvyj8, Accessed: October 5, 2020

[195] People with Disabilities Rights Protection Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050046

able to enjoy the tax rate for their own residences, which makes it extremely difficult for the disabled to rent houses.

305. We suggest:

(1) *The Regulations of Grading Housing Performance* should not be merely a mechanism to encourage action, it should be binding. Without active promotion, its implementation would be insufficient. It is hoped that the government will incorporate this into the *Housing Act* and implement it.

(2) Implement the penalties specified in the *People with Disabilities Rights Protection Act*.

(3) Being unregulated is the key reason why the government still fails to address issues regarding the rental market. This often leads landlords to reject tenants seeking subsidies. The government should work on this issue, to allow for the implementation of such mechanisms. The government should also seek means of providing better accommodations for landlords that are willing to care for people with disabilities.

Housing subsidies lack comprehensive planning and division of labor

306. For housing assistance for economically and socially disadvantaged people who do not have their own houses, the internationally recognized consensus is to provide an appropriate amount of affordable housing, which is directly supplied by the state (represented by the construction of social housing) or Indirect supply (represented by rent subsidies) provides citizens with affordable housing that meets the basic living quality. In terms of the practical experience of various countries, the two models of direct and indirect supply have their own advantages and disadvantages, and they are mutually matched in implementation. The difference lies in the master and slave, and this is in line with the country's social and meridian context. System conditions are related. In this regard, Taiwan currently has three mechanisms, namely social housing, rent subsidies, and the "guaranteed lease and management residences policy". However, these three types of subsidies lack integrated planning in terms of targets, demands and subsidy amounts. The following problems exist:

(1) The issues of current rent subsidies has not been firmly addressed: Currently, every year, around 60,000 households receive rental subsidies,[196] but this is insufficient to accommodate residential needs. Indeed, the government's rental subsidy system is lacking, and cannot accommodate this burden with a lack of complementary policies.[197] Rental subsidies internationally emphasize affordable housing and ensure

[196] Take for instance the data in 2018, there are about 82,729 low-income households which do not own their own houses, of which less than 19.5% have applied for rent subsidies. ◦

[197] Take data on households that received rent subsidy in 2017 as an example. If we take the internationally recognized rent-to-income ratio, 30% benchmark as reference, 21.1% subsidy recipients were within the affordable rent range before receiving the rent subsidy; while 75.1% of the subsidy recipients still failed to meet the affordable rent standard after receiving the subsidy.

residential standards. Given the insufficient number of social housing units, rental subsidies are a necessity. As such, the most urgent need is to upgrade the current system, to allow for a more robust affordable housing policy. At the present time, housing policy overlooks this point, failing to enact Article 11 of the *Housing Act* that housing must be affordable. Rental subsidies are not taken seriously and accompanying measures have not been strengthened, charter rental contracts are often used, instead.

(2) The 80,000 households under the guaranteed lease and management residences policy is not reasonable": initially, the original intention was to make up for the lack of rental subsidies, that is, through rental discrimination. For example, disadvantaged households such as elderly single people, people with disabilities, single parents, etc., even if they are eligible to receive rent subsidies, often because it is difficult to find a place to rent in the rental market, the subsidy is like a "visible but non-receivable" policy. Therefore, it is proposed to rent out private rental housing through this policy to the disadvantaged who are vulnerable to discrimination when seeking to rent. On the other hand, the need to rent houses to assist disadvantaged people is a large-scale problem of insufficient financial affordability. An efficient solution is to implement "affordable" rent subsidies (enough supplements) so that people receiving subsidies can find suitable rental housing options instead of renting and 80,000 households at a high cost (more expensive than building social housing, more than twice the rent subsidy). Of course, it is absolutely necessary to charter a house, but rental housing units obtained in this way should be directed toward vulnerable people exposed to discrimination in the rental housing market.

(3) The system is disordered and unfair: Take rent subsidies as an example. Under the current system, there are various types of rental subsidies such as "general rent subsidies", "single rent subsidies", and "rent subsidies under charter escrow". In terms of subsidy eligibility, these types of subsidies are different in income restrictions and property restrictions, and lack consistent standards. In terms of subsidy amounts, there is no clear basis for calculating the subsidy amount in different regions. On the other hand, social housing rental costs also have chaotic standards. For example: Taipei City uses a 15% discount on the surrounding market and matches the graded rental rate; New Taipei City uses a 20% discount on the surrounding market and 64% off for priority households; Taoyuan City uses a 20% discount for the surrounding market and 60% off for priority households; and Taichung City is 50% off for the first year discount, 40% off in the second year, and 30% off in the third year (65% off for low- and middle-income households). The practice varies from county to city, and it is simple but lacks a reasonable basis for evaluation. The government has announced that it will expand the number of rent subsidy households to 120,000 in 2020. However, if the "affordability calculation basis" of rent subsidy is delayed and only the scope of subsidy is expanded blindly, it may further seriously affect the rational

use and distribution of subsidy resources. The reverse distribution of welfare income for "everyone has a prize" cannot give priority to assisting those who need it most.

(4) To clarify the positioning of different housing subsidy models: The current situation we are facing is that the stock of social housing is seriously low, coupled with the extreme insufficiency of the rental housing market. Here, if we want to provide affordable housing, should we give priority to building social housing, or should we take rent subsidies as the main axis? This issue has never been clarified clearly on the policy side.

307. We suggest:

(1) Social housing should continue to be promoted as the main plan, combined with the implementation of diversified construction models and innovative plans. The 30% of the main targets should be provided for those with high needs for welfare delivery and barrier-free access, such as the following limbs, the elderly living alone.

(2) Rent subsidies should be used as a secondary plan to actively invest budget resources and mainly provide to those with insufficient financial affordability, such as young people and ordinary households.

(3) The rental escrow is mainly targeted at people who are vulnerable to renting discrimination, such as single parents, people with low income, and those with physical and mental disabilities. Therefore, the number should be revised down reasonably and regarded as a supplementary plan for the above two.

(4) Housing subsidies should serve as a secondary policy, with effort placed on budgeting resources and provided to individuals lacking financial resources, such as young people or regular families.

(5) The guaranteed lease and management residences policy should be prioritized for individuals facing discrimination when trying to rent, such as single individuals, low-income individuals, and people with disabilities. The quantity of such housing should be decreased, with a focus on supplementing the prior two policies.

ICESCR art. 12

COR Point 46

308. Regarding health inequality, the government responded only to the health status of indigenous peoples, and neglected that of other ethnic groups.

309. The government's response shows that the Ministry of Health and Welfare views the issue of health inequality solely from a "medical service" perspective, while ignoring the internationally recognized "social determinants of health". As far as the health of indigenous communities is concerned, the scope is far wider than just TB prevention or medical resources. The government has long neglected the rights of indigenous peoples: their living environment was invaded, the community organizations were

destroyed, and their economic activities were drastically changed, forcing many indigenous families to disperse for work or school. Relatively low achievement in employment, education, and income all adversely affected health. The government also failed to provide assistance in situations where both chronic diseases and long-term care are in dire need of self-care and community support capacities. The lack of a social perspective in the Ministry of Health and Welfare and the medicalization of health policy is disconcerting.

310. In addition to indigenous peoples, other communities with relative deprivation of resources face similar difficulties, but the Government's response is completely lacking in these keywords: income, poverty, community organization, and community service.

311. We suggest:

(1) The government should understand health inequalities from the perspective of social determinants and propose solutions that respond adequately to the lack of community resources.

(2) The Ministry of Health and Welfare should revise their narrow view on health, particularly the medicalization of health problems and individualization of social problems.

(3) The government should conduct surveys and research on the problem of health inequality. In addition to physical health, attention should be paid to mental health and disabilities.

COR Points 48-50

Sex education (Responding to paras. 138-141, 144-150 of the State's Response to 2017 COR)

312. According to the 44th and 45th points of the International Review Committee's Conclusions and Recommendations of the Review of Taiwan's Third Report on the Implementation of CEDAW, the committee specifically mentioned that school curricula should provide students with comprehensive sex education on sexual health, reproductive health, and reproductive rights that is age-appropriate, scientifically accurate, and up-to-date. The committee also urged the Ministry of Education to resolve internal conflicts on sex education, to provide clear guidelines and courses, and to provide teachers with necessary training.

313. Stated in the 2017 State Report point 48 (paragraph 138-141) and point 50 (paragraph 144-150), despite the fact that the State does provide policies and guidelines on AIDS education and sex education, the disputes around sex and LGBTI+ issues remain unresolved.

314. Organizations affiliated with the religious right-wing, in the name of parents, have actively obstructed gender-diversity education in schools at all levels, as well as materials and teachings for positive sex education.
Published by Taiwan Gender Equity Education Association in 2011, "Shall We Swim (青春水漾)" is an educational film discussing sex, body, and intimate relations from the perspective of a teenage girl. This film has been continuously discredited by religious right-wing groups. In 2017, a teacher in an elementary school in Kaohsiung, after understanding the needs of students and having consulted with class parents, taught condom-related topics in sex education courses, but was litigated by parents and organizations outside the school.[198] This event had produced a chilling effect among schools and their teachers.
315. Teaching in many schools has become increasingly conservative under pressure from anti-LGBTI+ groups and parents. For instance, some schoolteachers have avoided teaching about using condoms fearing potential legal risk. Some schools and health bureau officers have requested teachers not to mention condoms when instructing about safe sex practices and not to mention LGBTI+ people when teaching about AIDS. Religious groups and/or lecturers have conducted "abstinence-only sex education" in the name of conducting "life education", "family education", or "moral/character education" with the emphasis on "two sexes", treating premarital sex as a negative stain, and asking students to sign a pledge for virginity before marriage.[199]
316. Taiwan's textbooks not only lack LGBTI+ related information on sex education, but also affect the development and rights of LGBTI+ children's sexual orientation, gender identity, intimate relations, and sexual health, and as long as any LGBTI+ related contents are found in textbooks, regardless of whether it is in relation to sex education, it will be pressured and protested by anti-LGBTI+ groups, city councilors and legislators, despite the Ministry of Education having provided subsequent

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198 In 2017, Liu Yu-hao, a teacher from Ganghe Elementary School in Kaohsiung City, with the consent of the parents, taught students how to use a condom in the classroom. However, his intentions were later distorted by certain groups that opposed gender-equity education, even litigated with "distribution of obscene materials" (dictated as no prosecution in 2019). Subsequently homophobic groups had used this footage to mislead students and the general public
at the 2018 referendum TV conference. https://www.mirrormedia.mg/story/20190726pol004/

199 Taiwan Gender Equity Education Association still received complaints as of April, 2020, regarding the parents' company had received a proposal for teacher's salary fundraising. This proposal is from an organization with a religious background to promote "abstinence education". According to the proposal, from February 2019 to January 2020, a total of 90 schools, 19 churches, and 6 organizations, a total of 1,408 classes, and a total of 42,240 students had accepted this course, with 73.9% of the students having signed a pledge.

clarifications. However, in the absence of explicit guarantees, most publishers will still delete LGBTI+ related information because of these unsubstantiated protests, which seriously affects the learning of all students.

317. It can also be seen from the practical experience of NGOs that many young LGBTI+ people were still unable to obtain sex education which includes different sexual orientations from the school curriculum. The content of current sex education curriculums obviously exclude the educational needs of LGBTI+ children. In other words, LGBTI+ children cannot obtain knowledge about their own sexual orientation and gender identity, as well as sexual health information pertinent to their personal needs.
318. The current sex education textbooks cannot meet the needs of students with disabilities, nor can ordinary students understand the sex-related issues of people with disabilities.

Artificial reproduction

319. According to the General Comment No. 22 of the ICESCR, the right to sexual and reproductive health is an indispensable part of the right to health in Article 12 of the ICESCR. Certain individuals and groups, such as lesbians, gays, bisexuals, transgender and intersex persons, and persons with disabilities, suffer multiple and intersecting discrimination, which exacerbates their exclusion in law and practices. Therefore, they were further restricted of the right to full enjoyment of sexual health and reproductive health.
320. After Taiwan passed the *Act for Implementation of J.Y. Interpretation No.748* in 2019, married same-sex spouses are still unable to use artificial reproductive technology in accordance with the provisions of *Assisted Reproduction Act*. According to the General Comment No. 22 of the ICESCR, reproductive health refers to the ability to reproduce and the ability to make informed, free and responsive choices regarding procreation. This also includes access to a variety of reproductive health information, materials, facilities and services, so that individuals can make informed, free and responsible decisions about their reproductive behavior. However, because of their LGBTI+ identity, same-sex spouses are still unable to access the artificial reproduction services equally as heterosexual spouses.

Sexual rights of persons with disabilities

321. Most people with disabilities face great difficulties in developing intimate relationships, and the state has not formulated any active support policies for the sexual rights of people with disabilities.
322. We suggest:

(1) The State should follow the General Comment No. 22 of the ICESCR, and United Nations' International Technical Guidance on Sexuality Education.

(2) Sex education should be close to the real-life experiences and needs of students, and must include diverse perspectives. In addition to the conveying of sexual knowledge, it should also focus on emotional education and issues in intimate relationships. The examination and discussion of power relations must also be included.
(3) Sex education courses should not evade students' need for sex or intimacy, and blindly instill in students the single value of "true love is worth waiting for." On the contrary, through courses and teaching, students should be assisted to establish new morals, such as helping students understand how to fully express oneself in intimate relationships, how to negotiate with each other and reach a consensus; assist students in finding balance between "freedom and responsibility", "autonomy and respect for others", and "privacy and openness".
(4) We should actively develop sex education content that includes diverse sexual orientations and gender identities. When presenting sex education content in textbooks, we should pay attention to the experiences and needs of LGBTI+ students and bring relevant topics into the classroom.
(5) The compilation process of sex education teaching materials should include people with different disabilities, and sex education teaching materials should include sex-related topics for people with disabilities.
(6) The central and local education authorities should actively deal with the chilling effect caused by the complaints against teachers who provided courses on safe sex, so that teachers can positively talk about sex and LGBTI+ issues when conducting sex education and AIDS education.
(7) The State should not restrict the reproductive freedom of same-sex spouses. Under the premise of not endangering their lives and others, the State should allow same-sex spouses to use artificial reproductive technology, and enable same-sex spouses to make informed, free and responsible choices on their reproductive behavior in accordance to information and services of artificial reproduction.
(8) The state should face up to the intimacy and sexual needs of persons with disabilities, actively legalize sex work, remove restrictions on pleasure districts to cope with the mobility difficulties of persons with disabilities, and reduce obstacles for persons with disabilities to meet their sexual needs.

COR Point 49

Responding to paras. 142-143 of the State's Response to 2017 COR

323. For many years, the State has investigated the mental health of the domestic population and health promotion policies such as the "2017-2021 National Mental Health Plan". However, it has not recognized the existence of the LGBTI+ community, nor has it established a local database on mental health and related medical

experiences of LGBTI+ people. In the State Report, it is obvious that there is no mental health survey report and data on LGBTI+ people, only in point 22, paragraph 52, it is pointed out that in 2018 and 2019, very scarce funds have been used to subsidize civil organizations. In other words, the national resources invested in LGBTI+ mental health promotion services and activities are seriously insufficient, let alone regularly evaluating the effectiveness of such measures.

324. We suggest that after the referendum of 2018, the State should pay attention to the suicide risk and mental health needs of the LGBTI+ community, and include more, both in quality and in quantity, in the national mental health promotion policies and plans to sufficiently promote mental health of the LGBTI+ population. Formulate special promotion measures, rather than just apathetically relying on subsidizing the scarce funds onto private organizations. LGBTI+ groups or individuals should be invited as stakeholders in the process of policy formulation, planning, implementation, evaluation, with the inclusion of mental health scholars and professionals.

COR Point 51

Responding to paras. 153-156 of the State's response to 2017 CO

325. In paragraph 153 of the State's response to the 2017 CO, the state mentioned the approval of "Lo-Sheng Sanatorium Overall Development Project" which in actuality encountered multiple obstacles in its implementation and subsequently caused the failure of the State's promise of "allow the residents under care to return to the old wards they are familiar with and provide them with care in their old age." The specific reasons are as follows:

(1) The "Lo-Sheng Sanatorium Overall Development Project" stated for wards where residents still reside in, namely the "Chao-Yang Ward", "Chu-Gao Ward", "Yu-Shan Ward", and "Yi Garden", will be restored by the method of "reconstruction after demolition". The implementation of the restoration project has not implemented information disclosure and a guarantee of participation in procedure, despite the Ministry of Health and Welfare had committed said procedures via continuous struggles and coordination of the residents. Residents cannot be sure of the extent of the restoration to its ward, cannot be certain of the necessity to move, when to move, whether "no relocation" or "division by stages" were arranged for the restoration project, causing the residents to suffer from continued concern over whether they will be subjected to eviction and relocation, which adversely affected their psychological wellbeing and right to housing, violating the procedures promulgated in the General Opinion No. 7 of the Committee on Economic, Social and Cultural Rights recommended by the International Review Conference.

(2) An incident occurred where the Peng-Lai ward, an important meeting place used by residents for a long time, and the Ping-An ward where the Lo-Sheng Sanatorium model and historical materials hand-made by the residents were stored, was notified to be cleared within a month despite being two months away from the actual restoration. The Sanatorium also stated that the Hui-Sheng ward, the electrotherapy center that many residents rely on, would be closed, without providing appropriate alternatives. Some of the notifying methods and timeframe the Sanatorium performed for clearance was crude, causing distress in many residents.

326. Regarding paragraph 154 of the State's response to 2017 COs, the executing authorities did not adopt the "most rigorous attitude in repairing historical buildings in the Lo-Sheng Sanatorium" as claimed, and ignored the needs and wishes of residents in the restoration project as it insisted on adopting the "overpass and elevator" over the "large slope" option proposed by scholars and residents which is more in line with the original landscape and the needs and wishes of the residents.

(1) In the past, with the assistance of professor Liu Ke-Chieng from the National Taiwan University Building and Planning Research Foundation, residents adopted the method of participatory design to recover the original appearance of the Lo-Sheng Sanatorium before its destruction, and cultivated the "large slope" project which is more in line with the original appearance, the will and needs of the residents, and more stable, as the backfilling excavated slope toe can stabilize the structure. The initial accord regarding this project was reached at the coordination meeting hosted by the National Development Council on December 22, 2016. After the coordination meeting, however, the Department of Rapid Transit Systems initiated the construction in accordance with the "overpass and elevator" project without communication with the residents.

(2) The "overpass and elevator" project utilized elevators and accessibility ramps with multiple turns as the entering and exiting method for the residents. With many residents having deformed hands or amputated hands, delicate actions such as pressing elevator buttons could be burdensome for them. The ultra-long accessibility ramp with multiple turns is also not suitable for residents with limited mobility. Worried about their own personal safety and the discriminatory gaze of others, residents also can't feel at ease at sharing a confined elevator cart with strangers.

(3) The residents have repeatedly expressed that the "overpass and elevator" project is difficult to use and is less in line with the original landscape. They hope to adopt the "large slope" project with the recognition from the Ministry of Culture as it stated that the large slope project is "closer to authenticity" and in accordance with the "maximum retention principle", however the Ministry of Health and Welfare refused the project on the basis of high cost, a long construction period and "the residents are aging and will continue to age", making the residents feel disrespected.

(4) The Department of Rapid Transit System's insistence on the implementation of the "overpass and elevator" project rather than the "large slope" project which was proposed jointly by scholars and residents, is in obvious violation with the obligations of state parties promulgated in article 3 of the Convention on the Rights of Persons with Disabilities, the obligation of universal design promulgated in paragraph 15 of the General Comment No. 2 of the Convention on the Rights of Persons with Disabilities, and the norm of full and effective participation promulgated in the General Comment No. 7 of the Convention on the Rights of Persons with Disabilities.

(5) The gate of the Lo-Sheng Sanatorium of the Department of Rapid Transit Systems is a cultural landscape and bears significant meaning to the residents. However, the authorized demolition by the Department of Rapid Transit Systems without the authorization of reviewing procedures had adversely affected the psychological wellbeing of the residents.

327. Regarding paragraph 154 of the State's response to 2017 COs, despite the Ministry of Health and Welfare claiming that it would "continue to provide care for residents for their medical and other needs", in the 90 residents living in the old and new sanatoriums, 39 of them who were placed in modular houses or the old sanatoriums only had 2 nurses on staff, with 1 per shift. The said 2 persons also have to support work in the new sanatoriums buildings, clearly a significant shortage of manpower. As the average age of residents has exceeded 80, the lack of nursing manpower directly impacts the health of residents.

328. We suggest:

(1) The restoration projects of the old sanatoriums shall be equipped with substantial participatory mechanisms for the residents, with the administration of the sanatorium having repeatedly revealed that the conditions of the wards might need to undergo significant renovation, rendering it possible for the residents to relocate, the relevant operating guidelines shall be executed in accordance to the General Comment No. 7 with sincere consultation with residents and assessment of alternatives, the follow-up construction principle shall also be based on the principle of relocating residents as few as possible.

(2) The State shall provide adequate nursing manpower for persons living with Hansen's disease with appropriate scales to evaluate the need, such as the SALSA scale which is used internationally to assess peripheral nervous conditions of persons living with Hansen's disease, which differs them in terms of their need of nursery care from other persons with disabilities. To comply with subparagraph 4, paragraph 1, article 3 of the *Act of Human Rights Protection and Compensation for Hansen's Disease Patients*, the State shall provide persons living with Hansen's disease with "lifelong treatment and care, rehabilitation and nursing services, etc." Rights to nursing services: including living subsidies, assistance in returning to the community and family, lifelong treatment and care, rehabilitation and nursing services, etc.

(3) The overpass at the entrance was temporarily suspended in July 2020 due to a court ruling. It is recommended for the State to reevaluate the possibility of implementing the "large slope" project and conduct an environmental impact assessment for the development of the National Hansen's Disease Medical Care Human Rights Park. The residents of Lo-Sheng Sanatorium and the IDEA Taiwan Chapter had filed a document to the Environmental Protection Administration to point out that the overpass was constructed without an environmental impact assessment in March 2020, and filed for judicial remedies. The administrative court made a provisional injunction to suspend the construction of the overpass in July. The administration of Lo-Sheng Sanatorium had paused the construction without initiating the procedure of environmental impact assessment. As the administration can initiate the environmental impact assessment procedure without a court order, we suggest the State actively initiate an environmental impact assessment of the plan, which shall include the psychological impact assessment of the affected, the assessment of an alternative to the entrance which alludes the reintroduction of the "large slope" project, and the formal inquiry of opinion of all affected stakeholders.

ICCPR art. 6

COR Point 52

Death in custody (Responding to paras. 157-160 of the State's Response to 2017 COR)

329. As stated in Paragraph 158 in the State's response to the 2017 CO upon the death of an inmate in a correctional facility, the facility is required to follow the *Inmate Death Incident Operating Procedures* promulgated by the Agency of Corrections, Ministry of Justice. However, the procedure is not yet available to the public.

Inmate at Kaohsiung Prison tortured to death

330. On October 17th, 2019, controllers and inmates serving as "service personnel" at Kaohsiung Prison tortured an inmate to death. They took an inmate with psychosocial disabilities (mental disorder) who had recently violated prison rules, to a surveillance blind spot and handcuffed him, subsequently kicking and beating the inmate to death. The "Control Yuan Investigation Report No. 0057" stated that Kaohsiung Prison's independent investigation failed to notice that the cause of the inmate's death was abuse, and stated that the Agency of Corrections should inform the public in the

future as a means of supervision regarding the improvement in the "Inmate Death Incident Operating Procedures ".[200]

331. The Control Yuan highlighted the negligence by Kaohsiung Prison in the report. Point 52 of Concluding Observations and Recommendations noted that the "underlying reason and root cause" of each case shall be investigated in order to prevent any future death of inmates. However, there isn't enough information accessible by the general public to assist in uncovering abuse and provide supervision for the reason and root cause of abuse cases. The investigation report of Control Yuan shows that the controllers have always allowed "service personnel" to apply handcuffs or shackles on inmates, but the investigation did not explain how such violations could go on for so long without being corrected. In addition, two service personnel were involved in this case, of which one was beating the inmate and the other was assisting, we have yet to see inquiries as to whether this is an isolated incident or a manifestation of a structural problem.

Inmate died at Penghu Prison due to suspected delayed medical care

332. In June 2020, the news reported that 4 inmates had died within a month at Penghu Prison. Causes of death included suicide by hanging in wards, accidental ingestion of rust remover, and deaths in hospital caused by a liver tumor and myocardial infarction. The inmate who accidentally ingested rust remover was reported to be in great pain, hitting the wall and shouting for help. However, according to the report, she was only asked by the controllers to lie down on the bed, and was only tended to and sent to the hospital after she fell on the ground and lost consciousness.[201] The Penghu Prison refuted the news report by stating that the inmate voluntarily drank the dish soap from the bottle (although the words "rust remover" were written with a

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[200] See Control Yuan Investigation Report No. 0057:
https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17309
A controlled surnamed Lee ordered the "service personnel", unauthorized to use any instruments of restraint, to handcuff the inmate and make him put in a full face helmet, of which the visor lens was covered with tape to obstruct his vision. The administrator and helper later proceeded to physically and verbally abuse the inmate. The other administrator, Qiu, acquiesced to the attack and abuse without submitting any report or record. Qiu even chided on the others while watching. After Qiu allowed the abused inmate to return to his cell, knowing that the inmate was attacked and severely injured, he ignored the inmate's need and did not offer him any medical help, which led the inmate to miss the best time to receive treatment.

[201] See press release by the members of the Control Yuan: The Agency of Corrections' Penghu Prison Sees 4 Inmate Deaths in 1 month; Major Negligence in the Prison Management? Control Yuan Members WANG You-ling, WANG Mei-yu and KAO Yung-cheng Initiated Investigation.
https://www.cy.gov.tw/News_Content.aspx?n=125&s=18124

marker pen on the bottle; the facts are still being determined) and that she passed away after being taken to the hospital. The Penghu Prison claimed that the surveillance video showed that the inmate did not shout or hit on the window for help, and the inmate was approved to leave the prison for medical care right after the incident. The Prison was willing to share footage with the inmate's family in the aim to prove that they did not ignore the inmate's cry for help for 3 hours as stated by the family and cause delayed medical help.[202] The series of deaths are currently under investigation by the Control Yuan and the status of the cases remains unknown.

Failure to initiate investigation on death row inmates' deaths before execution

333. Three death row inmates died in prison before execution in 2019. "CHEN Yu-an case" and "KUO Qi-shan case" were mentioned in Paragraphs 62-63 of the ICCPR State Report, while the "WU Ching-lu" case was not included in the Report.[203]
334. Per Paragraph 25 in the ICCPR General Comment No. 36, States parties assume the responsibility to care for the life and bodily integrity of individuals deprived of their liberty by the State by providing them with the necessary medical care and appropriately regular monitoring of their health, preventing suicides, and providing reasonable accommodation for persons with disabilities. We hereby reiterate the 2017 Concluding Observations and Recommendations Adopted by the International Review Committee: an independent body should be set up to conduct thorough investigations on all inmate deaths, including apparent suicides. The ROC government claimed that all inmate deaths, including "CHEN Yu-an", "KUO Chih-san" and "WU Ching-lu" cases, had been investigated and the prosecutors had ordered autopsies for each case. Thus, it sufficed to conclude the investigations. However, the examination procedure by prosecutors is merely a routine investigation into the cause of death. What's more, although the ROC Control Yuan had previously conducted an investigation on the "CHEN Yu-an case", the prison only provided information after being investigated.
335. We suggest:

(1) The Agency of Corrections, Ministry of Justice should publicize the aforementioned *Inmate Death Incident Operating Procedures* for it to be reviewed by the general public.
(2) The existing independent inmate-death investigation bodies, such as the National Human Rights Commission and Committee on Judicial and Prison Administration Affairs of Control Yuan, should not only clarify possible administrative negligence

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[202] See Penghu Prison, the Agency of Corrections, Ministry of Justice: Response to the News Report on "4 Deaths in 1 Month at Penghu Prison! Female Inmate Accidentally Ingested Dust Remover and Died after Begging for Help for 3 Hours" https://www.php.moj.gov.tw/290902/290927/776402/885788/post

[203] WU Ching-lu, Death Row Inmate, Died of Stomach Cancer at Taichung Prison Pei-de Hospital on 7th September 2019

but also strive to investigate the underlying reason and root cause of death in order to prevent similar incidents in the future.

(3) Prisons should be equipped with sufficient medical personnel, psychologists/therapists and social workers to prevent violence among inmates and suicide cases.

(4) The family members of inmates who pass away in prison should be adequately compensated.[204] A report clearly stating the cause of death and other investigation findings should also be provided to the family.

ICCPR art. 7

COR Points 55-56

Responding to paras. 167-171 of the State's Response to 2017 COR

All cases involving extradition, expulsion, and repatriation of foreigners should comply with the principle of non-refoulement

336. Since the Taiwanese government has passed the Act to Implement the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it should comply with the principle of non-refoulement stipulated in Article 7 of the ICCPR. The applicability of the principle of non-refoulement should not be limited to cases about refugees or stateless persons. The principle is applicable to all cases concerning extradition, expulsion, and repatriation of foreigners. To fulfill the non-refoulement obligations, the state should have established relevant standards and procedures to handle relevant cases. The state has repeatedly claimed that there was a series of standard procedures in place, but it refuses to make relevant standards and procedures public. People have no access to such information, so oftentimes they have difficulty believing the state's fulfillment of its non-refoulement obligations. In April 2020, a Filipino worker in Taiwan was asked to be returned for her remarks against President Rodrigo Duterte.[205]

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[204] Concluding Observations: Belarus (2018), para. 36; Concluding Observations: Eritrea (2019), para. 30; Concluding Observations: Paraguay (2019), para. 27; Concluding Observations: Tajikistan (2019), para. 30; Concluding Observations: Viet Nam (2019), para. 28.

[205] Rappler, DOLE asks Taiwan to deport OFW with Facebook posts criticizing Duterte, 04/25/2020, https://www.rappler.com/nation/dole-asks-taiwan-deport-ofw-facebook-posts-criticize-duterte

The pending refugee act should be sent back to the legislature

337. According to Paragraph 167 of the 2020 Concluding Observations and Recommendations, the Executive Yuan had handed the draft refugee act over to the Legislative Yuan for examination in 2016, and the Legislative Yuan went through the deliberation phase, yet the legislation wasn't passed. According to Article 13 of the *Law Governing the Legislative Yuan's Power,* [206] if incumbent legislators leave bills unpassed, the bills cannot proceed to the new parliament unless the new parliament reopens discussions in the new legislative procedure. As a result, the Executive Yuan will have to propose again, or legislators will have to propose the draft refugee act to resume legislation.
338. Civic groups have jointly unveiled their draft of a refugee law on June 19, 2020, one day before World Refugee Day. In the past few years, Taiwan has passed the *Act to Implement ICCPR and ICESCR*, *Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, *Implementation Act of the Convention on the Rights of the Child (CRC)*, as well as *Act to Implement the Convention on the Rights of Persons with Disabilities (CRPD)*. Besides, the Taiwanese government has approved to incorporate the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) into domestic law in 1970. In view of the backdrop, civic groups set the bar high compared to the 1951 Convention Relating to the Status of Refugees, and drew up principles and measures more suitable for the international human rights challenges Taiwan is currently dealing with when they proposed their draft refugee law. For example, the draft incorporates the interpretation and suggestion of the principle of non-refoulement, children's best interests, as well as necessary reasonable accommodation, procedural accommodation, and appropriate remedies for individuals with disabilities and sensitive issues stipulated in the General Comment No. 4 of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Notably, it is necessary to adopt follow-up measures to handle cases of asylum seekers who do not meet the definition of refugees and who will be at risk of being subjected to torture or to cruel, inhuman or degrading treatment if they are repatriated or expelled.

Taiwan does not have explicit standards and procedures on its books for individual asylum seekers

Taiwan lacks a comprehensive asylum procedure in place for Hong Kong protesters

339. In light of the special political relations between Taiwan and China, the Taiwanese government has formulated the *Act Governing Relations between the People of the Taiwan*

[206] Law Governing the Legislative Yuan's Power
https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0020058

Area and the Mainland Area (hereinafter referred to as "*Act Governing Relations between the People of the Two Sides*") and the *Laws and Regulations Regarding Hong Kong & Macao Affairs* (hereinafter referred to as "*Laws Regarding HK & Macao Affairs*") to handle matters concerning China, Hong Kong, and Macao. Officials claimed that the existing *Laws Regarding HK & Macao Affairs* had an adequate legal framework and no new laws were needed to process Hong Kong asylum seekers who had participated in the anti-extradition bill protests in 2019 and the new Hong Kong *National Security Law* protests in 2020. Although Article 18 of the Laws states that "necessary assistance shall be provided to Hong Kong or Macau residents whose safety and liberty are immediately threatened for political reasons",[207] the clause does not specify execution details or other clauses for reference, e.g. work allocation of the competent authority to provide such "assistance", the definition of "political reasons", and the standards for reviewing such cases.

340. The Mainland Affairs Council under the Executive Yuan has set up special projects and a special office according to the said Laws. Nonetheless, the uncertainty and incompleteness of the existing human rights system open up a wide gap between the asylum policies in Taiwan and the asylum policies in other countries or of the Refugee Convention.

Kurds from Syria are repatriated

341. In March 2018, two male Kurds and one female Kurds from Syria had just flown from Malaysia to Taiwan. They intended to have a transfer to Europe, where they planned to apply for asylum. The National Immigration Agency spotted their fake passports, and they were sent to Yilan Foreigner Detention Center. Later, they were prosecuted for forgery. Their lawyer argued in the pleading that the defendants had taken a transit flight to Taiwan as asylum seekers, so the state should be bound to the principle of non-refoulement. However, the defendants were still convicted. They were expelled from Taiwan and returned to Malaysia, their last point of departure after completing serving the sentence. During the process, the Taiwanese government turned a deaf ear to the female defendant's safety concerns that the Syrians in power regarded Kurds as enemies, and women were likely to be exposed to violence and sexual assault in Syria. This is the second repatriation case about Syrian Kurds that came to civic groups' knowledge.
342. From the handling of such cases, it is quite apparent that neither the front-line law enforcement agencies nor the judges are legally sensitive enough or capable of coping with refugee cases. They simply see these individuals as illegal immigrants, and convict them with the *Immigration Act* and the *Criminal Code of the Republic of China*.

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[207] Laws and Regulations Regarding Hong Kong & Macao Affairs https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010003

The convicted foreigners are detained in detention centers and are repatriated. One the one hand, law enforcers overlook the needs of defendants. On the other hand, they do not fully understand the implications of the principle of non-refoulement and the obligations our country should honor.

The residency of Tibetans remains an unsolved issue in Taiwan

343. Since 2000, the situation in Tibet has become grimmer. Tibetans from China, India, and Nepal began coming to Taiwan. They choose to leave their home voluntarily or involuntarily because they want to flee from China's persecution of culture, religion, beliefs, and other kinds of freedom, or because they hope to pursue a better life. Tibetans in India, Nepal, or other countries are deprived of their right to education, right to work, right to property, or even right to travel freely across states just because their identity is not officially recognized.
344. It is difficult for Tibetans to acquire legal and valid travel documents in China, India, and Nepal, so they are often running a big risk when they decide to purchase fake passports and travel to Taiwan. In 2015, Article 16 of the *Immigration Act* was amended.[208] Stateless Tibetans who had entered Taiwan before December 31, 2008 could apply for legal residency after the Mongolian and Tibetan Affairs Commission (MTAC, abolished) recognized their identification. The amendment means that Tibetans arriving in Taiwan after 2009 and Tibetans arriving in Taiwan before 2009 but weren't recognized by the MTAC can no longer obtain legal identity through the *Immigration Act*. Therefore, they are in danger of being expelled at any time, and will have difficulty making a living due to their illegal status. They will find themselves in a dire predicament.
345. Before Taiwan lost its seat at the UN, the ICERD was taken into force. In General Recommendation 30 of the ICERD, Part 6 stipulates the principles of "expulsion and deportation of non-citizens". Paragraph 25 under Part 6 states that state parties should observe the principle of non-discrimination and provide remedies. Paragraph 26 requires state parties to ensure that non-citizens are not subject to collective expulsion. Paragraph 27 demands state parties to ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment. Paragraph 28 asks state parties to avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.[209] Some Tibetans in Taiwan are running away from China's tightening grip on religion. Many of them are nuns or lamas who

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[208] Immigration Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132

[209] General Recommendation 30 of the ICERD https://covenantswatch.org.tw/wp-content/uploads/2019/01/INT_CERD_GEC_7502_E.pdf

make a detour to Nepal before coming to Taiwan. Once they are repatriated to Nepal, it is highly likely that they will be repatriated to China, where they will encounter torture or to cruel, inhuman or degrading treatment or punishment. On top of that, they will not receive fair trials or effective remedies.

346. Our suggestions:

(1) The state should provide sufficient training in relevant issues for immigration personnel, front-line law enforcers, and legal professionals, including judges.

(2) The state should promptly proclaim relevant standards and systems concerning repatriation, expulsion, and extradition of asylum seekers and foreigners for the public to examine if the mechanisms fit the benchmark of international human rights protection. If the state's approaches fail to meet the requirements of the said international standards, they need to make immediate adjustments.

(3) The state should take the draft proposed by civic groups into consideration, and formulate a Taiwanese refugee law that complies with human rights obligations stipulated in international covenants as soon as possible.

(4) The state should amend relevant clauses in the *Act Governing Relations between the People of the Two Sides, Laws Regarding HK & Macao Affairs*, and *Immigration Act* to uphold the spirit of the refugee act and other covenants on human rights.

(5) The state should immediately stop executing and making administrative acts of compulsory expulsion of Tibetans in Taiwan. Instead, the officials should thoroughly weigh every piece of evidence, go through the recognition process of their identity, grant them legal identity according to the *Immigration Ac*.

COR Points 58-59

Responding to paras. 172-178 of the State's Response to 2017 COR

The government has not actively raised people's awareness of anti-torture issues and abolition of the death penalty

347. Taiwan has not yet abolished the death penalty, and the existing laws continue to permit sentence and execution of the death penalty. From the second international review of the ICCPR in January 2017 to August 2020, a total of two death sentences were executed; in August 2018 and April 2020 respectively, the declarants Li Hongji and Weng Renxian were executed by shooting. During the same period, three death sentences were affirmed.[210]

348. Although the government restarted the Gradual Death Penalty Abolition Research and Promotion Team of the Ministry of Justice in 2017, the group still maintained the consensus that "there is no timetable for the abolition of the death penalty", which

[210] The three sentences were affirmed in 2017, 2019 and 2020, respectively.

means there is no definite timeline for the abolition of the death penalty. According to General Comment No. 36 of the ICCPR, states parties that have not yet abolished the death penalty should move toward "complete eradication of the death penalty, de facto and de jure, in the foreseeable future", and the path is irrevocable; also, it is emphasized that the death penalty cannot be reconciled with full respect for the right to life, and abolition of the death penalty is absolutely necessary for the enhancement of human dignity and progressive development of human rights.[211]

349. The government has repeatedly cited public opinion as the reason to keep the death penalty. However, the constantly high proportion of people against abolition of the death penalty indicates that the government has done nothing to "raise public awareness of anti-torture issues" or to "mobilize people to support abolition of the death penalty." In October 2019, premier of the Executive Yuan, Su Zhenchang, even claimed publicly that "the death penalty should be executed", supporting the government's execution of the death penalty.[212] This raises questions about whether the Taiwan government genuinely takes using the death penalty with caution, reducing the use of the death penalty, and gradually abolishing the death penalty as its goal.

Execution procedure of the death penalty lacks reasonability

350. Execution procedure of the death penalty lacks reasonable advance notice:

(1) According to government practice, persons sentenced to the death penalty are notified on the day of execution and are executed on the exact day, and their family members are notified only after the execution is completed. That is, not only can the persons sentenced to death not be able to file for effective legal remedies for the execution (execution orders) or apply for a final pardon, their chances for the last interview with their family members are also not guaranteed. Their family members have to endure the long, extreme pain and psychological pressure caused by the uncertainty that their relatives may be executed at any time.

(2) However, the *Prison Act* amended and passed in January 2020 and the *Regulations on the Execution of the Death Penalty* amended and passed in July of the same year have not based on the General Comment No. 36 of the ICCPR and the opinions on the case of Koveleva and Kozyar v. Belarus,[213] ensured the individual sentenced to death and his family to receive reasonable prior notice before the execution of the death

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[211] ICCPR General Comment No. 36, para. 50.

[212] Taipei Times, "Death penalty must be enforced where necessary: premier", 05 October 2019, Available at: https://www.taipeitimes.com/News/front/archives/2019/10/05/2003723415.

[213] General Comment No. 36, para. 40. Lyubov Kovaleva and Tatyana Kozyar v. Belarus, CCPR/C/106/D/2120/2011, 27 November 2012, para. 11.10, 13.

sentence, so as to avoid the abuse of the person sentenced to the death penalty and his family members.

351. The government claimed that execution of the death penalty was approved by the Death Penalty Execution Review Team in accordance with the *Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases*. However, given the members of the review team are all officials of the Ministry of Justice, the review process lacks external supervision, and the persons sentenced to death have no means of remedy for the review decision. Furthermore, the government has no legal basis or norms to observe for the selection of persons subject to execution.

Death penalty execution of people with mental disorders

352. According to No. 57 of 2013 ICCPR CO and No. 35 of 2017 CRPD CO, it is plainly pointed out that before the death penalty is abolished, the Ministry of Justice should clearly stipulate in the *Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases* to ensure that people with psychosocial/mental disabilities shall not be subjected to the death penalty. However, on August 31, 2018 and April 1, 2020, the government executed Hongji Li and Renxian Weng, who were suspected of mental or/and psychosocial disorders, and failed to give reasonable and legal explanations as to why the two were selected to be executed among the declarants subject to the death penalty and awaiting the execution.
353. There are currently several cases of people with mental disorders sentenced to death, such as Wangren Lin , Fukang Huang , Yuru Lin, and Jianyuan Peng.[214] Most of the death row prisoners currently being held are subject to long-term imprisonment; mental torture caused by indefinite execution time and long-term imprisonment are prone to lead to psychosocial and mental disorders often seen in the death row phenomenon, which should be duly noticed.

Crimes not of the most serious cases are still liable to the death penalty

354. Taiwan's existing laws still allow many perpetrators who did not commit the "most serious crimes"- that is, intentional killing,[215] to be sentenced to death. These crimes that are not intentional and directly result in death but are punishable by the death penalty include an attempt to take the life of another (art. 271, Paragraphs 2 and 3 of the *Criminal Law*), combined robbery (art. 332, Paragraph 2 of the *Criminal Law*), and piracy (art. 333 and 334 of the *Criminal Law*), combined acts of kidnapping (art. 348, Paragraph 2 of the *Criminal Law*), narcotics offenses (arts. 4, 6, and 15 of the *Narcotics Hazard Prevention Act*), etc.

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[214] CCPR, GC No. 36, para. 49.

[215] CCPR, GC No. 36, para. 35.

Sentenced to death without the guarantee of a fair trial

355. According to GC No. 36 of the ICCPR, if the litigation procedure violates the fair trial guarantee stipulated in Article 14 of the ICCPR and results in the death penalty, the sentence is arbitrary and thus violates Article 6.[216] In Taiwan there are several people sentenced to death for not being guaranteed a fair trial:

(1) The "Heshun Qiu Case": Heshun Qiu, who was sentenced to death in the condition of "handcuffed during the trial", "loss of important evidence of the trial basis" and "the court used flimsy evidence such as voiceprint identification". The death sentence he received was made under pre-trial judgment and failure to exclude reasonable suspicion, which violates Article 14 Paragraph 2 of ICCPR.[217] Although Heshun Qiu filed a retrial and extraordinary appeal, the government of Taiwan rejected Heshun Qiu's request for relief, even though a high possibility of wrongful conviction existed.

(2) "Xinfu Wang Case" and "Honglin Shen Case": both Xinfu Wang and Honglin Shen were sentenced to death, in the situation where both had not cross-examined key unfavorable witnesses. The key witnesses in the two cases had been executed by the Taiwanese government, so that the defendant was not able to cross-examine him. The death penalty sentenced to Xinfu Wang and Honglin Shen were made in violation of Article 14, Paragraph 3, Subparagraph 5 of ICCPR.[218] Although the two convicts had filed for retrial and extraordinary appeals, the government of Taiwan rejected their requests for relief.

356. Also, in recent years, there have been many cases suspected of violating fair trial but were given death sentencing in Taiwan, such as in multiple cases where the judge repeatedly tried the same case without recusal. In the "Renxian Weng case", the trial judge even stated in court to the defendant Renxian Weng that "if the murderer of 6 people is not sentenced to death, Taiwan will get into chaos", which raises doubts concerning the court's bias and judicial non-neutrality.[219]

The request for pardon not expressly stipulated

357. According to the GC No. 36 (2018) of the Human Rights Committee, paragraph 47,[220] although the State party reserves the right of discretion when formulating relevant procedures, the procedures should still be expressly stipulated in domestic law, and the relevant procedures and substantive standards for requesting pardon should be definitely established. However, according to the practical opinions of the Ministry of

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[216] CCPR, GC No. 36, para. 41.

[217] CCPR, GC No. 32, para. 30.

[218] CCPR, GC No. 32, para. 39.

[219] CCPR, GC No. 32, para. 30.

[220] CCPR, GC No. 36, para. 47.

Justice of Taiwan and existing courts, amnesty is a presidential prerogative and is not judicial relief. There is no clear procedural requirement for exercising such a prerogative; the president is free to comprehensively consider the relevant circumstances for discretionary judgment. Since 2015, a total of 39 death row prisoners in Taiwan have requested pardons, but the government has not responded. So far there have been cases of appeals and administrative litigations.

Limited results are seen in directives for death penalty case review

358. It is mentioned in paragraphs 34 and 36 of the 2020 ICCPR State Report that the Ministry of Justice formulated the directives of "Controversial Death Penalty Case Review" and "Conviction Review" for the Supreme Prosecutors Office and the Taiwan High Prosecutors Office. However, limited results have been seen since the implementation of the two directives.
359. These two review directives are based on the design of reforming the US system for redressing unjust cases, establishing a "Conviction Integrity Unit" in the prosecution system, setting up a dedicated unit to assign prosecutors and lawyers to jointly investigate wrongful cases and relieve innocent convicts. In recent years, fruitful results have been achieved. However, the core value of the unit is to raise awareness within the procuratorial system to investigate possible wrongful cases with dedicated full-time personnel.
360. However, since its establishment in 2016, not a single affirmed death penalty case has passed the review by the highest prosecution.[221] As of September 1, 2020, only two cases passed the review by the High Prosecutors Office's Convicted Case Review Committee, one of which is a well-known domestic unjust case, Zhongxiong Guo, who robbed Jin Ruizhen jewlery store, and the other former Minister of Transportation, Yaoqi Guo. The result was not satisfactory.
361. We recommend:

(1) The government and President Ing-wen Tsai should take the lead in raising public awareness of protecting the right to life and opposing torture and inhuman

[221] No. 34 of the directives said: "In July 2018, the High Prosecutors Office reviewed the death penalty case of Zhihong Xie based on the Directives, and the prosecutor requested a retrial in the interest of the sentenced person." Regarding that, the Taiwan Innocence Project holds reservations. After Zhihong Xie was sentenced to death in 2011, he filed 7 extraordinary appeals with the Supreme Prosecutors Office, and all were rejected. Afterwards, the Control Yuan issued an investigation opinion in July 2018 and sent a written request to the Ministry of Justice to transfer the case to the Chief Prosecutor in the Supreme Prosecutors Office to file for extraordinary appeals and retrials. Thus, the investigation was initiated by the prosecutor's office. Zhihong Xie's rescue group had not followed the directive to request for relief with the Supreme Prosecutors Office.

punishment, and take appropriate awareness-raising measures and public initiatives to promote public support for abolition of the death penalty. [222]

(2) The execution of the death penalty should be suspended immediately, and an official moratorium on execution of the death penalty should be considered. With the goal of "legally abolishing the death penalty in the foreseeable future",[223] specific measures should be taken to initiate the political and legislative process of abolishing the death penalty,[224] and a definite timetable is demanded for such a process.[225] If execution of the death penalty continues, it should be ensured that there is no actual increase in the frequency of executing the death penalty to avoid violating the purpose and objective of Article 6 of the Convention.[226]

(3) Before the death penalty is abolished, the *Regulations for the Execution of Death Penalty* should be amended to ensure the declarants of the death penalty, their lawyers and family members receive reasonable prior notice of the date of execution, and have the opportunity to meet their family members for the last time.[227]

(4) Before abolishing the death penalty, it should be clearly stipulated in the *Directions for the Ministry of Justice in Examining the Execution of Death Penalty Cases* based on No. 57 of 2013 ICCPR CO and No. 35 of 2017 CRPD CO that people with psychosocial/ mental disabilities shall not be subjected to the death penalty. Furthermore, it should be ensured that execution of the death penalty is subject to appropriate external supervision, including open and transparent information, the participation of non-governmental officials, and that the person sentenced to death penalty has access to remedy for the decision.

(5) Before abolishing the death penalty, it should be ensured that the process of conviction and sentencing the death penalty did not violate the convention, especially the guarantee of a fair trial. There should also be priority made to proactively verify

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[222] Concluding Observations: Belize (2018), para. 23 (recommending that the State Party should consider appropriate awareness measures to mobilize public opinion in support of abolition of the death penalty); Concluding Observations: Saint Vincent and the Grenadines (2019), para. 23 (recommending that the State Party should carry out appropriate awareness-raising measures to mobilize public opinion in support of abolition of the death penalty); Concluding Observations: Mauritania (2019), para. 25 (recommending that the State Party should carry out public advocacy efforts and campaigns to promote the abolition of death penalty).

[223] Concluding Observations: Saint Vincent and the Grenadines (2019), para. 23.

[224] Concluding Observations: Mauritania (2019), para. 25 (recommending that the State Party should initiate a political and legislative process aimed at the abolition of death penalty)

[225] See Concluding Observations: Tajikistan (2019), para. 28 (recommending that the State Party should take concrete steps, within a clear timeframe, towards the abolition of death penalty).

[226] CCPR, GC No. 36, para. 50

[227] Concluding Observations: Belarus (2018), para. 28; Concluding Observations: Vietnam (2019), para. 24.

the active social, psychological, mental or intellectual disability of those who are awaiting execution of the death penalty, such as arranging regular psychiatric or psychological assessment to ensure that they receive effective medical care and treatment.

(6) Before abolishing the death penalty, the Taiwanese government should comprehensively review the current legislation to ensure that only those who committed the most serious crimes—that is, the most severe crimes that involved the action of intentional killing— are sentenced to death.[228]

(7) For the unjust death penalty cases of Heshun Qiu, Xinfu Wang, Honglin Shenand, as well as several death penalties cases whose trial processes violated the fair trial principle of Article 14 of the ICCPR, effective remedies should be provided for each case, and measures should be taken to ensure that none of the said affirmed death penalty cases shall be executed.

(8) Before abolishing the death penalty, the Taiwanese government should amend the law to include the requirements, procedures, and review methods for death row prisoners to request pardons, and inform the death row prisoners requesting pardon of the progress of their applications.[229] Although currently prisoners filing for petitions and administrative litigation may request the Justices of Constitutional Court for constitutional interpretation in the future, the government should actively amend the law at the present stage.

(9) It is recommended that the *Directives for Death Penalty Case Review* should include procedures for the petitioner to review case files and state their opinions, and should, referring to the US model, set up a Conviction Integrity Unit in the evaluation mechanism, to enhance the internal corrective function within the procuratorial system.

ICCPR art. 9

COR Point 60

362. See paragraphs 369-372 of this report.

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[228] Concluding Observations: Lao People's Democratic Republic (2018), para. 18; Concluding Observations: Mauritania (2019), para. 25; Concluding Observations: Nigeria (2019), para. 25; Concluding Observations: Vietnam (2019), para. 24.

[229] Concluding Observations: Belize (2018), para. 32 (recommending that pardons or commutations of the sentence are available in all cases); Concluding Observations: Viet Nam (2019), para. 23 (recommending ensure that pardons or commutations of death penalty sentences are effectively available in all cases, and regardless of the crimes committed).

COR Point 61

363. Currently, Article 14 of the *Legal Aid Act* states that legal aid is granted to non-citizens who legally entered the border, are victims of human trafficking cases, and those who lost their residency due to incidents not imputed to themselves.[230] However, according to the current regulations, legal aid is not applicable for non-citizens who entered the border illegally seeking political asylum or as refugees.

364. We suggest:

(1) The Board of Legal Aid Foundation may decide to provide legal aid to non-citizens without legal status, according to Subparagraph 7 of the same Article.

(2) Judicial Yuan as the competent authority, shall also support the decisions by the Foundation and allocate a sufficient budget at the Foundation's disposal.

COR Point 62

Reasonableness of maximum of five years of detention pending trial (Responding to para. 182 of the State's Response to 2017 COR)

365. Legislative Yuan has amended Paragraph 3, Article 5 of the *Criminal Speedy Trial Act*, reducing the accumulated period of detention during the trial from a maximum of eight years to five years. However, according to Paragraphs 2 and 3, Article 14 of ICCPR, regarding any restriction to the people's right to personal liberty, the procedures shall be not only legitimate but also reasonable and necessary. A member of the International Review Committee, Peer Lorenzen, also commented during the 2017 review that the focus should be whether the litigation period is reasonable. Therefore, he recommended removing the limitation of eight years altogether and changing the wording to "within a reasonable period,"[231] which would then be determined on a case by case basis. Although the amendment in 2019 saw the detention period reduced from eight to five years, the State has not addressed the litigation period's reasonableness, which concerned the international expert.

Alternatives to detention violated the right to personal liberty in practice

366. Taiwan amended Article 116-2 of the *Code of Criminal Procedure* on July 17th, 2019, and now offers the following five alternatives to detention:

(1) Report to the court, the prosecutor, or the designated authority periodically;

(2) Accept appropriate monitoring by technical equipment;

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[230] *Legal Aid Act* <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030157>

[231] This referred to the law prior to the 2019 amendment that "the accumulated period of detention during the trial shall not exceed eight years."

(3) Do not leave the domicile, residence, or certain area without the permission of the court or prosecutor;
(4) Hand over passports and travel documents; the court may also notify the competent authority not to issue passports and travel documents;
(5) No specific actions are allowed to be taken against the specific property without the permission of the court or prosecutor.

367. Despite adding alternatives to detention offers judges more options than before, which only included reporting to the court or the prosecutor, and keeping away from individuals involved in the case, the practice, in reality, is problematic.

(1) Ordering the defendant to hand over passports and travel documents and notifying the competent authority not to issue passports and travel documents are, in practice, prohibiting the defendant from exiting from the border. The measure has the same effect as Article 93-3 of the *Code of Criminal Procedure*,[232] which restricts the defendant from exiting from the border. However, such restriction period in the Article "may not exceed eight months," while the newly amended Subparagraph 6 of Article 116-2 allows the court to "designate a considerable period of time" without stating specific limits. This is clearly an excessive violation of the defendant's human rights, violating Paragraph 1 of Article 9, right to personal liberty, Article 12, freedom of movement, and Paragraph 2, Article 14, right to fair trial and due process, of ICCPR.
(2) "Not to leave the residence or certain area without the permission of the court or prosecutor" restricts the defendant's movement even further. The residence limitation has shown the same problem as prohibiting the defendant from exiting from the border. The lack of maximum time limits for such restrictions and a periodic review mechanism violated Paragraph 1 of Article 9, right to personal liberty, Article 12, freedom of movement, and Paragraph 2, Article 14, right to fair trial and due process, of ICCPR. Furthermore, General comment No.35 stated that restricting the defendant's residence, similar to house arrest, for a prolonged period of time is a severe violation of the defendant's personal dignity.
(3) Regarding monitoring by technical equipment, according to Paragraph 5 of the Article, "shall be determined by the court together with the Executive Yuan." However, the State has yet to complete the enforcement rules. In contrast, the current use of electronic handcuffs and ankle monitors, which track the defendant's whereabouts, has already violated the defendant's privacy and imposed a significant limit to the defendant's right to personal liberty.

368. We suggest

(1) Regarding the litigation period for which the defendant is detained pending trial, there should be a more delicate and specific standard for consideration.

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[232] *Code of Criminal Procedure* <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010001>

(2) The State should legislate and set up a reviewing program that stipulates detention by taking into account the complexity of the case, criminal behavior of the defendant, and the continuous trial of the court. The program should also prompt the court to review the necessity and alternatives for detention during trial continually.
(3) Regarding the alternatives to detention, a periodic review mechanism and the limitations on the period and amount of times should be added to the measures that violate the people's freedom of movement or right to personal liberty (e.g., handing over travel documents or ordering the defendant not to leave residence).
(4) Paragraph 5 of Article 116-2 should be amended, stipulating the legislative branch to compile the enforcement rules for monitoring by technical equipment, including the usage, duration, and scope of utilizing electronic monitoring equipment. The executive branch's executive orders should be limited to determining the matter's technical details, and such rules should be handed to the court for independent examination.

COR Point 63

Responding to paras. 185-187 of the State's Response to 2017 COR

369. The new Habeas Corpus program of the Legal Aid Foundation officially came into effect on January 1st, 2020. As of March 31st, the Foundation received calls for 11 applications for Habeas Corpus, all of which resulted from cases of mandatory hospitalization under the Mental Health Act. However, only one case successfully applied for the Habeas Corpus program; the designated attorney went to the hospital to assist the applicant, and later helped to terminate mandatory hospitalization. One case required the Foundation to assist in transferring to another hospital; nine cases failed to meet the requirement for Habeas Corpus, for the applicants had signed admission consent. In these cases, the attorneys were sent to the hospitals for legal counsel.
370. However, the hospitals often denied attorneys the opportunity to meet with the clients, citing the latter part of Paragraph 1, Article 25 of the *Mental Health Act*, with no specific reasons. Recently, due to the COVID-19 pandemic, hospitals have imposed stringent visitation rules on the grounds of pandemic response.
371. What is worth noticing is that, in most cases that called the Foundation applying for Habeas Corpus and seeking to be released, the applicants had signed admission consent, which prohibited them from being released. Therefore, whether the hospitals restrict the freedom of movement of those who voluntarily admitted to the hospitals, how they inform the rights of those hospitalized involuntarily, and whether the procedure of mandatory hospitalization is comprehensive, may all be questionable.

372. We suggest: Article 25 of the *Mental Health Act* should refer to Paragraph 5, Article 31 and Article 34 of the *Code of Criminal Procedure*. It should stipulate that when hospital patients apply for Habeas Corpus, they may commission or request attorneys from the Legal Aid Foundation for assistance at the scene to ensure a fair executive and judicial review. Mental health care institutions should provide appropriate space for the clients under mandatory hospitalization to speak with their attorneys free from restraint and are free to express consent, to ensure the rights of those under mandatory hospitalization.

ICCPR art. 10

COR Points 64-67

Criminal regulations and policies had led to serious problems with prison overcrowding (Responding to paras. 188-191 of the State's Response to 2017 COR)

Signs of prison overcrowding

373. From the table below, one can see that overcrowding in prison has eased slightly since the beginning of 2019, but the situation will need to be monitored to establish if this will become a long-term trend.[233]

Table 3

Year	Total inmate population	Approved capacity	Rate of overcrowding (%)
December 2017	62,315	56,877	9.6%
December 2018	63,317	57,573	10%
December 2019	60,956	57,573	5.9%

According to statistics reported by the Ministry of Justice in June 2020[234]

374. Although overcrowding has eased slightly overall since the beginning of 2019, there are some prisons in which the issue of overcrowding is still fairly severe. As of the end of 2019, the prisons with a severe rate of overcrowding (referring to

[233] Monthly Legal Statistics, Dec. 2019, Ministry of Justice: https://www.rjsd.moj.gov.tw/rjsdweb/book/Book_Detail.aspx?book_id=370

[234] Monthly Legal Statistics, June. 2018, Ministry of Justice: https://www.rjsd.moj.gov.tw/rjsdweb/book/Book_Detail.aspx?book_id=404 。

overcrowding rates of over 20%) are as follows: Taoyuan Prison, overcrowded by 64.8%; Taoyuan Women's Prison, 26.8%; Hsinchu Prison, 28.9; Taichung Prison, 20.7 %; Kaohsiung Second Prison, 32.6 %; Yilan Prison, 22.6 %; Taipei Detention Center, 28.0 %; Hsinchu Detention Center, 42.5 %; Miaoli Detention Center, 32.8 %; Taichung Detention Center, 26.2 %; Nantou Detention Center, 26.9 %; Tainan Detention Center, 32.0 %; Pingtung Detention Center, 26.0 %; Keelung Detention Center, 33.3 %.[235]

"Tough on Crime" policy exacerbates overcrowding

375. Currently, policies related to crime are among the main factors contributing to overcrowding. Amendments to the *Criminal Code* in 1997 and 2004 framed the matter as a binary between leniency and being tough on crime. Both the legislative and administrative organs operated under the belief that the public preferred strict policies that were tough on crime, leading to the imposition of harsher penalties. For example, Articles 77 and 79-1 of the *Criminal Code* raised the threshold for parole, and introduced the "three-strikes law." Additionally, Article 51 increased the upper limit for concurrent sentences for multiple convictions. These changes not only led to increased sentences for individual prisoners, but also raised the total number of prisoners with long jail terms.
376. In response to paragraph 111 of the 2020 ICCPR State Report: The Ministry of Justice's draft amendments to Article 78 of the *Criminal Code* only applies to those convicted of minor crimes in the future. While the administrative agency has the discretion to revoke parole, the draft amendments do not deal with the issue of parole being revoked due to minor offences for prisoners currently serving their sentences — this matter should be reconsidered. There are currently 61 cases in which parole from life sentences have been revoked for minor offences such as drunk-driving or drug consumption. These individuals will be required to serve another 25 years before they will once again be eligible for parole. This not only increases the pressure on prisons, but also has little impact on the maintenance of public safety. Furthermore, it metes out a disproportionately harsh punishment on these individuals and does not help them return to society. Among these ongoing cases, 18 have to do with individuals sentenced under the Regulations on the Punishment of Bandits that was in force under Taiwan's former authoritarian regime. This legislation has already been changed following Taiwan's transition to democracy, but these individuals are still required to return to serve life sentences in prison after their parole was revoked for petty offences. Such situations are not addressed in the Ministry of Justice's current draft amendments.

[235] Ibid.

Regulations related to drug and alcohol addiction

377. Article 185-3 of the *Criminal Code* stipulates a penalty of not more than two years' imprisonment for drunk-driving. If one has been caught drunk-driving three times within five years, the penalties are, in principle, not allowed to be converted into fines.[236] A significant number of inmates entering prisons have been jailed for drunk-driving. For example, in 2019, about 27% of new inmates were imprisoned for endangering public safety (mainly by drunk-driving); the number was 9% at the end of the year.[237] Considering that one reason for drunk-driving is alcohol dependency, the impact of jail time as a deterrence might be limited and may only work up to a certain point. Furthermore, alcohol withdrawal symptoms can be life-threatening, causing problems for prisons and endangering individuals.
378. Long-term imprisonment not only exacerbates Taiwan's overcrowding problem, but could also cause drug users to lose employment and reduce their ability to adapt and integrate in society. While in prison, they might also be introduced to even more offenders, strengthening networks of antisocial behavior. In 2017, Taiwan introduced a "New Generation Anti-Drug Strategy".[238] In 2020, as part of the "New Generation Anti-Drug Strategy," para. 2 of art. 4 of the *Narcotics Hazard Prevention Act* was amended to raise the minimum penalty for "manufacturing, transporting, or selling Category Two narcotics" from seven years to 10 years, placing it on par with the minimum penalty for homicide under Article 271 of the *Criminal Code*. In practice, such offenders might be low-level drug pushers who are themselves grappling with drug addiction, or might be couriers within a social circle of drug users — thus leading to judges having to find ways and means to hand down reduced sentences.
379. As for art. 10 of the *Narcotics Hazard Prevention Act*, part of the "New Generation Anti-Drug Strategy" strengthens the use of deferred prosecution, instead of imprisonment against drug users. The law related to deferred prosecutions was also amended to adopt an approach which provides drug users with more kinds of programs than before. However, there are challenges to implementation. According to the Control Yuan's report, the number of individuals who underwent treatment for addiction as a condition of a deferred prosecution in 2017 was twice the number of such cases in 2016. This increase led to the over-burdening of treatment facilities that did not have

[236] Ministry of Justice press release on "Unifying standards for recurring drunk driving to avoid unfair enforcement", June 19, 2020: https://www.moj.gov.tw/cp-21-50914-e15ab-001.html

[237] Monthly Legal Statistics, Dec. 2019, Ministry of Justice: https://www.rjsd.moj.gov.tw/rjsdweb/book/Book_Detail.aspx?book_id=370

[238] New Generation Anti-Drug Strategy (2017), the Executive Yuan: https://www.ey.gov.tw/Page/5A8A0CB5B41DA11E/47bbd6cf-5762-4a63-a308-b810e84712ce

sufficient capacity, thus creating one problem after another.[239] In the use of measures such as deferred prosecution when dealing with drug users, Taiwan needs to reasonably address the issue in a way that is proportionate to the risk factor present in each case, while ensuring sufficient intensive treatment for high-risk individuals in need.

380. Taiwan continues to feel the pressure of an expanding system of incarceration. Currently, those who are caught using Category Three or Four drugs are given administrative penalties. In 2017 the "Anti-Drug Strategy for the New Era" proposed by the Executive Yuan suggested that users of Category Three or Four drugs should first go through administrative penalties such as lectures and counselling. Those who have failed to complete the mandated counselling or who have committed at least four offences within three years would be imprisoned to enhance the prevention and deterrence effect of the policy. However, the draft was not passed.

381. Our recommendations:

(1) The Legislative Yuan and the Ministry of Justice should reconsider the current binary criminal justice system that promotes the false belief that harsh penalties are needed to deter crime. Excessive punishment will only place greater pressure on the country and cause individual suffering.

(2) Repeal art. 77 of the *Criminal Code* which stipulates the threshold for parole for recidivists and the "three strikes" rule, and return to the original system of parole, based on an assessment of whether the individual is at risk of committing a major offence and whether they will be suitable to be returned to society under supervision.

(3) The Ministry of Justice should include, within the scope of its draft amendments, individuals who are currently serving sentences after their parole was revoked for minor offences, so as to allow them the opportunity to turn over a new leaf.

(4) For those who are caught drunk-driving due to alcohol addiction, put more emphasis on treatment rather than imprisonment as a deterrence. Additionally, use other evidence-based strategies to reduce alcohol-impaired driving.

(5) The law allows for discretion to be exercised instead of resorting to prison sentences. Encourage prosecutors and judges to consider more holistic ways of treatment when prosecuting and sentencing, in hope to improve the current 'revolving door' system imposed on drunk-driving offenders.

(6) Amend the *Narcotics Hazard Prevention Act* so that the penalties for supplying drugs are proportional to the offence. For drug users who have become low-level drug pushers or suppliers within their social circle, treatment should be prioritised over imprisonment as a response.

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[239] The Control Yuan investigation report on the quality of treatment: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17005

(7) Input across multiple ministries (including the Ministry of Health and Welfare) should be taken on board in discussions of how to reform the overly punitive policy currently used against drug users and to establish a supportive and helpful environment for drug users.

Medical resources within correctional facilities (Responding to paras. 106-109 of the ICCPR State Report)

Lack of access to tap water: water quality issues threaten inmate health

382. The health and medical circumstances in Taiwan's correctional facilities cannot be considered an environment conducive to treatment due to issues such as overcrowding resulting from over enrollment of inmates, deterioration of basic living environment, and dilution of healthcare resources. Moreover, as pointed out in Paragraph 105 of the 2020 State Report on ICCPR, many correctional facilities have yet to convert to the use of tap water. During the Presidential Office National Conference on Judicial Reform in 2017, a committee member noted that the water used in correctional facilities are mostly sourced from groundwater with simple filtration, has poor quality, and contains pathogens. Aside from designated hours, no showers are allowed, thus inmates can only wipe themselves clean, turning towels into dirty rags full of dander without water with which to clean it. Moreover, the inmates must stack their bedding for storage, making it easy for skin diseases to spread.[240] The water quality issue is severe, especially at the four correctional facilities in Taichung (Taichung Prison, Taichung Women's Prison, Taichung Detention Center, and Taichung Drug Abuser Treatment Center) that shares its groundwater and are located near a landfill. The issue cannot wait.

Severe lack of medical resources

383. Currently, the medical resources at correctional facilities are provided primarily by the National Health Insurance. However, the correctional facilities' own medical teams are inadequate and can only serve an auxiliary role. At the end of 2018, the total number of medical staff at all correctional facilities was 103 (not including contract employees).[241] The ratio of medical staff to inmates was approximately 1:615, where medical staff takes into account all physicians, clinical psychiatrists, pharmacists (or assistants), medical technologists (or technicians), registered nurses (or nurses). If the

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[240] Issue of excessive enrollment of inmates (Presidential Office National Conference on Judicial Reform Meeting Group 5, 2nd Meeting, Lin, Ewam (Number 5-1-1) https://drive.google.com/file/d/0B9NObfZ1vI2WVV84Wm1uRERLVTg/view 。

[241] Ministry of Justice Statistics Handbook, Ministry of Justice (2018) https://www.rjsd.moj.gov.tw/RJSDWeb/book/Book_Detail.aspx?book_id=360

ratio is calculated for each individual type of medical staff, the number is even more staggering. Moreover, since national health insurance resources are absent during nights and holidays and the correctional facility's own medical staff is off duty, there is a possibility of incidents occurring without medical staff present. In such a case, only the administrator is left to decide how to handle the incident and whether an ambulance is needed.

384. The state report lacks statistics on the average wait time from registration to actually seeing a doctor, the average duration of clinical sessions, and the number of visits serviced. The Justice Reform Foundation once received information from an inmate that the wait between registration to actually seeing a physician was about a week, while a dentist appointment was a half-month to one to two months wait at a correctional facility. In addition, since physicians must see a large number of patients, there are reports of physicians not listening carefully to patients and always prescribing the same medication. However, it has not been verified whether this is a single incidence or a widespread issue. Prison Watch has also received complaints from multiple inmates saying that they registered but still could not see a doctor. There is even an absurd case of an inmate who was not allowed to register for a Chinese medicine clinic since their cash account had less than 2000 NT in it.
385. Considering that, currently, correctional facilities do not constitute an environment conducive to treatment, when the prosecutor is supervising the execution of a sentence, a mechanism should exist where if the sentenced suffers from a disease and can anticipate deterioration of health during their sentence due to lack of proper treatment, the execution of the sentence can be postponed to first provide the sentenced with treatment. Taiwan's *Code of Criminal Procedure* has rules to suspend execution of a sentence, but the code requires that the sentenced suffers from "insanity" or is "currently suffering a disease and the execution may threaten his life", which are overly stringent. The tradeoff between realization of the nation's power to criminal punishment and the safeguarding of an individual's right to health is out of balance. As for improvements to healthcare at correctional facilities, the *Prison Act* amended in 2020 stipulates that the Ministry of Health and Welfare shall provide assistance in improving the healthcare and sanitation at prisons. Whether the healthcare and sanitation conditions will actually improve remains to be seen.

Lack of mental health resources

386. Regarding inmate health, mental healthcare is even more lacking in resources than physical healthcare and is more prone to inhumane treatment. The expertise of the medical staff at correctional facilities generally lean more toward the physical rather than the mental side. The primary mental health resource in correctional facilities is the psychiatry clinic, which mainly administers medication treatment and has varying clinical hour availability across different facilities. With a lack of professional mental

health workers, the correctional facility administrator could then have to face multiple inmates with poor mental health without any support.

387. Considering the ratio between correctional facility administrators and inmates in Taiwan, the situation seems even more dire. Paragraph 112 of the 2020 State Report on ICCPR mentions that the guard-inmate ratio was approximately 1:10.6 in December, 2019. This is a much higher number than nearby Hong Kong (1:1.9), Korea (1:3.5), Japan (1:5.4), and Singapore (1:5.8). The lack of security guards, coupled with the need to work in rotating shifts, sometimes resulted in situations where one guard is assigned to oversee a hundred inmates at certain locations. In such circumstances, the correctional facility administrator on the frontline may treat violation of rules as insubordination, or resort to security measures such as using restraining instruments or imposing solitary confinement rather than provide mental health services. If the correctional facility administrator lacks understanding of the rule of law and no supervision is in place, the measures may devolve into torture.

Solitary confinement worsens the mental health of inmates with disabilities

388. Moreover, solitary confinement is closely related to mental health issues of inmates. Solitary confinement may be imposed upon inmates with mental health issues or exacerbate the existing mental health problems of inmates. According to an investigation by the Control Yuan in 2019, incidences of correctional institutions imposing solitary confinement on inmates are uncommon with the exception of Lyudao Prison. Lyudao Prison has placed multiple inmates in long term solitary confinement. In the past five years, there were 21 inmates placed in solitary for durations between 1 month and 1 year, 3 inmates for durations between 1 year and 2 years, 2 inmates for durations between 2 years and 6 years. There was even one inmate who was placed in solitary confinement for as long as 14 years and 14 days.
389. Of the inmates who were placed in solitary confinement, 13 were also put in restraining instruments, 3 inmates attempted suicide with 1 succeeding who had a history of chronic anxiety before being transferred to Lyudao Prison.[242] Since 2017, there were two cases of juveniles being placed in long term solitary confinement at correctional institutions, both of whom had disabilities. In the 2017 case, the Taipei Juvenile Detention House placed a juvenile inmate with mental disability in the pacification ward as many as 27 times for a total of 101 days, severely damaging the physical and mental health of the individual.[243] In the 2020 case at Chengjheng High School Taoyuan Branch, a juvenile with moderate intellectual disability who had been

[242] Control Yuan Investigative Report 0053, 2019
https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6747

[243] Control Yuan Investigative Report 0010, 2020
https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=16984

diagnosed by a psychiatrist with conduct disorder, was repeatedly placed in the school's Calming Garden for nearly 3 months for scabies and emotional behavior. While in the Garden, he was punished to solitary living three times for a total of 22 days, with one particular incidence lasting as long as 15 days.[244]

390. Regarding the issue of solitary confinement, the *Prison Act* amended in 2020 stipulates that correctional facilities may not place inmates in solitary confinement for more than 15 days. In the event solitary confinement is imposed, medical personnel shall be assigned to continuously evaluate the physical and mental condition of the inmate. Where medical personnel deem the inmate unfit for continuous solitary confinement, the solitary confinement must be terminated. Although the law has been amended, whether the corresponding psychological evaluation and service resources are adequate is questionable.

The medical parole process does not offer sufficient guarantee

391. According to Article 63 of the *Prison Act*, "the prison may report to the supervisory authority which shall consider the doctor's instructions before approving out-of-prison medical treatment on bail." Such wording may lead to some inmates not receiving approval for medical parole. For example, Control Yuan investigative report number 0051 in 2020 describes a case of an inmate with multiple diseases failing to receive approval for medical parole multiple times, showing evidence that the approval system for medical parole does not guarantee the inmate's right to medical attention.[245] In addition, in Table 11 Follow-Up Status of Medical Paroles for Inmates in Correctional Institutions of the 2020 State Report on ICCPR, no numbers are provided about how many applications for medical parole were denied and what the reasons were in correctional institutions. The data may be inadequate.
392. The Taichung Prison Pei-Teh Hospital is a medical zone established to promote inmate health. However, according to the Control Yuan investigative report number 0051 in 2020, the prisons under authority of the Agency of Corrections, and the Taichung Prison Pei-Teh Hospital lack a mechanism to coordinate the inmate's medical condition with their medical treatment.[246] This led to the predicament where the correctional facility's clinical physician deemed that the inmate's medical condition necessitated their transfer to the medical branch but the hospital refused to accept the inmate. In addition, the Pei-Teh Hospital makes its decision on whether to accept an inmate suffering from multiple disorders based on the evaluation from one

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244 Control Yuan Investigative Report 0039, 2020
https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17165

245 Control Yuan Investigative Report 0051, 2020
https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17255

246 Ibid

single division every time. It is clear that there is a lack of a cross-division evaluation and the actual overall medical care needs are being overlooked.

393. We recommend:

(1) The government should continue to pay attention to the right to health of the inmates in correctional facilities. This includes access to clean water, sufficient ventilated space (especially in the Summer), access to clinics, and the right to receive external medical service with an escort.

(2) The cleanliness of water for everyday use is closely related to the health of inmates. Even if correctional facilities have difficulty converting to tap water completely, they should still provide inmates with sufficient and clean water for everyday use. The water used to wash the inmates' bodies and daily utensils should pass the appropriate water quality tests.

(3) Regarding the issue of a lack of medical personnel on duty during nights and holidays at correctional facilities leaving security personnel to make a decision on offsite medical attention, the Ministry of Health and Welfare should provide appropriate assistance. In addition, the Agency of Corrections should collect data on the disparity between the supply of medical service from correctional facilities and the demand of medical service of inmates and release the data to facilitate the Ministry of Health and Welfare's effort to improve the healthcare and sanitation at correctional facilities.

(4) Amending all regulations about suspension of execution of sentences in the *Code of Criminal Procedure* should be implemented to differentiate the sentenced based on whether they are fit to serve their sentence. If the sentenced suffers from a disease and can anticipate deterioration of health during their sentence due to lack of proper treatment, the execution of the sentence can be postponed to provide the sentenced with treatment. In addition, the inmate's health should continue to be monitored after incarceration. Just as the Sate provides the elderly with health examinations, they should be conducted in prison as well.

(5) The correctional facilities should improve the resources for mental health evaluation and services. In particular, the Agency of Corrections must explicitly create a plan for what types of medical personnel must be hired and additionally, how many, and what type of training should be conducted to realize the stipulations in the current *Prison Act*.

(6) Amending Article 63 of the *Prison Act* to read "prisons shall report to the Agency of Corrections for approval" and retract the prison's power to make a decision, allowing inmates with the need for medical parole to receive approval from the supervisory authority as soon as possible rather than wait until the inmate's condition worsens to the point of an emergency. The Agency of Corrections should also provide data on the number of denied applications for medical parole and their reasons for denial.

(7) Regarding the decision between escorted medical service or medical parole, the doctor's opinion should be given precedence while the freedom of the doctor to make an independent medical decision should be protected with great effort, freeing them from the influence of factors such as pressure from the correctional facility.
(8) The Agency of Corrections should serve as the bridge of communication between each correctional facility and the Pei-Teh Hospital and coordinate the flow of information between the two sides. In addition, the Pei-Teh Hospital should change its way of making a decision based on diagnosis from a single specialist and make a decision on the inmate comprehensively based on cross-specialty diagnosis.

Responding to paras. 99-102, 122-124 of the ICCPR State Report

Obstacles in rehabilitation of inmates

394. Facilitating social reintegration of Inmates is an important function that correctional agencies are expected to possess. When helping inmates to return to society, correctional agencies in Taiwan are currently facing several challenges:
(1) Lack of connection between penal labour and post-incarceration reintegration.
(2) Lack of prison psychologists/therapists and social workers in prison to offer personalised treatment.
(3) Open prison regime and temporary release programs sees little social support, resulting in a lack of interest among most correctional agencies.
(4) Lack of probation officers to support a smoother transition upon release.

Gap between prison labour and current social needs

395. Most prison labour requires little to no skills from inmates, making it difficult for them to acquire the skills needed in future rehabilitation. At present, most inmates work in low-skilled labour, such as folding paper bags and making paper lotus flowers. Although some vocational training programmes are available, including baking and long-term care, only a small number of inmates participate in those training sessions. At present, the *Prison Act* stipulates that the Agency of Corrections shall work with the Ministry of Labor to assist correctional agencies in developing work and vocational training programmes. It remains to be seen whether the inter-ministry cooperation will be able to improve the situation and develop work and vocational training programmes that meet both the inmates interests as well as social needs.

Insufficient workers to provide individualized treatment

396. Paragraph 101 of the ICCPR State Report stated that correctional agencies should design individualized treatment plans for each inmate, taking various factors into account, including their age, physical and mental state, education background and the

nature of the offence. However, paragraph 113 in the same report shows that there aren't enough rehabilitation workers in correctional agencies and those working are often overburdened, indicating that resources needed for the formulation of personalized treatment plans were yet to be allocated. In addition, "rehabilitation workers" in Taiwan often refer to "counselors", who are not necessarily qualified to be considered psychologists/therapists or social workers. Therefore, strictly speaking, they are not professionals who can provide appropriate treatment. In paragraph 160 of the State's response to the 2017 CO, it was stated that correctional agencies will offer support by assigning more psychologists/therapists and social workers to the agencies on a yearly basis. However, it was not clarified regarding how the plan will be carried out.

397. On the issue of lack of treatment professionals, the Agency of Corrections presented the Plan to Increase Clinical Psychologists and Social Workers on the Establishment of Correctional Agencies in 2015. However, the Directorate-General of Personnel and Administration, Executive Yuan believed that the plan was incomplete and recommended to defer. In 2017, the Executive Yuan convened a meeting to reach the conclusion that the Agency of Corrections shall outsource with a certain budget. However, since these treatment professionals were not full-time employees,[247] their labor rights were not properly protected, which led to an investigation by the Control Yuan.[248] The Control Yuan stated that when correctional agencies employ professional psychologists and social workers through "service contracting by labour procurement", their labour rights are not protected properly. This would affect their willingness to work long-term in the agencies, preventing them from understanding inmates' special needs and building a better professional relationship with the inmates. In addition, by contracting labour, the correctional agencies are not the employers, thus it can be difficult to clarify the responsibilities on employee management and professional treatment; it would also impair the service for inmates and, consequently, their rights. This case involves the establishment of a professional service system and can affect the counselling result of inmates in correctional agencies, making this a crucial matter.

Restricted practice of intermediate treatment in correctional agencies

398. When facilitating the inmates social reintegration, it's important to make use of intermediate treatment measures such as open prison and provide inmates with temporary release programs such as industrial training leave, educational release,

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[247] See Tracking Platform for the Progress of Judicial Reform: https://judicialreform.gov.tw/Resolutions/Form/?fn=58&sn=3-1&oid=15

[248] See the Control Yuan's Investigation Report No. 0046, 2020: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17244

work releases, etc. These incarcerated inmates are temporarily released from prison to re-adapt to social life with partial freedom, therefore, there will be risks of escape and recidivism which Taiwanese society has a very low tolerance of. Even though inmates who didn't achieve social reintegration with help, inmates released on parole or those released after finishing their sentences can also reoffend, those who escape or reoffend during intermediate treatments attract much more media attention. In the event of escape or recidivism, the employees of correctional agencies are expected to be held accountable. Back in 2017, Taiwan put in a great effort in allowing certain inmates to work outside of the prison unguarded. Two months after the initiative started, an incident where an inmate failed to report back to the prison on time sparked concern in society. The Control Yuan immediately initiated an investigation after the occurrence and issued corrective measures to the Agency of Corrections and relevant prisons.[249] Knowing that correctional agencies are the ones to be held accountable whenever something happens, it is only natural for them to avoid and limit intermediate treatments as much as possible.

Lack of probation officers

399. Probation officers are the primary enforcers in criminal justice supervision. They're responsible to help the inmates during the period of transition before admission, and to plan and arrange community treatment for inmates before their release. However, at present there's a serious shortage of probation officers, hence it's unrealistic to expect them to perform the aforementioned functions. According to the "Tracking Platform for the Progress of Judicial Reforms",[250] on average, a probation officer deals with 290 cases of various types each month, coupled with other administrative duties, this high number is unbearable as they are already overworked. According to the Ministry of Justice, a probation officer should work on only 150 cases each month. In this standard, the ideal number of probation officers is 373, highlighting a need for another 168 posts to be added to the current composition of 205 officers. However, only 6 posts have been added in 2020, which is far from the above-mentioned number.

400. We suggest:

(1) Develop prison labor and vocational training programmes that meet the inmates' career aspiration and interests as well as social needs, to enable them to find appropriate occupations after being released.

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[249] See the Control Yuan's Case of Corrective Measures No. 0008, 2017: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=134&s=5897

[250] See Tracking Platform for the Progress of Judicial Reform: https://judicialreform.gov.tw/Resolutions/Form/?fn=58&sn=3-1&oid=15

(2) There need to be more professionals who can offer personalised treatment in correctional agencies. It is also recommended to have these posts as permanent ones to facilitate long-term training.
(3) The State should further promote intermediate treatments. Employees of correctional agencies shouldn't be the ones to blame whenever an inmate escapes or reoffends. Instead, the State should regard such incidents as opportunities to improve corresponding mechanisms, so as to support the employees' effort in such treatments. In addition, the State should understand that the result of intermediate treatment should not be overlooked simply because someone escapes or reoffends. Instead, the judgement should be made by comparing the social reintegration process and the recidivism rate between inmates who received intermediate treatments and those who didn't.
(4) More probation officers should be recruited. The number of administrative duties unrelated to probation work assigned to the officers should also be reduced.
(5) Training on social interaction and interpreting social signals are essential to help inmates return to the workplace and society.

External inspection teams (Responding to paras. 89-92, 107 of the ICCPR State Report)

401. As stated in the State report, the Prison Act was substantially amended in December 2019 and officially implemented on July 15th, 2020. In addition to the Covenants, international human rights conventions, and legislatures of other state parties, the most important reference this extensive amendment had made is to the United Nations Standard Minimum Rules for the Treatment of Prisoners (“the Mandela Rules”) which was substantially revised in 2015.
Among the said amendments of the act, the most important advancements include reasonable accommodations for prisoners with disabilities and the establishment of independent external inspection teams.
402. Although the *Regulations for Implementing the External Inspection Team of the Prison and the Detention Center* specified the formulation of a curated pool of qualified candidates for the team and stipulated restrictions and avoidance measures in the qualification standards for the members of said team, the candidates for the external inspection teams were still mainly selected by the prisons themselves. Additionally, the fact that many administrative affairs of the teams were dependent on state agencies had made it questionable as to whether the teams could indeed operate independently and substantially perform their supervisory function, and will it end up being a band of cohorts of the prisons, or will it suffer passive boycotting by the prisons for taking their duties “too seriously”. As the competent authorities, the Agency of Corrections and the Ministry of Justice should undertake their duty to strictly screen candidates proposed by individual prisons. Furthermore, although external inspection teams can

draw up inspection plans on their own to help solve specific problems in individual prisons, a comprehensive plan is still lacking.

403. We suggest:

(1) The Ministry of Justice and the Agency of Corrections shall strictly screen candidates proposed by each individual prison.
In addition, it is necessary for the Ministry of Justice to provide training programs and experience exchange platforms for members of inspection teams to build their capabilities and to improve the quality of inspections.

(2) Still, the Ministry of Justice and the Agency of Corrections shall formulate overall objectives and strategic plans for individual inspection teams to adhere to, for the teams to collectively identify structural factors of human rights violations in prisons, propose systematic solutions, and recommendations.

(3) We urge the Legislative Yuan to promptly ratify the *Act to Implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Optional Protocol on National Preventive Mechanisms*, in order to establish an authentic independent external monitoring and torture prevention mechanism in pursuance of preventing torture and other cruel, inhuman, and degrading treatment or punishment from occurring in the prison.

Prisoners with disabilities

The state failed to include data regarding prisoners with disabilities in its statistics

404. For every month, the Agency of Corrections updates the statistics of detainees and publishes a *Monthly Statistics On Judicial Affairs*. The statistics can also be accessed on the website of the Agency of Corrections.[251] However, in the said statistics report, there is no data regarding prisoners with disabilities. The latest statistical data can only be found in "Double Confinement", a book published by the Control Yuan. As of April 30th, 2020, there are 2,592 persons with disabilities confined in correctional facilities nationally,[252] accounting for about 5% of the entire population of incarcerated people, 54,752 in total.[253]
The statistical data the Control Yuan obtained was acquired from the Ministry of Justice with the request of members of the Control Yuan who were exercising their

[251] Statistics section of the website of Ministry of Justice: https://www.mjac.moj.gov.tw/4786/4923/Normalnodelist

[252] Double Confinement - Investigation report on prisoners with disabilities and the case of Green Island solitary confinement, pp20, Chart 1. Published by Control Yuan.

[253] See Monthly Statistics on Judicial Affairs, April 2020, Ministry of Justice. :http://www.rjsd.moj.gov.tw/RJSDWEB/book/Book_Detail.aspx?book_id=388

power of investigation. Ordinarily, there is no statistical data collection on the number of prisoners with disabilities.

405. It is clearly stipulated in article 31 of the Convention on the Rights of Persons with Disabilities that the state bears the obligation to compile statistical data, in paragraph 77 of the Concluding Observations of the initial report of Taiwan on the CRPD,[254] the international review committee also recommended the State to collect information regarding persons with disabilities in a systematic manner. The state had not only failed to update its statistics regarding prisoners with disabilities on a monthly basis but when conducting surveys, the State had chosen the definition in article 5 of the *People with Disabilities Rights Protection Act* as the basis of calculation.[255] That is, the State only counted those who had obtained a disability identification before entering places of confinement. For impairments that were acquired after entering places of confinement, the state did not provide any means of identification in statistical reports. Thus, the statistical data the Ministry of Justice provided may not be accurate. Furthermore, in accordance with the recommendations in paragraph 45 of the Concluding Observations of the initial report of Taiwan on the CRPD, the state shall allocate appropriate resources to provide reasonable accommodations. Given that the Agency of Corrections is unable to monitor the changes in the population of prisoners with disabilities, it is possible for the agency to be unable to provide reasonable accommodations to prisoners with disabilities with insufficient resources.

The lack of accessible spaces

406. Paragraphs 17 to 18 of *Guidelines on the Right to Liberty and Security of Persons with Disability* had stipulated that state parties shall ensure that places of detention can meet the accessibility standards and provide humane living conditions.[256] In paragraph 33 of the Concluding Observations of the initial report of Taiwan on the CRPD, it was also recommended for the state to draft a comprehensive action plan for the implementation of uniform accessibility across private and public

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254 Concluding Observations of the initial report of the Republic of China (Taiwan) on the Convention on the Rights of Persons with Disabilities (CRPD) adopted by the International Review Committee (IRC) on 3 November 2017, See: https://covenantswatch.org.tw/wp-content/uploads/2018/12/2017-CRPD-CORs_EN.pdf

255 People with Disabilities Rights Protection Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050046

256 CRPD, Guidelines on the right to liberty and security of persons with disabilities, https://covenantswatch.org.tw/wp-content/uploads/2019/12/A7255-Annex.pdf

environments.[257] However, as of 2019, two reports from the Control Yuan - the 2019 Corrective Measure No. 0007 and the 2019 investigation report No. 0073 - had indicated that places of detention in Taiwan are not only outdated but also lack accessible environments and facilities.[258] Prisoners with limited mobility and with sensory impairment can only move around in patient wards. It is clear that the State has not improved the accessibility of spaces in places of detention since the initial review of the CRPD in 2017. Furthermore, in paragraph 95 of the ICCPR State Report, the state did not propose any programs for construction or improvement of accessibility of the environment and facilities. In paragraph 107 of the same report, the state had only mentioned that places of detention would set up basic accessible facilities according to the situations of detention and did not mention whether special equipment or spaces would be provided accordingly to prisoners with different types of disability, which may lead to inadequate guarantees.

407. We suggest:

(1) The Agency of Corrections should include data of prisoners with disabilities to its website and Monthly Statistics On Judicial Affairs. The agency should also regularly review whether the resources allocated to prisoners with disabilities were adjusted in accordance to their population, type of disability, and the need of reasonable accommodations.

(2) *People with Disabilities Rights Protection Act* embodied a relatively restrictive definition of persons with disabilities. It is recommended that the Agency of Corrections refer to the CRPD's definition of persons with disabilities when compiling statistics on the populations of prisoners with disabilities to adhere to the Convention.

(3) When the state drafts a comprehensive action plan for the implementation of uniform accessibility across private and public environments, places of detention shall also be incorporated.

The state shall provide a sufficient budget to assist correctional agencies to improve the accessibility of its environment and facilities and to eradicate the pattern wherein inmates have been tasked to take care of other inmates.

(4) The Agency of Corrections shall review the accessibility of the environment and facilities in each of the existing and prospective prisons, arrange facilities, spaces, and

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[257] Concluding Observations of the initial report of the Republic of China (Taiwan) on the Convention on the Rights of Persons with Disabilities (CRPD) adopted by the International Review Committee (IRC) on 3 November 2017, See: https://covenantswatch.org.tw/wp-content/uploads/2018/12/2017-CRPD-CORs_EN.pdf

[258] Control Yuan 2019 Corrective Measure No. 0007, See: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6885 ; Control Yuan 2019 Investigation Report No. 0073, See: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6887

individually accommodated treatment programs respectively to prisoners with varying types of disabilities.

(5) Psychological or psychiatric evaluation shall be incorporated in the inspection procedure for new inmates. Follow-up evaluations shall also be carried out periodically (such as 3 years, 5 years, 10 years, etc.), so as to provide prompt assistance and treatment plans for prisoners with psychosocial disabilities or intellectual disabilities. Evaluations will also be incorporated so as to avoid adverse mental conditions before entering prison or conditions that are caused by the environment after entering the prison.

Prisoners living with HIV/AIDS

The rights of prisoners living with HIV/AIDS have not been protected

408. According to article 15, paragraph 1, subparagraph 5 of the *HIV Infection Control and Patient Rights Protection Act*, it is stipulated that the central competent authority (the Ministry of Health and Welfare) deemed detained persons as “necessary for testing”, and in accordance with article 13 of the *Prison Act,* a new inmate should undergo a health evaluation when entering prison (including testing for HIV/AIDS). In practice, when new inmates were entering a prison, they encountered loud, verbal inquiries from the central station, asking the prisoners to state whether they had been infected by HIV. This habitual procedure has obviously violated the privacy of persons living with HIV/AIDS.

409. Isolative measures of prisons unduly expose the identity of persons living with HIV/AIDS: Acute HCV, HBV, and HIV are all classified as "third-class notifiable infectious diseases" in accordance with the law. However, inmates infected with Hepatitis B and Hepatitis C do not receive distinctive treatments in prisons, in contrast, prisoners living with HIV/AIDS are quarantined. At present, Taiwanese prisons isolate prisoners living with HIV/AIDS in different spaces. For example, Taoyuan Prison allocated exclusive cells in designated wards and Keelung Prison outlined exclusive cells. Such isolation is equivalent to directly exposing the identity of the person living with HIV/AIDS, causing hostility from other prisoners who were tasked with being their service personnel. Communally used by all prisoners, the singular employment channel can potentially expose the identity of persons living with HIV/AIDS upon their return to society.

Prisoners living with HIV/AIDS experience disparate treatments.

410. Although prisoners living with HIV/AIDS can serve as service personnel for the wards, they are not allowed to cook in the kitchen site, deliver goods for the commissary, clean with the cleaning squad, or operate with the maintenance squad. Prisoners living with HIV/AIDS also may not participate in desk jobs of the central

station, the Edification or Education Section, the Investigation Section, or the Roster Management Section. At present, there are generally no restrictions on the occupations of persons living with HIV/AIDS in Taiwanese society. For example, limitations for persons living with HIV/AIDS in participating in examinations for the catering industry, the beauty industry, public official positions, state-owned enterprises, have all been expunged. HIV/AIDS testing in employee physical evaluations has also been outlawed. However, in the practices of prisons, prisoners living with HIV are still subject to multiple legal restrictions upon engaging in activities such as labor work, daytime-guarded out-of-prison labor, and daytime-unguarded out-of-prison labor.

411. Prisoners living with HIV/AIDS have no access to workshops, chairs, or tables because of prison overcrowding and quarantine policies. For example, prisoners living with HIV/AIDS in Taoyuan Prison can only work for money in their respective wards by huddling together on the floor to make religious worshipping supplies and pack joss paper. The time limit for such labor is two hours a day, which translates to 60 NTD a month, less than 1000 NTD a year. Unmotivated by such low pay, many prisoners living with HIV/AIDS prefer to rest instead.
412. In addition, it is common for prisoners living with HIV/AIDS to have to wait for all other inmates to complete consultations before they can access dental outpatient clinical services in prisons. The result of periodic medical examinations for HIV/AIDS patients shall be transferred to the examined person. However, absurdly, prisoners living with HIV/AIDS might not be able to obtain said information. The correctional courses that prisons provide for prisoners living with HIV/AIDS are also relatively monotonous. Some vocational training courses even barred the participation of prisoners living with HIV/AIDS, which subsequently caused adverse effects on employment conditions upon reintegration to society and the rights of prisoners living with HIV/AIDS.
413. We recommend the state to adhere to the instructions of **HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings** jointly published by UNDOC, WHO, and UNAIDS.[259]

(1) Discard article 15 of the HIV Infection Control and Patient Rights Protection Act in order to replace mandatory HIV/AIDS inspections for prisoners with consenting inspections. Upon detection, the state shall not make remarks of any form on prisoners living with HIV/AIDS, nor impose quarantine measures.
(2) Legislate protective statutes for equality in employment, arrangement of correctional courses, access to consultation, medical services, and the right to health for prisoners

[259] United Nations Office On Drugs And Crime, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings, 2006, Co-published with the World Health Organization and the Joint United Nations Programme on HIV/AIDS. https://www.who.int/hiv/pub/idu/framework_prisons.pdf?ua=1

living with HIV/AIDS. Statutes such as granting prisoners living with HIV/AIDS equal labor opportunities and conditions, the right to an education, vocational training course, and introduce comprehensive infection prevention and control measures.

Rehabilitative Measures

Custody and protection might lead to indefinite deprivation of freedom of persons with disabilities

414. Custody and protection refer to the compulsory treatment stipulated in article 87 of the *Criminal Code*. Should a judge deems it probable for a previously detained person with psychosocial disorders, intellectual disorders, or mental disabilities to recommit or encroach public safety, an enforced transfer to mental health institutions can be imposed after the completion of execution of penalty or pardon.[260] However, in Paragraph 20 of *Guidelines on the Right to Liberty and Security of Persons with Disability*, the Committee clearly recommends the abolition of custody and protection for persons sentenced to an exemption from liability and who are incapable of criminal responsibility due to "mental disorder".[261] However, due to the killing of a railway police officer in July 2019, [262] the Ministry of Justice proposed to amend the Code to extend the five-year limitation of custody and protection period,[263] which may lead to the indefinite deprivation of freedom of persons with disabilities and a lack of protection of due process.
415. When the judge imposes custody and protection, the prosecutor will carry out enforcement actions in accordance with the *Precautions for the Procuratorate upon Implementing Custody and Protection on the basis of Psychosocial Disabilities, Intellectual Disabilities or Other Mental Disorders* (adopted in March 2020).[264] However, according to the Control Yuan 2019 investigation report No. 0019, resulted from the Ministry of

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260 Article 87, Criminal Code: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001

261 CRPD, Guidelines on the right to liberty and security of persons with disabilities, https://covenantswatch.org.tw/wp-content/uploads/2019/12/A7255-Annex.pdf

262 Focus Taiwan, Railway police officer murdered by passenger in Chiayi, 2019/07/04, https://focustaiwan.tw/society/201907040004

263 "[Effect of the Railway Police Killing Case] The Ministry of Justice to Extend the Five-year Limitation of Custody and Protection Period. Tsai Ching-hsiang (Minister of Justice): Unlimited Times of Extensions for Three Years, If Necessary" from Upmedia. May 6th, 2020 https://www.upmedia.mg/news_info.php?SerialNo=86794

264 Precautions for the Procuratorate upon Implementing Custody and Protection on the basis of Psychosocial Disabilities, Intellectual Disabilities or Other Mental Disorders, amended March 2020: http://www.rootlaw.com.tw/Lawarticle.aspx?LawID=A040090041009200-1090317

Justice's insufficient budgeting on the execution of custody and protection, the emphasis of a single treatment model of psychiatric care and the lack of an intermediary and a diverse, community-centered model of treatment,[265] custody and protection is not essentially helpful to the societal reintegration of former convicts with disabilities. Point 9 of said Precautions had also stated that, should the enforcement agency consider it as necessary, the extension of custody and protection can be made per request to the court, leading to many cases of extension for former convicts with disabilities.[266]

Post-imprisonment treatment resulted in long term confinement

416. According to article 91-1 of the *Criminal Code*,[267] there is no maximum time limit to compulsory treatment for convicts charged with sexual assault and said treatments can be extended indefinitely. In practice, there are three hurdles in compulsory treatment:

(1) "Treatment in prison" for convicts charged with sexual assault currently serving sentences.

(2) "Community treatment" for those who don't need to serve a sentence, namely those who have completed their sentences, released on parole, on probation, or received deferred prosecution: Report to professional institutions according to the scheduled date, participate in group courses led by psychologists, and continue treatment until the risk of reoffending is reduced.

(3) If the risk of recidivism is high or an offender hasn't passed treatment for 4 consecutive years, the said offender will be sent to the only institution currently dedicated to isolation and treatment of high-risk sexual offenders, the "post-imprisonment treatment" section of the Peide Hospital attached to Taichung Prison.

417. As for the "post-imprisonment treatment" ward, the environment of Peide Hospital attached to Taichung Prison is equivalent to a prison, which is more prone to deteriorate the conditions of persons with disabilities, leading to their failure in evaluations and inability to be discharged. The situation has led to the fact that a majority of persons detained in Peide Hospital currently suffer from psychosocial disabilities, intellectual disabilities or mental disorders. However, what these persons with disabilities need is a resettlement organization because of the "neighboring effect" of various places, a proper location for a settlement organization has not been

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[265] Control Yuan 2019 Investigation Report No. 0019, See: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=6478

[266] Point 9 of Precautions for the Procuratorate upon Implementing Custody and Protection on the basis of Psychosocial Disabilities, Intellectual Disabilities or Other Mental Disorders. http://www.rootlaw.com.tw/Lawarticle.aspx?LawID=A040090041009200-1090317

[267] Article 91-1, Criminal Code: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001

found. As a result, persons with disabilities can only stay in Peide Hospital, equivalent to long-term or indefinite imprisonment, depriving persons with disabilities of their freedom.

418. We suggest:

(1) The Ministry of Justice shall follow the recommendation of the CRPD Committee, and withdraw the proposal on extending the limitation of time in custody and protection.

(2) The Ministry of Justice and the Ministry of Health and Welfare should cooperate in the development of relevant custody measures, to provide intermediary and diverse, community-centered models of societal reintegration.

(3) The Ministry of Justice should cooperate with the Ministry of Health and Welfare to improve the environment of the Peide Hospital and attempt to find a suitable resettlement organization to introduce those who were confined in Peide Hospital to receive proper treatment for sexual offences as well as to help their smooth reintegration to society.

(4) At present, termination of treatment is based on the matter of the "significant reduction of risk of reoffending". However, given that clinical diagnoses do not regard sexual offences as a disease, nor is "risk of reoffending" a medical criterion, it is contentious to request medical professionals to assess the prognoses and risk of reoffending. Furthermore, the academic world has presented a wide range of standpoints and understandings on the prospect of so called "rehabilitation" measures, hence, various bases for judgment shall be considered, rather than fixate on the single standard of "rehabilitation".

ICCPR art. 14

COR Point 68

419. Please refer to CO Point 62 (Paragraphs 365-368 of this report.)

COR Point 69

Responding to paras. 199-200 of the State's Response to 2017 COR

420. In accordance with Subparagraph 1 to 5 in Paragraph 4 of Article 5 and Paragraph 2 of Article 15 of the *Legal Aid Act*, the application for legal aid made by people who are unable to receive proper legal protections shall not be denied for the reason that the case is manifestly meritless. However, as prescribed in Article 8 of the *Regulations on the Implementation Process of Legal Aid by the Legal Aid Foundation*, except for cases where the death penalty or life sentence is pronounced, during the appeal process of the third trail, the application for legal aid can still be denied with such reason,

resulting in a scenario where defendants of said cases may not be able to receive assistance from legal aid lawyers while appealing to the court of the third instance.

421. Mandatory representation in court by an attorney refers to the intervention of public power to protect underprivileged people's right of defense in litigation in line with the right to counsel. However, in the case where legal representation in court by an attorney is mandatory, the defendant does not have a lawyer who can assist him/her in setting forth supplementary reasons for the appeal to the second instance appellate courts, creating a lapse period of mandatory representation. Also, this could easily result in the defendant's appeal being rejected directly by the second instance appellate court in accordance with the former part of Article 367 of the *Code of Criminal Procedure* (refer to the Resolutions of the 12th Criminal Divisions Conference of the Supreme Court in 2017) since the lack of supplementary reasons are consequent to the absence of assistance from the defender. Currently, the system of mandatory representation in court by an attorney has not applied to the third instance, which violates Article 14, Paragraph 5 of the ICCPR which promulgates everyone convicted of a crime to have the right to his conviction and sentence being reviewed by a higher tribunal according to the law, as well as the purpose of implementing the mandatory representation system to protect the underprivileged people's right of defense.
422. Under Article 376 of the *Code of Criminal Procedure* amended on November 16th, 2017, "Certain criminal cases shall not be appealed to the third instance court after the second instance judgment is issued. However, the defendant may file for an appeal on cases where the judgment of the first instance court was not-guilty, exempt-from-prosecution, dismissal-from-prosecution, or jurisdictional error, and is revoked by the second instance court and a guilty ruling is pronounced." Though, the amended article went into effect on November 18th, 2017, meaning that cases before November 17th, 2017 still follow the previous provision and shall not be appealed to the third instance court. According to the statistics of the Judicial Yuan, there are about 300 to 400 cases of such type per year, but the number of criminal cases handled by the Supreme Court in a year has decreased from 9177 in 2017 to 6637 in 2019. With the number of judges in the Supreme Court remaining around 70. Apparently, the Supreme Court is capable of handling cases as such.
423. We suggest:

(1) Amending the stipulations of the *Code of Criminal Procedure*. When the defendant files an appeal without the assistance of a retained or appointed attorney, the second-instance court shall appoint an attorney for the defendant to help submit reasons for the appeal. In addition, relevant provisions are suggested to be amended to allow the mandatory representation system to apply to the third instance.
(2) We suggest that cases before November 17th, 2017, should be applied to the amended Article 376 of the *Code of Criminal Procedure*, granting the convicted defendant the right to appeal to the higher court to review the ruling by the law.

ICCPR art. 17

COR Point 71

Communication surveillance by the intelligence agencies strenuous to supervise (Responding to paras. 203-204 of the State's Response to 2017 COR)

424. According to art. 7 paragraph 2 and art. 11-1 paragraph 8 of the *Communication Security and Surveillance Act* (hereinafter "the *Act*"),[268] intelligence agencies are only required to file for a court approval when the person under communication surveillance has a registered permanent address within the country. When necessary, intelligence agencies may directly obtain communication records and communication user information from telecommunication service providers without the need for court approval. The *Act* stipulates that the enforcement authority for communications surveillance shall periodically submit reports to the Legislative Yuan with information including number of cases, number of surveilled lines, and number of approved/denied cases regarding communications surveillance in general criminal investigations. However, article 16-1 paragraph 2 of the *Act* does not require intelligence agencies to regularly publicize said statistical data, article 10 of the *Act* also states that the data obtained from surveillance operations can be used for other cases, making it strenuous to supervise cases of intrusion in privacy executed by intelligence agencies.

Insufficient protective measures against communication surveillance (Responding to paras. 183-184, 186 of the ICCPR State Report)

425. According to article 3 and article 3-1 of the *Act*, communications surveillance, including monitoring of communications, acquiring communication records and user information, can only be executed with an interception warrant and an access warrant. Depending on the type of cases, the channels for obtaining said warrants can be divided into categories of "file an application to the court for issuance", "prosecutor access (communications record) ex officio", and "judicial police access with the approval of prosecutor", however given the insufficient protective measures, communications surveillance might be abused.
426. Prosecutors have promiscuous standards about issuing access warrants: For instance, as listed in the article 11-1 paragraph 3 of the *Act*, when concerning major offences

[268]The Communication Security and Surveillance Act:
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=K0060044

with minimum term imprisonment of 10 years and offences concerning narcotics or fraud, prosecutors can issue warrants directly. In practice, most communications surveillance operations were initiated by prosecutors themselves, rather than judges. According to 2019 statistics on legal affairs,[269] the courts approved 4,462 operations and partially approved 105 operations; while the aggregated amount of prosecutors' approval, partial approval and access ex officio was 131,709 operations, namely, among all the cases of retrieval in 2019, only 3.3% were approved by the court, while the rest were approved by the prosecutor or accessed ex officio. Moreover, in 2019, prosecutors approved and issued warrants to 98.27% of requests from judicial police, indicating their promiscuous standard for issuing access warrants.

427. Judicial police obtained information of communication users on their own: According to article 11-1 of the *Act*, the prosecutors' accessing to communication records and user information was categorically sensitive, some of the requests must be sanctioned by the court while others can be accessed ex officio. The same article stipulates that judicial police's access to communication records are also subject to the same restrictions and should be warranted per request to the prosecutor, but it does not stipulate how exactly the judicial police should obtain information of communication users. However, the legislative purpose of the act can be interpreted as a statutory restriction to limit police and prosecutors' access to communication surveillance, communication records and information of users. Furthermore, according to the *Code of Criminal Procedure*, judicial police are under the command of prosecutors, making the scenario where judicial police possess greater authority than prosecutors absurd. The legislators' failure to regulate judicial police's access to communication user information in the act does not signify that the judicial police are not subjected to the same statutory restraint. In practice, however, frequent occurrences persist where judicial police send requests without the approval of prosecutors to telecommunication service providers to obtain information of communication users; the National Police Agency has yet to disclose relevant statistical data.[270]

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[269] 2019 Annual Report on the number of access warrant applications approved by the prosecutors' offices and courts http://www.rjsd.moj.gov.tw/RJSDWEB/book/Book_File.ashx?chapter_id=408_42_1

[270] Initiated by civil organizations, Taiwan Internet Transparency Report applied for statistics of "surveillance agencies' request for internet personal information" and was subsequently rejected. With the assistance of legislators, some statistics were obtained, and the occurrence of police requests to communication service providers for information of users was known. Since the request is not based on the *Act*, there is no mechanism for disclosure of statistics.

428. Insufficient statutory regulation on data retrieval from internet service providers:[271] At present, the act only regulates data retrieval from telecommunication or postal service providers, while lapsing on regulating enforcement authorities' retrieval from internet service providers.[272] Hence, multiple enforcement authorities habitually request user information from service providers of shopping websites, social networking sites, and communication software without the limitation of court authorization and procedural notification to the concerned parties. Furthermore, the statistical provision of the act also does not incorporate cases of retrieval from internet service providers, rendering it impossible to conceptualize the total sum of incidents of retrieval and making it challenging for the general public to be aware regarding this form of privacy violation. Initiated by human rights organizations, The Taiwan Internet Transparency Report had periodically applied for information disclosure every two years since its commencement in 2014. The National Police Agency of the Ministry of the Interior however avoided its obligation in being supervised by the public and protect privacy, by refusing to disclose statistics on the grounds of hindering criminal investigations.[273]
429. Incomplete notifying mechanism for the person under surveillance: article 15 of the Act stipulates that the person under surveillance shall be notified immediately upon the completion of surveillance of communications, the completeness of its practical implementation, however, is questionable. The Act also does not regulate the need to notify the person whose communications record and user information was accessed. As indicated in the 2019 Communications Surveillance Report of the Judicial Yuan, 738 cases (24.0%) previously under surveillance were notified within two months of completion of surveillance, 977 cases (31.8%) were notified after 2-6 months of completion, 516 cases (16.8%) were notified after 6-12 months, and 842 cases (27.4%)

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271 See the transcript of the public hearing for relevant discussion: https://tahr.sayit.mysociety.org/%E5%85%AC%E8%81%BD%E6%9C%83-2/20180903-%E4%BF%9D%E9%9A%9C%E6%95%B8%E4%BD%8D%E4%BA%BA%E6%AC%8A%E5%9C%8B%E5%AE%B6%E7%9B%A3%E6%8E%A7%E7%9A%84%E9%80%8F%E6%98%8E%E6%A9%9F%E5%88%B6%E5%85%AC%E8%81%BD%E6%9C%83%E9%80%90%E5%AD%97%E8%A8%98%E9%8C%84

272 Except for retrievals based on the act, other agencies do not regularly disclose relevant statistics on requests for information of users from internet service providers and active application for information disclosure from the civil society is needed. An incomplete list of the above-mentioned agencies included the Ministry of Economic Affairs, the Ministry of Health and Welfare, the Ministry of Finance, the Ministry of Justice, and the Ministry of the Interior (National Police Agency and National Immigration Agency). Among the agencies, the National Police Agency of Ministry of the Interior and the Ministry of Justice have refused to provide statistics on the grounds of obstructing criminal investigations and lack of statistics, and assistance from legislators is required to obtain such statistics.

273 See Taiwan Internet Transparency Report: https://www.tahr.org.tw/issues/transparency-report

were notified after a year of completion of surveillance.[274] The provision of notifying the previously under surveillance individuals upon completion may not be thoroughly implemented, thus infringes the right to privacy of the public.

430. We suggest:

(1) Amend article 7 of the *Communication Security and Surveillance Act* to stipulate the necessity of a court warrant when conducting surveillance on persons without a registered permanent address within the country.
Amend article 11-1 of the Communication Security and Surveillance Act to specify the due process for judicial police's obtaining of information of communication users.

(2) The Ministry of Justice and the National Police Agency of the Ministry of the Interior shall establish a statistical mechanism and periodically publicize the findings regarding the collection and retrieval of private information of users from internet service providers. The Legislative Yuan shall also initiate the formulation of relevant statutes to respond to the new methods of telecommunication surveillance.

(3) The legislature, the enforcement agency of the *Communication Security and Surveillance Act* and its supervisory agency shall evaluate the circumstances of practical implementation and amend the provisions insufficient at ensuring protection against surveillance.

COR Point 72

Responding to paras. 205-206 of the State's Response to 2017 COR

431. The General Comment No. 22 of the ICESCR had stated that lesbians, gays, bisexuals, transgender and intersex persons, as well as persons with disabilities, suffer multiple and intersecting instances of discrimination, which exacerbates their exclusion in law and practices. Therefore, they were further restricted to the right to fully realize sexual and reproductive health.

432. Quoting the preliminary version of State's response to the 2017 CO, "The Ministry of the Interior... had invited relevant agencies, NGOs, experts and scholars to conduct research and discussions, and came to the conclusion that matters involved with the rights and interests of transgender people, shall be prescribed by law." In this regard, we believe that if there is a legal research plan, it is necessary to communicate and negotiate with the transgender community or transgender organizations. The State should not be detached from the transgender community while making laws that affect the said community.

433. We suggest:

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[274] "Overview of 2019 communication surveillance operations by the court" in 2019 Communications Surveillance Statistics of the Judicial Yuan: https://www.judicial.gov.tw/tw/dl-89795-f168014ce8eb4b9da4f5f345098abd4f.html

(1) At present, Taiwan still regards gender reassignment surgery and psychiatric assessment as the mandatory threshold for changing the legal gender, making all transgender people who want to change their legal gender to have to pay huge costs. We believe that gender reassignment surgery and psychiatric assessments should not be the necessary threshold. Therefore, it is recommended to enable transgender people to change their legal gender registration in accordance with their own identity and wishes.

ICCPR art. 21

COR Point 75

Responding to para. 212 of State's Response to 2017 COR, and paras. 211-212 of the ICCPR State Report

434. In 2016, a draft bill of the *Assembly and Parade Protection Act* passed a first reading in the Internal Administration Committee of the Legislative Yuan. The draft bill fell short in reforming many of the *Assembly and Parade Act* clauses that hold back civil society development. These clauses include articles about restricted areas (art. 6) and law enforcement's coercive measures (art. 25) in the *Assembly and Parade Act*.[275] Moreover, the draft bill was discarded due to Article 13 of the *Act Governing the Exercise of Legislative Power* that bars carrying draft bills over to a subsequent session. This proposed amendment made the most progress since the enactment of the *Assembly and Parade Act*. However, the failure of this attempted reform means that the current *Assembly and Parade Act* is almost identical to the 1988 version that was written soon after martial law was lifted.
435. The Justice Interpretation No. 718 that was referred to in the State Report only applies to special circumstances such as "urgent" or "occasional" assemblies. In the past four years, systemic problems have persisted: protests are typically hotspots for confrontations; and plentiful limitations remain on people's rights to assemble and march.
436. Advanced permitting affects people's rights to assemble and march. In 2019, Taiwan Association for Human Rights applied for a permit to assemble and march for Hongkongese Taiwanese communities in support of anti-extradition protests in Hong Kong. The Association chose to hold the event in the plaza of the Kaohsiung Train Station. Associated railway agencies shirked their responsibilities. As a result, the train station refused to issue any approval for the use of its property, claiming that

[275] Civil Media @ Taiwan. What is controversial about the Assembly and Parade Act reform? https://www.civilmedia.tw/archives/51426

this event was a political activity, citing administrative procedures established by the Taiwan Railways Administration of the Ministry of Transportation and Communications.[276] (art. 6, Paragraph 8 of the Ministry of Transportation and Communications Taiwan Railways Administration Property Short-Term Use Policy) The current law still requires advanced permit applications to be reviewed by police departments. A police station denied the Taiwan Association for Human Rights' assembly permit application because the application lacked property use approval as required by Article 9 of the Assembly and Parade Act.[277]

437. Chaotic enforcement by police agencies due to a lack of legal standards:

(1) Current law pertinent to policing lacks authorization for law enforcement standards of conduct. As a result, police officers largely rely on administrative rules and standard operating procedures set forth internally by administrative agencies and even on supervisors' orders. Affected by structural problems rooted in working conditions and institutional culture, the police system leads to individual police officers or commanders acting out of control on the job. Moreover, it is difficult to ensure accountability.

(2) One prominent example is the series of actions protesting the government's forceful rollbacks of the Labor Law in late December 2017. During that time, among all the protests, five legislators from an opposition minority party, the New Power Party, participated in a peaceful sit-in protest in front of the Presidential Office Building, which is listed as a restricted area according to Article 6 of the Assembly and Parade Act. Despite their status as legislators, they were not spared from forced dispersal by the police. Moreover, they were dumped in the outskirts of Taipei. This tactic has been in place for years.[278] Its legal framework is based on Article 28 of the Police Power Exercise Act which is exceedingly vague and lacks detailed standards for exercising this power.

(3) In the following days, a large number of people engaged in guerrilla-like marches in the streets of downtown Taipei City for the same demands. After midnight, police gradually surrounded the crowds at the Taipei Main Station and blocked people from leaving. Then a commander ordered everyone to be arrested without making clear any justification. Participants, along with several attorneys who were attempting to

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[276] Paragraph 8, Article 6 of Operation Instructions for Lending Venues of Taiwan Railways Administration, Ministry of Transportation and Communications

[277] "Our Right to Assembly and Demonstration Encountered Obstacles: Application for Right-of-way from TAHR Rejected" from Taiwan Association for Human Rights https://www.tahr.org.tw/news/2491?fbclid=IwAR1JckC5Yjkpa-9neQ0jLmImKYBqOabH3MWEBoUUTsprOTQei9TtCU3eLZQ

[278] In order to disperse a crowd, police officers would load participants on police vehicles, drive participants somewhere far from the protest scene, and then let participants go.

provide legal aid on the spot, were zip-tied, taken away, and dropped off in different places. This infringed on people's rights and prevented the lawyers from performing their duties.

(4) The Taiwan Association for Human Rights wrote letters to illustrate the outrageous police conduct to Freedom House, international experts who have visited Taiwan for ICCPR and ICESCR review, and United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Additionally, the Control Yuan issued an investigation report about this incident. However, then Mayor of Taipei City, Ko Wen-je, to whom the city police reports, questioned the accuracy of this report during a Taipei City Council hearing

438. The State Report mentioned that an individual can file for state compensation when a public sector worker willfully or mistakenly infringes upon the rights of peaceful protestors or unarmed rally participants. However, aside from the high bar for the public to pursue legal actions against the police, the above-mentioned remarks ignored the fact that according to Article 11 of the Statute Governing Use of Arms by the Police, if in an assembly, one's rights were impaired by police officers using standard police equipment, the individual can at best request solatium or compensation whose amount is capped, not state compensation. The definition for police equipment in the Statute Governing Use of Arms by the Police does not clearly correlate to tools that are often resorted to in practice, such as zip ties. Consequently, it is difficult for the public to pursue the question of whether it is illegal for the police to use certain tools in the gray area.

439. Currently in practice, the court has been taking a stricter approach to the application of the Assembly and Parade Act. Although guilty verdicts based on Article 29 and others of the act have decreased, the previous two CORs have clearly stated that the Assembly and Parade Act should not impose any penalty on protestors. Also, various laws may be applied to a protest or assembly case. For example, a protestor can be charged for obstructing an officer, insulting a governmental agency, and public order offenses under the criminal law. Although the administrative law does not impose penalties as serious as those under the criminal law, the administrative law can still mount pressure on protestors due to accumulated fines and cumbersome procedures. The following case illustrates a real-life situation that people face in protests:

(1) Panai Kusui and Istanda Husungan Nabu, members of Indigenous Justice Classroom, an aboriginal people's rights advocate, began their long-term protest in 2017. They have been forced to move from Ketagalan Boulevard, to MRT NTU Hospital Station, and then to their current spot, the 228 Peace Memorial Park. These two protestors have encountered law enforcement at different spots. They were dispersed and fined, and their belongings removed. Thus far, the two of them have received more than 20 notices and five tickets with fines ranging from NTD 1,200 to 3,600 per ticket. Law enforcement has cited regulations including Article 82, Paragraph 1, Subpagraph 1 of

the Road Traffic Management and Penalty Act; Article 50, Paragraph 10 of the Mass Transportation Act; and Articles 13 and 17 of the Taipei City Park Management Ordinance. Among all, the Taipei City Park Management Ordinance is such a low-ranked source of law that contains regulations set forth by a local council for municipal affairs. Although the two individuals won an administrative lawsuit at a court of first instance in 2020, the Taipei City Park Office ignored the judgement which determined that the above-mentioned municipal ordinance may be unconstitutional and appealed this judgement.

(2) Furthermore, the document entitled *Prohibited Activities in National Parks* limits the freedom of speech. Please refer to paragraph 520 of this report.

(3) The above-mentioned *Taipei City Park Management Ordinance* and *Prohibited Activities in National Parks* are low-ranked sources of law that can be unilaterally amended by an administrative agency or a local government (a municipal council), and yet these rules in practice affect the people's fundamental rights. Administrative agencies have a lot of leeway over these types of regulations. Unless the public wins multiple layers of lawsuits or brings a final judgement to the justices for constitutional interpretation, it is difficult to avoid the risks of such regulations violating the constitution and infringing upon the right to assemble and march.

440. We recommend:

(1) The Government immediately amend the *Assembly and Parade Act*, particularly to align clauses regarding advanced permitting, restricted areas, and the use of coercive power with the standard set forth by ICCPR Article 21, which provides total protection for peaceful assemblies.

(2) Law enforcement personnel (including but not limited to the police) devise a plan to carry out comprehensive training about fundamental human rights, including the right to assemble and march. Particularly, the decision-making body designing the overall curriculum for police education and training should incorporate the National Conference on Judicial Reform's Police Education and Training Committee, which included external experts.

(3) The Government conduct a comprehensive review of administrative rules at the national and local levels to see if any rules violate the constitution or Article 21 of ICCPR.

ICCPR art. 23

COR Point 76

441. Slow progress in draft amendments: In response to para. 213 of the State's response to 2017 CO, the Executive Yuan on Aug. 12, 2020 passed the draft amendment to the Civil Code as proposed by the Ministry of Justice, in which the legal age of marriage

for women was revised to 18, the same as for men. Art. 12 in the draft revision also revised the legal age of marriage from 20 to 18, with art. 980 stipulating that minors are not to marry. However, currently the draft revision is tentatively planned for implementation on January 1st, 2023, and in case of any delay in legislation, it may still be adjusted or postponed. Meantime the government has not stated how to safeguard the rights and interests of children and gender equality.[279]

442. The problem of adolescent pregnancy persists:

(1) According to current statistics of the Executive Yuan, the number of babies born to women under 20 was 2,331 in year 2019; the figure over the past 10 years had also been at least 2,000 babies per year.[280] Between 2015 and 2019, the fertility rate among women between 15 and 19 of age has constituted 4‰ of that for the total population.[281]According to the 2017 report of the Control Yuan, awareness of adolescent pregnancy on the part of the government is seriously disconnected with reality, and for 10 years, the number of underage mothers in Taiwan has not been effectively reduced.[282]

(2) For underage mothers who wish to marry, there is no mechanism for their protection or corresponding measures, whether under current regulations or the draft revised law. Whether this infringes on women's autonomy in marriage and the rights and interests of children born to underage girls is a question that remains to be discussed.

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279 Executive Yuan, Executive Yuan passes Item 38 of draft partial revision for Civil Code to amend legal age of marriage to 18 for protection of youths. https://www.ey.gov.tw/Page/9277F759E41CCD91/655b2cd1-64e5-4bbe-9d5d-786df090bb69

280 Gender Equality Department, Number of babies born by date. https://www.gender.ey.gov.tw/gecdb/Stat_Statistics_Query.aspx?sn=TChStJr9NFNg2PrBQzib3Q%3d%3d&statsn=81ca3xOmq7PeQ19JLb29nw%3d%3d&d=m9ww9odNZAz2Rc5Ooj%2fwIQ%3d%3d&n=37325

281 Gender Equality Department, Fertility rate of underage mothers (aged 15-19). https://www.gender.ey.gov.tw/gecdb/Stat_Statistics_DetailData.aspx?sn=eYfJTJ8lWIZHmsjuPNtodA%3D%3D

282 Control Yuan, Underage mothers in the news; Control Yuan urges Ministry of Health and Welfare and Ministry of Education to seek review (11/10/2017). https://www.cy.gov.tw/News_Content.aspx?n=124&sms=8912&s=12659

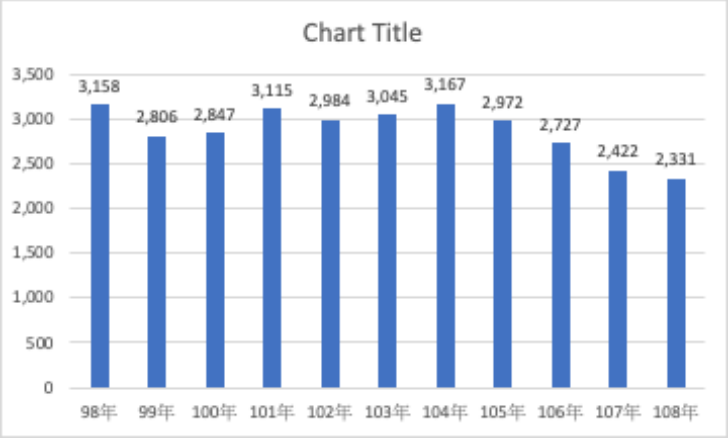

Figure 3

443. In terms of statistics, as the government is currently not conducting any survey pertaining to the number of girls under 18 who are pregnant, or the number of women above 16 but under 18 who are married, the scope and extent of social impact remains unclear, making it even more difficult for civil society to come up with policy recommendations.

444. We recommend:

(1) Pass the amendment to the *Civil Code* as soon as possible, in order to eliminate gender discrimination in legal age of marriage under the current law, and to ensure the rights and interests of children born to underage mothers who wish to marry, by proposing relevant measures.

(2) Clarify how the rights and interests of children may be safeguarded and how gender equality may be realised before the passing of the amendment of the *Civil Code*. Also compile statistics on the number of mothers under the age of 18, and the number of girls who got married between ages 16 and 18, so as to provide the reference data to implement policies.

COR Point 77

Responding to para. 214 of State's Response to 2017 COR

445. Referring to paragraph 224, paragraph 231 and paragraph 232 of the 2020 ICCPR State Report, and the State's response to the 2017 CO paragraph 214, *Act for Implementation of J.Y. Interpretation No.748 has* been formally passed in May 2019, thus allowing two people of the same gender to enter marriage. However, because of the deliberately reserved gap between same-sex marriage and heterosexual marriage in the bill, LGBTI+ people in Taiwan still cannot fully enjoy the same legal protection of marriage and family as heterosexual people can. For example, as mentioned in paragraphs 224 and 232 of the 2020 ICCPR State Report, the extended family of same-sex spouses will not establish legal in-law relations, LGBTI+ people cannot form

same-sex marriages with nationals of countries that have not yet recognized same-sex marriages, and cannot perform joint adoptions, as heterosexual spouses are able to do. In addition to the said differences in legal rights between heterosexual marriages and same-sex marriages, same-sex spouses who are legally married in Taiwan also cannot legally use artificial reproductive technology after marriage. These gaps have barred LGBTI+ people from being legally protected. This violates the norms of gender equality and family rights in the conventions such as ICCPR Article 23 and ICESCR Article 10.

446. Article 23 of ICCPR clearly stipulates that the family is the natural basic group unit of the society and shall be protected by the society and the state. Article 10 of the ICESCR also stipulated that the family is the natural basic group unit of the society and the state should try its best to provide protection and assistance, especially when it is established and responsible for rearing of dependent children. In addition to the Covenants, the Ministry of Interior of the Executive Yuan promulgated the "Social Welfare Policy Guidelines" in 2004, and also declared that "support for diverse families: the promotion of various public policies should respect the differences due to different sexual orientation, race, marital relationship, family size, family structure, and differences in values" However, Taiwan's same-sex spouses still have the following rights gaps and violations of family rights in the legal system.
447. As mentioned in paragraph 224 of the 2020 ICCPR State Report, Taiwanese nationals can only form marital relationships with nationals of countries that have legalized same-sex marriage. If the country of the foreign partner does not recognize same-sex marriage, such as Japan, South Korea, Singapore, Malaysia, etc., the State will reject such transnational same-sex spouses from registering their marriage in Taiwan on the grounds that the selection principle of the *Act Governing the Choice of Law in Civil Matters Involving Foreign Elements*. At present, the Ministry of Justice adopts the most limited literal interpretation for "countries that recognize same-sex marriage". For countries such as Hungary and Italy that provide same-sex couples with legal protection under the "same-sex couple" system, they also consider that they do not belong to countries that have legalized same-sex marriages. (Letter No. 10903508350 of the Ministry of Justice). Although the State Report mentions that the law will be studied and discussed, there is no explanation on the direction and timeframe of the said revision, which has prevented these transnational same-sex spouses from having a legal status. In addition to obtaining legal spouse status, the State has no clear administrative measures for same-sex spouses and LGBTI+ families who have actually lived together in Taiwan to help them obtain a certain degree of residency, which seriously violates the family reunion rights of these transnational partners.
448. After the formation of a same-sex marriage, the same-sex spouses cannot establish an in-law relationship with each other's family members, which will affect the current laws regarding the avoidance of family members' interests (for example, Article 26-3,

Paragraph 3, Paragraph 2 of the *Securities and Exchange Act*, stipulated restrictions on inter-relationships for company directors, or as stipulated in Article 47 of the *Certified Public Accountant Act* that accountants may not sign financial reports entrusted or inspected by direct in-laws, etc., in order to protect the public interest), and the same-sex spouse related to the family of the other party In litigation matters, there is no right to refuse to give testimony in court (art. 180, Paragraph 1, Paragraph 1 of the *Code for Criminal Procedure*). Furthermore, according to the *Domestic Violence Prevention Act*, "immediate in-laws" will be regarded as family members, but for same-sex spouses or ex-spouses, should domestic violence occur with each other's respective parents, for example, after divorce, the ex-spouse stalks, harasses, or induces other forms of violence onto the family members of their ex-spouse, the parents of the ex-spouse cannot be protected by the relevant provisions of the *Domestic Violence Prevention Act* and cannot apply for a protection order from the court.

449. From the perspective of family rights, and in accordance with Article 20 of *Act for Implementation of J.Y. Interpretation No.748*, same-sex spouses can adopt the spouse's natural children, this excluded the right for LGBTI+ spouses to become adoptive parents. That is, same-sex spouses cannot jointly adopt biologically unrelated children, nor can they continue to adopt biologically unrelated children of their spouses. This deprives the adopted children of the right to establish a parent-child relationship with their LGBTI+ parents and impairs the rights of LGBTI+ adoptive families.

450. We suggest:

(1) Combining the two Covenants, CEDAW, and the requirements of the equality principle in the *Constitution*, we suggest that the state shall review the existing laws and regulations for same-sex marriages and the gaps in the legal provisions between heterosexual marriages, clearly formulate a revision schedule, propose draft amendments to gradually amend the gap between the two and propose relevant amendments as soon as possible, such as:

(2) Regarding the issue of transnational same-sex marriage, amend the *Act Governing the Choice of Law in Civil Matters Involving Foreign Elements* as soon as possible, and use administrative measures or other means to protect the family reunion rights of transnational same-sex couples or LGBTI+ families before the amendment.

(3) Amend the *Act for Implementation of J.Y. Interpretation No.748* so that the kinship between same-sex spouses and the other's family members is clearly regulated, and the rights of same-sex spouses to jointly adopt unrelated children shall be guaranteed.

(4) In addition, in the current situation where heterosexual marriages and same-sex marriages are concluded through different laws and regulations, the state should also consider revising the *Civil Code* in the future to allow two forms of marriages to be concluded through the same laws and regulations. It is no longer necessary to

distinguish between the legal norms applicable to marriage due to the people's sexual orientation.

COR Point 78

Responding to paras. 215-216 of State's Response to 2017 COR

451. At the beginning of the development of the National Human Rights Action Plan (NAP), the government solicited input from civil society through online platforms, but the participation of NGOs ended there. After the Human Rights Protection Promotion Group convened in March 2019, the Executive Yuan formed the "Advisory Committee for Developing the NAP" (members unannounced) which subsequently held a series of meetings. However, NGOs were not consulted on important matters such as which issues should be prioritized in the action plan and what strategies should be adopted to achieve the objectives. The Government has failed to follow the procedures recommended in the UNOHCHR *Manual of National Human Rights Action Plans*. There is a tendency that government agencies mostly consult and cooperate with academic scholars. Although the two conventions have been implemented for 10 years, the participation of civil society in critical human rights policies or programs has seen little improvement and the executive branch has repeatedly violated the principle of participation in human rights law.
452. The National Human Rights Commission was established in August 2020 and is therefore not involved in the above-mentioned processes either.
453. The Government proclaims in the 2017 State Report that it has asked relevant agencies responsible for responding to the 2017 concluding observations to respond in a more structured, constructive manner. The Ministry of Justice is responsible for compiling the reports of the ministries, but the small number of staff means that there is no manpower to handle other matters beyond this logistic work. This situation reflects the fact that the Executive Yuan does not have a dedicated unit responsible for human rights. Compared with the "Gender Equality Department" of the Executive Yuan, which has nearly 40 staff members to handle one single issue, there isn't a corresponding "Human Rights Department". This demonstrates that during the process of Taiwan's transitioning from authoritarian rule, sufficient attention has not been paid to human rights matters, especially the functions of an agency directly under the Executive Yuan in planning, supervising, coordinating, researching, and developing human rights tools that are irreplaceable.
454. At present, Taiwan has ratified and implemented acts of covenants and conventions such as CEDAW, ICCPR, ICESCR, CRC, CRPD, and has successively launched an international review process and submitted relevant reports. Through this process of review and promotion of human rights, the human rights of LGBTI+ people have

been improved to a certain extent. However, the State has not yet conducted a complete investigation and research analysis on the improvement of the social situation of LGBTI+ population and the reform of the legal system, put forward specific and feasible improvement goals, plans and schedules, only completed single-point and compensational amendments. According to the State Report, there are seven major issues planned under the National Human Rights Action Plan. Among them, the issue of "equality and non-discrimination" includes a sub-topic "LGBTI+ equality and non-discrimination", and the action includes "enhancing respect, protection and non-discrimination of gender identity and sexual orientation" and "resolve the employment discrimination of transgender people." The relevant authorities of the plan are "Executive Yuan Office for Gender Equality, Ministry of Health and Welfare, Ministry of Labor, and Ministry of Interior." We are pleased that the equal rights of LGBTI+ people is listed as a sub-topic in the discussion process, so that rights of LGBTI+ have the opportunity to be comprehensively reviewed. From the meeting materials released by the National Human Rights Action Plan, it can be seen that transgender identities, surgical health, identity registration, employment discrimination and other issues were mentioned. However, referring to the "Taiwan LGBTI+ Human Rights Policy Review Report" published by the Taiwan Tongzhi (LGBTQ+) Hotline Association in 2017, more topics can be discussed in addition to physical, health, and workplace equality. For instance, education, equality in law enforcement, elder care, media, speech, space, culture, etc.

455. We suggest:

(1) The NAP should be open to participation from the civil society.

(2) The Executive Yuan should strengthen its ability to handle human rights matters, including through the establishment of a Human Rights Department, to draft, lead, and monitor the NAP.

(3) The State should integrate the proposals of different projects in the future, draw up a complete and integrated action plan aimed at the equality of the LGBTI+ community and eliminate discrimination, list the projects that can be improved for different policy areas, and formulate specific implementation improvements.

Responding to ICCPR & ICESCR State Report

ICCPR Subparagraph 1 of art. 2, art. 3, art. 26

Responding to paras. 22-24 of the ICCPR State Report (Digital sexual violence, stalking and harassment)

Specific laws on digital sexual violence shall be expeditiously legislated

456. The State Report currently does not provide any account on its policy against an emerging form of cybercrime — digital sexual violence. According to the 2018 *Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective* published by the UN Human Rights Council, the definition of digital sexual violence is "any acts of gender-based violence against women that is partially or fully implemented, assisted or aggravated by information and communicative technologies", the report also indicated that digital sexual violence can be manifested in many forms.[283] In Taiwan, the two most common forms are 'nonconsensual pornography':[284] the intentional dissemination, broadcasting, posting, or in any way allowing a third person to view images or videos of sexual intercourse or exposed sexual organs of the person concerned without the consent of the person concerned; and 'sextortion': the act of using intimate imageries of persons concerned as the basis of threat against the person concerned.
457. According to statistics from Taipei Women's Rescue Foundation (hereinafter "TWRF"), since 2015, TWRF began its consultation and assistance hotline service for

[283] United Nations (2018). 'Human Rights Council, Report of the Special Rapporteur on Violence against women, its causes and consequences on online violence against women and girls from a human rights perspective'. UN.Doc. A/HRC/38/47, https://undocs.org/en/A/HRC/38/47.

[284] The original report worded the said act as "Revenge Porn". However, the non-consensual distribution of intimate sexual content on the internet might not always be motivated with the intention of "revenge", the nature of said content also cannot be categorized as "porn". Hence, we implement the wording "nonconsensual pornography".
https://www.iwomenweb.org.tw/Upload/UserFiles/files/32%e6%9c%9f%e9%80%9a%e8%a8%8a_%e5%9c%8b%e9%9a%9b%e4%ba%ba%e6%ac%8a%e8%a6%96%e8%a7%92%ef%bc%9a%e6%96%b0%e8%88%88%e6%95%b8%e4%bd%8d%e6%80%a7%e5%88%a5%e6%9a%b4%e5%8a%9b%e8%88%87%e9%98%b2%e5%88%b6.pdf。

victims of digital sexual violence and served 345 cases as of the end of 2019.[285] Among said cases, as high as 48.57% of them suffered threats from the perpetrator. It can be observed that offences of nonconsensual pornography are often accompanied by offences of sextortion. According to the statistics, the channels for the perpetrators to obtain sexually intimate videos include consensual shooting (32.59%), the victim's self-portrait (27.48%), and sneak shots (19.49%).

458. However, at present, the legal system does not provide sufficient protection for adult women against digital sexual violence.

(1) Regarding the statistics above, sneak shots can be prosecuted as offences against privacy according to article 315-1, paragraph 2 of the *Criminal Code*.[286] However, should the material the perpetrator possesses be acquired through consensual shooting or the concerned parties' self-portrait, the perpetrator cannot be charged (for mere possession/for possession with the intention of extortion) rendering more than half of the cases in the said statistics inapplicable to article 315-1, paragraph 2 of the *Criminal Code*.[287] Only after the perpetrator undertakes the act of distributing can it constitute the crime of distribution of obscene articles in article 235 of the *Criminal Code*.[288]

(2) Furthermore, article 11-1 of the *Communication Security and Surveillance Act* stipulates that prosecutors can only apply for an access warrant when the offence is punishable by term imprisonment of more than 3 years,[289] offences against privacy and distribution of obscene articles, respectively stated in article 315-2 paragraph 2 and article 235 of the *Criminal Code*, had term imprisonment of less than 3 years, hence, even if the prosecutors possess facts leading to the belief that communications records and information are necessary and relevant to the investigation of the case, statutory limitations made them incapable to apply for an access warrant from the court. In addition, operations of search and seizure stipulated in Chapter 11 of the *Code of Criminal Procedure* were legislated to protect the evidence from being destroyed and altered.[290] However, in cases where images or videos of sexual intimacy were disseminated, the proposition of search and seizure was based on the plaintiffs'

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[285] See the Voiceless Victims: Conditions, Needs, and Intervention Services for Victims of Digital Gender-Based Violence, published by TU Ying-chiu and CHENG Hsiao-shan at "Build supportive and safe environments with professionalism - Empirical research and innovative services for protective services" conference held by National Union for Licensed Social Workers, 2020.

[286] The Criminal Code, art.315-1 https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001

[287] The sum of consensual shooting (32.59%) and self portrait of the victim (27.48%) is 60.07%.

[288] The Criminal Code, art. 235, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0000001

[289] The Communication Security and Surveillance Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=K0060044

[290] Code of Criminal Procedure: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010001

intention to prevent the circulation of said imagery, which is the exact opposite of the legislative purpose, hence prone to be rejected by the court.

(3) In addition, in the judicial process, cases involving children, domestic violence (from former or current spouse or partner) or sexual assault will be provided with relevant asylum mechanisms and procedural non-disclosure in accordance with the *Child and Youth Sexual Exploitation Prevention Act*, the *Domestic Violence Prevention Act*, and the *Sexual Assault Crime Prevention Act*.[291] Other cases will not be regulated by said regulations. However, for the victims of aforementioned offences of article 315-1, paragraph 2 and article 235 of *Criminal Code,* only public litigation can be accessed without corresponding protective measures. In many cases, victims were reluctant to take judicial proceedings for the fear of their intimate information being disclosed.

459. In addition to insufficient legal protection, the existing practical prevention, protective mechanisms and social awareness are also insufficient:

(1) The inadequate awareness of the government on the solemnity of digital sexual violence and its subsequent lapse of statistical coverage had left the aforementioned statistics of TWRF the only existing statistics on digital sexual violence.

(2) Furthermore, police officers and schoolteachers are not sufficiently sensitive to digital sexual violence, which can lead to improper handling of cases. For instance, there is a case where a female passenger on the MRT was harassed by an unknown person using AirDrop[292] to send obscene pictures, but encountered police officers who did not know what AirDrop was when reporting the case. This case made it palpable that front-line police officers are not familiar with new forms of cybercrime.[293] In September 2020, a news report indicated that incidents of sexual assault between classmates occurred in a high school in Nantou, the video of said occurrences even circulated around the class.

However, after the school was notified about the incident, it did not actively address the incident and kept both the perpetrator and victim in the same class, nor did it

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[291] Chapter 2 Rescue and Protection, Chapter 3 Placement and Services of Child and Youth Sexual Exploitation Prevention Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050023, Article 13 of Domestic Violence Prevention Act, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050071, arts. 12, 13, 15 of Sexual Assault Crime Prevention Act https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080079

[292] AirDrop is a trademark of Apple Inc., registered in the U.S. and other countries.

[293] Joint statement from the victim and Women in Digital Initiative: "The "AirDrop sexual predator" Hard to Investigate, Emerging Digital Gender-based Harassment Requires Attention" https://www.facebook.com/women.in.digital.initiative/posts/116590436610851

address the fact that the classmates shared and reposted the videos. The school's hasty behavior is equivalent to causing secondary harm to the victim.[294]

(3) At present, the only protective agency which can accept complaints and remove sexually intimate content with the assistance of telecommunications providers from the internet, is the iWIN, authorized by article 46 of the *Protection of Children and Youth Welfare and Rights Act*,[295] and congregated by the National Communications Commission with the joint participation of Ministry of Health and Welfare , Ministry of Education, Ministry of Culture, Ministry of Interior, Ministry of Economic Affairs, and commissioned participation of civil organizations. However, since iWIN was not equipped with public authority, should the telecommunication provider decline to remove said content, there is no existing regulation to authorize direct sanctions, rendering the iWIN only able to transfer said complaints to the competent authority of the respective business for arbitration. In addition, if said contents were distributed to foreign websites or platforms, it is unlikely for the content to be successfully removed, along with being less feasible supposing the lack of mutual legal assistance agreement between Taiwan and the location of said telecommunication provider. Furthermore, authorized by the *Protection of Children and Youth Welfare and Rights Act*, iWIN cannot handle cases involving adult women, aggregating an even more difficult removal.

(4) Victim blaming is pervasive in society. When a case of nonconsensual pornography occurred, media and social commentaries often chose to criticize the victim who produced the images themselves or consented when the video was being recorded. This causes victims to spiral down into self-condemnation and denial while unaware to possible remedies. The State has not addressed and redressed such a social atmosphere.

460. We recommend the State to improve its policies on digital sexual violence in accordance with Report of the Special Rapporteur on violence against women, as well as its causes and consequences toward online violence against women and girls from a human rights perspective published by the United Nations:

(1) The DGE shall conduct national statistical surveys and trend monitoring on various types of cases, observe monthly and yearly trends, and propose corresponding preventive and resolutive measures. Furthermore, the DGE shall submit training programs for public agencies on the prevention of and response to digital sexual violence, especially for judicial officers and school teachers on the frontlines.

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[294] "[High school sexual assault incident] School Confirmed the Male Student was Suspended, the Victim awaiting for Transferrance on a Long Leave" from UDN https://udn.com/news/story/7317/4852107

[295] The Protection of Children and Youth Welfare and Rights Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0050001

(2) Expeditiously legislate a specific law on digital sexual violence to illustrate and address various forms of digital sexual violence, and reserve flexibility to respond to its emerging forms. Clearly outline protective and remedy-seeking mechanisms, formulate effective measures to prevent and urgently remove concerned content from being distributed on the internet such as authorizing prosecutors to carry out preventive deletion and seizure while the case is under investigation.
(3) The concealment of the case should be ensured in the judicial process, procedural non-disclosure shall be applied to protect personal information of the victims, corresponding protection mechanisms such as social worker escorts or psychological consultation shall be provided.
(4) Establish a dedicated agency for the internet. The State can refer to the practice of the Australian Communications and Media Authority (ACMA) of imposing fines on telecommunication providers which declined to remove concerned contents through administrative penalties.
(5) Public-civil cooperation: relevant government agencies shall cooperate with the National Human Rights Commission and civil organizations to formulate procedures to address the pervasive social atmosphere of victim blaming through education, audio-visual works, and advertising marketing.

Expeditiously legislate the Stalking and Harassment Prevention Act

461. While manifested in many forms other than mere following, stalking and harassment has four characteristics: high incidence rate, high risk, highly intimidating, and highly harmful. Most occurrences of stalking and harassment possessed many forms of manifestation and occurred repeatedly and continuously. Regarding stalking and harassment, at present, relevant laws and regulations are unable to provide comprehensive preventive measures given its limitation in terms of applicable scope, protective effects, penal intimidation, and obligation in prevention. At present, "Stalking another person without justifiable reasons despite having been dissuaded" in article 89 paragraph 2 of the *Social Order Maintenance Act* is the only legal basis of regulation.[296] Not only can the description not describe all forms of stalking and harassment, the fine of "not more than NTD 3,000 or a reprimand" is not at all able to effectively deter and punish similar criminal acts; coupled with the low frequency of usage by police and low prevalence of punishment, the effect of it is practically nonexistent.
462. Although the *Domestic Violence Prevention Act* included relevant regulation on acts of stalking and harassment, the scope of applicability was limited to family members. Only under the circumstance where a former or current cohabiting or non-cohabiting intimate partner commits domestic violence, a protection order prohibiting stalking

[296] Social Order Maintenance Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080067

can be claimed, this statutory scope cannot be applied to cases where the stalker is a suitor or a stranger.

463. To utilize the "three laws for the prevention of sexual harassment", the offence must satisfy the criteria of "contains sexual implications or gender discrimination" or "sexual or gender-related behaviors",[297] and are unable to cover all harassment behaviors in the cases. While the victims can file complaints against behaviors of sexual harassment, only the *Sexual Harassment Prevention Act* contains penal details against the perpetrator, coupled with the time-consuming nature of investigations and the fact that concerned parties can file a re-appeal, the immediacy is insufficient and cannot rapidly deter the offence.
464. At present, the *Criminal Code* may be able to address and penalize intimidation, home intrusion, property damage, but not the varied, continuous and repetitive forms of stalking and harassment offences. The high threshold of prosecution and time-consuming litigations can only lead to sentencing of minor misdemeanors which can lead to mere fines or short-term imprisonment, improbable to be able to prevent continued stalking and harassment in the future. More importantly, as a result of legal ambiguity, offences of stalking and harassment can cause the loss of confidence in the justice system after occasions of failed police reports. The legal ambiguity paradoxically allows the stalker to continue their offence without fear. Law enforcement is left powerless and victims have nowhere to go except the abyss of pain. The legal limitations also demonstrated the lapse of regulation against all perpetrators other than relatives and intimate partners, for stalking cases perpetrated by excessive pursuers or strangers, the legal system was still in an unmanageable dilemma. At present, relevant laws and regulations are unable to provide comprehensive preventive measures given its limitations in terms of applicable scope, protective effects, penal intimidation, and obligations of prevention.
465. The State shall expeditiously legislate a specific act to address offences of stalking and harassment, to enable early intervention to eliminate the possibility of the said cases deteriorating into cases of major seriousness, and to effectively protect victims and prevent offences. The *Stalking and Harassment Prevention Act* is a bill proposed by civil organizations for many years which was in the agenda for two sessions of the Legislative Yuan and received positive responses from legislators across the aisle. The draft was first proposed by civil society; however, the Executive Yuan version was sent to the Legislative Yuan as late as 2018. The bill was reviewed and deliberated by the Home Affairs Standing Committee and caucus negotiations, and was expected to be passed by completing Yuan Sitting negotiations, the second and the third reading in 2019. At the end of April 2019, however, the Ministry of the Interior and the

[297] The "three laws for the prevention of sexual harassment" are Sexual Harassment Prevention Act, Act of Gender Equality in Employment, and Gender Equity Education Act.

National Police Agency requested the halt of implementation to the Legislative Yuan, the bill was withdrawn for further discussion and no progress was made since then; On 13th April, 2020, in a session of interpellation, the minister of the interior promised to submit a ministerial version of the bill to the Executive Yuan within six months

466. We suggest:

(1) The Ministry of the Interior shall submit the bill to the Executive Yuan for approval within the promised time limit, and expeditiously initiate the legislative process by proceeding to the deliberative processes of the Legislative Yuan. The Legislative Yuan shall convene joint public hearings with competent authorities of relevant ventures, legislators and civic entities concerned with the legislature against stalking and harassment, to deliberate and collect rectifying recommendations to the bill and its implementation.

(2) Regarding the content of the act, the definition of stalking and harassment and the offence shall be specifically defined, to clearly stipulate that stalking and harassment is a behavior of criminal nature that causes a continuous and lasting impact on victims' lives. In addition to the necessity to include emerging forms of abuse such as digital stalking and harassment, to regulate all forms and patterns of stalking and harassment, the legislation shall also reserve flexibility to incorporate emerging forms of offences by promulgating general clauses. Furthermore, the relationship between concerned parties shall not be specified, to enable the act to be applicable to any case of stalking and harassment

(3) To achieve the effect of early intervention and urgent protection, the police shall be equipped with a warning system, to enable law enforcement a system that allows early intervention in stalking and harassment cases. The design of a warning system can provide the police with a legal basis on the handling of cases of stalking and harassment. Should an incident occur and the victim is in need, the police can issue a short-term warning order according to the claim of the victim and the scope of authorization.

This can enable early intervention before the worsening of situations by notifying the perpetrator of the criminal nature of the behavior, thus restraining their actions; which can serve as a protective mechanism before the victim officially acquired a preventive order, and is also beneficial for social order and crime prevention.

(4) The preventive order system shall be established to ensure the effectiveness of remedy, intervention and prevention: In order to prevent the victim from suffering from the perpetrator's continuous stalking and harassment, the act shall be furnished with the design of preventive orders, of which can be issued by the court, covering stalking prohibition, access fencing, prohibition of collection or possession of non-public information, etc.

(5) Preventive measures against digital stalking and harassment shall be strengthened: In addition to passive prohibition of stalking and harassment via communicative methods or the internet, more active responsive measures shall be specified for contents that have been published or distributed. Regarding the legislation, in addition to specifying digital forms of stalking and harassment to the definition of the offence, specification in the preventive order is also necessary.
The Legislative Yuan and the Executive Yuan shall also utilize the opportunity of the legislation to incorporate measures against digital stalking and harassment and other forms of active prevention and investigation.

ICCPR art. 6

Responding to para. 50 of the ICCPR State Report (Induced miscarriage)

467. At present, article 9 of the *Genetic Health Act* stipulates that married women need to obtain the approval of their spouses to terminate a pregnancy,[298] despite its violation to women's reproductive autonomy, and its contravention with article 12 of CEDAW on the right to health, and article 16 on eliminating discrimination against women in all matters relating to marriage and family relations. If the two parties were in a state of disharmony or in disagreement, the approval of the spouse is prone to become leverage to threaten women into compromises. For women who suffered sexual or domestic violence, socioeconomically or culturally underprivileged women who lack access to resources and support systems, it is even more onerous to immediately obtain proper medical care and services.
468. In November 2019, opponents of induced abortion proposed two referendum proposals for "limiting induced abortion to early stages of gestation", and "6 days waiting period with mandatory counseling" which clearly violated the Covenants and CEDAW, indicating that Taiwan's conservatives may propose public policies which violate human rights. In the two referendum proposals, the former intends to limit the legality for induced abortion under cases in 8 weeks of gestation, and the latter escalated procedural barriers to induced abortions in the name of protecting women's health. If women who wish to terminate pregnancy cannot complete the procedure with the proposed legal timeframe, induced abortion cannot be legally proceeded.
469. We suggest:
(1) The State shall abolish the provision of spouse approval in the *Genetic Health Act* for married women, and expeditiously propose amendments to the *Genetic Health Act* to ensure reproductive autonomy of women.
(2) Regarding the referendum proposals for "limiting induced abortion to early stages of gestation" and "6 days waiting period with mandatory counseling", the State shall

[298] Genetic Health Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0070001

increase the openness and diversity of referendum hearings by inviting civil organizations that have focused on gender equality and reproductive reform to participate in the hearing for similar proposals in the future, rather than appeal to groups with certain religious backgrounds to speak on behalf of women. In addition, the government shall also openly clarify to the society that the referendum proposal violated the resolve of the Covenants and CEDAW by claiming restrictions to induced abortion with reason of lowering the abortion rate. The genuine method to ensure a woman's right to health and reproductive autonomy is composed of child rearing-friendly childcare policies and labor conditions, and the comprehensive implementation of gender equality education.

ICCPR art. 14

The deficiencies in the criminal compensation system (Responding to paras. 87, 175 of the ICCPR State Report)

470. In paragraph 87 of the third ICCPR State Report, the number of approved cases for criminal compensation is shown, however the State neither analyzed reasons for compensation nor stated any deficiencies in the system. There is no way to understand what the number represents.
471. In Article 6 and 7 of the *Criminal Compensation Act*, compensation claimants are divided into "non-attributable" and "attributable."[299] However, the concept of "attributable" stated in Article 7 is abstract and violates the principle of legal certainty. Also, the agency that accepts the compensation case is allowed to reexamine the victim's innocence and use it as a reason to award poor compensation. This, in fact, has caused harm equal to a guilty verdict to the victim who is rendered innocent and violates constitutional principles such as the double jeopardy clause and the principle of presumption of innocence.
472. Take Su Chien-ho, Chuang Lin-hsun and Liu Bin-lang, who were sentenced to death and then acquitted, as an example. They made claims for criminal compensation, which were granted by Taiwan's Supreme Court. The written decision found that the three confessed to committing the crime during police interrogation, resulting in their initial custody. This is considered as a responsible cause, and they were given compensation of NTD 1,300, NTD 1,200, and NTD 1,300 per day respectively based on their jobs and educational level when they were arrested.[300] The "price" of personal

[299] *Criminal Compensation Act*: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010009

[300] Su Chien-ho graduated from a vocational high school and worked as a home appliance technician; Chuang Lin-hsun did not finish junior high school and worked as a plumber; Liu Bin-lang was a high school graduate and unemployed at the time.

freedom judged by a person's occupation and educational level obviously does not comply with the intent of the ICCPR.

473. Moreover, in accordance with Article 34 of the Act, the State is entitled to seek indemnification from the civil servant who commits malfeasance due to his/her intentional or grossly negligent act and results in the claimant's claim of compensation. After the compensation agency makes compensation, it shall be compensated from the civil servant. As pointed out in the investigation conducted by the Control Yuan in July 2020, the mechanism of the compensation claim in the current Criminal Compensation Act is not adequate, so the wrongful civil servant has not been held accountable for his/her malfeasance or taken the responsibility for compensating for the damage. However, the contents of paragraphs 87 and 175 in the State Report are insufficient to reveal and review the operation of the current criminal compensation mechanism.

474. The current *Criminal Compensation Act* does not regulate legal sanctions that have not been executed. Also, the Act does not include the situation where a person is rendered not guilty on the retrial, extraordinary appeal, or trial de novo and is not subject to restrictions on personal freedom or any legal sanctions. That is, there is no compensation for the damage that the prosecution causes to the defendant of the mistrial. According to the Criminal Judgment No. R1 (2014) of Taichung Branch Court of Taiwan High Court, as the convicted person Chen Long-qi was not subject to restrictions on his personal freedom or any other sanctions, he did not receive any compensation from the State for his losses caused by the mistrial.

475. We suggest:

(1) Delete the standard of making considered reductions of the compensation amount based on the general situation of the society mentioned in Article 7 of the *Criminal Compensation Act*. Also, it is advised to stipulate provisions to consider the victim's losses and subjects of attributability, clearly defining subjects of attributability as false confession, escape, and tampering with evidence of investigation.

(2) Compensation for punishment that does not involve restrictions on personal freedom shall be added. Before being proven innocent through a special relief litigation procedure such as retrial or extraordinary appeal, if the victim is sentenced to death, life imprisonment, or fixed-term imprisonment without probation with his/her personality severely damaged alongside with personal freedom due to investigation, trial procedure, or final adjudication, the victim should have the right to make a claim for criminal compensation to the State.

Obstacles hindering the right to access justice for persons with disabilities (Responding to paras. 164-168 of the ICCPR State Report)

476. According to Taiwan's *Civil Code*, Articles 14 and 15, when a person is under adult guardianship due to mental or intellectual disabilities, the individual is regarded to

have no capacity to perform any juristic act. Article 45 of Taiwan's *Code of Civil Procedure* stipulates that any person who does not have the capacity to undertake obligations through independent juridical acts does not have the capacity to litigate. In combinations, the laws essentially deprive persons with disabilities of the right to access justice. Furthermore, in Paragraphs 38 to 39 of the 2017 CRPD Concluding Observations, the Review Committee emphasized that many laws in Taiwan, including the *Civil Code* and the *Trust Law*, deprive persons with disabilities of the right to access justice. The Committee also pointed out that the State failed to distinguish between legal capacity and mental capacity, citing General Comment 1 of CRPD. Judging whether a person has legal capacity from a particular mental capacity deprives persons with disabilities the right to access justice, which violates Article 12 of CPRD.

477. Regarding legal procedures, the procedural rights of some persons with disabilities are impaired due to their inability to make a statement. For example, some persons with mental or intellectual disabilities could not comprehend the legal procedures or claim their rights. Some are victims of crime, but the court hardly admits their statements because they cannot articulate their claims. This is the direst in cases of sexual assault in special education schools. Also, some persons with disabilities whose impairment is not recognized by the medical field have difficulty making a statement. Since judges are not trained in communication or psychology, they often lack the skills to communicate with persons with disabilities. Furthermore, in trials, judges often only schedule 15-20 minutes to hear the case, which heighten the difficulty to communicate with the parties concerned.

478. This year, Taiwan passed the *National Judges Act*. Although the act has not come into effect, there is no mention in the act of the State's assistance or accommodation to ensure accessibility for a person with disabilities to be selected as a national judge. Moreover, Subparagraph 10, Article 13 of the act stipulates that persons under adult guardianship or assistantship shall not be selected as national judges or backup national judges, which, in effect, deprives persons with disabilities of the right to participate in the judicial system.

    At present, stipulated in Paragraph 2, Article 7 of Regulations on Civil Service Special Examination for Judges and Prosecutors that failed the health examination, including corrected visual acuity below 0.1 and corrected hearing loss exceeding 90 dBs, shall not participate in the third round of examination for judges and prosecutors. This regulation directly deprives persons with such disabilities of the right to participate in the judicial system and severely violates their right to equality.

479. We suggest, according to the UN International Principles and Guidelines on the Right to Access Justice for Persons with Disabilities,[301] that:

(1) The State should amend provisions, including the *Civil Code* and *Trust Law*, to grant equal access to justice to persons with disabilities. Enhance the training of professionals in the judicial system and distinguish between legal capacity and mental capacity.

(2) Provide reasonable procedural accommodations for persons with disabilities, such as assistance for making a statement, granting them reasonable time to make their statement, and offer training in communication and psychology for judicial personnel.

(3) Review the examination requirements for Taiwan's judicial system and other government agencies, ensuring equal access to such examinations for persons with disabilities. Furthermore, in such examinations and workplaces, the State should provide reasonable accommodations for persons with disabilities.

Protect the right of confrontation and examination of the defendant (Responding to para. 170 of the ICCPR State Report)

480. Currently, there are still problems listed below that violate Subparagraph 2 and 5, Paragraph 3, Article 14 stipulated in the ICCPR, as well as the requirements for the presumption of innocence and right to a fair trial in Paragraph 2, which seriously violates the defendant's right of confrontation, examination and sufficient opportunity to make a statement, and also breaches the guarantee of presumption of innocence and fair trial.

481. Statements made by someone other than the defendant can be used directly as evidence without confrontation. According to Article 159-1 to 159-3 of the *Code of Criminal Procedure*, [302]under some circumstances, statements made by someone other than the defendant can be used as a basis for conviction without the defendant's confrontation and examination. As in Article 159-1, statements made out of trial by a person other than the defendant to the judge shall be admitted as evidence. However, when the prosecutor presents the evidence as stated above in court, he/she has actually affirmed the crime formally instead of protecting the right of confrontation and examination of the defendant, which violates the requirements for presumption of innocence and fair trial in Article 14 of the ICCPR.

482. Part of the documents made by a public official and a person in the course of performing professional duty can be used directly as evidence without confrontation

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[301] UNOHCHR, International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020): https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/InternationalPrinciplesGuidelinesAccessJusticePersonswithDisabilities.pdf

[302] Code of Criminal Procedure: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010001

and examination. According to the provisions in Article 159-4 of the same law, documents such as breathalyzer test reports made by the police on drivers, reports on the exhibit examination made by the police, records made by prosecutors while making an inspection, records on search and seizure made by prosecutors, traffic accident investigation forms and accident scene maps made by the police, land resurvey diagrams made by land offices, certificates of deposit issued by banks, can all be used as a basis for conviction without the defendant's confrontation and examination.

483. Reports of an expert witness submitted in writing from the agency can be used directly as evidence without confrontation or examination: according to Article 206 and 208 of the *Code of Criminal Procedure*, as long as the expert witness "makes a report of his/her findings and results," there is admissible evidence, the judge can decide whether the report will be verbal or not, or the judge can let the expert witnesses appear in court, not only depriving the defendant's right to cross-examine the expert witness but also conflicting with the principle of a direct trial.
484. The *Witness Protection Act* seriously affects the defendant's real and valid right of examination and right of reply. According to Article 11 of this Act, apart from the provision that "any information of identity of the witness should not be recorded on the record or document," it is stipulated that "a witness should conceal his/her identity by wearing a mask, changing his/her voice, appearance, using video communication or other forms of segregation during the investigation or trial. The same methods should be taken to a witness protected under this act during the confrontation or examination under the law." However, neither the defendant nor the defender can adjust the order of examination or control the pace by "face-to-face" observation of the voice or facial expressions of the witness during examination, which seriously affects the defendant's real and valid right of examination and right to prepare adequately for reply.
485. In sexual assault cases, the right of confrontation and examination of the defendant are not protected. According to Article 16 of the *Sexual Assault Crime Prevention Act*, the inquiries or questioning of the victim may be carried out outside the court via suitable means, so that the victim can be separated from the defendant or judge, resulting in the situation that the defendant and defender cannot observe how the victim testifies at all. Moreover, in Article 17 of the same Act, if the victim "is unable to make a statement due to physical or psychological injury resulting from the sexual assault incident" or "is unable to or refuses statement at trial due to physical or psychological pressure caused by the inquiries or cross-examination," statements made by him/her to the bailiff can be used as evidence if it is proved credible and necessary for the determination of guilt. However, the current situation in court is that, due to the abuse of use of this article, if the victim is crying or unable to make a statement, the court will deprive the defendant of the right of confrontation and

examination on the grounds that the witness cannot subject to examination objectively, and will turn to regard the records of the victim made by the prosecutor (victim's statements made out of the court) as incriminating evidence, severely depriving the defendant's right of confrontation and examination, right to make valid reply as well as requirements for presumption of innocence and fair trial.

486. In conclusion, the above-mentioned provisions cause damage to the defendant's right of confrontation and examination and put the defendant in a weak position, increase the conviction rate and threaten the principle of presumption of innocence and fair trial.

487. We recommend:

(1) It should be clearly stipulated in the *Code of Criminal Procedure* that if the defendant has not exercised his/her right of confrontation and examination, incriminating evidence should not be determined.

(2) The risk of having mistakes in reports from an expert witness should be taken into consideration, and related regulations should be revised.

(3) The application of witnesses should be limited, and the defender should at least have the chance to cross-examine the witness at his/her face.

(4) We recommend that in sexual assault cases, the defender can cross-examine the victim at his/her face depending on the situation, or the defender can take other means that would cause less damage to the right of the defendant.

(5) We suggest that the state should develop a peer-review mechanism and re-examine the rationality of the above-mentioned provisions one by one to avoid causing too much damage to the defendant's right of confrontation and examination, with a view of establishing a justice system with fair trial.

The state does not fulfill its responsibility for keeping evidence (Responding to para. 174 of the ICCPR State Report)

488. In 2016, the *Post-Conviction DNA Testing Act* was legislated,[303] giving right for those whose convictions become final to ask for DNA identification. In 2019, the rehearing proceeding in the *Code of Criminal Procedure* was also reformed. Although both institutions are helpful for innocent people who are wrongly convicted seeking relief, the current laws have not placed enough value on the custody, management process and system of evidence, and related provisions are also mere formality, so that those whose conviction is affirmed usually find the evidence destroyed when trying to seek vindication by means of new DNA technologies but then fail to re-identify them.

489. For example, in the current domestic unjust cases that have been redressed or are still being rescued by non-governmental organizations, almost every case involves the

[303] Post-Conviction DNA Testing Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010031

disappearance or contamination of seized evidence during the trial, such as the murder knife in the case of Su Chien-ho, the audio tape, black plastic bag and things inside it in the case of Chiu He-shun, tape of evidence collecting and bullets in the case of Cheng Hsing-tse, and the DNA specimen in the case of Lu Chin-kai. It is worth mentioning that in the case of Lu Chin-kai, the testimony from National Taiwan University Hospital pointed out that the test specimens submitted for examination did not match the defendant's DNA. On the one hand, the court used "it was mixed after spreading" as the reason to exclude this evidence in favor of the defendant, but on the other hand, it used other contaminated specimens as the basis for the conviction.

490. Furthermore, a few years later, not until Lu Chin-kai and his defender found new evidence and made a request for DNA identification again with more precise scientific way were they informed from the Prosecutors office that the related evidence had been destroyed, and it was impossible to examine them again. It is obvious that the state keeps evidence carelessly, and the case mentioned above is just the tip of the iceberg, not to mention how many defendants have suffered injustice behind the scenes. The previous investigation reports of the Control Yuan have repeatedly pointed out the mismanagement of the storage of stolen goods, and requested the Judicial Yuan and the Ministry of Justice to review and correct it, but so far they have taken no actual effective actions. Under the current situation that evidence is destroyed as soon as the conviction is affirmed, even if the defendants have the right to investigate evidence as stated in Section 174 of the State Report, they cannot obtain relief.

491. We recommend:

(1) The state should establish clear and specific procedures for the custody of evidence and specific procedures for confirming the identity of the exhibits.

(2) The legal effect of the use of evidence should be specified for the state's failure to fulfill its responsibility for keeping the exhibits, and criminal defendants whose judgement is unfavorable should be given chances to ask for relief.

The Case of Choiu Ho Shun

492. In 1988, Chiou and 11 other defenders were charged in a corpse dismemberment case in November 1987, in which the victim was an insurance agent, Ke Hung Yu Lan, from Miaoli. Chiou was also charged in another kidnapping case in December, 1987, in which a schoolboy Liou Jeng was killed. The cases were remanded eleven times, and the conviction was affirmed by the Supreme Court in 2011. However, obvious errors exist in the case. The prosecution repeatedly tortured the defendant to retrieve confession and even lost key evidence. The court ruling was based solely on the 288 confessions of the defendants, which were inconsistent and contradictory, as well as a flawed voiceprint analysis of the kidnappers' phone recording. No other evidence

indicated Chiou and other defendants' involvement in the case. The head and limbs of the corpse Ke Hung Yu Lan were never found. The body of the schoolboy was never found either. The 13 phone recordings of kidnappers at the time were sent to a professional voiceprint lab for analysis by the volunteer lawyers. The lab concluded that the criminal police's analysis was "scientifically unconvincing," and that the analysis was insufficient to identify Chiou as the same person as the kidnapper in the recording. This voiceprint analysis stands as the only evidence to overturn the conviction.

493. No capital conviction shall be based on confession under torture, as stressed in Point 57 of the 2013 CO, and in a capital case like Chiou's, the sentence should be commuted based on the torture he endured. In addition, the Review Committee also stressed that a defendant in a capital case has the right to request amnesty and commutation, according to Paragraph 4, art. 6 of the ICCPR.
494. In July 2019, the Asian Human Rights Court Simulation (AHRCS) selected Chiou's case to deliberate on, in which Chiou sued the Taiwanese government for its ICCPR violation. The AHRCS ruled, on Oct 17 of the same year, that the Taiwanese government violated art. 7 and 14 of the ICCPR, and that Chiou's rights have been severely infringed owing to dysfunction of court procedure and errors in fact-finding.[304] The AHRCS court urged the Supreme Court to review the conviction and sentence of the Chiou case, as well as to remedy and correct the infringement of Chiou's fundamental rights in a just and necessary fashion. This is yet another examination from the international community on the Chiou case and the Taiwanese government's violation of obligations on fundamental rights.
495. We recommend that the President exercise art. 40 of the Constitution and grant full remission to Mr. Chiou Ho-shun.

The Hsichih Trio case: expedite the case

496. According to Point 27 of CCPR/C/GC/32, the principle of "trial within a reasonable time" also applies to civil procedures. The Hsichih Trio case, a critical innocent rescue case of capital punishment, was affirmed on February 4, 1995 by the Supreme Court, in which the three defendants, Su Jian He, Liu Bing Lang, and Chuang Lin Hsun, were sentenced to death. After five years, on May 18, 2000, the High Court ruled to retrial, and remanded the case three times upon the Supreme Court's request. In 2010, article 8 of the *Criminal Speedy Trial Act* forbade the prosecution to appeal to the

[304] AHRCS, Chiou Ho-shun v. Republic of China (Taiwan), Case No.18-1: https://sites.google.com/view/ahrcs/judgments?authuser=0&fbclid=IwAR0hFOMtsd5epKjb_c4Iy2B4wHyWNPhzn0UIyaTMOFS2kwtL_leagpsdEF8

Supreme Court in remanded cases after receiving an innocent verdict three times.[305] The verdicts for the three defendants were finally reversed on Aug 31, 2012.

497. After criminal procedures were finalized, the civil matters were transferred to the civil courts. Both courts of first and second instance ruled that the three defendants were not liable for the damage. On Aug 26, 2020, the Supreme Court revoked the ruling and the case returned to the High Court. The reason for its ruling was that the victim's family had offered evidence, and hence the burden of proof reverted to Su, Liu and Chuang. For instance, to provide evidence of alleged torture. These issues, however, were comprehensively debated and reviewed in the proceeding criminal procedure. Human rights NGOs in Taiwan expressed concerns regarding the Supreme Court's revocation. The case is in its 29th year, and the three defendants are still wronged in the court proceedings. This seriously violates the principle of "trial within a reasonable time." In addition, the case also shows how victims are poorly protected in the current legal system. The victim's family also felt wronged after the innocent defendants were rescued, and continued holding the defendants accountable to the damages in the civil proceedings.
498. We recommend that the victim's family be included in the compensation of criminal procedures, resolve the difficulties faced by victims and their families, and to dispel hatred rooted in judicial errors.

The thorough realization of citizen participation in the judicial process

499. The participation of citizens in the exercising of judicial power is the tangible realization of the principle of a constitutional democratic state. As the legatees of sovereignty, citizens have the right to participate in the exercising of judicial power. This is an important feature of democratization in the judiciary system. The core essence of citizen participation in the judicial process is the hope that the experience and ethics of people from all fields can be incorporated as components toward fact-finding and the choice of law in judicial processes, so to improve people's trust in adjudications through allowing active participation and introducing a transparent judicial process.
500. The *National Judges Act* was passed in July 2020 and will be formally implemented in 2023. Comprising six national judges and three professional judges to jointly try and judge, the structural design of the system is comparable with the Lay Judges system of Japan. Whether this system under the *National Judges Act* can truly achieve democratization in the judiciary system and improve transparency is dependent on the ability to ensure that the views of people from different backgrounds will be able to avoid the authoritarian effect of the so-called "professional judges" and substantially affect the judicial system. Further, democratization of the judicial system

[305] *The Criminal Speedy Trial Act*: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=C0010027

is dependent on the relevant coordinative measures to improve the criminal justice system (such as an evidence management system that satisfies the 'same evidence test') as well as whether basic education on the rule of law can be comprehensive.

501. We suggest the State invest resources in judicial administration, education and other relevant systems, to achieve the true realization of citizen participation in the judicial process in accordance to its essence.

ICCPR art. 16

Active issuance of legal residency status of stateless children and their birth mothers (Responding to paras. 180-182 of the ICCPR State Report)

502. As quoted in paragraph 73 of State's 2020 Report on the Implementation of the ICESCR, albeit stipulated in the Article 46, paragraph 3 of *Employment Service Act* that labor contracts for migrant workers only applied to fixed-term contracts, which barred contents in violation with *Act of Gender Equality in Employment*,[306] including repatriation upon pregnancy, listed in the contractual agreement, until the end of 2019, the Control Yuan had yet to propose corrective measures to the Executive Yuan, the National Immigration Agency of the Ministry of Interior, and the Ministry of Labor on the matters of the failure to implement the protection of identity rights for the children of migrant workers, and the exclusionary outcome of the *Act of Gender Equality in Employment*. [307] According to investigations, article 15 of the *Act of Gender Equality in Employment,* which addresses maternity leave, the employer's obligation to administer childcare facilities and maternity protection were not implemented for the

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[306] According to the Ministry of Labor's statement on the protection of the right to work for pregnant migrant workers in Taiwan, the content of labor contracts for migrant workers must not violate relevant labor laws and regulations and employers must not terminate the contract or force the migrant worker to leave the country due to pregnancy.
Statement: https://www.mol.gov.tw/announcement/33702/26461/?cprint=pt
The Act of Gender Equality in Employment also stipulated that "Work rules, labor contracts and collective bargaining agreements shall not stipulate or arrange in advance that when employees marry, become pregnant, engage in childbirth or child care activities, they have to sever or leave of absence without payment. Employers also shall not use the above-mentioned factors as excuses for termination." Text of the Act: https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=N0030014&flno=11

[307] See the press release of the Control Yuan: "on the matters of the lack of implementing conducts for the protection of identity rights of the children of migrant workers and the exclusionary outcome of the Act of Gender Equality in Employment, the Control Yuan propose corrective measures to he Executive Yuan, the National Immigration Agency of the Ministry of Interior, and the Ministry of Labor" https://www.cy.gov.tw/News_Content.aspx?n=124&s=14906 The text of corrective measures: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=134&s=3924

sake of migrant workers. Once a migrant worker becomes pregnant, it is very likely for the employer to terminate her employment status due to lack of manpower, resulting in repatriation. Fearful of being repatriated, pregnant migrant workers might become undocumented migrant workers with illegal residency status.

503. Illegal residency status of birth mothers adversely affects their children: Article 38-1 Paragraph 1 Subparagraph 3 of the Immigration Act stipulates that relevant social welfare agencies must be notified to provide shelter for children under the age of 12.[308] However, whether the sheltered children can obtain legal residency status correlates with the residency status of the child's birth parents. According to Article 2 Paragraph 1 Subparagraph 3 of the *Nationality Act*, a person born within the territory of the ROC with both of his/her parents unascertainable or stateless, can be granted the nationality of the ROC.[309] At present, birth mothers of a large number of cases are undocumented migrant workers, even if the state is made aware of their identity, the birth mothers would not be willing to come forward for the fear of repatriation or the inability to support said children, causing the children to only be able to obtain, at most, one year of residency status with an Alien Resident Certificate,[310] (applied by local Departments of Social Welfare and issued by the National Immigration Agency) in lieu of acquiring legal residency status. If the birth mother is still unascertainable, in principle, the court shall deprive the birth parents of their parental rights in accordance with Article 1094 of the *Civil Code*, and then grant the child Taiwanese nationality with adoptive parents in accordance with Article 4 of the *Nationality Act*. At present, however, only a minority of cases have been established where the parental rights of said children were deprived and processed through adoptive procedures. Most of the cases have been related to birth mothers unwilling to come forward, rendering the children to be taken care of by children's institutions, foster

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[308] Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132
An alien who falls under any of the following circumstances, may have his/her detention sanction temporarily suspended: is mentally impaired or physically sick, and the detention could affect treatment or endanger his/her life has been pregnant for five (5) months or longer, or has given birth or had a miscarriage for less than two (2) months children under 12 years old; has contracted an infectious disease indicated in Article 3 of the Communicable is unable to take care of himself/herself due to senility or physical or mental disability has been banned from exiting the State at the request of judicial authorities. Based on the preceding paragraph revoking temporary detention, the National Immigration Agency would desist or cease from detaining an alien in accordance with Paragraph 1 of Article 38-7, and may impose an alternative to detention in line with Paragraph 2 of the preceding Article, as well as notify registered social welfare institutions that provide social welfare medical resources and shelter.

[309] Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0030001

[310] Regulations Governing Visiting, Residency, and Permanent Residency of Aliens, art.6: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080129

families, and caregivers. Not only do these children not have legal residency status, they are also not entitled to National Health Insurance (hereinafter the "NHI"), education services and related social welfare resources.

504. There is a gap between the actual number of stateless children and reported cases, the actual number being unbeknownst by the state. According to paragraph 182 of the State Report, there are 372 cases of stateless children registered by the State since June 2019, of which 178 are unregistered due to adulthood or repatriation. However, this number can only describe the reported cases. As revealed in multiple news reports about stateless children and pregnant migrant workers, the state registered a mere fraction of the total population of stateless children in Taiwan.[311] Unreported by the birth mother and unregistered by the state, some of the stateless children were revealed to have died prematurely due to diseases after their birth mothers were arrested, indicating a gap in the reported population data of stateless children in the country.

505. We suggest:

(1) Implement maternal protection in the workplace for pregnant migrant workers and redraw the quota policy: the rights and interests of birth mothers and children cannot be separated. If the rights of pregnant migrant workers in the labor force are not protected, migrant workers will have to constantly face the risk of unemployment and repatriation, causing their children to become unregistered. Therefore, the rights of pregnant migrant workers promulgated in the *Act of Gender Equality in Employment* must be implemented, including adjusting contents of work during pregnancy and the obligation for employers of more than 100 people to administer childcare facilities, and enable migrant workers to have the right to await the delivery of their child in Taiwan or return to her country of origin for resettlement, whilst retaining her position at work. The unfavorable circumstances faced by pregnant migrant workers are partly caused by statuary quota restrictions on migrant workers. Under quota restrictions, employers are unwilling to and unable to find alternative labor power. Therefore, it is recommended for the state to consider the reality that female migrant workers may become pregnant, redraw the quota policy of migrant workers, and formulate a more flexible hiring system for migrant workers.

(2) Normalize the legal right of residence for migrant workers who have children after coming to Taiwan: it is highly recommended for the state to grant temporary legal residency rights to unregistered migrant workers, to ensure migrant workers and their children have the right to family unity which was guaranteed by the Covenants, to refrain from presenting a dilemma of self-perseverance and rights of children to

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[311] According to a report by the Storm Media "Discrimination kills! Pregnant migrant workers were forced to flee, perils of unregistered children: died from inaccessible vaccination, the mother wished to bury him at a mosque….. " Text of the report: https://www.storm.mg/article/1546158?page=1

migrant workers, and to fully comply with Article 16 of the ICCPR and Article 7 of the CRC which concerned the right of children to bear name and nationality, to recognize their parents, and the right to enjoy parental care.

(3) Accelerate the process of granting stateless children temporary residency status: although, the Executive Yuan has adopted the principle of facile evaluation since 2017 and stated it will exhaust all possible measures to grant children whose birth parents are unascertainable of nationality of ROC in accordance with article 2 of the *Nationality Act*.[312] Children with a known mother who are not willing to come forward still have to go through a long "search" process to obtain a one-year residency status with an "Alien Resident Certificate", and are still deprived of their right to health and education during the waiting period. Therefore, it is recommended for the state to issue an "Alien Resident Certificate" directly to the children after the case is reported, and consider revising Article 2 of the *Regulations Governing Visiting, Residency,*[313] *and Permanent Residency of Aliens* to relax the restrictions for the children to extend their residence period.

(4) It is prohibited to repatriate children of non-nationality when it is not in their best interest: the state should ensure that children of non-nationality are not separated from their parents and their original environment of upbringing. In recent years, Taiwan's primary method of handling children born to migrant workers primarily is to repatriate them to social welfare institutions of the country of origin with the consent of the birth mother. This may result in the child being only able to reunite with the birth mother after she returns to the country for adoption. Relatives in the country of origin might also be unwilling to claim the child for social stigmatization from the country's religious or cultural prejudice for children born out of wedlock. This contradicts with Article 24 of the ICESCR which guarantees that all children have the right to birth registration and acquisition of nationality without discrimination, and with articles 3, 10, and 18 of the CRC which disclosed the right of family unity and the best interests of children. The decision on whether to return children of non-nationality to their country of origin for resettlement must be assessed in the best interests of the child. The state shall also cooperate with the social affairs unit of the country of origin to regularly and continuously monitor the conditions of said cases,

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[312] See report from Upmedia, Jan. 25th, 2017: "[Exclusive] Stateless children born to migrant workers might be able to acquire ID, terminating their legal limbo": https://www.upmedia.mg/news_info.php?SerialNo=11234

[313] According to the article 2 of *Regulations Governing Visiting, Residency, and Permanent Residency of Aliens*, in principle, extension shall not surpass six months; however, on the basis of pregnancy, disease or natural disaster, said extension can be further lengthened. We recommend the state to include stateless children in the concession. Text of the Regulation: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080129

to ensure the compliance with article 27 of the 6th General Comment of CRC,[314] and to ensure the child is protected from torture or disadvantageous circumstances.

ICCPR art. 17

506. For the response to ICCPR State Report paragraphs 183 to 186, please refer to paragraphs 424 to 430 of this report.

Existing provisions failed to protect people's right to privacy (Responding to paras. 187-189, 192 of the ICCPR State Report)

The revision of the *Personal Data Protection Act* weakened the protection of personal information, and increased risk of usage outside specified purpose and leakage

507. The 2015 revision of *Personal Data Protection Act* relaxed restrictions on the collection, process and use of special personal information, including medical records, medical treatment, genetics, sex life, health checks, and criminal history.[315]

(1) Article 6 paragraph 1 subparagraph 4 of the *Personal Data Protection Act* enabled public agencies or academic institutions to collect, process, and use special personal information without de-identification, on the condition that "specific parties cannot be identified based on the method of disclosure".

(2) Statutory definition in Article 6 paragraph 1 paragraph 5 of the *Personal Data Protection Act* is ambiguous. It was stipulated by the act that the usage of special personal information can be sanctioned under the condition where it can "assist a government agency in performing its statutory duties or a non-government agency in fulfilling its statutory obligations".

The revision had weakened the protective measures against intrusion of personal information, increased the risk of usage outside specified purpose and leakage, and facilitated potential circulation between different agencies.

The revision had weakened the protective measures against intrusion of personal

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[314] "27. Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services."

[315] Personal Data Protection Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=I0050021

information, increased the risk of usage outside specified purpose and leakage, and facilitated potential circulation between different agencies.

Abusive usage of surveillance cameras and license plate recognition systems

508. Presently, eTag location tracing system is one of the most controversial license plate recognition technologies in Taiwan. Originally intended for electronic toll collection on the highway system, the license plate recognition system of eTag was later expanded with external code readers in a 2017 tender proposal by the claim of the Ministry of the Interior that it was in accordance with Article 10 paragraph 1 of the *Police Power Exercise Act*.[316][317] The *Police Power Exercise Act* has not been amended for nearly 10 years since its revision in 2011, while emerging technologies have been increasingly able to extract personal information in public settings. When law enforcement personnel collect information on unspecified persons in public places in accordance with the act, there is a higher possibility of infringing on privacy than in the past.

The electronic identification system (eID) may grievously infringe on privacy of citizens

509. According to article 55, article 56 and article 59 of the *Household Registration Act*, citizens are given a unique identification number, and are required to carry and replace their National Identification Card in accordance with the law. Unceasingly, the State has given all citizens a unique and permanent identification number which will also be inscribed on the National Identification Card, National Health Insurance (NHI) IC card, and driver's license. Yet, contrasting with analogous legal structures of Germany and Japan which also maintains the system of IC identity cards, the identification IC card of Taiwan is particularly incidental as it possesses a one-person-one-number system which is unprecedented in Germany, and a mandatory renewal/replace system that is unseen in Japan, moreover, neither Germany nor Japan require its citizens to carry said identity document at all times, producing a higher risk of State or corporate cognition of citizens' daily lives. The State asserted the New eID policy, in the absence of specific protective provisions restricting access

316 The Police Power Exercise Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080145

317 Next Magazine: "Police Spent 40 Million to Track Cars Concerned in Investigations, Legislator Criticized: It's a Form of Surveillance on the Whole Population" https://tw.nextmgz.com/realtimenews/news/284498 ; Bid awarding announcement of "Big Data Analysis Platform for Cars Concerned in Investigations" of Criminal Investigation Bureau, National Police Agency, Ministry of the Interior, Government e-Procurement System: http://web.pcc.gov.tw/tps/main/pms/tps/atm/atmHistoryAction.do?method=review&searchMode=common&pkPmsMainHist=63301937

and usage of identity information, is a disregard of privacy and information autonomy of citizens. The State proposed a compulsory renewal and refused to maintain chipless identification documents as an option.

Information in National Health Insurance may be abused

510. The National Health Insurance (NHI) is a single-payer compulsory social insurance in Taiwan. The State has unceasingly provided medical information to research institutes per application without the consent of the person concerned, who cannot refuse its usage outside specified purpose (the legality of this act is contested). In 2017, a party filed for constitutional interpretation with its results pending.
511. In addition, the *National Health Insurance Data Artificial Intelligence Application Service Pilot Program Guidelines* mentioned in paragraph 192 of the State report does not comply with the *Personal Data Protection Act* as the State declared. The article 6, paragraph 1, subparagraph 4 of the *Personal Data Protection Act* had only authorized governmental agencies and research institutions to utilize medical information for medical, health, and crime prevention purposes on the condition that the identity of parties cannot be identified in the method of disclosure, the provisions did not authorize releasing medical information for industrial applications. Furthermore, the subject of review of IRB (Institutional Review Board) is the content of the program, instead of supervision of collection and application of personal information, or overall risk evaluation of infringement on privacy. The protective clause of personal rights, and the assurance of parties' request of ceasing collection, processing and application of personal information in the *Personal Data Protection Act* has not been put into effort.
512. We suggest:

(1) To fully implement protection of personal information, the State shall expeditiously establish an independent and dedicated agency for personal information protection.
(2) Establish a personal information impact assessment mechanism for high-risk forms of data processing, including the aforementioned special personal information and others (for instance, household registration information).
(3) Amend the requirements for effective consent in the *Personal Data Protection Act* to avoid the abuse of general consent by the public and private sectors, resulting in the violation of personal volition. In addition, despite its assurance of "right to request for erasure", the *Personal Data Protection Act* does not specify the right to refuse or withdraw upon usage of personal information outside specified purposes, the *Personal Data Protection Act* shall be amended, and relevant regulations shall be implemented.
(4) Revise the Police Power Exercise Act to re-examine the regulations for systems of police monitoring in public places, specify the regulation on density of equipment, and prohibit usage outside specified purposes.

(5) Retain the option of possessing chipless identification documents upon implementing the eID renewal project.
To assure basic information privacy and reduce privacy and information security risks, the renewal operation shall be suspended until the provisional regulation of its usage is legislated, and an independent agency for personal information protection be established.

(6) Regarding the application of NHI information, the State is recommended to conduct Data Protection Impact Assessment (DPIA) in accordance with the General Data Protection Regulation (GDPR) of the European Union, to ensure protection of citizens' personal information.

Unregulated usage of facial recognition

General facial recognition systems

513. The use of facial recognition technology is widespread across the public and private sectors, such as campuses, train stations, convenience stores, private corporations, and the police system "M-Police"; among them, the M-Police is not geographically dependent as it is mobile with individual officers. Although the Judicial Yuan Interpretation No. 689 had clearly stated that peoples' privacy should be protected in public places, facial recognition applications can still be seen in public places, such as the 2017 Universiade and Kaohsiung MRT.[318]

514. For the general public, facial recognition systems are difficult to detect, even more difficult to withstand. The advertisement screens in some convenience stores utilized facial recognition technology to calculate the number of advertisement views and the characteristics of customers' age and gender;[319] these operations of processing customers' biometric characteristics have not obtained consent from customers. In 2019, the Taiwan Railways Administration of the Ministry of Transportation and Communications utilized a surveillance system equipped with facial recognition

[318] "Hsinchu Police Utilized Facial Recognition Technology of Industrial Technology Research Institute for the Security of 2017 Universiade" https://www.hsinchu.gov.tw/News_Content.aspx?n=153&s=98250 ;"Use Big Data to Boost the Economy. Kaohsiung MRT Introduced Facial Recognition System": Kaohsiung MRT introduced facial recognition, crowd counting, and data analysis systems to its populous stations of Zuoying, Kaohsiung Main Station, Formosa Boulevard, Central Park, and Sanduo Shopping District for integrated applications. https://news.ltn.com.tw/news/life/breakingnews/2270884

[319] "Facial Recognition in Convenience Stores. Analyze Customers with Gaze Tracking" from TVBS NEWS: https://www.youtube.com/watch?v=iddIHNnrkhM

function at its stations, and later issued a press release after 3 months of testing. Afterwards, the facial recognition function was disabled due to public dispute.[320]

515. Places where access control is in effect, such as campuses, workplaces, and dormitories, have also begun to implement facial recognition access control systems. In 2019, the Ministry of Education formulated the *Guidelines for the Protection of Personal Data and Usage of Biometric Recognition Technology on Campuses* in response to the appeal of civil organizations and legislators, the guidelines recommended educational institutions to obtain the consent of students and their legal representatives, clearly inform relevant information and channels for complaint, and provide protective measures and alternatives for faculty and students who refuse to provide their biometric data, before applying the biometric information technology. However, since the aforementioned guidelines are not legally imperative, coupled with the lack of an independent and dedicated agency for personal information protection, disputes regarding facial recognition technologies persist on campuses, in workplaces and dormitories.

Police and the "Eye of Law System"

516. It is known that the police system "M-Police" can acquire information of: photos of citizen, history of changes in national identification number, criminal records, pawn records, car registrations, photos of missing migrant workers, people who were subject to urine testing, people under home quarantine and other miscellaneous information. Similar systems include the "Eye of Law" system of the Investigation Bureau, Ministry of Justice, of which accessible information includes gender, national identification number, address of registered household, and birthdate. These systems involve the personal information of the entirety of Taiwanese citizens, and were all previously subjected to abusive use or investigation by personal volition of public servants.[321]
517. The police system "M-Police" features a photo comparison system capable of identifying nationality status by taking photos of faces, this system is known to be compatible with mobile devices and can be carried and used by police officers on patrol. The system was formerly used in tasks including routine spot checks, assemblies and parades, and assisting people with dementia to return home. According to the 2018 statistics of accesses to the M-police system, 18,309 queries were

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320 "Facial Recognition Involved with Privacy and Human Rights, TRA Ceased" from UDN https://udn.com/news/story/120815/4147689

321 "Officer from Daan Precinct of Taipei City Police Department Self-Willed Probing of Personal Information Led to Prosecution for Information Leakage" from China Times https://www.chinatimes.com/realtimenews/20200206003658-260402?chdtv

made on desktop terminals, while 19,996 queries were made on mobile devices.[322] The photo-comparing function of the M-police system was authorized by the article 6 and 7 of the *Police Power Exercise Act* with article 15 and 16 of the *Personal Data Protection Act*. However, whether the parties can/did fully discern the scope of functionality of the system, and the legitimacy of using this system, is dictated by the free evaluation of police officers, which may lead to encroachment on people's rights to privacy.

518. We suggest:

(1) The government should expeditiously formulate a specific provision for the use of facial recognition technology. The content should include, but not be limited to, the fields and purposes where facial recognition technology can/cannot be used; the user of said technology shall periodically consolidate corpus of its deployments and the purpose, location, number, cost and manufacturer information; the user of said technology shall conduct and publish data protection impact assessments and allow for public inspection and supervision before formal implementation; establish discussion platforms for users, professionals and relevant personnel to express opinions, participate and deliberate in the decision-making process, and to provide a mechanism for effective consent, and explanations on alternative operatives; regulate the method, expiration, location of storage and its management authority; explain whether data of minors shall be protected by alternate densities of regulations; and the supervisory mechanism for the implementation of this provision.

(2) The State shall expeditiously complete and publicize the timetable for the formulation and implementation of aforementioned measures. Before its complete formulation and implementation, the State shall promptly investigate the circumstances of facial recognition technology usage and publicize the findings. In contrast, unless a reliable legal basis for the necessity and compliance to the principle of proportionality can be designated, all use and introduction of the facial recognition systems should be suspended.

(3) When formulating relevant provisions, the State shall notice the power relation between parties, and require the competent authority to formulate provisions for the regular survey regarding usage of biometric identification in campuses and workplaces, in order to effectively protect the privacy of students and workers.

(4) The State shall be more articulated on the formulation of provisions regarding the more controversial usage of facial recognition technology by the procuratorial system, and require procuratorial agencies which utilizes said technology to regularly disclose incidents of query and audit reports for the inspection of civil society.

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[322] "Where Is the Next Face? (2): Facial Recognition - Technology to Dystopia" from Taiwan Association for Human Rights. https://www.tahr.org.tw/news/2509

ICCPR art. 19

Laws restricting freedom of speech (Responding to para. 203 of the ICCPR State Report)

519. The list in table 18 of the State Report is not exhaustive, lacks explanation and inspection of article 63 paragraph 1 subparagraph 5 of the *Social Order Maintenance Act*,[323] article 63 of the *Communicable Disease Control Act*,[324] and article 41 of the *Disaster Prevention and Protection Act*.[325] The *Communicable Disease Control Act* stipulates that the announcement of epidemic status of infectious diseases shall be made by the competent authority,[326] consequently, there have been cases where judges deemed true information published before the competent authority as rumors, and penalized the publisher on the basis of the *Social Order Maintenance Act*.[327] Albeit the *Social Order Maintenance Act* can only sanction administrative penalties, since provisions authorized police officers to autonomously initiate then transfer to the court, and the act penalizes imprudent acts; extensive interrogation and transfer by the police may cause chilling effects and encroach on the right to free speech.

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[323] Article 63 paragraph 1 subparagraph 5 of Social Order Maintenance Act: Spreading rumors in a way that is sufficient to undermine public order and peace.
https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=D0080067&flno=63

[324]Article 63 of Communicable Disease Control Act: Persons who disseminate rumors or incorrect information concerning epidemic conditions of communicable diseases, resulting in damages to the public or others, shall be fined up to NT$ 3,000,000.
https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=L0050001&flno=63

[325]Article 41 of Disaster Prevention and Protection Act: Informants who report untrue information about disasters despite the fact that they perfectly know the information is untrue as specified in Paragraph 1 of Article 30 shall be fined from NT$300,000 to NT$500,000. Anyone who spreads rumors or untrue information about disasters and thus causes damage to the public or other people shall be subject to imprisonment for not more than three years, detention or a fine not more than NT$1,000,000.
https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=D0120014&flno=41

[326] https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=L0050001 art. 8 of *Communicable* Disease Control Act: Recognition, announcement and removal of epidemic conditions of communicable diseases and the areas thereof shall be made by the central competent authority. For category 2 and category 3 communicable diseases, the aforementioned activities shall be made by the local competent authorities, and report to the central competent authority for reference at the same time. The central competent authority shall timely announce international epidemic conditions or relevant warnings.

[327] News:https://www.setn.com/News.aspx?NewsID=558322；The court judgement: https://law.judicial.gov.tw/FJUD/data.aspx?ty=JD&id=TNEM,108%2c%e5%8d%97%e7%a7%a9%2c56%2c20190531%2c1

520. *National Park Administrative Rules* violate the freedom of expression: During the 2018 local elections, a candidate climbed to the highest peak of Taiwan's Yushan, held a PRC flag to promote the annexation of Taiwan.[328] The Construction and Planning Agency of the Ministry of the Interior therefore revised the *Prohibited Activities Regulations in the Domain of National Parks* and added "prohibition of political acts or activities that can cause social disputes or conflicts."[329] Violators will be fined NTD $1,500. However, the abovementioned revision is very ambiguous, and the pervasive prohibition of "political" acts or activities might violate the principle of proportionality and infringe people's freedom of expression

521. We suggest:

(1) Thoroughly review relevant provisions and its circumstances of implementation, clarify the sources of reported cases, amount of transferred cases, cases penalized by judges, prosecution rate, and conviction rate.

(2) Re-examine the provisions of *Prohibited Activities Regulations in the Domain of National Parks*, distinctly define the scope of administrative penalty, to avoid disproportionate infringements on freedom of speech via legal ambiguity.

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[328] "Candidate for Taipei City Councillor Mounted Yushan with PRC Flag. Yushan National Park: Political Activities Are Unwelcomed" from Upmedia https://www.upmedia.mg/news_info.php?SerialNo=50147

[329] Take regulations from three National Parks for example:
Point 17 of Prohibited Activities Regulations in the Domain of Yushan National Park:
https://www.cpami.gov.tw/%E6%9C%80%E6%96%B0%E6%B6%88%E6%81%AF/%E6%B3%95%E8%A6%8F%E5%85%AC%E5%91%8A/27-%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E7%AF%87/10651-%E7%8E%89%E5%B1%B1%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E5%8D%80%E5%9F%9F%E5%85%A7%E7%A6%81%E6%AD%A2%E4%BA%8B%E9%A0%85.html
Point 17 of Prohibited Activities Regulations in the Domain of Kenting National Park:
https://www.cpami.gov.tw/%E6%9C%80%E6%96%B0%E6%B6%88%E6%81%AF/%E6%B3%95%E8%A6%8F%E5%85%AC%E5%91%8A/27-%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E7%AF%87/10664-%E5%A2%BE%E4%B8%81%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E5%8D%80%E5%9F%9F%E5%85%A7%E7%A6%81%E6%AD%A2%E4%BA%8B%E9%A0%85.html
Point 14 of Prohibited Activities Regulations in the Domain of Taijiang National Park:
https://www.cpami.gov.tw/%E6%9C%80%E6%96%B0%E6%B6%88%E6%81%AF/%E6%B3%95%E8%A6%8F%E5%85%AC%E5%91%8A/27-%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E7%AF%87/15034-%E5%8F%B0%E6%B1%9F%E5%9C%8B%E5%AE%B6%E5%85%AC%E5%9C%92%E5%8D%80%E5%9F%9F%E5%85%A7%E7%A6%81%E6%AD%A2%E4%BA%8B%E9%A0%85.html

ICCPR art. 24

Rather than transferring the responsibility to civil organizations, the state shall undertake the obligation to provide resettlement for stateless children and pregnant migrant workers (Responding to para. 252 of the ICCPR State Report)

522. Article 22 of *The Protection of Children and Youth Welfare and Rights Act* stipulates that household registration and immigration authorities shall assist stateless children in household registration,[330] naturalization, residence or settlement. However, on the frontline, most tasks, including contacting pregnant migrant workers and resettlement, are still undertaken by civil organizations (such as Harmony Home Association Taiwan). As a result, the state's responsibility to stateless children was transferred to private organizations. Because of the high number of cases and the high cost of site operation, The Harmony Home can only provide about 50 beds as legal accommodations for resettlement.[331] Despite having accumulated extensive trust among migrant workers in the form of halfway houses for women and children, resettlement facilities have been stuck in legal ambiguity. Characterized as "resettlement institutions", the sites also face exclusion and discrimination in the communities they have been stationed in.[332]

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[330] "Authorized agencies shall ask for assistance from the authorized agencies in charge of household registration and immigration in the household registration, naturalization, residence, or settlement for children and youth who do not apply for household registration, are stateless, or fail to acquire a residence or settlement permit. Before the completion of household registration or the acquisition of a residence or fixed abode permit mentioned in the preceding paragraph, the social welfare services, medical care, and schooling rights and interests of the children and youth shall be protected in accordance with the law."

[331] Contradicts with the State Report and its accusation that the statutory standard prohibits undocumented migrant workers to live with underage children, Harmony Home Association Taiwan. The establishment of sites and the act of resettlement is fully compliant with article 2 paragraph 3 subparagraph 3 of the Standards for Establishing Children and Youth Welfare Institutes. Article 2 of the Standards for Establishing Children and Youth Welfare Institutes: Children and youth welfare institutes referred to in the Act are defined as follows: 3. Placement and educational institutes mean institutes that offer placement and educational services to the following placement objects (3) Women and babies who encounter hardship due to unmarried pregnancies or deliveries

[332] Taiwanese society has deep rooted discriminatory and stereotypical tendencies against people of Southeast Asian nationality. In addition, most of the cases accommodated by the Harmony Home Association Taiwan were regarded as "fled" migrant workers and their children, resulting in the fact that Harmony Homes often have experienced rejection and unacceptance from the communities it is stationed in. https://www.storm.mg/article/1546171?page=1

523. In lieu of being listed as a specific expenditure, at present, the budget for resettlement of stateless children is listed in the annual budget of the Ministry of Labor,[333] under the item "Employment Stability Fund", not to mention that there has never been an exclusive budget for resettlement of undocumented migrant workers who are pregnant. In addition, the "Employment Stability Fund" witnessed a gradual decrease over the years. The budget started with 26 million NTD in 2018, and dropped sharply to 10.5 million NTD in 2020. Making the prospects for resettlement funds even more dire.

524. We suggest:

(1) Establish a fixed resettlement process for pregnant migrant workers waiting for delivery: As stated in the preceding paragraph, the rights of mothers and children shall not be separated. Part of the cases served by the Harmony Home were documented migrant workers with a legal residency status, however the burden of care while awaiting delivery and resettlement was still undertaken by the Association, instead of employers who the state ought to regulate.
The obligation to serve stateless children also belongs to the state. The state should establish detailed procedures for the resettlement of migrant workers awaiting delivery, to prevent pregnant migrant workers from falling into a state of isolation and helplessness, and to ensure that they enjoy the benefits promulgated in the *Act of Gender Equality in Employment*.

(2) Amend article 22 of the *Protection of Children and Youth Welfare and Rights Act*, systematically regulate standard procedures and obligations for the resettlement of stateless children from the legal dimension. At the same time, a fixed budget for the resettlement of stateless children and pregnant migrant workers shall be established. Thus, the current practice of tackling the issue with a non-fixed budget such as the Employment Stability Fund can be changed.

(3) Civil organizations such as the Harmony Home Association Taiwan have long been pressed to assume the government's responsibility for conducting resettlements, the situation must be improved immediately. It is recommended that the Departments of Social Welfare provide expeditive guidance for the Harmony Home Association Taiwan to acquire the status as a legal institution, to equip it with responsibilities and powers on resettlement for stateless children and pregnant migrant workers equivalent with social affairs units. At the same time, allow civil children and youth organizations, such as the Harmony Home Association Taiwan, to join the

[333] The Employment Stability Fund deals exclusively with labor and labor-related expenditures. From 2018 and onwards, it began to pay attention to the issue of resettlement of stateless children. The name of the expenditure item is "Subsidies to the Ministry of Health and Welfare for the resettlement services of children born to migrant workers whom were introduced to Taiwan on the basis of the Employment Service Act"

deliberative processes of resettlement policy in the central level, thus protecting the right to the decision of civil organizations as stakeholders, and to reverse the current situation where civil organizations can only passively participate in local government cases.

The right to health and education of stateless children should not be deprived

525. According to Article 9 of the *National Health Insurance Act*,[334] among stateless children, only those who obtained an Alien Resident Certificate can enjoy NHI benefits. However, as stated in Article 4, paragraph c, a certain amount of time must be spent for the obtainment of the Alien Resident Certificate. Children who are in the process of obtaining the certificate are also unable to enjoy NHI benefits. In addition to the NHI, since their prolific information was non-existent, children who have not been reported as a case might be rejected by universal routine vaccinations and cannot enjoy the most basic protective measures for their right to health.[335]
526. The education system lacks protective measures for stateless children: Taiwanese laws and regulations have specifically promulgated the right to education for refugees, asylum-seekers and other special citizenship holders. However, the said protection measures stated in *Senior High School Education Act* and *Junior College Act* were limited to higher education. Primary school education, which is most needed by stateless children, was neglected. According to Article 6 of the Primary and Junior High School Act, national compulsory education was available exclusively to school-age children registered by the household registration agencies, children of foreign personnel, expatriates, and overseas Chinese students. In other words, only those with a defined nationality can enter the Taiwanese education system. Even if a stateless child obtains an "Alien Resident Certificate", diplomas would not be awarded as he/she can only enroll in the form of “auditing”. This has blocked the path to higher education for

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[334] Article 9 of National Health Insurance Act: With the exception of individuals mentioned in the previous article, any person who has an alien resident certificate in the Taiwan area must meet one of the following requirements in order to become the beneficiaries of this Insurance:

Those who have established a registered domicile in Taiwan for at least six months.

Those with a regular employer.

Newborns in the Taiwan area.

Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0060001

[335] See CDC website: the CDC stated that special non-national children are also applicable to accept regular universal vaccinations https://www.cdc.gov.tw/Category/ListContent/4T8vDeSxOpmz0ILvF_D8Yw?uaid=j2C0YYhi3H2yjfmZxo1ccw

stateless children, which greatly hinders their future employment opportunities and career development.

527. We suggest:

(1) Children in reported cases should immediately enjoy NHI benefits: the stagnant process for stateless children to be resettled and obtain a residency status has collaterally impacted their access to the NHI, which violates article 24 of the CRC and 15th General Comment of the CRC restricting the inalienable and non-discriminatory right to health of children. Therefore, we urge the state to enable reported stateless children to enjoy the NHI whilst expediting the issuance of residence identification documents for the said cases. At the same time, the vaccination policy should comply with the principle of universality. Regardless of the consent of the unascertainable parent, vaccination might be the most basic form of medical resource for unreported, unregistered children. To exhaust all measures to lower the hurdle for the children of undocumented migrant workers to access medical resources, vaccine administration shall be as swift as possible, and an anonymous administration policy shall also be provided.

(2) Amend Article 6 of *Primary and Junior High School Act* to protect stateless children's right to an education: As mentioned, the compulsory education policy of Taiwan has yet to take the initiative to include stateless children, causing major obstacles to their education and career development, which contradicts article 28 of the CRC that asserts that state parties shall guarantee that every child has the right to receive a compulsory education, higher education and equal opportunities. It is recommended to amend Article 6 of *Primary and Junior High School Act* regarding the household registration and nationality qualifications of children in school or, the Ministry of Education shall formulate schooling and advancement measures for stateless children upon evaluation.

ICCPR art. 25

Age restriction for participation in politics (Responding to para. 258 of the ICCPR State Report)

528. In the 2017 CRC COR,[336] the international committee pointed out that differences in age restrictions across various laws and regulations in Taiwan may cause inconsistencies in applications of human rights conventions. Regarding citizen participation in political rights, in 2017, Taiwan amended the *Referendum Act* to lower the referendum age to 18 years old. However, the minimum age for voting in general elections other than referendums still remains 20 years old. This difference unfairly

[336] Point 25 of the 2017 CRC COR, https://covenantswatch.org.tw/wp-content/uploads/2018/12/2017-CRC-CORs_EN.pdf

discriminates against 18-year-old citizens' political rights. In recent years, many general polls and campus polls have shown that as many as 65% to 80% of young people under the age of 18 believe that they should have the right to vote at the age of 18.[337]

529. According to the intents and purposes of the convention, citizens' participation in political rights should be equal and consistent in all laws and regulations. Although the state has promised to amend the age of majority to 18 years old in the *Civil Code*, the *Social Organization Law* is also expected to amend the law so that people under 18 can also apply for the establishment of civil organizations; these two draft amendments are in the legislative stage of the Legislative Yuan. However, the lowering of voting rights from the age of 20 to 18 is regulated by the constitution, and the extremely high threshold for amendment of the constitution means that 18-year-old citizens still lack the most important political right: the right to vote.
530. The importance of protecting the fundamental human right of freedom of assembly and association is clearly stated in Article 14 of the state's Constitution, Article 21 of the ICCPR, and Article 15 of the CRC. However, as stipulated in Article 10, paragraph 1 of the current Assembly and Parade Act, and Article 8, paragraph 2 of the *Civil Associations Act*, persons under the age of 20 are not allowed to act as initiators of outdoor assemblies and civil organizations, which greatly limits the right to freedom of assembly and association of young people under the age of 20 in the state's Constitution and Conventions. The state should formulate and implement the protection of freedom of assembly and association as soon as possible, so that children and adolescents can have full rights to participate in society.
531. We recommend:

(1) Lowering the threshold of the constitutional amendment procedure, amending Article 130 of the Constitution regarding the age restriction for voting rights and the right to be elected, and consistently interpreting the legal term "adult" across, and within the context of, the state legal system.
(2) State departments work with schools at all levels to implement civic education courses, providing multiple channels for children and adolescents to understand civil rights, so as to teach them to understand the meaning of political participation, and to cultivate civic literacy and critical thinking skills.
(3) The administrative and legislative branches regularly initiate activities for children and adolescents to participate in politics, and designate the Children's and

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[337] In April 2020, the Alliance conducted a public opinion survey on 18-year-old civil rights. Among the survey respondents under 20, nearly 90% supported the civil rights of 18-year-olds. The press release and survey analysis are as follows. In 2019, as many as 65% of senior high school vocational students voted in favor of the 18-year-old civil rights issue in the voter education program, as found by the Alliance, in cooperation with the K-12 Education Administration.

Adolescents' Council to an official public body, incorporate the opinions of children's and adolescents' representatives into consideration of the state's future policy planning, implement the protection of children's and adolescents' rights, and avoid the Children's and Adolescents' Council becoming an hollow shell with negligible influence.

Women's participation in public affairs (Responding to para. 271 of the ICCPR State Report)

Insufficient protection for women in civil servants elections

532. On central government elections: although Taiwan has a female president and the proportion of women elected to the 10th parliament in 2020 hit 41.59%, the highest in the country's history, it still remains to be seen whether this level of female participation is maintainable or if an over 50% women-represented parliament is achievable in the future. Furthermore, it has been clearly set out that at least 50% of the candidates on the legislator-at-large candidate list from each party must be women. However, only 34.25% of the regional legislators elected are women this year, which shows that without the requirement, the number would have been even lower.[338] In addition, there are only 34 legislator-at-large seats, which is barely enough to be allotted to vulnerable and disadvantaged groups, such as workers, farmers, people with disabilities or new residents.

533. On local elections:

(1) It is stipulated in art. 33, para. 5 and 6 of the *Local Government Act* that in the event that there is a total of four representatives to be elected in a district, there should be at least one female among the elected.[339] However, this is only applicable to larger electoral districts where more than four are elected. Requirement on the number of women elected is not enforced for other districts. The article also stated "if the total number of the seats to be elected exceeds four, an additional female shall be among the elected for every additional four persons elected". However, when the total number of the seats to be elected is not a multiple of four in a district, the required number of women to be elected can easily be less than 25% of the total. According to the reverse interpretation in para. 16, CEDAW General Recommendation No. 23,[340] if the number of women elected is less than 30 - 35%, it becomes much harder for them

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338 Additional Articles of the Constitution of the Republic of China, art.4.2: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000002; Civil Servants Election And Recall Act, art.67.3: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0020010

339 Local Government Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0040003

340 CEDAW, GC No.23 (1997): https://covenantswatch.org.tw/wp-content/uploads/2019/01/INT_CEDAW_GEC_4736_E.pdf

to have a tangible impact on political solutions or decision-making. It's obvious that the 25% requirement is far from enough to enable women to affect in substance the political decision-making.

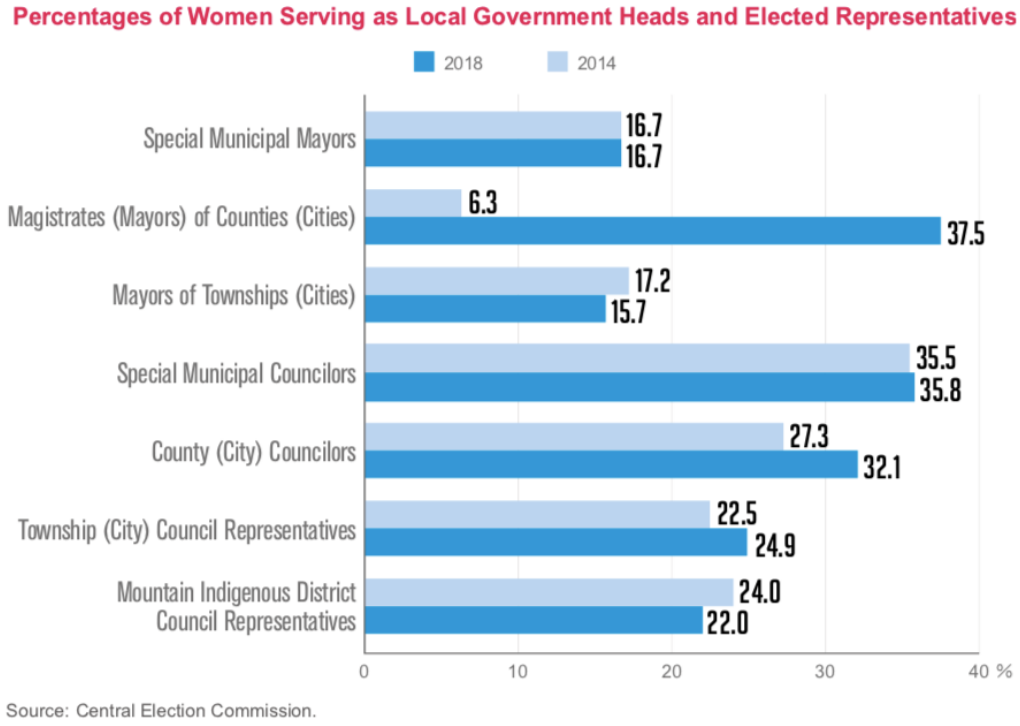

Figure 4

(2) According to the chart from the "2020 Women and Men in R.O.C. Facts and Figures", in 2018, 37.5% of the magistrates/mayors from different counties/cities are women, which is a lot better than 2014.[341] However, there are still very few women working as mayors of special municipalities or mayors of townships/cities. Regarding local representatives, across different special municipalities and counties/cities, more than 30% of the councilors are women. However, the proportion in smaller electoral districts, such as townships/cities and indigenous districts, is less than 30%. This shows the aforementioned flaw in the *Local Government Act*.

Low participation rate by women in public sector decision-making

534. According to "2020 Women and Men in R.O.C. Facts and Figures", a report compiled by the Executive Yuan, women only make up 6.9% of the Cabinet,[342] ranking the 165th

[341] 2020 Gender at a Glance in R.O.C. (Taiwan), by Department of Gender Equality, Executive Yuan, January 2020

[342] The scope of these statistics cover institutions and important positions under the Executive Yuan according to the "Organizational Act of the Executive Yuan", including the President of the Executive Yuan, Vice President of the Executive Yuan, Ministers without Portfolio, the Secretary-General, the

in the world. The number, criticized by the Gender Equality Commission of the Executive Yuan (GEC) and other civic groups,[343] falls short of the Executive Yuan's *Gender Equality Policy Guidelines*. While the Guidelines set the goal of "either gender should account for one-third of the public sector",[344] the reality is far from it. Only 26.6% of the Grand Justices in the Judicial Yuan are women.[345] Per the Department of Gender Equality, Executive Yuan,[346] from 2016 to 2019, only 21-23% of the local government primary unit managers and correspondent directors are women, it is obvious that a "glass ceiling" exists at different levels of government agencies.

535. In addition, according to the 2019 Women and Men in R.O.C. Facts and Figures by the Ministry of Examination, by the end of 2019, 56.5% of civil servants were female. By rank, only 35.5% of seniors (ranking the highest) were female, whereas more than half of the juniors were women.[347] The Facts and Figures also indicates that, during 2015-2019, there were 6 to 7 times more women who applied for parental leave than men. This proves that domestic responsibilities still fall mostly on women, creating a glass ceiling.

Weakness of gender equality mechanisms

536. Lack of diversity and representation in the GEC: historically, members in the GEC consist of people from mainstream society, such as those from metropolitan areas, elites and heterosexuals. However, according to paras. 24 and 25 of the 2018 CEDAW Concluding Observations, women from disadvantaged groups should be represented in all aspects in the GEC, including those from rural or remote areas, women with disabilities, indigenous women, elderly women, immigrants, homosexual, bisexual or transgender women. It also noted that the member quota for scholars and experts

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Spokesperson, and Heads of second-level agencies and equivalent central-level independent agencies (currently includes 31 Ministries and Agencies according to organizational adjustments, and excludes the Transitional Justice Commission, Taiwan Council for U.S. Affairs, Ill-gotten Party Assets Settlement Committee, and Fujian Provincial Government). Each position is counted only once.

343 PTS News Website: Only 3 women in new cabinet, hitting new all-time low. https://news.pts.org.tw/article/485042

344 *Gender Equality Policy Guidelines*, as amended in January 2017. https://gec.ey.gov.tw/File/808C5A20D8871D62?A=C

345 Currently, among 15 Grand Justices, only 4 are women.

346 Gender equality in the participation in decision-making in public/private sectors. https://gec.ey.gov.tw/Page/8F04E73DC96E5F11

347 2019 Gender at a Glance in R.O.C. (Taiwan) by Ministry of Examination. https://ws.exam.gov.tw/Download.ashx?u=LzAwMS9VcGxvYWQvMS9yZWxmaWxlLzEyMDkzLzM5NzU0L2U5YjA5MjlhLTNhYzQtNDU5Zi1iYTRkLWM0NTI2N2IzMjczMy5wZGY=&n=MDItMjAxOSBHZW5kZXIgU3RhdGlzdGljcy5wZGY=

should only be of representative nature, ensuring diversity and representation in civic members' opinion.

537. At present, only the Executive Yuan has a unit for reviewing and improving gender mainstreaming. While the other branches of government have also established gender equality mechanisms to implement CEDAW, it's not really effective and needs reinforcement. The Legislative Yuan presented a gender analysis report based on the bills passed in each session. However, the report only stated that the bills have " a positive impact on gender equality" but did not show any possible gender impact other bills may bring.[348] Furthermore, although the President leads the coordination and cooperation between the five Yuan branches of government , the Office of the President has yet to set up a gender equality mechanism to implement CEDAW.
538. Local gender equality mechanisms have mixed results: Setting up an Office for Gender Equality is a way for local mayors/magistrates to express their political will, which has inspired administrative heads of other mayors/magistrates to do the same. However, the number of dedicated staff in each county/city varies, therefore we are seeing different levels of impact in different regions. Moreover, it is sometimes unclear exactly how each local Gender Equality Office is doing, because of insufficient monitoring and supervision from civil society in some regions.

Traditional misogynistic culture hinders women's participation in public affairs

539. Attacks on female politicians often stem from women's traditional cultural status and their expected domestic responsibilities. Female politicians are also often marginalized, depicted in an essentialist manner, and objectified in the media. With the development of the internet, such attacks have become more and more prevalent whilst its nature and severity are also changing.[349] Taiwan's traditional political culture also exposes women participating in public affairs to misogynistic comments from all walks of life. Discriminatory remarks by public figures is a leading cause of the deteriorating misogyny phenomenon.
540. With the popularization of the internet and social networking platforms, the public is now much closer to politicians than ever. But this also allows politicians to be more exposed to hate speech, which can be generated and spread much faster with the help of social networking sites. Under the traditional perspective, women are expected to shoulder domestic responsibilities. Additionally, the double standards on what counts as “immoral behaviors” imposed by society have led to disproportionate and

[348] Gender analysis report based on the bills passed by the Legislative Yuan. https://www.ly.gov.tw/Pages/Detail.aspx?nodeid=5249&pid=195802

[349] UNOHCHR, Violence against Women in Politics: IFES Submission to the OHCHR Special Rapporteur (2018): https://www.iknowpolitics.org/sites/default/files/ifes.pdf

acute attacks on female public figures.[350] Such attacks not only hurt women but also silence them and discourage them from participating in the political process and public affairs.[351]

541. We recommend

(1) Amend the *Additional Articles of the Constitution* to increase the number of legislators-at-large.

(2) Amend Article 33 of the *Local Government Act* to increase the number of reserving seats as per Point 25 (c) in the 2018 CEDAW Concluding Observations -- increase the proportion of seats reserved for women to 40% or even 50% to comply with the gender balance principle.

(3) In order to increase the female percentage in central and regional administration at a faster rate, the laws, including the *Basic Code Governing Central Administrative Agencies Organizations* and *Basic Code Governing Local Administrative Agencies Organizations*, should be amended to temporary measures, ensuring the proportion of either gender as the heads of first-level agencies both in the cabinet and in local governments is no less than one-third. The GEC should also urge all ministries to break the glass ceiling in the public sector and choose to promote gender minorities when candidates have matching qualifications, raise gender awareness among the highest-ranking administrative and executive officers, and create a gender-friendly workplace.

(4) The central and local GECs should welcome the diversity and representation of women from different disadvantaged groups and improve accountability by setting up a gender-equal professional qualification and "openness and transparency" system for the selection of Committee members. Establish an "Advisory Panel on Gender Mainstreaming in the Office of the President in Taiwan" to strengthen the gender equality mechanism function in the five Yuans branches of government. Local governments should also train using more gender equality resources to promote capacity in the Office for Gender Equality.

(5) A comprehensive anti-discrimination law should be enacted to combat against misogyny. Gender equality training based on CEDAW should involve legislators, other elected public officers and staff in political groups, and analyze the results.

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350 iKNOWPOLITICS, Summary of the e-Discussion on Violence Against Women in Politics(2019): https://www.iknowpolitics.org/sites/default/files/final_english_consolidated_reply_e-discussion_on_vawp_1.pdf

351 Council of Europe Gender Equality Strategy, Factsheet on Combating Sexist Hate Speech, http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806515 92

New residents' right to participate in political affairs and right to group representation repeatedly hindered

542. The Executive Yuan directed the establishment of "Fund for the Specific Care of Spouses of Foreign Nationality" at the 2900th meeting in 2004 with the enormity of 1 Billion NTD, however, given that it differed from the norm of human rights with its incentives being based on benefits of national development and care and assistance. The fund was later renamed as "New Residents' Development Fund" and oriented at establishing new residents' family service centers, providing childcare for new residents, promoting multicultural policies, promoting family education, consummating social safety nets and providing talent training programs.
543. In 2020, the National Immigration Agency announced the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* draft bill with the motive to curtail the number of representatives of new residents' organizations in the Fund Management Committee from 11 to 7, that is, the seats occupied by new residents' organizations shrunk from 33% to 24%. This had not only reduced the influence of new residents in the decision-making process on the use of a fund that is vital to them, this cutback also gravely withered one of their few opportunities for them in participating in politics.
544. In addition to the hurdle to political representation, the qualification hurdle for new residents to access the New Residents' Development Fund persists. Although the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* have undergone several revisions, the fund has continuously failed to separate civil organizations and government agencies as different items, resulting in the scenario where projects from government agencies occupied 80% to 90% of the total amount of the annual fund, or even became the source of policy subsidies for entities which are more capable at mastering methods of application and evaluation (e.g municipal governments, large scale foundations or large for-profit corporations), meanwhile excluding small units or entities that are less familiar with the application and verification process (e.g., governmental agencies of rural areas, or grassroots organizations populated by immigrants), and eventually precluded the direct access of new residents to the New Residents' Development Fund.
545. We suggest:

(1) Immediately withdraw the draft provisions of *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* concerning the reduction of the representatives from new residents' organizations, and robustly implement the right to participate in political and policy decision-making processes of new immigrants. Especially in policy planning concerning them, deprivation and restriction without justifiable reasons shall be prohibited.
(2) The New Residents' Development Fund shall abolish the subsidy type of "short-term projects", and reinstate the regular establishment in local governments or relevant

units, to thoroughly address the issues of resource misplacement, waste and regional imbalance.

(3) Amend the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* to restrict the qualifications of applicants to enable the fund to comprehensively subsidize and encourage local grassroots new residents' organizations, and to address the fact that most subsidized entities are government agencies.

ICESCR art. 6

Responding to paras. 21-39 of the ICESCR State Report

Rehabilitated persons

546. According to a 2017 Ministry of Justice report on the employment situation of rehabilitated persons,[352] 77.33% of the total population of rehabilitated persons in Taiwan are employed, a drop of nearly 4% compared to 81.23% in 2014. The same report indicates that 32.09% of respondents have encountered difficulties in filing job application, the main reason being that they have a criminal record.

547. In recent years, more and more employers request applicants to present a Police Criminal Record Certificate. Such a certificate is required by law for certain occupations, for instance, a taxi driver, as per art. 37 of the *Road Traffic Management and Penalty Act*; a security guard, as per art. 10 of *Private Security Service Act*, and cram-school employees as per art. 9 of the *Supplementary Education Act*. However, apart from these occupations, more and more employers in other fields are also demanding prospective employees to produce such certificates. According to statistics of the Ministry of the Interior, the number of Police Criminal Record Certificates issued pursuant to the *Act Governing Issuance of Police Criminal Record Certificates* has almost doubled between 2013 and 2019. Please see chart below.[353] Year/Number of certificates issued.

Table 4

Year	2013	2014	2015	2016	2017	2018	2019
Issuances	368,104	361,375	334,111	397,329	464,635	513,341	711,095

[352] Survey Report on Employment of Rehabilitated Persons (2017), Ministry of Justice. http://www.after-care.org.tw/upload/cht/attachment/3ef23742edff0ce256a274f94e69a714.pdf

[353] Statistical Table of Police Criminal Record Certificates Issued Nationwide (2020), Ministry of the Interior. https://data.moi.gov.tw/MoiOD/Data/DataContent.aspx?oid=D0F7877F-74CF-4207-B8F3-C0CEA7F92E6B

548. The requirement of a Police Criminal Record Certificate as prerequisite for job applications may be infringing on rehabilitated persons' right to work. There is no legal basis in Taiwan to date that would expressly protect rehabilitated persons from job discrimination. Furthermore, employers who demand job applicants or employees to produce a Police Criminal Record Certificate may be contravening Subparagraph 2 of para. 2 of art. 5 in the *Employment Service Act*, which states that employers must not "request job seekers or employees to surrender any other personal documents unrelated to the employment concerned against his/her free will" and art. 6 of the *Personal Data Protection Act*, stipulates that "data pertaining to a natural person's medical records, healthcare, genetics, sex life, physical examination and criminal records shall not be collected, processed or used".

549. We suggest:

(1) Amend the law immediately by stipulating in art. 5 of the *Employment Service Act* that no employer is to discriminate against any job applicant or employee on the grounds of criminal records. The *Act of Gender Equality in Employment*, the *Act of Worker Protection of Mass Redundancy*, the *People with Disabilities Rights Protection Act* and so on may serve as reference for the formulation of specific laws in protecting rehabilitated persons' right to work. The scope of "personal documents unrelated to the employment" as mentioned in Subparagraph 2 of para. 2 of art. 5 in the *Employment Service Act* should be clarified so as to prevent any discrimination or compromising of personal information as a result of vagueness in legal interpretation.

(2) The government should establish a model of inter-ministerial cooperation centered on the promotion of rehabilitated persons' employment: to make effective use of vocational training, skills verification and employment promotion among other measures and resources of the Ministry of Labor, and to cooperate with the Taiwan After-Care Association, which is supervised by the Ministry of Justice and has long been involved in casework of rehabilitated persons and community follow-up, in order to understand and assist rehabilitated persons facing difficulties in gaining employment, and provide management experience to companies, so as to truly promote employment of rehabilitated persons, the willingness of companies in hiring and stability thereof.

Persons with disabilities

550. According to the Labor Ministry's report, the labor participation rate of people with disabilities as of 2019 was 20.7%,[354]not significantly higher than 20.41% in 2016.[355] Furthermore, in response to para. 31 of the 2020 ICESCR State Report, the government has merely accounted for the increase in 'quantity' of employment, without providing any statistics and analysis on 'quality of employment'.
551. According to arts. 5 and 6 of the *Employment Service Act*, plus the *Enforcement Rules of Employment Service Law*,[356] an employer is not to discriminate against job seekers or employees on the grounds of disability. However, the act does not give further explanation on the nature and form of discrimination, but refers the power of discretion to city or county authorities and a committee on job discrimination formed by relevant government departments, units, labor organizations, representatives of employers' organizations and experts. Furthermore, as the forms of discrimination such as 'indirect discrimination', 'associative discrimination' and 'refusal to provide reasonable accommodations' have not been formalized in law, people with disabilities find great difficulty in declaring that their right has been deprived and making a complaint successfully under the current law.
552. We recommend:

(1) In reference to the examples and interpretation on forms of discrimination in the report (A/HRC/34/26) by the Office of the United Nations High Commissioner for Human Rights regarding art. 5 of the CRPD,[357] to develop a comprehensive law on equality or specific to employment, in order to broaden the definition of job discrimination.
(2) The government should fully reexamine the system of sheltered workshops based on the principle of CRPD, in order to ensure that people with disabilities will have the right to freely choose and accept job opportunities to make a living, in an 'open, inclusive and barrier-free labor market and working environment'. Also, as

354 2019 Survey on Labor Conditions of Persons with Disabilities, Ministry of Labor. https://statdb.mol.gov.tw/html/svy08/0841menu.htm

355 2016 Summary and Analysis of Labor Conditions of Persons with Disabilities, Ministry of Labor. https://www.mol.gov.tw/media/5758854/105%e5%b9%b4%e8%ba%ab%e5%bf%83%e9%9a%9c%e7%a4%99%e8%80%85%e7%94%9f%e6%b4%bb%e7%8b%80%e6%b3%81%e5%8f%8a%e9%9c%80%e6%b1%82%e8%aa%bf%e6%9f%a5%e5%a0%b1%e5%91%8a-%e5%8b%9e%e5%8b%95%e9%9d%a2.pdf

356 Employment Service Act, art.5, art.6: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

357 UN, Equality and non-discrimination under article 5 of the Convention on the Rights of Persons with Disabilities (2016): https://undocs.org/A/HRC/34/26

emphasized in para. 47 of the ICESCR GC 23,[358] people with disabilities should enjoy equal remuneration for work of equal value, and not be discriminated against in any application of wages due to a perceived reduced capacity for work.

New immigrants

553. The government policies in subsidies have led to a wage gap between new immigrants and Taiwanese nationals, causing unequal pay for the same job. According to ruling made in administrative litigation by the Taipei District Court, Summary Procedure No. 14 of 2019, Juridical Association for the Development of Women's Right in Pingtung, JADWRP applied for many years to the Ministry of the Interior for the "New Immigrants Development Fund" to subsidize a new immigrant lecturers training program, the proposed plan in 2018 was consistent with that of the previous year and should in principle be classified as being a general activity in nature, which may enjoy up to NT$1,600 in hourly rates,[359]yet it was forcibly identified as camp activity, such that the previous subsidy of NT$800 for hourly lecturer fees was reduced to NT$260. The ruling held that the claim of the Ministry of the Interior that new immigrant lecturers are of a different nature from other teaching activities under subsidy was not valid, and seriously violated the principle of self-restraint in administration; the reduction in subsidies for the teacher's hourly fees which the association had applied for also constituted differential treatment in violation of the principle of equality as proclaimed in the Constitution.
554. This case of administrative litigation not only exposes the predicament in which organizations of new immigrants have long been relying on short-term subsidies from the "New Immigrants Development Fund" in order to raise funds for empowerment and to hire new immigrant lecturers. It also suggests that government subsidies for social welfare have not provided reasonable and equal protection to new immigrants' right to work, much less fulfilling responsibility in active promotion of empowerment and awareness of new immigrants.

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358 CESCR, GC No.23 (2006): https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en

359 According to para. 1 and Item 2 of para. 3 under Point 8 of Basic Principles of Review for New Immigrants Development Fund (law at the time of commission), hourly fees for teaching are thus stipulated: for general learning courses, language learning for daily life, self-cultivation and emotional support and other courses, for total duration of exceeding 36 lessons or hours, an external teacher will be paid maximum NT$1,000 per lesson, and a staff member will be paid maximum NT$800 per lesson; for projects under 36 hours, an external teacher will be paid maximum NT$1,600, a staff member maximum NT$800; for summer or winter camps, or courses lasting less than a week, maximum subsidies would be NT$400 per hour; for courses lasting more than a week, maximum subsidies would be NT$260.

555. We suggest:

(1) Review the effectiveness of successful cases over the years in application of "New Immigrants Development Fund", in terms of meeting the needs of regional migrants.

(2) Actively cooperate with NGOs centered on migrants and undertake long-term empowerment projects for new immigrant women in various regions, not only to bring about relevant vocational skills and reasonable labor conditions, but also to promote an inclusive Taiwan society and education system with diverse cultures.

The middle-aged and elderly

556. Para. 29 of the 2020 ICESCR State Report mentioned that the *Middle-aged and Elderly Employment Promotion Act* was originally slated to take effect on May 1, 2020, but the plan was suspended due to the pandemic,[360]with the new date of implementation yet to be determined.

557. We suggest that the government enact the act and its sub-laws as soon as possible, including enforcement rules, assistance for middle-aged and elderly to work in stable employment positions, assistance for the unemployed and retirees returning to work, along with various incentives and subsidies, to safeguard the right to work among the middle-aged and elderly.

The impact of foreign migrant workers on domestic workers

558. As of the end of 2019, the number of industrial and social welfare foreign workers in Taiwan reached 718,000.[361] With the sharp increase in foreign workers, there have been growing concerns that locals' right to work may be negatively impacted. According to the Control Yuan's 2018 report,[362] Paragraph 3, Article 52 of the *Employment Service Act* required the government to set indicators to evaluate the impact of migrant workers,[363] and control the total number of foreign workers allowed to enter the country each year. However, the Ministry of Labor has never conducted quantity control. Moreover, academic studies have pointed out that the

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360 Due to the pandemic, the Middle-aged and Elderly Employment Promotion Act has been temporarily suspended, while the Ministry of Labor actively promotes labor relief programmes to help workers find stable employment.
https://www.wda.gov.tw/News_Content.aspx?n=7F220D7E656BE749&sms=E9F640ECE968A7E1&s=7F85E93AC0D2B615

361 Statistics on the number of foreign workers, Ministry of Labor:
https://statdb.mol.gov.tw/evta/JspProxy.aspx?sys=220&ym=10908&ymt=10908&kind=21&type=1&funid=wq1401&cycle=1&outmode=0&compmode=0&outkind=11&fldspc=24,6,&rdm=efmmjjiN

362 Control Yuan's investigation report https://www.cy.gov.tw/CyBsBoxContent.aspx?s=6283

363 Employment Service Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

increase in foreign labor intensity has a negative impact on the overall labor wages.[364] However, there is still no consensus in society as to whether foreign labor is a substitute or a supplementary effect. Even though civil society has many concerns, the government has yet put forward a constructive policy or produced relevant statistics on this matter.

559. We suggest that the government immediately launch investigations and produce in-depth statistics so that civil organizations can conduct substantive supervision and provide policy recommendations. At the same time, take reference from the Control Yuan's 2018 report, and formulate a clear, specific, and enforceable foreign labor control mechanism to ensure the rights and interests of domestic workers.

ICESCR art. 7

Responding to paras. 40-63 of the ICESCR State Report

Inadequate regulations causing long working hours

560. In response to para. 56 of the 2020 ICESCR State Report, although the *Labor Standards Act* has clear provisions on regular daily working hours, extended working hours and flexible working hours, the total annual working hours of Taiwanese workers remain inexorably high at 2,028 hours in 2019.[365]The biggest reason lies in illegal overtime work and that annual leave and regular off day requirements are ignored. Moreover, the rights and interests as safeguarded in the *Labor Standards Act* are not applicable to civil servants.

561. According to art. 84-1 of the *Labor Standards Act*,[366] provisions of working hours and regular days off that are safeguarded by the act are not applicable to 49 types of workers.[367]This has become an excuse for some employers to evade overtime payment or even abuse the practice of exempt employees, leading to many workers losing their legal rights. Even with workers for whom art. 84-1 is truly applicable, some companies do not sign the written agreement to send for approval by the district

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[364] The Impact of Foreign Workers on Domestic Workers' Salary and Employment: An Empirical Study in Taiwan
https://www.ntpu.edu.tw/econ/files/Journal/2019083093640.pdf

[365] Statistics of Working Hours from Ministry of Labor.
https://statdb.mol.gov.tw/statis/jspProxy.aspx?sys=100&kind=10&type=1&funid=q0402&rdm=pkcllWyZ

[366] Labor Standards Act, art.84-1: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001

[367] Types of Workers under para. 1 of art. 84, Ministry of Labor
https://www.mol.gov.tw/media/5762540/%e5%8b%9e%e5%8b%95%e5%9f%ba%e6%ba%96%e6%b3%95%e7%ac%ac84%e6%a2%9d%e4%b9%8b1%e5%b7%a5%e4%bd%9c%e8%80%85.pdf

government, making this law much of the reason as to why workers are being overworked.

Income inequality

562. . Please refer to paras. 147-155 of this report.

Insufficient manpower for labor inspections and ambiguity in division of power responsibilities led to inadequacies in implementation of the law

563. According to the 2019 Statistical Report on Labor Inspection,[368] there are currently 906,436 registered enterprises with employed workers in Taiwan. However, only 40,466 labor inspections were conducted in 2019. According to a 2018 investigative reporting by non-profit media The Reporter,[369]one labor inspector is responsible for more than 10,000 workers on average, additionally, just over 300 inspectors are in charge of the inspections on labor conditions. This is equivalent to one inspector versus nearly 2,000 enterprises, which is clearly a case of shortage in manpower.
564. Furthermore, official agencies that are in charge of labor inspections are disorganized. Apart from the Ministry of Labor authorizing municipal authorities or other related bodies to set up labor inspection agencies, the power of labor inspection for the Export Processing Zones and Science Parks is completely divorced from the labor administration bodies, and lies instead with the Ministry of Economic Affairs and the Ministry of Science and Technology respectively. The role of the Ministry of Economic Affairs and the Ministry of Science and Technology is defined as that of serving enterprises within the zone or park, hence completely set apart from the role of labor administration bodies in monitoring health and safety of workers as well as labor conditions.
565. When any enterprise is found contravening the regulations of the *Labor Standards Act*, the labor inspection agency is required, in accordance with the penalty provisions of the Act and para. 1 of art. 25 in the *Labor Inspection Act*,[370] to report to competent authorities of the municipal, county or city to monitor for rectification and decide whether to impose a penalty. Therefore, even if the labor inspection agency under the Labor Ministry finds out that a company is in violation of labor laws, it is still left to the county or city government to decide on whether to impose penalties, and the extent of penalties. After such a complicated procedure, an employer violating the

368 2019 Summary and Analysis on Enforcement of Labor Inspection, Ministry of Labor https://www.osha.gov.tw/media/7186986/108%e5%b9%b4%e6%8f%90%e8%a6%81%e5%88%86%e6%9e%90.pdf

369 The Reporter, 'Why can't labor inspection with a completion rate of 100% earn the trust of workers?' https://www.twreporter.org/a/labor-inspection

370 Labor Inspection Act, art.25.1: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0070001

Labor Standards Act may still not receive a deserved punishment, or may not be punished in a timely and effective manner, or make rectification within a certain time limit.

Disputes between labor and management

566. Regarding labor-management disputes, in response to para. 24 of the ICESCR 2020 State Report, although the government has implemented the *Labor Incident Act* since January 1st, 2020, the law is still a special legislation with the Taiwan *Code of Civil Procedure*, and is therefore mainly dealt with by judges of civil courts. If, in the future, disputes regarding unfair labor practices come under the jurisdiction of the *Labor Incident Act*, there is concern that civil judges may be lacking in experience and expertise.

567. We suggest:

(1) Abolish art. 84-1 of the *Labor Standards Act* and amend arts. 32 and 36 of the same Act,[371] so as to reduce the upper limits of normal working hours, and to specify that workers have 2 regular days off for every 7 days, in order to truly realize 2 rest days per week policy.

(2) Taiwan has accepted a practice of flextime work arrangements, which has created 12-hour rotating shifts. This leads to a major disruption of workers' biological clocks, which has already severely impacted the family life and physical health of workers. Such practice of a two-shift system with 12-hour rotating shifts should therefore be banned immediately. Also, it should be made compulsory under the *Labor Standards Act* that every shift should be followed by at least 12 hours of rest before a worker is to perform any further normal work duty, so as to protect workers' right to rest.

(3) For the sake of implementing annual leaves, it should be clearly stipulated in the *Labor Standards Act* that any annual leave not taken should be compensated with payment of wages. This should be upgraded from the current enforcement rules to the Act itself, with regulations of penalties incorporated, so as to enforce annual leave for workers.

(4) Regarding civil servants, to amend para. 2 of art. 11 in the *Civil Servant Work Act*,[372] so as to ensure that all civil servants regardless of the institution or agency they belong to shall enjoy 2 rest days per week.

(5) Increase manpower for labor inspection and return the power of labor inspection to the central government agencies, so as to ensure professionalism and independence.

(6) Integrate the power to conduct labor inspection with the power to administrative sanctions, so as to fully realize the purpose of inspections and exert a deterrent effect.

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[371] Labor Standards Act, art.32: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0030001

[372] Para. 2 of art. 11 in the Civil Servant Work Act stipulates that "civil servants shall enjoy 2 rest days every week. Agencies with businesses of special nature can implement necessary shift systems."

(7) Establish a labor court as soon as possible, taking reference from the German Labor Court (*Arbeitsgericht*) which is made up of judges with a background of expertise in labor law, and to explore the necessity in having non-professional judges to assist professional judges in clarifying points of contention in labor-management disputes.

Responding to paras. 85-91 of the ICESCR State Report

568. As of the end of 2019, migrant workers in Taiwan belonging to either industrial labor or social welfare labor have reached 718,000 in number,[373] making them one of the important communities in Taiwanese society. However, as early as 2013, the Review Committee have stated in Points 38 - 39 of the 2013 CO that blue-collar migrant workers in Taiwan face problems such as exorbitant broker fees, almost complete dependence on employers, restrictions on transfer between employers, possibly complete loss of rights with status as undocumented workers and so on. The Committee called on the government to closely monitor and control the exploitation of migrant workers by agent companies, to impose penalties in cases of abuse, to extend the rights of migrant workers in switching employers, and to ensure that everyone enjoys the most basic human rights, regardless of one's status as citizen or non-citizen, documented or undocumented. Yet aforementioned circumstances have seen little improvement to date.

High broker fees deepens exploitation of workers

569. As the process in hiring blue-collar migrant workers is somewhat complicated,[374] and migrant workers have difficulty in obtaining information, not to mention a lack of infrastructures and services, job seekers and employers usually choose to be matched through private broker agencies. According to Article 6 of *Standards for Fee-charging Items and Amounts of the Private Employment Services Institution*,[375] "profit employment services institution when being entrusted by employer to undertake business activities of employment services may charge employer fees"; this is used as a basis for agencies to exploit migrant workers, making them bear unreasonably high amounts of debt.
570. In response to para. 80 of the 2020 ICESCR State Report, while the government has set up Direct Hiring Service Centers to assist employers in handling matters of hiring

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373 Ministry of Labor, 'Number of Workers in Labor Industry and Social Welfare Industry' (2020). https://statdb.mol.gov.tw/evta/JspProxy.aspx?sys=220&ym=10908&ymt=10908&kind=21&type=1&funid=wq1401&cycle=1&outmode=0&compmode=0&outkind=11&fldspc=24,6,&rdm=efmmjjiN

374 Regulations on the Permission and Administration of the Employment of Foreign Workers, art.2 (1), https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090027

375 Standards for Fee-charging Items and Amounts of the Private Employment Services Institution, art.6, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028

themselves, with an attempt to lower broker fees for migrant workers, publicity has not been adequate and the procedure is more complicated than turning to recruitment agencies. This results in an extremely low rate of usage, with no significant effect.

571. In response to Paragraph 81 of the 2020 ICESCR state report, although the government has established an evaluation of service quality for employment agencies, according to the *Key Points of Service Quality Evaluation for Private Employment Service Institutions Involved in Transnational Recruitment*, serving as the legal basis for evaluation, the Labor Ministry has outsourced the responsibility in implementing evaluation, and its indicators for evaluation have been established without adopting the opinions of migrant workers or their representatives. Hence there is doubt as to the fairness and representativeness of this evaluation framework.[376]

Unable to switch employers freely, migrant workers compelled to escape

572. Para. 68 of the 2020 ICESCR State Report mentions that in accordance with the law, employers are to consent to any migrant workers switching to another employer, but be it according to regulation or in practice, migrant workers continue to be subject to various restrictions, rendering them often unable to choose employers as they wish:

(1) According to para. 3 of art. 53 in the *Employment Service Act*,[377] it is stipulated that any foreigner who has been employed for any work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of art. 46 under the same Act, including marine fishing work, household assistant and nursing work, and other forms of work as blue-collared migrant workers, "may not shift to a new employer or new work". Only when one of the 4 circumstances as stipulated in art. 59 of the *Employment Service Ac*t arises, may a blue-collared migrant worker switch to a new employer or a new job upon approval of the central authority.[378]

(2) Also, concerning migrant workers in household assistant and nursing work, Subparagraph 3 of para. 2 of art. 58 under the same Act stipulates that an employer who agrees for an employed migrant worker to switch to another employer or another job will be able to apply for replacement, only upon the worker shifting to work for a new employer, or the worker moving out of the country.[379] This law

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376 Ministry of Labor, Key Points of Service Quality Evaluation for Private Employment Service Institutions Involved in Transnational Recruitment
https://laws.mol.gov.tw/FLAW/FLAWDAT0202.aspx?id=FL044060

377 Employment Service Act, art. 53.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

378 Employment Service Act, art. 59.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

379 Employment Service Act, art. 58.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

creates a "window period" which is quite unfavorable to families with real need for care workers, and has led to employers finding ways to make migrant workers leave the country so as to allow them to apply for a replacement as soon as possible.

573. Given restrictions that prevent workers from changing employers freely, be it in industrial labor or social welfare labor, workers who are exploited by their original employers, or are unwilling to leave the country and unable to find new employers, may well be caught in a situation of having to "escape". In response to para. 76 of the 2020 ICESCR State Report, although the government, in accordance with *Key Points on Temporary Shelter and Placement for Migrant Workers* employed under Subparagraphs 8 to 11 of Paragraph 1 of Article 46 in *Employment Service Act*, has assisted in sheltering migrant workers who are forced to terminate employment relationships, the number of missing migrant workers in Taiwan as of August 2020 has reached 51,153 according to statistics of the Immigration Agency.[380] This marks an increase from 49,939 during the same period in 2015, suggesting that current government measures have not helped to ameliorate the situation.

574. Following an act of escaping, a migrant worker would not only lose all rights and easily become discriminated against, his or her work permit may also be revoked in accordance with art. 73 and 74 of the *Employment Service Act*,[381] and the worker will be barred from engaging in any work in Taiwan again.

(1) As mentioned in para. 66 of the 2020 ICESCR State Report, a runaway worker of Vietnamese origin by the name of Nguyen Quoc Phi was shot 9 times by a police officer in August 2017, and pronounced dead after being sent to a hospital.[382]In April 2018, another Vietnamese migrant worker named Hoang Van Doan, who chose to escape due to inhumane treatment of the employer and agency, thereafter becoming engaged in illegal work, was injured while being pursued by the police, and died after he escaped arrest.[383]

(2) Whenever migrant workers run away, if they subsequently encounter situations like illness or labor disputes which may be life-endangering or threatening to their interests as workers, they tend to choose not to go to a hospital and not to file an

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380 Immigration Agency, 'Statistics of Missing Migrant Workers' (2020). https://www.immigration.gov.tw/5385/7344/7350/8943/

381 Employment Service Act, art.73. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

382 Press Release on Police Officer Chen Chung-wen Opening Fire Leading to Unnatural Death of Vietnamese Migrant Worker Nguyen Quoc Phi on August 31st, 2017, Judicial Yuan. http://jirs.judicial.gov.tw/GNNWS/NNWSS002.asp?id=489797&fbclid=IwAR0psTOCOSL5A1PBcyEKyf5JSHwnP6Lnq6A8r3RLfjv91ENqzYiji4P7GDU

383 'Vietnamese Migrant Worker Found Dead in Alishan after Escape from Police', PTS News Network. https://pnn.pts.org.tw/project/inpage/485

appeal, as once they enter any system that requires documentation proof, they would face the prospect of being deported. Furthermore, a runaway migrant worker hence becomes an illegal migrant worker who does not qualify for any health insurance, and has to be charged based on rates as an international patient. While charges vary among hospitals for international rates, most charges would be 1.5 to 2.0 times of private health insurance prices.[384]

(3) In response to para. 65 of the 2020 ICESCR State Report, the government when faced with a situation of runaway migrant workers has actually resorted to the measure of offering monetary rewards to the public for "whistleblowing". There is no attempt in raising public awareness and educating employers meantime. Such a move not only entrenches misunderstanding and discrimination among the public against runaway migrant workers, but also allows employers and recruitment agencies to intimidate migrant workers using an "illegal" status as their bargaining chip. Furthermore, the Immigration Agency in June 2015 launched an anti-counterfeit verification app to check residence permits against electronic ID cards, to enable anyone to check the validity of a migrant worker's residence permit any time, which raises concerns of rights to privacy.

Occupational accident rate of migrant workers is twice that of local workers

575. According to the 2020 report of the Control Yuan,[385] the disability incidence rate of migrant workers in the last 10 years has been significantly higher than that of workers who are Taiwan nationals, and within the manufacturing industry which sees the highest proportion of migrant workers, the rate of disability incidence due to occupational accidents is almost double that of workers who are Taiwan nationals.[386]In 2018 for example, while the rate per thousand people was 0.31 among Taiwan nationals, that among migrant workers was 0.67.[387]The government, to date, has yet to put forth any specific or effective measure, which results in the rights and interests of migrant workers remaining unprotected.

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384 Upper limit based on 'Principles of Reference for Standards in Medical Charges', Ministry of Health and Welfare, October 3rd, 2017; lower limit based on experience of NGO personnel in Taipei Metropolitan Area.

385 Survey Report on Labor Insurance and Occupational Accidents, Control Yuan. https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17095

386 Occupational Accident Rate per Thousand Persons: the number of injuries or illnesses, disability incidences or deaths due to buildings, machinery, facilities, raw material, chemicals, gases, steam, pollen or processes at the workplace on average among 1,000 workers.

387 'According to Statistics, Disability Incidence Rate of Migrant Workers in Occupational Accidents in Manufacturing Industry has been Double that of Workers of Taiwan', Control Yuan. https://www.cy.gov.tw/News_Content.aspx?n=125&s=14477

576. The same report has indicated that safety signs which caution against any hazard at the workplace often miss out on the mother tongues of migrant workers. Employers also often do not provide training in occupational safety, and instead leave it to more senior migrant workers to instruct new migrant workers. Training is thus hastily carried out.

577. We suggest:

(1) Formulate relevant policies immediately and limit the amount of service fees charged by broker agencies. Coordination with workers' countries of origin should be established for direct hiring, in order to simplify the procedure in direct hiring for employers in Taiwan, and to raise interest in applying for direct hiring. In the meantime, the employment service centers should hire sufficient interpreters, to enable migrant workers to obtain relevant information readily.

(2) Amend the *Employment Service Act* immediately so as to abolish the stipulation in Item 3 of art. 53 that a migrant worker may not switch to a new employer freely, and provide for additional penalties against illegal action taken by employers and recruitment agencies, and for implementation of labor inspection.

(3) Abolish monetary rewards for whistleblowing on runaway migrant workers. Strengthen advocacy and education so as to raise awareness among the public and public servants on the problem of runaway migrant workers, and protect such workers from discrimination.

(4) Concerning the issue of occupational accidents, the government should make it an actual requirement for employers to provide comprehensive vocational training conducted in the mother tongues of migrant workers; vocational training should also be incorporated into labor inspection, so as to ensure protection of migrant workers' occupational safety.

ICESCR art. 8

Right to participate in trade union organizations

578. According to Labor Ministry statistics, Taiwan has altogether 5,576 trade unions as of the end of 2019, a significant increase from 4,759 trade unions in 2009. However, the same statistical report indicates that the organization rate of nationwide trade unions has decreased over the years, from 37.8% in 2009 to 32.5% in 2019.[388]This suggests that protection provided to trade union organizations in terms of regulations and practical aspects has been inadequate, resulting in workers being unable to fight for their own rights and negotiate with the management on equal terms.

[388] Number of Trade Unions and Number of Members, Ministry of Labor. https://statdb.mol.gov.tw/html/mon/23010.pdf

579. In response to para. 93 of the 2020 ICESCR State Report, although art. 35 of the *Labor Union Act* stipulates that an employer shall not "improperly influence, impede or restrict the establishment, organization or activities of labor unions",[389] and if there is any such action of improperly influencing or impeding, it is stipulated in art. 45 of the same Act and art. 43 of the *Act for Settlement of Labor-Management Disputes* that punishment will be imposed only with a ruling by a Board for Decision organised by the Central Competent Authority.[390] As the waiting time for a ruling tends to be too long, and action of improper influencing or impeding union activities would have happened and continued in the duration, this results in failure to timely protect the rights and interests of workers.

Provisions of Collective Agreements

580. In response to paras. 98 and 100 of the 2020 ICESCR State Report, although art. 6 of the *Collective Agreement Act* in Taiwan stipulates that any party between the labor force and the management cannot reject a collective bargaining proposal without justifiable reasons,[391] between 2012 and 2019 the number of enterprises and institutions with effective collective agreements in force and the number of cases have all increased. Although, the number of collective bargaining cases, with enterprise unions, industrial unions and professional unions all added up, is only slightly more than 700. The ratio, in proportion to a total number of 5,576 unions, remains very small.
581. Furthermore, there are still inadequacies in the *Collective Agreement Act* which make it difficult to fulfill the rights and interests of workers:

(1) According to art. 8 of the *Collective Agreement Act*,[392] unless agreed by the other party, representatives in collective bargaining cases are limited to trade union members, which makes it very difficult for professionals who are non-members to assist the trade union in negotiation. The content of negotiation often involves knowledge of certain professional domains, which results in unequal footing between labor and management, with the former strapped for resources.
(2) Art. 9 of the *Collective Agreement Act* stipulates that if bargaining representatives have not been selected in accordance with the charter or resolution of a labor union or employer organization, they shall first "obtain the resolution which has been passed by more than two-thirds of attending members or member representatives who

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389 Labor Union Act, art.35: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020001

390 Labor Union Act, art.45, art.43: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020001

391 Collective Agreement Act, art.6: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020006

392 Collective Agreement Act, art.8: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020006

account for at least one half of members". Such a stipulation often leads to objection from employers that representatives of the labor union may not have the authority to negotiate, followed by a demand that the union produces a membership register to prove that more than half of the employees in the enterprise have joined the trade union, which compromises the secrecy in membership among the workers.

582. We suggest:

(1) Amend art. 11 of the *Labor Union Act*,[393] so as to reduce the number of signatures required to form a labor union, thereby enabling workers of small and medium-sized enterprises to enjoy the right to organize labor unions and fight for their own rights and interests, as a way to raise the rate of labor union organization.

(2) Amend art. 45 of the *Labor Union Act*,[394] such that as long as the action of an employer or supervisory employee is quite clearly improperly influencing or impeding labor union activities, punishment may be imposed.

(3) Formulate a "*Labor Education Act*", to give citizens the opportunity to understand one's future rights and interests in the course of education, as a way of countering the inadequacies in collective consciousness among workers.

(4) When any dispute arises over the rights of trade union representatives, a third party deemed fair should make judgment as a way to resolve the dispute, while ensuring secrecy of workers' participation in the trade union. At the same time, restrictions on participation by bargaining representatives should be revised, so as to enable professionals authorized by the trade union to assist in negotiation without consent of the employer.

ICESCR art. 9

The Long-Term Care Service Policies for Individuals Living with HIV/AIDS (Responding to paras. 131-132 of the ICESCR State Report)

583. The current long-term care service policies are unable to provide individuals living with HIV/AIDS with sufficient long-term care services. Individuals living with HIV/AIDS may suffer from premature aging in their physiological ages as a result of the AIDS symptoms or the long-term consumption of medication. From a clinical viewpoint, individuals living with HIV/AIDS may be in need of long-term care services when they reach the age of 55. According to the statistics from Taiwan Harmony Home Association, there are 53 people in every 100 housed cases in the association in need of long-term care services but only 6-9% of patients are successfully referred to other long-term care institutions due to the low-willingness of

[393] Labor Union Act, art.11: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020001

[394] Collective Agreement Act, art.9: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0020006

the public or private institutions in sheltering them, the inability for relatives to pay high costs, or the inapplicability of individuals living with HIV/AIDS to the related long-term care services regulations.[395]

584. Many individuals living with HIV/AIDS also suffer from mental illness (including AIDS-affected cognitive decline), physical disabilities, aging issues, cancers and other chronic diseases. Currently, only general nursing care centers can house individuals living with HIV/AIDS, but these institutions may not be able to provide suitable services tailored for them. The institutions may even impose some restrictions on individuals living with HIV/AIDS so as to avoid extra work in taking care of them, which may deteriorate their symptoms. Although the State requires these institutions to accept all referrals cases, there are no such regulations dealing with care guidance. Consequently, some institutions may ask individuals living with HIV/AIDS to stay in the single or isolation ward, or increase their service fees or bias against them when providing care services, resulting in individuals living with HIV/AIDS deciding to leave the institutions.
585. The current *Long-Term Care Services Act* and related policies fail to take the needs of individuals living with HIV/AIDS into consideration. Article 22 in the *Long-Term Care Services Act*[396] regulates that private institutions that were established before the implementation of this *Act* non-pursuant to the *Senior Citizens Welfare Act*, *Nursing Personnel Act* or *People with Disabilities Rights Protection Act*, are not applicable to directly apply for institutionalized residential long-term care services.[397] The rule not only restricts social welfare institutions from engaging in long-term care services, but it also prevents these institutions from applying for or participating in the provision of residential long-term care services, thereby affecting the chances of individuals living with HIV/AIDS to obtain long-term care services.
586. The Centers for Disease Control (CDC) of the Ministry of Health and Welfare (MOHW) is currently in charge of the statistics on policies related to individuals

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[395] Before the implementation of the *Long-Term Care Services Act* in 2019, the residential institutions were established in accordance with the *Senior Citizens Welfare Act*, *People with Disabilities Rights Protection Act* and related regulations. People need to be at least 65 years old or have a specific disability before they are eligible for admission to these care services institutions. Though many individuals living with HIV/AIDS also have premature aging issues or other diseases, provided that they don't physically or mentally meet the statutory disability standards, they are directly rejected by the long-term care institutions.

[396] Regulation link: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0070040

[397] According to laws and regulations, the establishment of long-term care corporate entities requires the fund of 10 million from the local government and 30 million from the central government. Therefore, drawing out a long-term care corporate entity to replace the social welfare corporate entity will undoubtedly make it more difficult and raise the threshold for the existing AIDS rights groups to provide relevant residential long-term care services.

living with HIV/AIDS. The statistics of individuals living with HIV/AIDS only provide cumulative reported cases of the infection, and do not reveal the age distribution data of surviving infected persons. It is not beneficial for the MOHW to formulate or enact policies for the elderly care of individuals living with HIV/AIDS, and it is also not conducive for civil society organizations and individuals to participate in and supervise the discussions of such policies.

587. The model institutions to provide care for individuals living with HIV/AIDS announced by the CDC are supposed to provide long-term resettlement and related care services for individuals living with HIV/AIDS, but the result is not as expected. The reasons are as follows:

(1) The *HIV Infection Control and Patient Rights Protection Act* (hereinafter the "HIV Act") guarantees the resettlement needs of individuals living with HIV/AIDS, and long-term care institutions cannot refuse to provide care services due to HIV/AIDS. This announcement of model institutions providing care services for individuals living with HIV/AIDS from the CDC may mislead the public to thinking that there are only these few, and even lead to general care services centers or institutions thinking that they can refuse to provide services for individuals living with HIV/AIDS. Currently, individuals living with HIV/AIDS can only go to special care institutions or model institutions.

(2) In the currently announced model care services institutions, individuals living with HIV/AIDS usually have to wait because these institutions have no vacant spot left or they require long referral waiting times, which often render patients unable to obtain care resources immediately. In addition, some institutions have not signed contracts with the local government department of social welfare. Therefore, if individuals living with HIV/AIDS are eligible for low-income family or physical and mental disability subsidies, they still have to pay for their own care services. As a result, those underprivileged individuals living with HIV/AIDS cannot obtain relevant long-term care services due to economic disadvantages.

(3) Most of the model institutions are nursing care centers and there are no other types of resettlement institutions such as nursing homes for the elderly or disabled persons' institutions. Currently, there are only 2 mental nursing homes. Further, there are no public nursing homes in the greater Taipei area, so people needing such services would have to be referred to other counties or cities or may be resettled to institutions of inappropriate types.

588. We suggest:

(1) An appropriate relaxation of long-term care institution regulations and establishment standards is needed. Because of the multifaceted needs of caring for individuals living with HIV/AIDS, including different gender identities, substance abuse, physical and mental illness (including AIDS-affected cognitive decline), and premature aging, it is recommended to relax the restrictions on the provision of residential long-term care

service institutions mentioned in Article 22 of the *Long-term Care Services Act*, and encourage more corporate bodies to actively participate in long-term care services.

(2) The CDC should collect and disclose more data on individuals living with HIV/AIDS. Currently, the CDC only updates relevant data including cumulative reported cases of infection every month and it does not have demographic statistics on the surviving individuals living with HIV/AIDS. They shall add more relevant data including the age and geographic distribution of individuals living with HIV/AIDS. Besides, in the meantime of fulfilling the "90-90-90 target" set by the UNAIDS, they shall disclose the current situation and data collected in Taiwan regularly to the public and civil groups for inquiry purposes and use. They shall investigate the socioeconomic conditions of individuals living with HIV/AIDS as well to provide references for the State when formulating related policies. It is also beneficial for the public to participate and supervision to be administered from individuals and AIDS-related civil groups.

(3) The establishment of standard operating procedures (SOP) for the long-term care services for individuals living with HIV/AIDS is required. In view of the difficulty in the referrals of long-term care services for individuals living with HIV/AIDS, it is recommended that the Long-Term Care Department in MOHW and the CDC shall establish relevant SOP and take inventory of the resources needed in each part of the SOP which may be used as a reference for case referral and assistance.

ICESCR art. 12

The proportion of children and adolescents chewing betel nuts has risen rather than decreased (Responding to para. 218 of the ICESCR State Report)

589. The Health Promotion Administration has medically proven that the addictive and carcinogenic nature of betel nut chewing are as harmful as cigarettes. Both are classified as first-class carcinogens. According to a survey conducted by the Health Promotion Administration, the proportion of betel nut chewing among junior high school students has risen rather than decreased in recent years.[398] The estimated number is around 8,000 to 9,000. Although the number of senior high school students has remained flat in recent years, there are still tens of thousands of young students chewing betel nuts. In addition, when it came to their first time chewing betel nuts, relatives and friends were the source 70% of the time. However, the state's regulation of betel nut is only stipulated in Article 43 of the *Protection of Children and Youth Welfare and Rights Act* which prohibits the sale of betel nut to young people. Further,

[398] In the 107 Annual Report by the Health Promotion Administration, Ministry of Health and Welfare, "Adolescent Smoking Behavior Survey"

Article 24 of the *School Health Act*, which prohibits the sale of tobacco, alcohol and betel nut on campus. Legal regulations of betel nut use are far behind that of tobacco regulations.

590. We recommend:

(1) The legislative branches formulate a specific betel nut prevention law to protect children's and adolescents' health rights, parallel to the regulations of tobacco.

(2) Every state agency strengthens their advocacy of the prohibition of betel nut and other addictive substances, supplemented by teaching correct concepts and providing appropriate pictures without excessively frightening and bloody images, so as to prevent children and adolescents from being exposed to content that may cause psychological trauma, or other adverse effects.

(3) The addiction treatment agencies should encourage children and adolescents to cease the use of betel nut and other addictive substances through other appropriate methods, and assist them with arranging related treatment courses.

The Right to Medical Resources for individuals living with HIV/AIDS

591. The Paragraph 4 and Paragraph 12 in the current *AIDS Act* stipulates that the dignity and the legal rights of individuals living with HIV/AIDS shall be protected and respected; there shall be no discrimination or denial of medical care. But when individuals living with HIV/AIDS inform medical personnel beforehand, individuals living with HIV/AIDS may still suffer from discrimination or the denial of medical care.

592. According to the survey "The People Living with HIV Stigma Index," conducted by the Persons with HIV/AIDS Rights Advocacy Association of Taiwan in 2018, and the survey "The Living Conditions of HIV-Infected Persons," conducted jointly by the Taiwan HivStory Association and Taiwan Lourdes Association,[399] even though

[399] "The People Living with HIV Stigma Index" is regulated and developed by "The Joint United Nations Programme on HIV and AIDS, UNAIDS," "Global Network of People Living with HIV, GNP+," and "International Community of Women Living with HIV/AIDS (ICW)." The team members obtained international consent for the implementation in Taiwan region in early 2017. In April, they invited GNP+ senior trainer, Liz Tremlett, to complete interviewer training in Taiwan, and then started formal interviews afterwards. By the end of December, a total number of 842 HIV-infected people had finished one-on-one interviews. According to the results of a survey in Taiwan in 2018, 7.3% of the infected have experienced "denial incidents to medical treatment" in the past year; 10.6% of the infected have suffered the disclosure of their AIDS status by medical personnel without their consent.
https://praatw.org/news/905

"The Living Conditions of HIV-Infected Persons," conducted jointly by the "Taiwan HivStory Association" and "Taiwan Lourdes Association" in 2020. 257 individuals participated through online questionnaires on

Taiwan's HIV/AIDS-related laws and regulations clearly stipulate that the rights and interests of individuals living with HIV/AIDS shall not be infringed, incidents of medical denial and discrimination may still occur after medical personnel learn of the HIV/AIDS status of individuals living with HIV/AIDS. After the implementation of the Cloud Medical Records, some individuals living with HIV/AIDS have begun to avoid medical treatment due to their fear of their HIV/AIDS status being exposed.[400]

593. For migrant workers, in addition to their inability to access affordable stable medical treatment, the State's attempts to provide HIV/AIDS education for the group as a whole has been insufficient. The State is currently only advocating for the screening of HIV/AIDS for migrant workers. Education, promotion in HIV/AIDS prevention, diagnoses and treatment methods of HIV/AIDS are all still insufficient.
594. In conclusion, even though the current laws and regulations in Taiwan have clear protective standards for the medical rights and interests of individuals living with HIV/AIDS, the fear and discrimination of and toward people living with HIV/AIDS in society may still occur due to a major gap in public knowledge and disseminated information on HIV/AIDS prevention and treatments. In total, this makes it difficult for individuals living with HIV/AIDS to obtain medical resources.
595. We suggest:

(1) The CDC shall be more active in promoting and updating HIV/AIDS knowledge and infection control education based on empirical medical research for frontline medical personnel. The CDC shall also introduce to medical units the notion of, "no denial to provide medical services for the infected." At the same time, all medical departments and units shall be invited to draw up relevant guidelines for HIV/AIDS treatment and infection control for reference by medical personnel in all units to reduce their anxiety during medical practices.
(2) At the same time, it is suggested that the Ministry of Health and Welfare shall review the Cloud Medical Records system and actively draft specific measures to avoid

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their experience receiving medical care as an HIV-positive indivual. The survey period was conducted from June 30th to July 31st in the same year of 2020. The results of the survey showed that 15% of the infected were "rejected by medical institutions due to their Cloud Medical Records," and 70% of the infected "worried about being rejected by medical institutions due to Cloud Medical Records." There was a further 30% of the infected who were "suffering bias from the medical personnel" after their AIDS status was revealed; 11% of the infected "have been rejected to medical services for proactively informing their AIDS status within the past year."
https://drive.google.com/file/d/1W2OIqx9ilBhYL7QfKQp49YGyCr_pbTLx/view?usp=sharing

400 "The 2016 Investigation on the Infringement Conditions of HIV-Infected People in Taiwan" was carried out by the Persons with HIV/AIDS Rights Advocacy Association of Taiwan. The survey results showed that "40% of individuals living with HIV/AIDS 'actively' gave up their rights and saw doctors from other departments or for other diseases." https://praatw.org/news/2029

damages to the rights of individuals living with HIV/AIDS. For individuals living with HIV/AIDS who have suffered from an infringement on their privacy and medical rights, the amendment of the *HIV Infection Control and Patient Rights Protection Act* is recommended based on the protection of those privacy and medical rights. By doing so, individuals with rights that were infringed upon who live with HIV/AIDS can be compensated and rights repaired, ensuring that they will not fall into a more dangerous and disadvantageous condition.

(3) For migrant workers, the State shall have a complete HIV/AIDS prevention and education scheme and related policy planning system designed specifically for migrant workers. The State shall provide minimum medical measures, coordination, and protection of migrant workers' employment rights. Further, policies shall be available in multiple languages so that migrant workers from different countries can quickly understand the contents of health education and policies. The State shall also ensure that they will take care of migrant workers in Taiwan and increase the willingness of migrant workers to cooperate with screening for various diseases.

HIV/AIDS Spread Penalties

596. Article 21 in the *AIDS Act* stipulates that individuals who are fully aware that they are infected and have, by concealing the fact, unsafe sex with others shall be sentenced for five years up to twelve years. This article clearly violates ICCPR fundamentals: equality before the law, freedom from discrimination, and goes against the presumption of innocence for individuals.

597. Modern science and technology cannot verify the absolute causality of HIV infection (whether A is transmitted to B or not). However, in judicial proceedings, 85% of cases are guilty verdicts,[401] of which 76% are attempted cases.[402] The main reason for the high proportion of guilty verdicts is that most judges do not believe that "people who have undetectable viral load will not infect others" from the medical viewpoint and insist that low-risk behavior is not equivalent to being risk-free. In addition to litigation, non-governmental organizations have also discovered that some people who have a certain level of legal knowledge try to threaten individuals living with HIV/AIDS by law for monetary, emotional, sexual purposes, or other types of extortion. Individuals living with HIV/AIDS would then choose to obey threats in order not to go into legal procedures.

598. In terms of infectious diseases in Taiwan, article 62 in the *Communicative Disease Control Act* stipulates that only those who knowingly contract the disease and infect

[401] The court heard a total of 20 cases (from Judicial Yuan Law and Regulations Retrieving System, statistics as of December 31, 2019; exclusion of shared needle cases; the same case was considered as 1 case at different levels of trial), and 17 out of the 20 cases pleaded guilty.

[402] Among the 17 convictions, 13 were attempted cases.

others shall be sentenced to fixed-term imprisonment of no more than 3 years, criminal detention, a fine of no more than 500,000, and the attempted offender is not fined. HIV/AIDS is listed as a category 3 statutory infectious disease,[403] and the criminal responsibilities under Article 21 of the *AIDS Act* are clearly out of balance compared to the aforementioned Article 62 in the *Communicative Disease Control Act*.

599. Criminalizing the sexual behaviors of individuals living with HIV/AIDS and the non-disclosure of HIV/AIDS status will not help the prevention and treatment of the disease in terms of public health, other than to aggravate the stigmatization of individuals living with HIV/AIDS from the society.[404] Individuals living with HIV/AIDS cannot be convicted before they know they are infected. Therefore, logically speaking, as long as people avoid receiving screening, they will not know whether they are infected or not, and there is no possibility of conviction under this rule. People's willingness to be screened will be lowered and the control of the spread of the virus will then be unmanageable based on these policies.[405] If the responsibility of preventing infection falls upon the self-disclosure of the infected persons, it will make others overly-reliant on the proactive actions of the infected and may cause others to neglect to take protective measures.[406] In addition, there is a conceptual difference between the risk of spreading the virus in public health and the risk of harm caused in law, and the two risks should not be treated as equal.[407]
600. Finally, because modern antiretroviral therapy medications are far more advanced now than they were decades ago, the life expectancy and threat of transmission of the virus through sexual behavior for individuals living with HIV/AIDS with stable medical treatment has been greatly diminished. So, the logical basis for the regulation of spreading HIV/AIDS in the criminal code is no longer justifiable.
601. We suggest:

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403 The communicable diseases are categorized according to degrees of risk and hazard such as case fatality rate, incidence rate, and transmission speed. The category 1 is the highest level of risk, and HIV/AIDS is listed in the category 3.

404 Adam BD, Corriveau P, Elliott R et al. HIV disclosure as practice and public policy. Critical Public Health 2015; 25: 386-397

405 Galletly C, Lazzarini Z, Sanders C et al. Criminal HIV exposure laws: moving forward. AIDS Behav 2014; 18: 1011-3；Galletly C, Pinkerton SD. Conflicting messages: how criminal HIV disclosure laws undermine public health efforts to control the spread of HIV. AIDS Behav 2006; 10: 451-61

406 Adam BD, Jusbands W, Murray J et al. Silence, assent and HIV risk. Cult Health Sex 2008; 10: 759-72；Simoni JM, Pantalone DW. Secrets and safety in the age of AIDS: does HIV disclosure lead to safer sex? Top HIV Med 2004; 12: 109-18

407 Loutfy M, Tyndall M, Baril JG et al. Canadian consensus statement on HIV and its transmission in the context of criminal law. Can J Infect Dis Med Microbiol 2014; 25:135-40

(1) The State shall refer to the 2013 statement of UNAIDS which clearly recommends the amendment or deletion of legal provisions concerning the "non-disclosure," "exposure" and "contagion" and any other criminalized provisions of HIV/AIDS.[408] The unsafe sexual behavior policy shall be redefined based on the notion of U=U (Undetectable = Untransmittable). The State shall gradually nullify Article 21 of the *AIDS Act*, and redirect the related regulation references back to the *Communicable Disease Control Act* in order to comply with the current medical situation and further protect the human rights of individuals living with HIV/AIDS.
(2) Before the official amendment, there shall be a transitional relief mechanism to prevent individuals living with HIV/AIDS from criminal charges or penalties.
(3) The State shall also continue to carry out the promotion of HIV/AIDS education so that the public can better learn how to identify HIV/AIDS-related myths. For example, as long as individuals living with HIV/AIDS take medicine actively, their viral load can be reduced; and when the medical equipment fails to detect the viral load, the individual living with HIV/AIDS will not transmit the HIV virus to other people through sexual behavior.[409]

ICESCR art. 13

Homeschoolers (Responding to paras. 242, 245 of the ICESCR State Report)[410]

602. According to the *Enforcement Act for Non-school-based Experimental Education at Senior High School Level or Below* (hereinafter as *Enforcement Act for Experimental Education*),

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408 UNAIDS. Ending overly broad criminalization of HIV non-disclosure, exposure, and transmission: Critical scientific, medical and legal considerations (2013): http://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf (In the absence of the actual transmission of HIV, the harm of HIV non-disclosure or exposure is not significant enough to warrant criminal prosecution. Non-disclosure of HIV positive status and HIV exposure should therefore not be criminalized.) (Since HIV infection is now a chronic, treatable health condition, it is inappropriate for criminal prosecution for HIV non-disclosure, exposure or transmission to involve charges of “murder”, “manslaughter”, “attempted murder”, “attempted manslaughter”, “assault with a deadly weapon”, “aggravated assault” or “reckless homicide”)

409 National Institutes of Health, The science is clear: with HIV, undetectable equals untransmittable (01/10/2019): https://www.nih.gov/news-events/news-releases/science-clear-hiv-undetectable-equals-untransmittable

410 The term “homeschooler” has different connotations in different countries. In Taiwan, it refers to students participating in various types of non-school-based experimental education systems. A similar educational system in England is called “elective home education”, and in the United States,

provide the public with the flexibility to conduct and participate in non-school-based experimental education in the form of individuals, institutions, and groups, and enhance the educational system to protect students' right to learn. Pursuant to the regulations, students participating in experimental education at the senior high school level, who have not obtained a student identification registration from a senior high school, may apply for tuition subsidies as private school students to improve their financial accessibility to an education. In reality though, most families that adopt a non-school-based experimental education structure for their children are middle class or wealthy families living in urban areas. Besides, the government needs a dedicated unit and enough budget to implement and improve the homeschooling education system; such a situation is especially serious in local governments.

603. The *Enforcement Act for Experimental Education* requires that local governments enforce a policy wherein students participating in non-school-based experimental education must have their student identification registered at schools in their respective districts, thus ignoring the independence of those involved in non-school experimental education structures. Further, the government has not provided relevant educational resource funds for homeschooling students. Equitable funding policies are clearly being denied to students that don't participate in the general education system.[411]

604. In response to paragraph 199 of the ICCPR State Report about parents' religious and moral education to minor children: according to the *Enforcement Act for Experimental Education*, in Taiwan, more and more institutions and groups are established on the basis of diverse beliefs or moral ideas; however, government support is still insufficient for parents to exercise their right to choose what form of education they want for their children, including the problems mentioned in the previous section, which have impacted rights protected by Article 18, paragraph 4 and Article 13, paragraph 3 of the ICCPR.

605. We advise:

(1) Reposition the role of non-school-based experimental education systems in the general education system and establish its status as an alternative education program parallel to the general school education system.

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homeschooling. In whatever terms, they comply with special reporter Vernor Muñoz Villalobos's explanation in section 62 of the United Nations' Report of the Special Rapporteur on the Right to Education: Mission to Germany (A/HRC/4/29/Add. 3 March 2007) regarding Article 13 of the ICESCR.

411 The number of self-schooling students in the national compulsory education period in academic year 108 was about 6,700. If estimated by the average cost of 190,000 per student in the period of Taiwan's compulsory education in academic year 107, the government mistakenly saved about 1.3 billion TWD in fiscal spending in one year.

(2) Establish a support system, allocate sufficient manpower and list sufficient budgets to ensure protection of parents' right to educational choice, and students' right to education.
(3) Propose solutions to reasonably allocate educational resources to parents and students participating in non-school-based experimental education systems and educational institutions and groups that provide non-school-based experimental education.
(4) Establish a mechanism to ensure non-school-based experimental education systems meet the educational goals stated in Article 13 Paragraph 1 of the ICESCR, as well as various evaluation mechanisms for the objectives of children's education regulated by Article 29 Paragraph 1 of the CRC.

Protection of gender equality in experimental education environment is yet still inadequate

606. Although the government enacted the *Gender Equity Education Act* to protect school students' rights to an education, the regulations do not apply to students participating in non-school-based experimental education systems. Specifically, students involved in these systems through individual, institutional, or group-based study at the senior high school level were not protected by the act. Further, the act does not regulate non-school-based experimental educational institutions and groups to implement gender equality education, build a gender-friendly learning environment, and be obligated to prevent and handle campus sexual assault, school harassment, or sexual bullying.
607. Since the implementation of the *Enforcement Act for Experimental Education* in 2014, there have been many incidents of sexual assault, school harassment or sexual bullying between non-school-based experimental education students and institutions, and group faculty members,[412] causing indelible harm to students. Although article 25 of the act stipulates the obligation of non-school-based experimental educational institutions and groups to assist in reporting campus sexual assault, school harassment, or sexual bullying, relevant regulations do not specify penalties and thus are of no use.
608. The local government has not actively carried out its statutory obligations to coordinate the work of non-school experimental education institutions and groups

[412] According to a news report in The Liberty Times, the head of an experimental education group, Hiphop Music School, in Taichung was suspected of committing an act of compulsory indecency with the students; There were also cases of teachers sexually harassing students in a Taipei experimental education institution named Taipei Media School.
http://web.archive.org/web/20191217175615/https://news.ltn.com.tw/news/society/breakingnews/3011250
https://news.ltn.com.tw/news/life/paper/1322564

and formulate relevant protective measures. Part of the reason for the difficulty in fulfilling its statutory obligations is that the local governments does not have enough professional manpower nor relative budgets to support its fulfilling the responsibilities.

609. Although the Ministry of Education has promised to amend the *Enforcement Act for Experimental Education* to protect students participating in non-school-based experimental education systems and require local governments and non-school-based experimental education institutions and groups to bear more obligations, the foregoing claim has not entered the review process by the legislative Yuan yet.

610. To protect the right to learn for students of non-school-based experimental education, we recommend:

(1) Immediately implement the current provisions of Article 25 of the *Enforcement Act for Experimental Education* and supervise the implementation of Article 9 of the same law that relevant experimental education institutions should proactively maintain a friendly educational environment.

(2) Complete amendment to relevant laws and regulations as soon as possible, and establish a well-rounded legal system for implementation of gender equality education in non-school-based experimental educational institutions and groups, as well as the prevention, investigation, and handling of campus sexual assault, school harassment, sexual bullying, etc. The government should also develop sufficient professional manpower and list adequate budgets to implement the aforementioned relevant regulations.

(3) Establish an effective mechanism to regularly and actively monitor and count the incidents of sexual assault, school harassment or bullying of non-school-based experimental education students and institutions, groups or faculty, staff and students, and set up a statistical system.

Lack of effective mechanisms to prevent and deal with bullying incidents in experimental schools (Responding to para. 244 of the ICESCR State Report)

611. The government mentioned in the state report that it had discussed and revised the *Regulations Governing Prevention and Control of Bullying on Campuses* to include non-school-based experimental education at the senior high school level or below as applicable objects, and protect students participating in non-school-based experimental education from campus bullying. However, the revised *Regulations Governing Prevention and Control of Bullying on Campuses* issued by the Ministry of Education on July 21, 2020 have been shelved and have not included relevant provisions regarding non-school-based experimental education in the revised final version.

612. It is still difficult for the government to grasp the current situation of campus bullying that may exist in non-school-based experimental educational institutions and groups, and there is no corresponding mechanism to investigate and deal with such incidents, which may damage students' right to education as guaranteed by the Convention. In the litigation process, there have been some cases alleged to be involved with campus bullying.
613. We recommend:

(1) Complete the amendments to relevant laws and regulations such as the "*Enforcement Act for Experimental Education*" and "*Regulations Governing Prevention and Control of Bullying on Campuses*" as soon as possible, and establish a campus bullying prevention mechanism for non-school-based experimental education institutions.
(2) Require all the experimental education plans submitted by non-school-based experimental education institutions and organizations to include measures on how to maintain a safe and friendly educational environment and relevant plans for responding to campus bullying incidents; the review mechanism on non-school-based experimental education systems should also be strengthened.
(3) Establish an accessible notification mechanism to effectively deal with campus bullying incidents between non-school-based experimental education students or between school students and non-school-based experimental education students.
(4) Allocate adequate professional manpower and list a sufficient budget for implementing relevant regulations.

Right to education of students with disabilities (Responding to paras. 250-251 of the ICESCR State Report)

The identification of students with disabilities excludes people with particular disabilities

614. The *Special Education Act* and its secondary laws decouple the definition of students with disabilities from the eligibility for disability identification while relaxing the diagnostic criteria of disabilities. However, said standard still puts more emphasis on impairments to physiological function and overlooks the fact that causes for disabilities may result from social factors in addition to physiological impairments. Even if the degree of functional impairment of an individual does not meet the current criteria for the special education student status, they may still need support in the form of special education. The rigidity of the assessment standard leads to the exclusion of people with, for example, unilateral hearing loss or other disabilities that do not meet diagnostic criteria from parts of everyday life, interpersonal relationships, and education by the special education system.
615. The criteria to diagnose students with disabilities is disconnected from practicality. The diagnostic of students with disabilities is performed, in principle, on paper

without considering the reality in the field while also failing to examine the difficulties in everyday life that the students encounter which cannot be adequately described in writing. Consequently, the result of the assessment is often not in the best interest of the students with disabilities. Moreover, in the event of a dispute regarding the results of the assessment, only a few minutes are granted to voice the applicant's opinion.

616. We recommend:

(1) Reviewing and amending the *Special Education Act* and its secondary acts to ensure the education needs of all students with disabilities (Including those with needs for special education, but couldn't or were not identified as students with disabilities) can be seen and that no one is excluded on the basis of the form and degree of disability as well as the type and number of required support.

(2) The diagnostic of a student with disabilities should be made more comprehensive, including giving more emphasis to impairments to social function, and not be limited to a review of physiological function and impairments. The assessment process should include additional facets such as the actual quality of life on campus of the students and the difficulties they face rather than be limited to a determination based on medical data on paper. Opinions from the field should also be directly included and actually considered as part of the process.

Inclusive education has yet to be implemented at all schools

617. Students with disabilities are still being denied enrollment: Even today, some schools use the lack of special education resources as an excuse to deny enrollment to students with disabilities. Even though Article 22 of the *Special Education Act* has explicitly stated that enrollment of students with disabilities must not be denied, situations still arise where schools advise students and parents against enrollment off the record, or fail to actively provide special education resources, forcing students and parents to eventually seek enrollment at other schools.

618. Most policies still have yet to implement structural reforms to accommodate inclusive education. Even as the numbers show that a great proportion of students with disabilities are enrolled in the regular school system, they are still merely placed there. There is also a lack of systematic planning for in-service training for teachers. Thus, general education teachers have difficulty recognizing the uniqueness and differences in learning capability, needs, form, and cognitive skills of students of different types of disabilities. Consequently, the teachers are affected in terms of their ability to accommodate inclusive education in class management, classroom planning, course design adjustments, and teaching evaluations.

619. Latent segregation still exists in general education schools: Although schools up to and including secondary schools all have curriculum development committees and teaching study groups for each field or subject to enhance professional dialogue

between teachers of the seven major fields (language, health and physical education, social studies, arts and humanities, mathematics, science and technology, and integrated activities) and develop curriculum, the meetings lack the involvement of teachers and parents of special education students. As a result, the above platforms lack a voice from experts in special education, further exacerbating the structural disadvantage of students with disabilities in the mainstreaming system.

620. We recommend:

(1) Implementing regulations that prohibit acts of discrimination, including any acts of "gentle discouragement" and exclusion. At the same time, the sufficient allocation of special education resources at any school must be ensured to avoid forcing students with disabilities to give up their choice of education due to a lack of resources.

(2) To comprehensively and structurally review regulations related to special education. Meanwhile, the State should launch in-service training for all teachers at all levels (including general education teachers, special education teachers, and assistive staff) in accordance with Paragraph 71 of the CRPD General Comments No. 4.[413] This can equip the staff with the core competencies and values required to work in an inclusive education environment so they can take into consideration the needs of the students with disabilities while in the field or executing any part of the school policies.

Support for students with disabilities in the general education system is still insufficient

621. The special education funding and resources received by higher education is still insufficient, leading to issues such as incomplete construction of accessible environments and inability to provide sufficient support according to the individual needs of students with disabilities. For assistive staff who help special education students, schools are only willing to approve compensation for a portion of staff working hours.[414] As such, the students with disabilities can only receive assistance for a portion of the time that they require assistance. A cap on the budget for assistive devices and other consumables results in the assistive device needs not being met for different disabilities.

622. For students with disabilities enrolling in schools up to and including secondary school, even though teaching assistants and assistive staff for special education

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[413] CRPD, GC No. 4 (2016), https://covenantswatch.org.tw/wp-content/uploads/2019/01/4eng.pdf

[414] According to the Directions for Subsidizing Postsecondary Schools for Enrollment and Counseling of Students with Disabilities by the Ministry of Education, postsecondary schools must submit the enrollment record of students with disabilities for the school year to the Ministry of Education to apply for counseling funding. However, when the approved funding is insufficient, the school must raise its own funds, undermining the rights and interests of the students with disabilities. https://edu.law.moe.gov.tw/LawContent.aspx?id=FL026216

students can provide support for their needs during school, they are often faced with the issue of not having their needs met in daily life and after-school learning. Aside from the poor working conditions for the assistive staff and the insufficient support from local governments toward their salaries, the ultimate reason for their service not meeting the needs of the students with disabilities is that the government did not consider the entirety of daily living needs related to the education of the students when developing the policies.

623. We recommend:

(1) Providing students with disabilities complete support for their educational needs, including offering special education teachers reasonable teaching hours and working conditions, providing compensation for the assistive staff hours as needed by the student, and fulfilling assistive devices or other special education resource needs for students with disabilities.

(2) Devising a system for division of labor based on the different expertise of the assistive staff, creating a talent database, and re-evaluating assistive staff allocation.

Discrimination exists against students with disabilities in the higher education admission system

624. The law does not explicitly protect the right to higher education of students with disabilities. Article 29 of the *Special Education Act* and Article 6 of the *Regulations on Counseling for Admission to Higher Education for Students with Disabilities* do not mention practical details for supporting students with disabilities such as reasonable accommodation and reserved quota in enrollment. Relative to other students with special status, such as indigenous peoples and overseas nationals, the rules of the protective measures are less clear and cannot actually protect the right to higher education for students with disabilities.

625. For example, the "Screening-based Admission to Higher Education for Students with Disabilities", an admissions channel to higher education for students with disabilities, classifies disabilities into six major categories: visual impairment, hearing impairment, cerebral palsy, autism, learning disability, and other disabilities. Schools then must choose whether to provide an enrollment quota for specific disabilities, thus in actuality exclude students with specific disabilities from admission. This categorization has no reasonable basis; not only does it lack sufficient supporting research evidence, it arbitrarily imposes restrictions not found in the legislation. The "other disabilities" category includes students with all disabilities not listed in the first five categories, covering a wide range of disabilities. Schools, wanting to avoid admitting students without prior knowledge of their disability type, are thus unwilling to provide quotas. As another example, categories such as autism and learning disabilities are not favored by schools, which is evident in the low number of departments that offer a quota and the lack of diversity in the academic fields

available. The above unreasonable categorization leads to unequal opportunity between different disability categories. Specific disabilities are intentionally excluded, which amounts to “discrimination based on other status” as defined by Paragraph 2, Article 2 of ICESCR, and ICESCR General Comments No. 5. Overall, the admissions opportunities offered exclusively to students with disabilities are insufficient, while the diversity of academic fields is also lacking.

626. We recommend:

(1) Legislate to protect the right of higher education for students with disabilities, so the "Screening-based Admission to Higher Education for Students with Disabilities" and other admissions channels for students with disabilities have a legal basis. The new regulations should prohibit direct and indirect discrimination during the admission process by higher education schools.

(2) Immediately prohibit all departments to include direct or indirect exclusion clauses in the application package for Screening-based Admission to Higher Education for Students with Disabilities.

ICESCR art. 15

Responding to paras. 256-265 of the ICESCR State Report

Comfort women (military sex slaves) —Gender human rights and cultural heritage preservation overlooked by the Government

627. Article 15.1 of the ICESCR requires that the States Parties recognize the right of everyone to take part in cultural life, enjoy the benefits of scientific progress and its applications, and benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. It also specifies that the steps to be taken by the States Parties to achieve the full realization of said rights shall include those necessary for the conservation, the development and the diffusion of science and culture.

628. On August 14 1991, Kim Hak-soon, a South Korean comfort woman, revealed to the world the military sexual slavery system("comfort women" system) that existed during World War II. The following year, Taipei Women's Rescue Foundation (TWRF) began the "Comfort Women: Survivors of Military Sexual Slavery" service and advocacy. It's estimated that there are nearly 2,000 comfort women in Taiwan. The Ama Museum, Taiwan's first museum dedicated to comfort women, was opened in March 2016. The museum collected the life stories of 59 “grandmas”, the former comfort women, who have endured tremendous hardships, as well as 5,057 images and multimedia materials, 750 objects, as well as documents related to the judicial proceedings against Japan during the 2000 Tokyo Tribunal. Since its establishment, the museum has been committed to the promotion and education of gender and

human rights issues concerning "comfort women", and engaging actively in international gender rights communication. To date, the museum has seen 125,529 visitors.

629. "Comfort Women", or military sexual slavery, is a historical event of sexual violence committed by the Japanese Army during World War II in Taiwan. This is a historical trauma the country cannot erase. The valuable historical source and artwork by the survivors should be considered a part of the country's public property, its history and cultural heritage. The Government should also shoulder the responsibility to preserve it. However, the Government has yet to attach any importance to the museum, excluding it from being considered as a national history, human rights or women museum. Civic organizations were left to operate and maintain the museum through fund-raising. However, since the preservation of historic objects and raising awareness regarding gender rights issues require professional equipment and substantial financial support, civic organizations had been overwhelmed and were forced to temporarily shut down the museum. For this, Taiwan is not only absent on the list of military sexual slavery museums worldwide, but also lost a historic landmark for women's rights.
630. According to the UN Security Council's definition, "comfort women" are victims of military sexual slavery. However, even nowadays, the belief that "comfort women were voluntary" still exists among some Taiwanese people and in history education. While the survivors and their families suffer from stigma and discrimination, the government is not taking any initiative to correct the wrong.
631. We recommend:

(1) The government should attach importance to the preservation of "comfort women" (military sexual slavery)-related cultural heritage and establish a national "Gender Rights Museum". In addition to preserving historical materials on the victims and survivors of military sexual slavery, the history of women's rights in Taiwan during Japanese colonial rule, as well as contemporary violence on the basis of gender should also be preserved at the museum, so that everyone can visit and learn about the history.
(2) The history of military sexual slavery is not only a part of the national history but also a gender and human rights issue. The government should actively raise awareness and include it in textbooks to restore the truth and to avoid students from learning inaccurately about their own history.

Appendix 1: Introduction of Participating NGOs

(in alphabetical order)

1. Association for Taiwan Indigenous Peoples' Policies

Association for Taiwan Indigenous Peoples' Policies is a nonprofit and non-governmental organization that looks for cooperation between intellectuals, scholars, social workers from political, social, economic, legal, cultural and educational seg-ments who are concerned about the future of Taiwan's indigenous peoples, aiming to understand the special problems faced by the Taiwanese indigenous peoples, safe-guard their special interests, and preserve their special cultures and languages, in order to enhance the indigenous self-esteem, self-confidence and self-identity, to promote the autonomy of indigenous peoples, and to develop feasible programs and organization-al training methods in order to achieve the ideal of ethnic justice.

Contact E-mail: atipp.tw@gmail.com

2. Covenants Watch

Covenants Watch was founded on December 10, 2009, with NGOs in Taiwan concerning various aspects of human rights. Through advocacy, monitoring, education, and research of human rights, Covenants Watch is devoted to promoting the domestication of the nine UN human rights conventions in Taiwan, especially taking use of our unique Convention Review Mechanism to monitor the government to proactively implement human rights.

Covenants Watch is also a collaborative platform for NGOs to work together with joint alternative reports on the implementation of UN core human rights conventions that have legal binding effect on the Taiwanese government. Covenants Watch co-organized 67 and 80 NGOs in 2013 and 2017 respectively for alternative reporting on the ICESCR and ICCPR.Each NGO covers different aspects of human rights, such as prisoners, laborers, migrant workers, death penalties, people with disabilities, transitional justice, children, women, LGBTI, and so on.

Contact E-mail: info@cwtaiwan.org.tw, yibee.huang@cwtaiwan.org.tw

3. **Environmental Jurists Association (EJA)**

Environmental Jurists Association (EJA) was founded by a group of lawyers who care about the environment on January 30, 2010. With consolidated power within the organization, over the past decade, EJA has worked hard to close legal loopholes related to environmental litigations. The association provides legal advisories and aids for cases related to environmental public interest, supports residents' participation in the process of environmental impact assessment and litigations, and closely monitors the development of cases. Bringing lawyers into the communities, we learn the deep

connection between the litigants and environment, and help bring the cases into the court. We connect citizens, scholars, and partner organizations to conduct research on and participate in the discussions of environmental issues. Through examining the loopholes and inadequacies of current regulations, EJA takes action on advocacy and legislative changes. We also organize training sessions for environmental lawyers and work in tandem with universities to provide internship opportunities and encourage young lawyers to join the force of environmental public interest. We look forward to seeing environmental law become an important field of focus in the legal world, to ensure the intergenerational fairness and sustainable development of natural, economic, and cultural environments.
Contact E-mail: eja@eja.org.tw

4. Environmental Rights Foundation

ERF is an NPO founded due to the result of the court settlement regarding the lawsuit on the 3rd phase expansion of Central Taiwan Science Park (CTSP) between farmers and the government. According to the settlement contract, the board of directors of the ERF are nominated by governmental authorities, local farmers, lawyers, and environmental experts.

ERF members include lawyers and environmental experts who aim to support environmental grassroots movements, strengthen civic participation, promote information disclosure, and defend communities for the right to live with a better environment.

We assist farmers, residents, and indigenous peoples to acquire information, participate in the environmental decision-making process, and access to justice, which may include but not be limited to environmental impact assessments, urban planning, cultural heritage preservation, consultations and consent procedures of indigenous peoples as well as and other administrative procedures.
Contact E-mail: erf@erf.org.tw

5. Handangel

Handangel is a group of people who wish to bring the fulfillment of sexual rights into practice. Founded in early 2013, we saw the importance of sex to a person, and how the desires of people with severe disabilities in Taiwan are being bound and constrained by traditional values. As the first local sex volunteer group, we are committed to freeing the desires of those hindered by their disabilities.
Contact E-mail: taiwanhandjob@gmail.com

6. Harmony Home Association Taiwan, Harmony Home Taiwan

Today, Harmony Home has established 5 AIDS halfway houses in Taiwan. So far, it has assisted in receiving nearly 600 of those infected and provided assistance and

consultation for more than 2,500 infected individuals. At present, we have received more than 200 infected persons and children affected by AIDS in total. In addition, Harmony Home has long been devoted to visiting prisons and schools of all levels. We also cooperate with the Ministry of Education, the Ministry of Justice, and the CDC in providing AIDS education, anti-discrimination campaigns, and drug prevention education to the public in order to eliminate public stigma and discrimination against AIDS.

In recent years, the number of migrant workers in Taiwan has risen rapidly. Since 1997, the service work of Harmony Home has been extended to foreign victims, new immigrants, and female migrant workers. Children of migrant workers are among the most vulnerable individuals in society as they have difficulty in obtaining medical, social welfare, and education-related resources due to not being registered under a household. Therefore, taking care of and sheltering those children, as well as those infected or affected by AIDS, have become some of the main services at Harmony Home, Taiwan.

Contact E-mail: twhhf@twhhf.org

7. Homeless of Taiwan

Homeless of Taiwan works to provide homelessness services. We dedicate ourselves to speaking up for the underprivileged and carrying out social advocacy, care visits, and social investigations. Concerned about the right to live and adequate housing of the homeless people, we put in effort to open up possibilities and create adequate living conditions.

Contact E-mail: homelessoftaiwan.hot@gmail.com

8. Human Rights Network for Tibet and Taiwan

Human Rights Network for Tibet and Taiwan is a coalition comprising Taiwan-based NGOs. Individual members include Tibetan and Taiwanese social activists, college professors, writers, students and legislators, amongst people of many other professions. Although the members work on different issues, the common concern is human rights. Members of the HRNTT realize that the value of human rights is universal, and that the suffering of one person in any part of the world is a burden on the whole world. On the other hand, improving the rights of one person anywhere in the world is an inspiration for people everywhere. We also recognize that Taiwan and Tibet share many common grounds, for historical reasons. Both of us need to struggle to protect and improve our rights. There is a lot to be learnt from each other.

Contact E-mail: info@hrntt.org

9. International Association for Integration Dignity and Economics Advancement Taiwan (IDEA)

International Association for Integration Dignity and Economics Advancement (IDEA) is an international organization whose purpose is the advancement of human rights of people living with Hansen's disease. Today, there are about 20,000 members around the world, and chapters in 19 countries. "IDEA" stands for integration, dignity, and economic advancement, and the pursuance of its IDEAL. After the Taipei MRT selected the Lo-Sheng Sanatorium and Hospital as the site of the Xinzhuang Line Maintenance Plant, which triggered disputes over the retention of the Lo-Sheng Sanatorium and the rights and interests of the residents, a special representative of IDEA's New York headquarters came to Taiwan in 2007 to express concern and promised to acknowledge the status of the Taiwan chapter. Composed of residents and supporters, IDEA Taiwan chapter was approved by the Ministry of the Interior in 2007 to be established and actively cooperated with organizations of people living with Hansen's diseases around the world ever since.

Contact E-mail: happylosheng@gmail.com

10. Judicial Reform Foundation

The Judicial Reform Foundation is committed to advancing legal reform by uniting the power of the people in order to establish a fair, just, and trustworthy judiciary for the people.

In realizing its mission, the Judicial Reform Foundation embraces the following core values:

- Fairness and Justice.
- Diversity and Accessibility.
- Professionalism. Innovation. Criticism.
- The vision of the Judicial Reform Foundation is to ensure a society in which all people benefit from a fair, just and trustworthy judiciary.

The principal objectives of the Judicial Reform foundation are:

- To harness the power of civil society to advance judicial reform.
- To improve the justice, transparency, and democracy of the judicial system.
- To end unfair and negligent treatment of the people by the judiciary.

Contact E-mail: contact@jrf.org.tw

11. Juridical Association for the Development of Women's Right in Pingtung (JADWRP)

Juridical Association for the Development of Women's Right in Pingtung (JADWRP) was established in November 1997. Formed by a group of women who are enthusiastic about public affairs, the members of the association include scholars, teachers, social workers, and homemakers. Our members work jointly to promote women's public

affairs and activism in Pingtung County, and are committed to achieving the realization of women's rights in society, as well as to promoting ethnic inclusivity and gender equality in Pingtung County.

Our mission: JADWRP is a non-profit social organization that uses mutual learning and encouragement among members to cultivate their ability to help others, express women's opinions, promote women's rights, arouse women's self-growth, and affirm women's social participation so as to realize the vision of gender equality, equal rights, and respect.

Our tasks:

1. Collect, analyze, research, and develop the concept, willingness, participation method, style, and content of lifelong learning for women of all ages; organize reading clubs, growth groups, gender learning, and workshop courses to encourage women to diversify their leanings. Develop women's potential, enhance women's self-awareness, and enhance women's ability to face and deal with problems.
2. Collect and record the history of Pingtung women, and further sort, edit and publish relevant books and publications. Presents the diverse faces of women through texts, artistic creations, videos, documentaries, and theater performances.
3. Collect, analyze, and study the patterns of women's labor and employment, and promote the protection of women's labor rights.
4. Collect, analyze and research women's laws, and provide women's legal consulting services.
5. Organize women in the community, set up support groups in the community, equip women to participate in public affairs in order to lay the foundation for women's ability to participate in society, and to build a friendly society.
6. Hold symposiums, lectures, or activities from time to time on women's issues to promote the integration of exchange resources with other women's groups.
7. Supervise the media and promote social education to reduce stigma toward women.
8. Provide consultation on social welfare, education, and employment for disadvantaged women.
9. Promote women-friendly spaces in public buildings, medical institutions, public institutions, and public transportation facilities.
10. Other matters related to supervision, maintenance, protection, and promotion of women's welfare rights, etc.

Contact E-mail: jadwrp@gmail.com

12. Modern Women's Foundation

The Modern Women's Foundation (MWF) was established in 1987. Having pioneered Taiwan's first women's protection center in 1977, we provide professional legal service, medical treatment, reporting, court counseling, and escort services for female victims of violence. We became Taiwan's first public interest group to serve women and children who have been subjected to sexual assault, domestic violence, and sexual harassment. MWF assists more than 8,000 victims of domestic violence, sexual assault, and sexual harassment annually. We also assist nearly 3,000 high-conflict families in the courts each year.

Over the years, we have continued to care for women who have suffered violence, and have developed into a professional social work organization with practical actions. From direct case counseling services, preventive advocacy, to legal promotion and other indirect services and advocacy work, we continue to strive for an equal, safe, and dignified social environment for women who are victims of domestic violence, sexual assault, and sexual harassment. The Foundation actively promotes various forward-looking systems and service programs.

Because we believe that all people are equal, and that everyone deserves to be respected and own freedom and autonomy, we do not distinguish our clients between nationality, gender, and sexual orientation.

Our goal is to build a friendly environment of equality, safety, dignity, and development, and to debunk social myths. MWF hopes to end gender violence and achieve gender justice in a society.

Contact E-mail: chioulan@38.org.tw

13. New Vitality Independent Living Association, Taipei

"New Vitality Independent Living Association, Taipei" was established in 2007. For these 13 years, we have had consistent difficulties. We were not only to achieve the independent living environment for persons with disabilities, but also to eliminate discrimination. During this period, we were promoting the independent living services and connecting different people so as to strengthen the changing power in the community.

Contact E-mail: ciltaipei@gmail.com

14. Organization of Urban Reformers (OURs)

OURs is the first non-profit organization focusing on reforming urban spaces and advocating related policies in Taiwan. We draw the most of our attention on 'use value' and 'fair and justice' of space. In addition, OURs accentuates involvement with real cases and tries to find solutions from real experiences. Furthermore, we supervise and urge our government to improve urban problems, enhance rights of all the citizens to

utilize urban space in a fair and reasonable manner through advocating the unity of related experts and socialists.

Since 2010, due to skyrocketing house prices and the government's nonfeasance in housing policy for a long time, OURs devoted our efforts to advocate housing policies, and formed 'Social Housing Advocacy Consortium' together with several private organizations. On top of that, OURs launched 'Housing Movement2.0' in 2014 and thus accelerated the progress of housing policies and significant reform of related legitimization.

Contact E-mail: ours@ours.org.tw

15. Persons with HIV/AIDS Rights Advocacy Association of Taiwan

In Taiwan, Persons with HIV/AIDS Rights Advocacy Association (PRAA) is the first non-profit, self-help organization set up by/for PLWHA, with their relatives, friends, and some caring people in society.

We assist PLWHA, and their family with striving for their basic human rights, such as residence, working, education, and medical care which should be equally offered. We sincerely hope PLWHA, can live a normal life, and that our society can be a PLWHA-friendly environment without prejudice and discrimination. We also help with the improvement of AIDS treatment and the prevention of the disease as well.

Contact E-mail: service@praatw.org

16. Prison Watch

Prison Watch is a nonprofit organization formed by a group of practitioners from all walks of civil society. Our members hail from fields including sociology, law, public health, health management, medicine, human rights, and social works. We pay close attention to all issues around prisons in Taiwan, including the right to live, citizenship, and readiness for reintegration into society. Prison Watch also focuses on the situation of inmates and their families. Through various means such as capacity building, study groups, lectures, law amendments, networking, and the collection of supportive information, we seek all possibile means of mutual dialogue from the prisoners, family and friends, and the society, and continue to speak and act.

Our regular work include annual prison visits and forums, lecture series with themes, national lecture tours, inmates' prison support plan, inmates' family support groups, the establishment of a basic prison database, interviews with prison-related organizations, etc.

We believe that starting with prison reform, we will then be able to promote judicial reforms and social reforms in the future, and establish a social safety net of mutual assistance, non-discrimination, respect for differences, opportunities, and dignity in Taiwan.

Contact E-mail: prisonwatch.tw@gmail.com

17. Rerum Novarum Center

Rerum Novarum Center is a social service organization dedicated to caring for the disadvantaged in the workplace. We strive to build a resource-sharing society for all workers in Taiwan, regardless of nationality, race, gender, or religious beliefs, especially the most vulnerable groups in the workplace. We provide direct and indirect services, including early capacity building of indigenous talents and tribal family care and training, to protect the basic life and work rights of the disadvantaged of the society. Through individual service cases, research, education, activism, legal grassroots or communities, the Center trains leaders, participates in social movements, and promotes service work. We also actively advocate for rights and interests, prompts the society to care about the issues of the disadvantaged in the workplace, and participate in related legislation, amendment of laws, and reform of infringed rights.

Contact E-mail: ejason77@gmail.com

18. Social Housing Advocacy Consortium

For a long period of time, the right to housing was narrowly viewed as an individual issue in Taiwan, so public housing, composed of only 0.08% in total housing stock, is deficient in quantity and quality. It was against this historical backdrop that the consortium was born. Fourteen NGOs and NPOs founded the 'Social Housing Advocacy Consortium' on August 26, 2010. The Consortium thus inflamed public discussion on social housing.

Our goals and appeals are to "increase social housing stocks", "reinforce protection and supplement more resources for "underprivileged families" and "advocate the social meaning of social housing".

Contact E-mail: socialhousing.tw@gmail.com

19. Sunny Independent Living Association, Kaohsiung

When it comes to the notion of "self-reliance," the mainstream perspective in society still believes that "relying on oneself is the only road to success." This notion pressures many people with disabilities to deliberately simplify their personal needs—major and minor things in life—so as not to become dependent on others or to become the so-called "burden". The personal needs of those with disabilities range from using the toilet, washing, going out, to their daily meals. As people with disabilities typically would have to accommodate their caregiver's condition (relatives, caregivers, or institutional staff) to live their everyday life, they relatively lose much of their own autonomy and life. The biggest difference between our organization and other groups is that more than half of our members are people with disabilities. We emphasize that people with disabilities are central and encourage them to be independent from their parents. With assistance from home and personal assistants, no matter how severe one's disabilities are, everyone can choose to live the life they want. Our activities are mainly led by those

with disabilities, and we continue to promote the concept, and hope that ultimately, people with disabilities can truly integrate into society.
Contact E-mail: prosunny168@gmail.com

20. Taipei Women's Rescue Foundation

Taipei Women's Rescue Foundation (TWRF) was established in 1987. In the 1980s, child prostitution was a prevalent problem in Taiwan. A group of passionate attorneys, scholars, and women's rights, in response, advocated for the establishment of a foundation to rescue victims. TWRF has continued its victim-rescuing work, focusing on domestic violence, child witnesses, human trafficking, and Taiwanese "comfort women" issues. It has been the only civic organization supporting comfort women's rights movements long-term in Taiwan. In addition to providing victims with rescue, care, and empowerment services, TWRF also reaches out to communities and campuses to promote awareness and provide preventative education, and has worked to legislate sexual exploitation and sexual violence issues. With these efforts, TWRF hopes to create an equal, respectful and violence-free future in Taiwan.
Contact E-mail: master@twrf.org.tw

21. Taiwan Access For All Association

Since the establishment of the "Taiwan Access For All Association", people with disabilities and individuals concerned about the community have been actively involved in its operation. Founded in August 2004, the association aims to combine social resources and strength to promote a fully barrier-free life, and to encourage peoples with disabilities to speak up and participate in relevant government committee meetings and initiatives. We believe that through breaking down barriers of the external social environment, we are also transforming people's minds internally. The strength of people with disabilities is essential to moving towards a more peaceful and inclusive society.
Contact E-mail: sunable.net@gmail.com

22. Taiwan Alliance for Advancement of Youth Rights and Welfare

Taiwan Alliance for Advancement of Youth Rights and Social Welfare is composed of multiple youth welfare organizations, all of which have been dedicated to youth issues. Due to the lack of an integrated complete youth welfare system and insufficient government funding, youth welfare is gradually simplified to residual welfare for marginal youth. Youth rights and welfare have been constantly neglected through policy making, which leads to these issues being pushed to the periphery and lack of a diverse environment for the healthy mental and physical development of young people. We aligned 45 youth organizations to strive for six major areas of youth rights,

including the right to welfare protection, the right to public participation, the right to recreation, the right to health, the right to an education, and the right to employment.
Contact E-mail: young@youthrights.org.tw

23. Taiwan Alliance of Anti-Forced Eviction (TAAFE)

Taiwan Alliance of Anti-Forced Eviction (TAAFE) is a platform serving to build solidarity across issues of forced evictions. Our aim is to provide public education and advocacy for raising the public attention to diverse ongoing issues of forced-eviction. We explore the diverse structural problems related to the basic right to housing in Taiwan, and provide trained activists to manage different issues related to the threat of forced eviction.

Currently, there are 12 executive members working gratuitously at TAAEF. Hailing from different organizations, they continue to provide case assistance and policy research.
Contact E-mail: public@taafe.org.tw

24. Taiwan Alliance to End the Death Penalty

The Taiwan Alliance to End the Death Penalty (TAEDP) was founded in 2003 by local NGOs and academics, such as the Taiwan Association for Human Rights, and the Judicial Reform Foundation. The alliance was formed to stress and promote the absolute value of life and human dignity as core to the protection and promotion of human rights. Profoundly understanding that the society has yet to be exposed to the debate concerning death penalty abolition, and that the general public seems to support capital punishment as a form of revenge against perpetrators of major crimes, the alliance aims to create an open discussion forum for society on various abolition issues. Furthermore, it advocates shaping a better penal system that both respects the value of life while truly compensating the victims so as to really uphold justice and safeguard human rights for all.

Our Work:

- Death Watch: The TAEDP works on individual death penalty cases with pro bono lawyers. Meanwhile, we provide criminal defense trainings for lawyers to ensure defense quality, and monitor the trial procedure to ensure that every defendant receives a fair trial. For cases where we believe the defendant is innocent, we initiate campaigns and work alongside other NGOs to avoid wrongful executions and raise public awareness.
- Research: The TAEDP conducts interviews, writes articles and makes video clips for specific issues and cases. In 2014, we conducted a face-to-face public opinion survey, interviewing more than 2,000 citizens around Taiwan. The findings of this survey show that if people are provided more information about the death

penalty and judicial system, and if they are made aware of the alternatives to the death penalty, there is an increasing rate in favor of abolition.

- Public Dialogue and Education: In order to better communicate with the public, the TAEDP regularly holds seminars and discussions on different levels with different communities. In recent years, TAEDP members have been invited to more than 100 events on the abolition of the death penalty every year. Since 2004, TAEDP has run the "Murder by Numbers" Film Festival, which takes place every three years in major cities and universities around Taiwan. The TAEDP Thursday Forum was initiated in April 2016 to increase further public participation.
- The TAEDP mobilizes school teachers and has formed an Education Team to develop abolition education materials which can be used in the classroom. We also publish TAEDP online newsletters on a regular basis.
- Promotion for Social Security: The TAEDP takes part in advocating prison reform and promoting crime victims' rights and support. A working group for victims' rights was formed in 2012, consisting of victims' families, NGO workers, social workers, and counselling experts. The objective of the working group is to understand the needs of the victims' families and to promote the rights of victims and their families.
- International Networking: The TAEDP promotes regional and international networking as a way introducing Taiwan to the latest information on the abolition movement. The exchange of experiences and collaboration worldwide is crucial to developing better strategies in the fight for a death penalty-free society. The TAEDP has been participating in the World Congress against the Death Penalty since 2004. It is one of the founding members of the Anti-Death Penalty Asia Network (ADPAN) and an active member of the World Coalition against the Death Penalty (WCADP), where it has served as a Steering Committee member since 2009. The TAEDP participates in the worldwide campaign on every October 10th, the World Day Against the Death Penalty.

Contact E-mail: info@taedp.org.tw

25. Taiwan Association for Disability Rights (TADR)

Taiwan Association for Disability Rights (TADR) is composed primarily of disabled members responsible for policy decision in order to fulfill Article 33 of CRPD for a DPO to monitor the government. TADR emphasizes promoting equal rights that ought to be possessed by people with disabilities, to maintain their human rights, to facilitate international exchanges and cooperation with pioneers and leaders in the aspect of disability, to bring in effective implementation projects, to persuade legislative committees and make recommendations to government, to provide training opportunities for disabled policy advocates to visit and learn from other developed

countries' experience and to enhance awareness of human rights of disabled people from international perspectives.

In order to eliminate discrimination toward disabled people, we place emphasis particularly on promoting community education with the inclusion of added elements such as drama plays, musicals, and hip-hop rapping performances in order to reinforce the general public's better understanding of disabled people. Moreover, we provide legal consultations, speed up technical development of assistive devices and cultivated cultural innovation as we wish to start from basic and core beliefs. We aim to facilitate opportunities for disabled people to participate in the community through cultural activities and public policies so as to achieve community integration for disabled people and for them to be able to enjoy human rights and freedom as everyone does in the community.

Contact E-mail: crpd.tadr@gmail.com

26. Taiwan Association for Human Rights (TAHR)

Taiwan Association for Human Rights (TAHR) is an independent non-governmental organization founded on 10th December 1984 (International Human Rights Day). It is a member-based NGO and run by full time activists and volunteers.

The Taiwan Association for Human Rights is committed to:

- Remaining independent from the government, all political parties, corporations, and other interest groups;
- Promoting the spirit of human rights and enhancing human rights standards and protections;
- Fighting for all people without regard for class, race, gender, religion, or nationality; and
- Cooperating with NGOs worldwide to improve domestic and global human rights.

Contact E-mail: info@tahr.org.tw

27. Taiwan Association for Truth and Reconciliation

Taiwan Association for Truth and Reconciliation, founded in 2007, is dedicated to promoting transitional justice, popularizing knowledge of transitional justice and delivering domestic and foreign transitional justice information. So far, we have implemented the oral history of victims and families in political cases through interviews, held the Constitutional Court Simulation, planned the collection of memory of the martial law period, and published "The Letter Never Delivered", "The Struggle of Memory and Forgetting: Interim Report of Taiwan Transitional Justice".

Contact E-mail: contact@taiwantrc.org

28. Taiwan Corrections Organization

History: The preparation to found the Taiwan Corrections Organization started in 2017, when the suggestions were given at the Presidential Office National Conference on Judicial Reform Conference. In 2018, the overwork condition of the colleagues was submitted to the Control Yuan for investigation. In 2019, a public hearing on the institutionalization of prison officials' services was held in the Legislative Yuan, and the Organization was officially registered. The next year, Taiwan Corrections Organization was invited to participate in the civil organization meeting convened by the Ministry of Justice to amend the law.

Words from Directors and the Board: In my past 20 years of experience in prison management, I have seen many unreasonable and unjust matters in the workplace. To deepen democracy in Taiwan, civil servants need to fully express their opinions. In the past, there was a long lack of platforms for rational discussions, and the internal website of the agency was often reduced to officialdom. In addition to overtime working, more than half of my colleagues have accumulated more than 3,000 hours of service in their institutions each year. The shift system has seriously affected their health, which results in a turnover rate as high as 10% for consecutive years and the shortage of workers. The Organization's members, their families, and the board wish to gather grass-roots employees and social forces to offer prison officials comprehensive legal protection, and to safeguard their basic health rights. Through our work, we aspire to give our colleagues a harmonious and pleasant work environment and to enhance Taiwan's criminal justice system.

Contact E-mail: taiwancorrectionsorg@gmail.com

29. Taiwan Criminal Defense Attorney Association (TWCDAA)

Founded in 2017 with a vision to safeguard human rights and enhance the structure of the criminal law system, Taiwan Criminal Defense Attorney Association (TWCDAA) commits to refine attorneys' criminal defense skills, to raise public awareness, and to facilitate researches on the topic of criminal defense.

To handle the great pressure in defense practice, raise the society's knowledge of criminal defense, and better the criminal system, it is essential to form solidarity among criminal defense attorneys. Through exchange and accumulation of collective experiences and a more in-depth and effective educational training, we are devoted to strengthening attorneys' criminal defense capabilities and assisting them with their defense practice. Ultimately, we wish to contribute to the rule of law and human rights.

Contact E-mail: twcdaa@gmail.com

30. Taiwan Equality Campaign

Taiwan Equality Campaign, previously named "Marriage Equality Coalition Taiwan," was formerly a task-oriented coalition formed by 5 different SOGI rights organizations in November 2016. The coalition played a key role in same-sex marriage advocacy, through the journey of lobby, Constitutional Court and referendum, the coalition

integrated the power from civil society and dedicated to advocacy, social education, grassroots organizing and international collaboration. The coalition has officially registered as an independent organization, Taiwan Equality Campaign, in May 2020. Taiwan Equality Campaign will continue projects that include enhancing political participation of the LGBTQ+ community, social education and international collaboration, aiming to create a discrimination-free society for the LGBTQ+ community and to make Taiwan an inclusive and friendly country.
Contact E-mail: equallovetw@gmail.com

31. Taiwan Gender Equity Education Association

The Taiwan Gender Equity Education Association (TGEEA) was founded in 2002 by a cohort of teachers and activists. TGEEA aspires to achieve gender justice and promote gender diversity through education.

A non-governmental organization, TGEEA has dedicated itself to the following endeavors: providing outreach programs to all stakeholders in primary and secondary education that are focused on gender justice, developing effective instructional materials and praxis for Gender Inclusive Education, and vigilantly monitoring the implementation and enforcement of the Gender Equity Education Act. In addition to the above domestic undertakings, TGEEA has actively participated in international networking with similar NGOs abroad and has been a principal contributor in writing a comprehensive CEDAW shadow report since 2010. The shadow reports evaluate the Taiwanese government's accomplishments and deficiencies in the efforts to achieve inclusive gender justice.
Contact E-mail: tgeea2002@gmail.com

32. Taiwan Gender Queer Rights Advocacy Alliance

Taiwan Gender Queer Rights Advocacy Alliance is formed by a group of people with multiple identities, i.e., people who are homosexual, bisexual, transgender, transgender, queer and questioning, etc. and at the same time with social vulnerabilities like physical or mental disabilities, epilepsy, or are infected with rare diseases, HIV, etc.

These individuals who carry multiple social stigmas are often excluded by society and find it difficult to seek support groups. The members of Taiwan Gender Queer Rights Advocacy Alliance have all experienced such hardship and decided to speak out for people like them. Seeking to be recognized and understood, the alliance aims to fulfill the equality of all human beings, realizing zero discrimination in all living spaces and to improve the rights and interests of people with different multiple identities.
Contact E-mail: tgqraa@gmail.com

33. Taiwan HIV Story Association

In the year 2016, we founded the HIV Story. Most of us are HIV carriers. We wrote our own stories, noted our ups and downs, and also collected the life stories of other HIV carriers living in Taiwan. For us, these stories serve as a means of contact between the public and the HIV+. In 2018, in response to low participation of the HIV carriers in public events, we started a series of lectures called "NowOn+." Through these lectures, we tried to communicate with people in Taiwan over 11 issues related to HIV—including drug, prostitution, stigmatization, and so on.
Contact E-mail: twhivstory@hiv-story.org

34. Taiwan International Medical Alliance (TIMA)

Founded in January 2001, the Taiwan International Medical Alliance (TIMA) is dedicated to promoting the right to health and alleviating the health inequalities among different social strata and classes, both domestically and regionally. TIMA has been working with Cambodian partners on the development and enforcement of health-related policies, including tobacco control. As a member organization of Covenants Watch, TIMA takes up the responsibility of developing human rights policies and quantitative human rights methods, such as human rights indicators and impact assessment.
Contact E-mail: songlih@gmail.com

35. Taiwan International Workers Alliance (TIWA)

Recognizing that the struggles of different worker groups are interrelated, a group of labor organizers with long experience in the Taiwan labor movement established the Taiwan International Workers Association (TIWA) in October 1999. TIWA is the first NGO in Taiwan dedicated to serving migrant workers. Aside from actively campaigning for labor rights, TIWA helps empower migrant workers to establish their own organizations. Over the past years, we have supported the establishment of the KApulungan ng SAmahang PIlipino (KASAPI) and the Ikatan Pekerja Indonesia Taiwan (IPIT). Furthermore, due to the prevalence of nationalism and cultural prejudice in Taiwanese society, we also organize cultural activities with the goal of transforming Taiwanese society's image of international laborers and promoting mutual respect, social justice and equality.
Contact E-mail: tiwa.home@gmail.com

36. Taiwan Labour Front

Taiwan Labour Front (TLF) was established on May 1, 1984. It is the first labor movement group in Taiwan. With the development of democratization in Taiwan, TLF has undergone several organizational transformations and promoted social justice under the concept of social democracy. However, in order to achieve this goal, TLF not only provides case services and helps to organize unions, but also promotes various labor policy legislation. In recent years, TLF has invested more resources in policy

research and advocacy regarding policy and legislative proposals for various labor and social policies. Currently, the main bills that are promoted and advocated include the "Minimum Wage Law", the "Occupational Accident Insurance Law", the "Labor Education Law" and the "Public Interest Whistle-blower Protection Law". TLF continues to pay attention to pension, judicial, and tax reforms to facilitate the practice of social unity in Taiwan.
Contact E-mail: labornet51@gmail.com

37. Taiwan LGBT Family Rights Advocacy

Taiwan LGBT Family Rights Advocacy (hereinafter as "TLFRA") originally sprung from an MSN group called the Alliance of Lesbian Mothers (hereinafter as "ALM") in 2005.

ALM members include lesbians who left their previous heterosexual marriage with children, lesbian couples with children and lesbian couples who planned to have children.

With increasing demands from various types of LGBT families and the needs to call for actions to enhance the recognition of LGBT family, the ALM was later regrouped and renamed as TLFRA in 2006 to broaden the service to all LGBT families in Taiwan.
Contact E-mail: registration@lgbtfamily.org.tw

38. Taiwan Lourdes Association

Taiwan Lourdes Association is a nonprofit organization dedicated to HIV/AIDS related fields and provides various services for PLWHA. The association's goal is to improve the quality of life of PLWHA through various care, support services, and programs. The association also advocates for human rights of PLWHA and empowers them to improve their general wellbeing. We have Taipei, Taichung and Taitung offices to provide a wide array of services for the PLWHA community and family, we help over thousands of clients visiting yearly from diverse groups across various ethnicities and ages.
Contact E-mail: lourdes@ms42.hinet.net

39. Taiwan Mad Alliance

Taiwan Mad Alliance (TMA) collects and sorts out the self-statements of mad people, and places the "madness" on the cognition of different historical moments.

On the one hand, TMA reflects on the rapid expansion of biological psychiatry, which incorporates complicated emotions (e.g. bereavement) into the diagnostic classification and the medical market. We criticize the collective role of the judicial and police administrations, the compulsory imposition of medical treatment on those deemed to have 'deviant behavior' and the diagnoses of patients as public security risks so as to be forcibly taken by the police at any time.

On the other hand, we form voluntary communities in our daily life through practice, documentation, performances, conceptualization, theoreticalization, and support groups to part ways with professionalism, and help mad people open up in times of mental crisis. The days of sorrow and pain can settle in one's place, TMA is committed to creating an alliance that gathers mad people and conducts collective action and voices.

Contact E-mail: taiwanmadalliance@gmail.com

40. Taiwan Tongzhi (LGBTQ+) Hotline Association

Taiwan Tongzhi (LGBTQ+) Hotline Association was founded in 1998 and is now one of the most longstanding and the largest lesbian, gay, bisexual, and transgender (LGBTQ+) organizations in Taiwan. Our mission is to promote a healthier and freer society for LGBTQ+ individuals. We provide peer support and resources for the Taiwan's LGBTQ community. While combating discrimination and inequality, we also foster an inclusive and diverse support network within the community at large.

Hotline's work includes four areas:

- Community services to LGBTQ+ people, their families and allies.
- LGBTQ+ education to students, teachers, professionals and general public.
- Advocacy work to deal with LGBTQ+ related policies and regulations.
- International connection and collaboration.

Contact E-mail: hotline@hotline.org.tw

41. Taiwanese Deaf Alliance

At Taiwan Deaf Alliance, we dedicate our work to connecting domestic and foreign hearing loss groups, engage in various exchange activities, and establish a cooperation network to fight for the fundamental human rights of the deaf. As our core mission, we safeguard the rights and interests of the deaf.

Contact E-mail: tda20181125@gmail.com

42. The Garden of Hope Foundation

Following in Jesus' footsteps, The Garden of Hope Foundation looks to pursue the determination and courage required to realize justice and love, to prevent and eliminate the trauma of women and children who survived sexual abuse, sexual exploitation, and sexual harassment. We have been committed to social reform and creating a friendly environment for women and children. The Foundation hopes to end all actions subjected to sexual and gender-based violence and oppression and to realize a society with gender justice.

Contact E-mail: master@goh.org.tw

43. The Homeschooler

Since the establishment of Homeschooler on July 21, 2018, we have committed to the information transmission of non-school-based experimental education (hereinafter referred to as non-learning) and the maintenance and assistance of student rights, connecting with non-governmental organizations, promoting and participating in the establishment of significant bills such as the Enforcement Act for Non-school-based Experimental Education at Senior High School Level or Below, and the Measures for the Protection of the Rights and Interests of Students in Non-School-Type Experimental Education at the Stage of Advanced Secondary Education.

Devoted to policy advocacy and enhancing the situation of non-school-based students and their parents, Homeschooler has facilitated several inclusivity policies e.g. inclusion of non-school students for publicly funded influenza vaccination by the CDC since 2019, the Zhongzheng Cup National Skating Championship, National Student Music Competition, and National Senior Middle School Student Skills Competition. Homeschooler delivers relevant information through the media and events like the 2019 Taiwan Experimental Education Forum, the 2019 ZA SHARE Expo, and the 2020 Forum on Quality Learning. We also organize student training activities and continue to provide parents and students with consulting services.

Contact E-mail: tzuhsuehsheng@gmail.com

44. Vietnamese Migrant and Immigrant Office

What social workers do is to extend the social safety net and catch the underprivileged." The Vietnamese Migrant and Immigrant Office has served countless Vietnamese migrant workers and immigrants in Taiwan since its establishment in the spirit of Catholic fraternity. In addition to assisting them to overcome the obstacles posed by their language struggles or lack of legal knowledge during their work in Taiwan, we have further promoted relevant human rights and legal knowledge, so as to encourage the disadvantaged to bravely speak for their rights, participate in social movements for social interests, advocate for social fairness and justice, and promote a comprehensive judicial function in our society. Through these means, we work to ensure that

disadvantaged migrant workers and immigrants can have a stable life and receive due protection of their rights and interests.
Contact E-mail: nguyenvanhung2025@gmail.com

45. Wild at Heart Legal Defense Association, Taiwan (WHA)

"Wild at Heart Legal Defense Association" is an organization founded by Robin Winkler (in Taiwan since 1977, gave up US nationality as required by Taiwan law to become a naturalized Taiwanese in 2003). Wild is a platform for social, economic and political (resource utilization) change through promotion of the ideas of deep ecology by means of litigation, dialog, conventional and unconventional educational activities. We provide support for environmental (social, economic and nonhuman environment) grassroots movements. We believe that a new "mindfulness" is necessary to prevent the premature death of life on Earth. We also believe, to paraphrase Gandhi, that true change will only come about when two forces interact against the established paradigm: resistance and creation. Restoration, conservation and preservation of the environment are the basis for both, and that is Wild's focus.

Through litigation, legislative reform and patient negotiations and dialog with government officials, corporate representatives, professors and other educators and members of the public, as well as collaboration with communities, public departments and organizations, we will successfully challenge the “consume till you die” mantra and contribute to the growing awareness of interconnectedness.

"Wild at Heart Legal Defense Association" is a registered organization under the law of civic organizations’ in Taiwan.
Contact E-mail: comment@wildatheart.org.tw

46. Women In Digital Initiative (WIDI)

Although the development and universalization of digital communication technologies have brought convenience to humankind, they have nonetheless incurred and exacerbated different forms of sexual violence. Powered by the multi-folded characteristics of digital technology, so-called digital sexual violence has resulted in drastic, perpetual, and even irreversible consequences on the modern-day virtual and real world. This is evident in cases like revenge porn, deep fake technology, digital surveillance on significant others, digital stalking and harassment, online misogynistic culture/hate speech/slut-shaming, digital human trafficking, and sexual exploitation, just to name a few.

The effect and harm “digital sexual violence” has on women is more significant. Moreover, the psychological and financial influence it poses also forms a continuum between the online technology and offline sexual violence.

Taiwanese society has yet to develop an awareness of this crucial topic. The lack of relevant knowledge of our central and local authorities, as well as the loopholes in our

law, have illustrated the government and legal system's incapability to respond to the novel forms of digital sexual violence properly. Online public opinion has also indulged derogatory comments that constitute sexual discrimination and misogyny. Beyond that, women have been underrepresented in STEM fields, and are facing workplace challenges like the "glass ceiling" effect and the gender pay gap. To resolve these problems, it requires immediate and zealous attention from all sectors of society.

In light of the aforementioned needs, we founded the Women in Digital Initiative (WIDI). Our team is constituted by members from all walks of life, including experts and practitioners from gender-studies, communication, law, social work, mental health, and the Control and Legislative Yuan. Holding to our mission to "prevent all forms of gender/sex-based discrimination and violence" and to "empower women and girls" in mind, we are devoted to promoting reform and advocacy work. We wish to raise the government and the public's understanding of digital sexual violence, to close the loopholes in current regulations, to change the misogynistic culture of the media and mainstream society, to empower victims, and to ensure the safety and equality of all women and girls in the digital world.

Contact E-mail: kevinckc1983@gmail.com

47. Yilan Migrant fishermen's Union

The Yilan Migrant Fishermen's Union was established on February 20, 2013, as Taiwan's first labor union with a focus on migrant fishermen. The officers of the union are all migrant fishermen, who are divided into a Filipino group and an Indonesian group per their nationality. The members of the two groups are each equipped with treasurers, secretaries, and coordinators, who are responsible for related affairs within each group.

The tasks of the union are as follows:

- The conclusion, modification, or annulment of the group agreement.
- Handling of labor disputes.
- Promotion of labor conditions, labor safety and health, and member welfare matters.
- Promotion of the formulation (fixing) and amendment of labor policies and laws.
- Organization of labor education.
- Assistance in the employment of members.
- Organization of member recreational matters.
- Mediation of a trade union or member disputes.
- The organization of undertakings according to law.
- Survey of the livelihood of laborers and families and compilation of labor statistics.
- Establishment of the shelters for resettlement and provision of accommodation space for temporary needs.
- Other matters that conform to the purpose of Article 3 and legal provisions.

Contact E-mail: fisherman121227@gmail.com

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