2021 Replies of Taiwan NGOs to ICCPR and ICESCR LOIs

人權公約施行監督聯盟	Covenants Watch
社團法人環境法律人協會	Environmental Jurists Association (EJA)
財團法人民間司法改革基金會	Judicial Reform Foundation
OURs 專業者都市改革組織	Organization of Urban Reformers (OURs)
財團法人天主教耶穌教會 台北新事社會服務中心	Rerum Novarum Center
台北律師公會	Taipei Bar Association
台灣廢除死刑推動聯盟	Taiwan Alliance to End the Death Penalty
台灣人權促進會	Taiwan Association for Human Rights (TAHR)
台灣刑事辯護律師協會	Taiwan Criminal Defense Attorney Association (TWCDAA)
臺灣教育協會	Taiwan Education Association
台灣冤獄平反協會	Taiwan Innocence Project
天主教新竹教區移工移民辦公室	Vietnamese Migrant and Immigrant Office

Covenants Watch
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Content

International Covenant on Civil and Political Rights (ICCPR)

Article 4

9. With reference to the *Third Report* (§ 28), please provide information on the measures taken to address the COVID-19 pandemic. In particular, please specify whether any such measures derogate from Taiwan's obligations under the ICCPR, including with respect to the rights to freedom of expression, freedom of peaceful assembly/association and freedom of movement. Please give details of how the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens* impacts human rights, in particular in relation to the provisions concerning quarantine, control and prevention measures, and personal data collection, storage and usage.

10. If those measures derogate from Taiwan's obligations under the ICCPR, please specify whether the measures are strictly required by and proportionate to the exigencies of the situation and limited in duration, geographic coverage and material scope, as outlined by the Human Rights Committee in its statement on derogations from the Covenant in connection with the COVID-19 pandemic (CCPR/C/128/2) and whether in this regard other obligations under the Covenant have been fulfilled.

Joint response of Taiwan Criminal Defense Attorney Association and Taipei Bar Association:

1. Regarding the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens*:
2. As per Art. 4, Para. 1 of the ICCPR: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."; and as per Para. 17 of the ICCPR, "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks."
3. Under the requirements of pandemic control, the State had deployed a wide array of epidemic prevention measures, including accessing people's communication records, consumption information, logs on ticket purchase, and

access history to public spaces, to enable travel and contact tracing. Measures to limit business operations, such as restrictions on commence events and movement of people, were also taken to reduce interactions amongst citizens.

4. However, these prevention measures were primarily authorized by Article 7 of the *Special Act for Prevention, Relief and Revitalization Measures for Severe Pneumonia with Novel Pathogens*, with stipulated texts indicating that the "the Commander of the Central Epidemic Command Center may, for disease prevention and control requirements, implement necessary response actions or measures". The vague wording alludes that as long as it can be justified as "necessary to prevent and control the pandemic", all forms of "necessary response actions or measures" can be pertinent. The wording, in practice, implies that the State can do anything in the name of pandemic control. The expansion of state power under this situation implies that restrictive actions against civil liberties which needed sanction of neutral judges, is off the leash.
5. The legal framework is also perceived as a form of "advanced deployment" in the eyes of citizens, which preemptively simplified the procedure and bypassed reviews and even specific legal boundaries. This framework has achieved its intent of pandemic control thus far, but it is based on sacrifices of civil liberties that were supposed to be short-lived and exceptional. During this state of exception, all pandemic prevention measures undertaken by the State should be subject to subsequent review by judicial organs and supplemented with mechanisms of remedy.
6. However, at present, we seem to have regarded the advanced deployment of exceptions as daily deployments. The State's extensive restrictions on civil liberties have become routine, and the degree of control the State possesses on citizens is ever increasing, rendering our human rights conditions incommensurate to the past. This human rights situation is surely concerning.
7. Regarding the *Special Act on Judicial Procedures During Severe Infectious Epidemics*:
8. According to paragraph 6 of the General Comment No. 32 of the ICCPR, "While article 14 is not included in the list of non-derogable rights of article 4, paragraph 2 of the Covenant, States derogating from normal procedures required under article 14 in circumstances of a public emergency should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation. The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights."
9. The *Special Act on Judicial Procedures During Severe Infectious Epidemics* issued on June 25, 2021 (hereinafter referred to as the "*Epidemic Judicial Act*"), of which the part regarding criminal cases are in articles 4 to 7, respectively regulating the "use of technological equipment", "effects and methods of delivery services", "amendment of interrogation records", and "impediment and continual of

procedures"; the State's effort to ensure the effective proceeding of judicial processes during this severe pandemic is commendable.

10. However, reviewing the content of the *Epidemic Judicial Act* literatim, although there are many special accommodations and measures of amenity, the *Act* nevertheless centers around the agents of power of the sovereign (e.g., judges and investigators), which might erode institutional assurances on due process and the right to fair trial of citizens.
11. For instance, Article 4 of the *Epidemic Judicial Act* permitted parties or related parties to criminal litigations to utilize technological means to participate in investigation procedures in cases where they are unable or unsuitable to be present, the implementation shall not hinder the effective exercise of the defendant's rights, and the consent were consulted. The intent of this article is to ensure the defendant's right to hearing and defense; however, the Act only emphasized the aspect of voluntariness of the statement of defendants. The defendant's right to defense, however, contains the additional connotation of "adequate and free communication with the defending lawyer without interference"; should the technology and devices cannot ensure that the communication between defendants and their defending lawyers is not heard by anyone (including but not limited to judges, prosecutors, bailiffs, police, etc.) then the investigation process shall be suspended, and all related records shall be deleted. Furthermore, since the right to defense is closely related to the defendant, the implementation of technologies in the investigation procedures should be based on the consent of the defendant and their defender. Should investigating agencies recognize the necessity of implementing technologies in said process despite the disapproval of the defendant and/or the defender, it shall be conducted by means of a court ruling or court order, and explicitly define the means for appeals.
12. Therefore, regarding the right to defense guaranteed by Article 14, measures with less infringement exist even in the state of emergency. The measures stipulated in the *Epidemic Judicial Act* are not within the limit of absolute necessity and may be in violation of Article 4 of the ICCPR.

Article 6

11. The *Third Report* (on page 21) indicates a decline in the number of persons sentenced to death and executed. Over the quinquennium 2015-2019, there were four death sentences and eight executions. By comparison, over the quinquennium 2010-2014, there were 31 death sentences and 26 executions. The *Third Report* speaks of the 'gradual elimination' of the death penalty. Please confirm whether these statistics reflect an official policy promoting abolition of the death penalty and if so, indicate when Taiwan expects to be in a position to impose an official moratorium and

proceed to de jure abolition, as requested by the Review Committee in 2013 and 2017. In the past, Taiwan has resisted calls to reduce the use of capital punishment by invoking public opinion. Does the decline in death sentences and executions reflect a change in public opinion?

Response of Taiwan Alliance to End the Death Penalty:

13. The decline in the death penalty cases is due to the fact that more and more experienced and trained lawyers provide effective and rigorous defense during the entire process, hence judges are more willing to make sentencing decisions in accordance with international human rights conventions. In fact, MOJ remained extremely passive in the past few years, and failed to take any positive measures to abolish the death penalty or introduce a moratorium.
14. Abolishing the death penalty indeed takes time, but it is an excuse for the government to evade its responsibility by indicating that European countries such as the UK, France, Switzerland, and Italy all took a long time to abolish the death penalty. Before these European countries abolished the death penalty, they had already stopped executions by issuing moratorium for a long time. In addition, the multiple UN Resolutions on the Moratorium urged governments to contemplate alternatives to death penalty while issuing a moratorium.
15. It is only because of NGOs' persistent advocate, the issue of death penalty was added in the *National Action Plan on Human Rights*, and one item in the plan is to carry out a new survey on public opinion. We urge that the government commission a third-party to conduct the survey, and the methodology should refer to the one conducted by Academia Sinica between 2013 and 2014, sponsored by the EU, so that the methods and scope comply with the international standard. The aforementioned survey revealed that the proportion supporting death penalty dropped significantly (from 85% to 56%) when alternatives are available.

Articles 7, 9 and 10

15. With a total population of 23.6 million people (*Common Core Document*, Table 1), and a total prison population of roughly 61,000 prisoners and pre-trial detainees (*Third Report*, § 95), Taiwan continues to have a comparably high incarceration rate of around 260 prisoners per 100,000 inhabitants, as is also confirmed by the statistics of the World Prison Brief. This high incarceration rate results from "tough on crime" policies (see also Covenants Watch, §§ 375 ff) and leads to overcrowding of prisons and inhuman prison conditions, which have been strongly criticized by the Review Committee in 2013 and 2017. In § 46 of its *Independent Opinion*, the Taiwan National Human Rights Commission (NHRC) concludes that "at least 20% of the prisoners were unable to satisfy their basic needs when serving their sentence." This would amount to a violation of their right to human dignity, as stipulated in the

Constitution of Taiwan and Article 10 ICCPR. The *Third Report* acknowledges again prison overcrowding (§ 95), a serious shortage of prison staff (§§ 112 ff) and other problems related to imprisonment. Which measures have been taken to address this problem?

Response of Judicial Reform Foundation:

16. The total number of inmates hosted by correctional institutions in Taiwan at the end of 2020 was 58,362 individuals, the lowest in recent years. Expansion plans for correctional facilities also brought the legal capacity of Taiwan's correctional institutions to 56,877 individuals, highest in recent years. The Agency of Corrections, Ministry of Justice also continued its "Correctional Institution Expansion and Reconstruction Project". In the foreseeable future, Taiwan's correctional institutions are able to accommodate more inmates. The crucial problem in Taiwan, however, is that criminal policy in the frontend nevertheless favors severe punishment. Taiwan has roughly 248 inmates per 100,000 residents at the end of 2020 (its total population at the end of 2020 is 23,561,236 persons). When major social incidents occurred, the Legislative Yuan and the Ministry of Justice often responded by emphasizing heavy penalties. The tendency has not changed.
17. According to the State's response to the List of Issues submitted by the International Review Committee, as of the end of 2020, the burden of staff was nevertheless excessive, the ratio of security personnel in correctional facilities to inmates is about 1 to 10.1, and the ratio of correctional personnel to inmates is about 1 to 144. On November 12, 2021, Newsmag of CTS published reports that described working conditions of civil servants in correctional facilities as "bureaucratic sweatshops", and their jobs as "high working hours, high pressure, high risk"; in the same report personnel of Agency of Corrections confirmed that the staff to inmate ratio of Taiwanese correctional facilities remained relatively high, compared with other countries, with high turnover rate.
18. Correctional institutions in Taiwan do not provide inmates with all the daily necessities needed for prison life, and inmates must earn allowances through labor or rely on outside sources of funding. According to an administrative rule issued by the Agency of Corrections, concerning the daily necessities, pharmaceuticals and medical necessities, dietary supplements, and other related expenses of inmates in the correctional institutions while taking into account differences in needs by genders, it is recommended to set the standard expenses for inmates to be NT 3,000 per month. According to Paragraph 100 of the State Report on ICCPR, however, the average amount of income from labor of inmates in 2018 amounted to about NT 487 per month; despite the Prison Act revised in

2019 increased the share of operating surplus to be distributed to inmates, the income is still far less than required expenses.

16. In response to the recommendations of the Review Committee to reduce the prison population, the Government states that "Taiwan has adopted a bipolar policy for processing criminal cases by imposing severe penalties for major crimes and light penalties for minor crimes, adopting both leniency and strictness. Taiwan has adopted severe penalties for criminals who commit serious offenses or repeat offenders based on the theoretical basis of retributive justice and taking offenders out of society". This "theoretical basis" seems to be in clear violation of Article 10 ICCPR. Will the Government of Taiwan reconsider its retributive criminal justice policy in order to bring it in line with the right of all detainees under Article 10 ICCPR to be treated with humanity, with respect for the inherent dignity of the human person and with the requirement that the penitentiary system shall aim not at retribution but at the reformation and social rehabilitation of prisoners?

Response of Judicial Reform Foundation:

19. The State's response to the List of Issues submitted by the International Review Committee had failed to respond to the committee's inquiry regarding the potential infringement to Article 10 of the ICCPR in the "theoretical basis" supporting the State's tendency of adopting strict criminal legislation and severe punishment. In actuality, the Ministry of Justice is the predominant determining actor on whether legislation will take the route of severe punishments. The Ministry of Justice will formulate relevant criminal legislations with regards to the length of the penalty and the number of imprisonments, with the Agency of Corrections only responsible for enforcement in its facilities. In government's response, the Agency of Corrections only provided the contents of enforcement, while the Ministry of Justice failed to explain whether it will reevaluate its criminal policies and legislations that were laden with severe punishments, for instance, recidivists must serve up to 2/3 of their entire sentence to be eligible for filing a parole request, the three-strikes law,[1] excessive penalties for selling drugs, and other legislation that increases penalties in response to major public security incidents. An odd phenomenon also arose from the tendency to increase penalties: the parallel increase of minimum non-parole time and minimum non-parole time after the parole is revoked. Before 1997 inmates with life sentences can file for parole after 10 years of imprisonment and can file for parole 10 years

[1] *Criminal Code*, Article 77, para 2, subpara 2: (Regulations regarding the application for parole is not applicable to) "the recidivist of an offense that carries a principal punishment of minimal five-year imprisonment intentionally commits in five years after completing the execution of the punishment or after being pardoned after the execution of part of the punishment an offense that carries a minimum principal punishment of not less than five years."

after the parole is revoked. The 1997 revision of the *Criminal Code* increased the threshold for first-time offenders with life sentences to file for parole to 15 years, the threshold for recidivists increased to 20 years, and 20 years of mandatory imprisonment will be issued to all whose parole was revoked. After 2006, the threshold for filing a parole was increased once again to 25 years, with 25 years of mandatory imprisonment after the revocation. Special provisions allowed the updated regulation to be utilized in conjunction with existing regulations (Article 7-1 and 7-2 of *Enforcement Law of the Criminal Code of the Republic of China*), namely, a person sentenced to life imprisonment before 1997 can file for parole after 10 years of imprisonment, but might be subjected to varying thresholds for refiling should they returns to correctional facilities, depending on the time: if the cause of revocation occurred before 1997, this person can file for parole after 10 years of imprisonment; occurred between 1997 and 2006 then this person will be subjected to 20 years of mandatory imprisonment; and should the event leading to revocation occurred after 2006, this person will need to serve 25 additional years of mandatory imprisonment. That is, the more careful a person on parole is, the longer they try to integrate into the society, the longer they will need to be imprisoned, should the parole be revoked. The provision is the product of heavy-penalty policy and ignores any criminal law principle or theory.

20. Ideally, the *Prison Act* attaches great importance to the notion of "correction" and "rehabilitation", but the implementation is problematic. The main activity inmates partake in during daytime is "work", which in theory shall cultivate essential skills for inmates in preparation for their return to society. According to Control Yuan investigative report number 0014 in 2019, however, more than half of the work in correctional facilities consists of folding paper bags or making paper lotus flowers. In the oral argument held by Justices on October 6, 2021 (the hearing for Constitutional Interpretation #812 on the mandatory work in correctional institutions), the Ministry of Justice explicitly stated that inmates' work consisted of manual and mechanical labor, falling short of skill training. The low-skilled, low-productivity work was part of the reason of the aforementioned inmates' problem of low wage and inability to support themselves. Unguarded work outside the prison has been a policy pioneered by the Agency of Corrections in recent years; yet the occasional incidents of prisoner escapes or negative reports often brought about public criticism and hindered the promotion of this practice.
21. Taiwan initiated the "individual treatment plan for inmates" on July 20, 2020. The limited resources for correctional treatments, however, plagued the implementation of the plan. According to the State's response to the List of Issues, staff to inmate ratio in Taiwanese correctional facilities is 1 to 144, which is unrealistic for the implementation of individual treatment plans. Another factor

affecting the implementation is the lack of a methodology for monitoring its implementation and achievements. Theoretically, the implementation of individual treatment plans and the achievement of goals shall be an important item in parole review and serve as the main basis for deciding whether to grant parole to inmates. According to materials related to the parole review collected by civil society organizations, however, the main reasons for not granting parole are usually the nature of the crimes committed and the serious impact on public security. Further, from any of the materials that NGOs can gather, including the reasons for not granting parole, prison report on parole application, individual treatment plans, it remains unclear how the prison designs and monitors individual treatment plans and sets its goals in accordance with the offence. It is also not clear how the prison improves, accommodates, and monitors the individual treatment plan after the parole application is denied.

17. Similarly, the Review Committee in 2017 has again strongly regretted any lack of progress in the abolition of capital punishment. It urged the Government "to take the lead in raising public awareness against this cruel and inhuman punishment, rather than being exclusively concerned with public opinion". In its *Response* (§ 172), the Government repeats that "even though abolition of the death penalty is an international trend, it involves a wide range of issues and cannot be achieved overnight". Please explain why a moratorium on executions cannot be achieved overnight as has been the case in numerous other countries in all world regions. Rather than bringing its criminal justice system in line with the requirements of Article 10 ICCPR and thereby abolishing the death penalty as a cruel and inhuman punishment in violation of Article 7 ICCPR, or at least as a first step imposing a moratorium on executions, the Government hides behind opinion polls and the rights of victims to "restorative justice" (§ 175). Does "restorative justice", in the opinion of the Government, mean that victims and their families have a right to determine whether perpetrators shall be sentenced to death?

Response of Taiwan Alliance to End the Death Penalty:

22. The State has formulated the policy of "gradual abolition of the death penalty" since over twenty years ago. The government has paid no attention to the historical, cultural, and societal circumstances that shape the discourses of death penalty issues. NGOs are striving hard to advocate for the abolition of the death penalty while the government is reluctant to make any effort to explain its stand and viewpoints on death penalty, resulting in the slow progress.
23. The Supreme Prosecutors Office established the "*Directions for Reviewing Controversial Death Convictions by the Supreme Prosecutors Office*" in 2016. However, when the petition of Wang Xinfu's wrongful conviction case was submitted to the Supreme Prosecutors Office by Taiwan Alliance to End the Death Penalty,

Judicial Reform Foundation, and Taiwan Criminal Defense Attorney Association in May 2021, instead of organizing a review meeting, the Supreme Prosecutors Office rejected the petition abruptly.

24. Is the government truly determined to end the death penalty? MOJ has updated a lot of research and reports on death penalty studies on their website. For example, they commissioned different parties to carry out the following reports: "A Study on Alternatives to the Death Penalty" by scholars from Academia Sinica in 2007, "Public Opinion Poll on the Death Penalty" by a polling company in 2012, "An Examination of the Correlates of Public Attitudes toward the Death Penalty in the Taipei Metropolitan Area" by Central Police University, "The Article 6 and 7 of ICCPR Concerning Right to Life Implement in the Criminal Justice Practice" by Dr. Lin Tzu-Wei, "Analysis of Taiwan's Death Penalty Controversy via International Human Rights Law" by Professor WU Chih-kuang", etc. No matter the research was commissioned by the MOJ or done by NGOs or scholars, the conclusions are almost the same: "If alternatives to the death penalty are provided, the public support for abolishment of the death penalty will rise", "if more information about the justice system and correctional agencies are provided, the public support for retaining the death penalty will decrease". These are empirical information that can help the government to reach the goal of ending the death penalty. However, whenever MOJ is asked about their position on this issue, they always repeat the same excuses such as: "total abolition of the death penalty is not achievable before a public consensus over the alternative for the death penalty is reached", they will be "careful and cautious in the execution of death penalty", they will "exhaust all remedies before sentencing the death penalty". These statements were not uttered to "gradually abolish the death penalty"; quite the contrary, these statements are excuses for "continuing the execution of the death penalty". Moreover, in terms of having more dialogues with the public, MOJ totally misses the point when contending that "they will continue to communicate with individuals and groups claiming the abolition of the death penalty…". Because MOJ's priority should be communicating with people who don't support the abolition of the death penalty rather than communicating with individuals or groups that already support it.
25. In July 2020, MOJ amended the *Regulations for Executing the Death Penalty* which permits death row inmates to arrange a funeral and religious ceremonies according to their wishes. However, the regulation still does not require that family members be informed prior to execution, and still allows persons with severe mental or intellectual disabilities to be executed.

18. Please provide precise statistics as to how many children (up to the age of 18 years) are currently (at a snapshot date before the Review) deprived of liberty in prisons, pre-trial detention facilities, police custody, migration-related detention centres,

psychiatric hospitals and special facilities for children with disabilities, drug rehabilitation centres, juvenile correctional institutions, reform schools, correctional schools or other closed institutions? Please also provide statistics on the number of children deprived of liberty on an annual basis for the last years in order to show any significant trends.

Response of Covenants Watch:

26. Although the State has provided statistical data on juvenile inmates of 18 years or younger from 2018 to July 2021, the data does not list data for inmates with disabilities in said institutions. The State should provide data disaggregated by gender and types of disability among juvenile inmates with disabilities in custody of juvenile reformatory schools and juvenile detention facilities. According to the Treatment Plan for Inmates with Disabilities in Correctional Institutions promulgated by Agency of Corrections in April 2021, Ministry of Justice, the status of disability or suspected disability will be checked at the physical evaluation for new inmates. In addition, the Control Yuan investigative report number 0031 in 2021 had also contained "numbers of students with disabilities in juvenile reformatory schools until 2020",[2] with data provided by the Agency of Corrections, this indicates that the State is indeed capable of conducting such a survey.
27. Other issues related to juvenile correctional institutions are as follows:
28. The Agency of Corrections has yet to formulate relevant operational regulations in response to frequent incidents of bullying and fighting in juvenile correctional facilities, and the staff also lack basic concepts of education, counseling, and professional training in juvenile justice; the relevant notification system also malfunctions:
    (1) The Agency of Corrections has yet to apply the *Campus Bullying Prevention Guidelines (for ordinary schools)* to formulate its own guidelines to address incidents of bullying in juvenile correctional facilities; instead, regulations regarding bullying in adult correctional facilities were applied;[3] the handling emphasized solely on punishment and separation, and did not provide education or counseling for students.
    (2) Correctional staff in juvenile facilities followed the management mindset of facilities for adults, which designates strong, gang-related, and influential

[2] According to the Control Yuan investigative report number 0031 in 2021, percentage of students with disabilities in reformatory schools are as follows: Ming Yang High School 7.96%, Chengjheng High School 10.21%, Dun Pin High School 8%, Li Zhi High School 10%: https://reurl.cc/EZ3xD1

[3] Specific Measures for Correction Agencies in Preventing Incidents of Sexual Assault and Bullying Among Inmates: https://reurl.cc/95je0V

students as cadres to assist with its management. This had formed a subculture of brute power struggle, leading to endless incidents of bullying and fights, in the severity of 7 to 1 fights or even 12 to 1 fights.[4]

(3) What's more, the staff had ignored situations where student cadres performed drills on the newly admitted which caused the newly admitted to be sent to medical care; failed to report incidents where student cadre gambled with or blackmailed other students; or exploited security passes to carry contrabands such as cigarettes and erotic materials for student cadre.[5] This indicates that not only did the staff neglected incidents of bullying but also maintained such occurrences. Under such an environment and the fear of retaliation, the victimized students dare not file any complaint.

(4) When incidents of violent conflicts occur among students, correctional staff ought to report the incident to competent authorities such as the Agency of Correction, Courts which govern the student's case, and the Social Affairs section of the local government. In practice, however, when such incidents occur, some staff may downplay it as individual fights and fail to report; further, according to Control Yuan investigation report number 0031 in 2021,[6] the case statistics by juvenile reformatory facilities do not match the statistics of notifications of violent conflicts reported by juvenile protection officers of the Judicial system, and the actuality still cannot be determined, demonstrating that the notification is thoroughly malfunctional.

29. Improper handling of incidents of sexual assaults and sexual harassment in juvenile reformatory and correctional facilities: As per regulations, should students in custody be subjected to sexual assault and sexual harassment, reformatory schools shall carry out notification, investigation, protection and handling procedures, and procedures for handling violations, according to Control Yuan investigative report number 0031 in 2021,[7] however, Dun Pin High School only implemented punishments such as exhortation, suspension of visits, and labor services, which are not effective in addressing the situation. In addition, the dilapidated school buildings cannot effectively separate victimized students from the perpetrators. See para. 31 for details.

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[4] Control Yuan investigative report number 0027 in 2021: https://reurl.cc/jgNzYy

[5] In 2021, in Ming Yang High School which accommodates juveniles sentenced to imprisonment, an instructor and an administrator carried contraband for students in custody and was determined to be guilty by the court (Disciplinary Court 2020 Qing Shang Zi No. 9 Disciplinary Judgment).

[6] Control Yuan investigative report number 0031 in 2021: https://reurl.cc/EZ3xD1

[7] See footnote 6.

30. Mishandling of juvenile inmates with disabilities by juvenile detention facilities: According to the *Special Education Act* and its relevant branches,[8] individual treatment plans shall be drafted for student with disabilities; juvenile correctional facilities, however, lack relevant resources for special education and counseling. Should juvenile inmates with disabilities suffer from emotional adversities or show signs of committing self-harm or suicide, solitary confinement or restraints will be used instead of counselling. The Agency of Corrections does not usually request professional aid and resources from the Ministry of Health and Welfare and Ministry of Education.
31. Dilapidated environment and insufficient equipment in juvenile reformatory schools: Take Dun Pin High School as an example,[9] when incidents of bullying, fighting, sexual assault, or sexual harassment occur, given the housing is provided in the form of a dorm hall, the victimized student cannot be effectively separated from the perpetrator. The current practice can only allocate a room for students with repeated offenses in a room with prominent monitoring cameras. After a mass fight, the victimized student would be moved to an isolation room in the name of protection, while the perpetrators are assessed in their original classes, confusing the students on their understanding of punishment.[10]

Supplementary information on issues not mentioned in the LOIs

Submitted by Taiwan Association for Human Rights:

32. Taiwan does not have formal procedures for refugee status determination and does not grant refugee status. In 2021, there are another thirteen persons seeking asylum in Taiwan: twelve of which from Tigray Ethiopia, one from Yemen, and three from Turkey. Another asylum seeker with national origin of Uganda who has been staying in Taiwan for over six years. Their requests for protection were not accepted in the first place.
33. Asylum seekers who are unable or are unwilling to return to the country of their nationality or country of their former habitual residence are faced with fines, detention, and deportation once they lost legitimate reason to renew visas and not leave for another country. The impact of the pandemic on the global mobility restrictions narrows options available for asylum seekers to claim protections in other countries should they have no means to stay in Taiwan.

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[8] Article 28 of the *Special Education Act*: https://reurl.cc/Zj0KNW ; Article 9 of the *Enforcement Rules of the Special Education Act*: https://reurl.cc/q1x7Gy

[9] Dun Pin High School accommodates juveniles who have been sentenced to probation education. Its predecessor was Taoyuan Reform School. In 2019, it was restructured into Chengjheng High School Taoyuan Branch in 2019, then restructured into an independent Dun Pin High School in August 2021.

[10] See footnote 4.

34. With or without the pandemic, overstaying asylum seekers are not permitted to either work, study, or obtain National Health Insurance eligibility. They have high risks of contracting the virus not only because they are least prioritized for vaccinations, but they are barred from accessing face masks in the time when the masks are distributed by the State only to those who possess registered ID card numbers. Furthermore, undocumented asylum seekers are not qualified for pandemic relief packages for income subsidies.
35. The illegal residency and the loss of rights that are derived from residential status is in breach of their rights under the ICESCR articles 1, 6, 9, 11 and 12 as a result of state omission in the protection of the rights of refugees by the creation of a national refugee mechanism.
36. The Ministry of the Interior is expected to propose a draft of Refugee Act to the Legislative Yuan by October 2020 in accordance with Executive Yuan's National Human Rights Action Plan.
37. The government shall consult with civil society organizations in the drafting process and ensure meaningful civil participation in decision-making processes.

Additional issue requiring urgent attention: Articles 9, 10, and 14

On the proposed amendment to provisions regarding Custodial Protection – Judicial treatment of persons with psychosocial disorders may violate ICCPR Articles 9, 10, and 14

Joint submitted by Judicial Reform Foundation, Covenants Watch, and Taiwan Alliance to End the Death Penalty

38. According to article 19 of the Criminal Code, the punishment is reduced for an offense committed when a person who has mental disorder or defect and, as a result, has a significant reduction in his ability to judge the illegality of the act or to act according to his judgement; in the severe case, he may be completely exempted from criminal responsibility. However, according to article 87 of the Criminal Code, a person with such mitigation or exemption in sentence, may be committed to a suitable establishment for *custodial protection* (CP hereafter) provided that he is believed to be at risk of repeating the offense or endangering public safety. The maximum period of custodial protection is 5 years. According to the investigation report published by the Control Yuan on December 16, 2021, about 200 people are ruled to CP by the court every year, of which about 30% are involved in theft, followed by homicide, physical injury, public danger, and other crimes. Half of the CP are one year, with 1/3 of the CP being executed before serving the sentence and 2/3 after the sentence. About 90% of the CP are carried out in mental hospitals, and those subject to CP are restricted in their movements, cannot go out or stay out overnight, the treatment mode is mainly based on

medication with limited the diversity, and there is also a lack of a interim mechanism for community rehabilitation.

39. Article 87 of the Criminal Law does not require a formal evaluation of the seriousness, dangerousness, and anticipation of the perpetrator's future conduct before CP is imposed, which may violate the Constitution of the Republic of China (see No. 471 of Grand Justice Interpretation). In this regard, the Taiwan government failed to amend shortcomings of article 87 of the Criminal Code, on the contrary, it launched a draft amendment on April 27, 2021, which intends to significantly increase the upper limit of the period of CP, or even extend the period upon review, resulting in lengthy or possible indefinite detention of persons with disabilities in the name of treatment. In addition, the Government intends to invest heavily in the establishment of judicial psychiatric hospitals, rather than investing more resources in improving mental health resources in prisons or developing community support services that are more conducive to reintegration. The government deprived the liberty of persons with disabilities without devising treatments appropriate for social rehabilitation, this is in violation with Article 9 and 10(3) of the ICCPR.
40. In addition to the above amendment to CP after the judgment is determined, the Taiwan government also introduced a draft amendment to the Criminal Procedure Act on March 23, 2021, adding an emergency custodial system for those offenders *before the judgment is rendered*, so that persons with disabilities may be ordered to be admitted to a establishment for treatment before the final judgment. The case was reviewed by the Legislative Yuan between October and December 2021, and the provisions were adjusted and renamed as *temporary placement*, but it is still full of doubts. For example, temporary placement can be carried out through only a simple appraisal or medical record report, and the temporary placement can be carried out for up to 5 years and may only be implemented in a judicial psychiatric hospital or ward. What is even more worrying is that the period of this deprivation of personal liberty in temporary resettlement cannot be counted into the fixed-term imprisonment after the judgment is rendered, nor can the provisions of the Criminal Compensation Act be applied. Restricting personal liberty pending a judgement may violate Article 9(1) of the ICCPR; non-applicability of provisions of the Criminal Compensation Act may violate Article 9(5), and the resultant delay in trial may violate Article 14(3).
41. Civil society organizations called on the International Review Committee to pay attention to the direction of the revision of this serious violation of the Convention and to remind the Government of Taiwan.

Article 14

25. In the Parallel Report 2020 by the Association of World Citizen and other associations (pages 27-29), it is alleged that the requirement of impartiality under Article 14 is not complied with in the procedural laws of Taiwan, as a judge who was involved in the investigation or interrogation of the trial in a lower court is only excluded from hearing the case on appeal, if he or she was the ruling judge in the lower instance. The Government is requested to give information on how the recusal system works under Taiwanese law, when a judge has taken part in a case at various court levels. Is the system compatible with Article 14 ICCPR?

Joint response of Taiwan Criminal Defense Attorney Association and Taipei Bar Association:

42. The system of recusal of the State may violate Article 14 of the ICCPR. As per Article 14, Paragraph 1 of the ICCPR, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law"; regarding the requirements of a fair court, in accordance with paragraph 21 of the General Comment No. 32 of the ICCPR: "The requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial."
43. Secondly, the *UN Bangalore Principles of Judicial Conduct* regarding the principle of "impartiality" for judges, point 52 of the commentary emphasized that "Impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice having been done, thereby destroying confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable observer." and point 53 "The European Court has explained that there are two aspects to the requirement of impartiality. First, the tribunal must be subjectively impartial, i.e., no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is to be presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, i.e., it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under this test, it must

be determined whether, irrespective of the judge's personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. In this respect, even appearances may be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public, including an accused person. Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw."

44. Further, principle 2.5 of the *UN Bangalore Principles of Judicial Conduct* stipulates that "A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable" which is elaborated in the point 85 of the commentary: "...To put it differently, in cases where disqualification is argued, the relevant inquiry is not whether there was in fact either conscious or unconscious bias on the part of the judge, but whether a reasonable person properly informed would apprehend that there was. In that sense, the reasonable apprehension of bias is not just a surrogate for unavailable evidence, or an evidentiary device to establish the likelihood of unconscious bias, but the manifestation of a broader preoccupation about the image of justice, namely, the overriding public interest that there should be confidence in the integrity of the administration of justice."
45. In other words, the system of recusal is the cornerstone of a fair trial, an exception to the principle of statutory judges which has a significant impact on the protection of people's litigation rights. Therefore, judges shall announce themselves unqualified for the trial should ordinary and reasonable people have doubts about the neutrality and impartiality of judges, for the preservation of confidence in judicial justice.
46. Despite that Article 17 Paragraph 8 of the *Code of Criminal Procedure* stipulates that judges shall disqualify themselves should "where the judge had participated in the decision at a previous trial", as indicated by page 73-74 of the State's reply to the List of Issues, "Taiwan's Supreme Court ruled in its precedent that a judge does not have to withdraw himself/herself from the present case if he/she had participated in the proceedings of investigation or interrogation at a previous trial for which he/she did not make any decision", in other words, even when the judge had participated investigative and interrogation procedures of the previous trials, there raises no need for the judge to recuse. Further, existing court rulings had limited the "trial" in Article 17 Paragraph 8 of the *Code of Criminal Procedure* as previous trials which were appealed. Under this interpretation, the judges would not need to recuse even if the successive judges had participated in trials which contained prosecutors' orders.
47. In conclusion, the practice of the system of recuse apparently violates the requirements of Article 14 Paragraph 1 of ICCPR and its General Comment. First,

the State did not clarify on why participating in the investigation process or interrogating witnesses without participating in the adjudication did not lead to prejudgment, and whether it complies with the provisions of Article 14 of ICCPR concerning a fair and impartial court, and what General Comment No. 32 of the ICCPR worded as "judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them". Secondly, a judge who participated in the previous trials, its investigation/interrogation processes, or partook in prosecutor's orders, should not be admissible in accordance with the standard stipulated also in paragraph 21, "...Second, the tribunal must also appear to a reasonable observer to be impartial"; even if the judge is not subjectively prejudiced, it is difficult to persuade reasonable observers (including the defendant and citizens) in terms of an objective appearance, and to instill the image of impartiality.

48. Therefore, under the practice of judges' principles of recuse, the State does not conform to the requirement of impartiality stipulated by Article 14 of ICCPR and its General Comment.

27. According to the Parallel Report of Covenants Watch, §§ 480-486, Article 159 of the *Code of Criminal Procedure* allows statements made by someone other than the defendant and documents made by a public official or a person in the course of performing professional duty to be used directly as evidence without confrontation and examination. The same practice is allowed with reports of an expert witness under Articles 206 and 208 of the *Code of Criminal Procedure*. It is alleged by the Covenants Watch that such a practice is in breach of the right to be presumed innocent and the right of confrontation, examination, and sufficient opportunity to make a statement under Article 14(2)-(3) 3 ICCPR. Similar violations are alleged under the *Witness Protection Act* and the *Sexual Assault Crime Prevention Act*. The Government is requested to give detailed information on how Taiwanese law is applied in the mentioned situations. Does the system comply with the requirements under Article 14?

Joint response of Taiwan Criminal Defense Attorney Association and Taipei Bar Association:

49. As per Article 14 Paragraph 3 Subparagraph 5 of the ICCPR: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

50. In addition, according to Article 166 Paragraph 1 of the *Code of Criminal Procedure*, "the party, agent, or defense attorney shall examine these persons; if an

accused, not represented by a defense attorney, does not want to examine these persons, the court shall still provide him with appropriate opportunities to question these persons.", Article 167 of the same *Code* stipulates: "The presiding judge shall not restrict or prohibit the examination of witness or expert witness by the party, agent, or defense attorney, unless the examination is inappropriate". Deducted from the articles, the present *Code of Criminal Procedure* is based on the principle that the defendant can exercise the right of cross-examination. The *Code* does not explicitly regulations regarding exception of the right of cross-examination, however, some court ruling had misappropriated the exception of the hearsay and holds that it is not illegal to bar the defendant from cross-examination; there are also incidents where the exception of the hearsay and the exception of the right of cross-examination are confused.

51. Regarding provisions of the rule of hearsay of the State, in accordance with Article 159 Paragraph 1 of *Code of Criminal Procedure*, "Unless otherwise provided by law, oral or written statements made out of trial by a person other than the accused, shall not be admitted as evidence". Article 159-1 thru 159-5 of the same *Code*, Articles 206 and 208 of the same *Code*, the *Witness Protection Act*, and the *Sexual Assault Crime Prevention Act* also contained exceptions to the hearsay rule, however. In practice there exists cases where the exceptions to the hearsay rule was abused, in which out-of-trial statements made by persons other than the accused were admitted as evidence without cross-examination; in such cases, prosecutors might take that the existing confession in the investigation can be used as evidence, and there is no need to summon witnesses for cross-examination. which renders the defendant be forced to summon unfavorable witnesses for the cross-examination, which amounts to violation to nemo tenetur se ipsum accusare, violating Article 14 Paragraph 4 Subparagraph 5 of the ICCPR.
52. First of all, Articles 159-1 thru 159-5, Articles 206 and 208 of the *Code of Criminal Procedure* had respectively stipulated statements before judges, statements before prosecutors, circumstances of inability to be present, credibility documents, the defendant's consent, appraisal reports and other statements outside the trial may be used as evidence without cross-examination procedures, which are in violation of Article 14 of the ICCPR:
    (1) For instance, regarding statements made by judges and prosecutors, while many scholars had criticized the tendency to superstitiously believe in the authority of judges and judge-centered thinking, the existence of a hollowed out "principle of immediacy", and the overly rudimentary regulations. Said statements are not necessarily creditworthy, and it is not appropriate to unitarily admit such statements to the exception of hearsay without protecting the right to cross-examination of defendants.

(2) For credibility documents, sobriety tests conducted by police officers, police reports in inspections, prosecutor's reports in inspection, seizure transcript, traffic accident forms and its diagrams can be admitted as evidence without cross-examination of the defendant.

(3) For appraisal reports, it is not commonplace for courts to summon appraisers to appear in court to testify in practice, given the court's unwillingness. Should an appraiser be summoned, its statement customarily falls into the principle of exception of hearsay and can be admitted as evidence.

53. Furthermore, regarding Article 17 Paragraphs 1 and 2 of the *Sexual Assault Crime Prevention Act*, worded as "Should the victim fall into one of the following categories, the statement which he or she made to the prosecuting officer, judicial police officer or judicial policeman during investigation can be used as evidence as long as it can be proven beyond a reasonable doubt and it is one of the elements of the crime: 1. The victim is unable to make a statement due to physical or psychological injury resulting from the sexual assault incident. 2. The victim is unable to or refuses to make a statement at trial due to physical or psychological pressure caused by the inquiries or cross-examination." The courts' application of this article is overly extensive, however, should one of the two requirements be met, the victim will be deemed as "objectively unable to be cross-examined" and their right to cross-examine the victim will be deprived.

(1) The nature of victim of sexual assault is equivalent to that of other witnesses, for instance, the victim of a violent crime may also suffer situations where "the physical and mental trauma cannot be stated"; given that other witnesses have the obligation to be a witness, and only the statement of victims of sexual assault was automatically admitted as evidence without substantial reasoning, this paradoxically cased unnecessary infringements on the defendant's right to cross-examine and fair trial.

(2) The two aforementioned paragraphs had established statutory exceptions to the victim's off-trial statement as evidence to convictions with highly ambiguous wordings, for instance, for "Physical and mental trauma" in Article 1 was not determined by medical professionals appraised by the court to determine its existence and nature. Further, "unable to or refuses to make a statement at trial due to physical or psychological pressure caused by the inquiries or cross-examination" in Paragraph 2 was unworkable with scientific appraisals, while the court lacks an objective rubric and often find itself pressured by sympathizing sentiments of the society, compliance with this paragraph will be assumed and his out-of-trial transcripts can then be cited as evidence of conviction should the victim makes such a claim. The

ambiguous wording of these two Articles might infringe the defendant's right to cross-examination.

54. Therefore, the response of the State had merely explained the legal provisions, without taking into account the practice. In order to comply with the requirements to ensure the right to cross-examination as stipulated in Article 14 of the ICCPR, it is recommended to explicitly stipulate provisions that bars evidence to be used as the basis of conviction should it was not cross-examined, and provisions that avert courts from misusing the hearsay exception, in the *Code of Criminal Procedure*. In sexual assault cases, depending on the circumstances of the case, it is also possible to allow the defender to cross-examine the victim face-to-face or take other measures that infringe the defendant's rights to a lesser degree.

28. Following recommendations by the Review Committee to remedy a violation of Article 14(5) ICCPR, Article 376 of the *Code of Criminal Procedure* was amended on 16 November 2017, with effect from 18 November 2017, in order to allow persons who have been acquitted in the first instance but convicted by the second instance to appeal to the third instance. However, according to the Parallel Report of Covenants Watch, §422, the right has not been made available "to cases before November 17th, 2017" which still follow the previous provisions. The Government is requested to explain why the right to appeal has not been granted in all pending cases and how such a limitation can be considered compatible with Article 14(5).

Response of Judicial Reform Foundation:

55. Per Article 14 Paragraph 5 of the ICCPR, General Comment No. 32, and Concluding Observations and Recommendations, the defendant has the right to appeal to a higher court for review. Judicial Yuan Interpretation No. 752 had clarified that citizens might suffer disadvantages in their personal, property and other rights should they be convicted. The core of the right to litigation is the notion to avoid errors or grievances, and to provide at least one opportunity for appeal and relief.

56. According to the statistics of the Judicial Yuan, from 2012 to June 2017, around 300 cases existed annually where they were deemed not guilty in the first verdict, deemed as guilty in the second verdict, and were barred from appealing to the third instance. Article 376 of *Code of Criminal Procedure* was amended on November 18, 2017; it has not applied retrospectively, nor was there a transitional relief clause, resulting in multiple instances of infringement of the defendant's right to appeal.

Unit：Cases

	Total	Taiwan High Court	Taiwan High Court Taichung Branch Court	Taiwan High Court Tainan Branch Court	Taiwan High Court Kaohsiung Branch Court	Taiwan High Court Hualien Branch Court	Fuchien High Court Kinmen Branch Court
2012	375	203	52	38	74	7	1
2013	368	184	65	29	76	14	-
2014	342	158	72	40	56	15	1
2015	301	125	57	44	56	18	1
2016	398	202	64	58	59	14	1
2017 (Jan.-Jun.)	143	78	25	15	21	4	-

57. Moreover, the aforementioned cases included cases in which wrongful convictions happened as a result of the lack of opportunity to appeal, which remained the center of advocacy of civil society organizations.

29. In the Parallel Report of Covenants Watch, §§ 471-472, it is alleged that the possibility to deny or reduce compensation under Article 14(6) ICCPR is used in a way not compatible with the principle of legal certainty and sometimes even used as a ground for reducing compensation based on a re-examination of the defendant's guilt in violation of "constitutional principles such as the double jeopardy clause and the principle of presumption of innocence". It is also criticized that no compensation is granted if the defendant has not been subject to restrictions on personal freedom or any legal sanctions. The Government is requested to comment on and provide relevant information concerning these allegations. Have the requirements of Article 14 ICCPR been complied with?

Response of Taiwan Innocence Project:

58. Although a draft of *Criminal Compensation Act* was submitted by the Judicial Yuan in 2019, which deleted Article 7 of the present Act in the attempt to avoid reducing the amount of compensation based on the attributable grounds on the party of the compensation request, so as to avoid re-examination of the victim's remaining responsibilities. The draft, however, included an amendment of Article 8 and added the provision of Paragraph 3, so that when the victim is deemed attributable because of "false confession, escape, interference with evidence investigation, or other reasons", the amount of compensation can still be reduced,

authorizing the compensation agency to review whether the victim is attributable, which will cause secondary trauma to the victim. The State report mentioned that the draft of Judicial Yuan deleted Article 7 but avoided mentioning the new Paragraph 3 added to Article 8. Despite the amendment, the defendant will continue to be subjected to examinations for suspicion of crimes; this had violated the prohibition of double jeopardy and the principle of presumption of innocence.

59. Furthermore, although the draft of Judicial Yuan considers compensation for those who were not subjected to deprivation of personal liberty, the draft nevertheless established a progressive scale based on the original sentence, and the base amount of compensation increases with the sentence. The mental suffering of the victim, however, cannot be generalized into a correlation with the original sentence, as experiences and situations vary, lighter sentences does not imply lighter damage. Providing compensation based on the degree of a guilty sentence fails to correspond to the damage that individual victims may suffer.
60. Further, the draft of Judicial Yuan deleted Paragraph 2 of Article 4: "The victim's behavior in the preceding paragraph shall be proved by evidence that is admissible and is lawfully investigated", this deletion may make it easier for the compensation agency to make a decision not to compensate.
61. Civil society organizations also advocated the State to emphasize on the part of rehabilitation into the society with regards to crime victim protection institutions and rehabilitation protection systems, while conducting research on cases of compensations to avoid wrongful convictions. We called on the Judicial Yuan to include analysis and research in its criminal compensation, which was not fruitful.

30. According to the Parallel Report of Covenants Watch, §§492-495, the Asian Human Rights Court Simulation (AHRCS) ruled in July 2019 that there had been a violation of Articles 7 and 14 ICCPR in the case of Choiu Ho Shun who had been sentenced to capital punishment. The Government is requested to provide details about the findings in the ruling of the AHRCS. Have any measures been taken to comply with the ruling? If so, please provide information on what has been done. If not, please explain why. For how long time has Choiu been imprisoned?

Joint response of Taiwan Criminal Defense Attorney Association and Taipei Bar Association:

62. The following is a supplement on government's failure to ensure appropriate safe keeping of evidence.
63. Before victims of wrongful convictions receive compensation for the damage bases on Article 14 Paragraph 6 of the ICCPR, the prerequisite issue is how the "new evidence" was provided. Most of the evidence submitted to criminal

litigations are under the custody of the State after the final judgment is conveyed. With the passing of *Post-Conviction DNA Testing Act* in 2016 which had granted persons subject to a guilty verdict to request DNA identification and the two (2015 and 2019) reforms in the *Code of Criminal Procedure* regarding retrial procedures, the intent is to enable victims of mis-conviction to seek relief; the statutory provision on the preservation, management, and depository of evidence, however, have never received due attention. Related provisions (for instance, the *Regulations on the Management of Criminal Case Evidence Room of Police Organs*, and *Criminal Forensic Manual*) are mere paper works with no effective system for the safekeep of stolen goods and exhibits of evidence. Those who intend to seek redress through new DNA technologies have found most of the said evidence destroyed.

64. The case of Chiou Ho-shun was also plagued with incidents of the disappearance of seized evidence during the trial. Key pieces of evidence such as audio tape, the black plastic bag, and its contents were lost during the trial and cannot be reinspected. Investigation reports of the Control Yuan had repeatedly censured the improper management of the storage of stolen goods and exhibits of evidence and requested the Judicial Yuan and the Ministry of Justice to rectify, with the latter producing no effective remedies. For instance, the Control Yuan investigative report number 0063 in 2020, titled "Study on the Custody of Stolen Goods, Evidence, and Files in Criminal Cases" (published on August 3, 2020) specifically pointed out that the present practice of safekeeping stolen goods, evidence, and files is ridden with the following deficiencies:
    (1) "The current criminal procedure adopts a system of indictment with the dossier and evidence. Evidence was collected by judicial police and passed through layers of different agencies until it is reviewed and evaluated in the court. After the trial, it will be transferred to Prosecutor's Offices for sorting and disposition. Agencies have varying storage locations, regulations, and naming systems for exhibits and seizures; with its primitive system deplete of modern technology, the cost of transportation and cross-checking, the systems also increase the risk of loss and mislabeling, which is detrimental to the assurance of the identity of evidence. The judicial practice also had not made a difference between the nature of files and evidence, thus presenting the risk of mixing the exhibits and files. According to existing cases, incidents where the file was destroyed before the exhibit is cleared, indicate the malfunction of the cross-checking provisions."
    (2) "At present, conditions of safekeeping are destitute in some courts and prosecutor's offices, such as high humidity, dust, unrefrigerated storage, or direct exposure to sunlight, etc. These objective conditions are not conducive to the preservation of trace-amount exhibits of evidence. Moreover, there

lacks institutional incentives or rewards for early auction for courts and prosecutors' offices; under the condition of ever-increasing cases, storage spaces had become severely insufficient. Seized items under long litigation processes implies the amounting cost of safekeeping, and the value of the goods, either confiscated or returned, had diminished, which infringes the people's property rights and the interest of the treasury. Under the current criminal procedure which adopts a system of indictment with the dossier and evidence, the court, prosecuting organs, and police departments all bear the responsibility to conduct custody of the exhibits. With individual budgeting, manpower management, and even their own audit operations come repetitiveness and inefficiency. In addition, the large variety of exhibits and its statutory transmission between layers of bureaucracy had resulted in issues regarding the identity of exhibits and high costs of cross-checking operations."

65. Therefore, under the condition where the State has not fulfilled its responsibility for exhibit custody, even when the *Code of Criminal Procedure* sanctioned those who are convicted to apply for investigation of evidence after the retrial amendment in 2019, relief is nevertheless unobtainable if the exhibits are destroyed after the finalization. Even if, as stated in the State's response, the National Police Agency, Ministry of the Interior did issue the *Precautions for the Management of Criminal Evidence in Police Organs* in July 2021, it remained an internal regulation and is exempt from effective monitoring and supervision of its effectiveness which lacks proper legal basis. Moreover, in practice, there are still problems of insufficiently rigorous supervision of exhibits, leading to loss of evidence and contamination.
66. Therefore, the State shall establish an explicit legal framework for the custody of exhibits, establish specific procedures for confirming the identity of the exhibits, and standardize the methods of evidence supervision and the period of custody. Furthermore, the legal effect of the use of evidence should be specified in light of the country's failure to fulfill its evidence custody responsibilities, and the defendant who has been adversely convicted should be given the opportunity to request relief.

Response of Taiwan Alliance to End the Death Penalty:

67. The Asian Human Rights Court Simulation in 2019 has clearly stated that forced confessions obtained through torture, missing evidence, wearing shackles on foot, solitary confinement, and death row phenomenon in Chiou Ho-shun's case violated Articles 6, 7 and 14 of ICCPR. Taiwan government should do more than just saying they respect the ruling made by AHRCS. Our arguments are as follows:

(1) The authorities have contended that Chiou was "charged of kidnapping and murder by the prosecutors and found guilty by trials at different levels", and "after 12 rounds of judicial panel by the Taiwan Hight Court, the Supreme Court confirmed the denial of this appeal on 28th July 2011." Yet, the authorities haven't mentioned that the judges in the judicial panel are biased because throughout the 11 re-trials sometimes there are five judges in the panel who are the same ones in the previous trials; sometimes two to four judges in the panel overlapped with previous trials. This is a violation of the right to fair trial in Article 14 of ICCPR.

(2) The authorities have stated that the court had denied Chiou's applications of retrial for four times and one extraordinary appeal filed by the Prosecutor General of the Supreme Prosecutors' Office. This only illustrates the unreasonable limitation constructed by the dysfunction of the judicial system and defects in criminal procedure at the legislative level. In such an urgent situation where there is no other option left, MOJ should ask for a presidential pardon for Chiou, and the president should honor the spirit of human rights and pardon Chiou Ho-shun immediately.

(3) From the successful exoneration cases such as Cheng Hsing-tse and Hsieh Chih-hung in recent years, we can see the effective results made by the prosecutors who actively apply for retrials. In contrast to the motion for retrial filed by the wrongfully convicted defendants themselves, prosecutors taking the initiative, based on their objective obligation to correct the miscarriage of justice is the key to acquit those who are wronged. Hence, prosecutors should actively apply for retrial for Chiou Ho-shun, giving him a chance of exoneration.

Article 17

33. With reference to the *Third Report* (§§ 183-194), please provide information on (1) facial recognition technology being used in Taiwan, and (2) the new E-Identification (EID) system, with implications for surveillance and limitations imposed on the right to privacy. Please indicate whether those innovations are in accordance with the law and are strictly required by and proportionate to the exigencies of the situation, as well as in compliance with the principle of non-discrimination.

Response of Taiwan Association for Human Rights:

68. Regarding the eID:

69. The specific draft provision regarding the eID submitted by the State shall ensure citizens have the choice between acquiring the new chip-based ID or retain the chipless ID card, and their access to public services will not be hindered on the basis of the existence of a digital identity. The eID design for 2020-2021

only allows individuals to choose whether to add a Citizen Digital Certificate with other data such as photos are set to be stored in the chip by default, and barred individuals to opt for new ID cards without a chip. Should a person refuse to opt in the new chip-based ID, after the State announced invalidity of the old ID, this person would face scenarios as being unable to vote, getting the driver's license, or receive subsidies, according to the present law.

70. In the 2020-2021 design, a photo of the holder was stored in the public area of the eID. Only with scanning or accessing the chip, and entering the number on the card, can the photo be accessed. No regulations further restrict public and private sector actors from accessing. The photo in the chip may also be utilized for facial recognition by the public and private sectors. In the "2021 New Taipei City Banqiao Land Administration Office's Facial Recognition System Construction Requirements",[11] it is mentioned the need of a function that compares the photo taken in real time and the photo stored in the chip. It can be deduced that the photo stored in the public area of the chip indeed possesses the possibility of being used for face recognition.
71. The collection of ID and ID card numbers had been indiscriminately and excessively collected, from university visitations to convenience stores. ID numbers were also generally used as the default account or password for accessing public services portals, which affects personal lives substantially. Furthermore, it is difficult to modify the ID number in Taiwan, and in cases of successful modifications, change log can be easily accessed.[12] This set number that follows individuals along their lives has made it prone to be concatenated with different information, exposing the individual to analyses. Mandatory change to eID might exacerbate the concatenation and abuse of identity data and digital footprints. Allowing individual choice to opt in or out, and limit collection and use of the ID card number from its source, is the only way to effectively protect the privacy of citizens.
72. Regarding facial recognition technologies:
73. The content of the State's reply lacks an insight and awareness of the use of facial recognition technology by private sector actors. It is already known that convenience stores use facial recognition technology without the consent of its customers.[13] As the pandemic progresses, temperature measurement systems

[11] 2021 New Taipei City Banqiao Land Administration Office Tender Notice: https://pse.is/3vgj8z

[12] The Global Information Network of the Department of Household Registration of the Ministry of the Interior, the operating system for querying information on obtaining and replacing national ID cards: https://reurl.cc/Q6M40b

[13] TVBS News, Convenience Store Adopts Facial Recognition and Eye Tracking to Analyze Consumer Groups, November 26, 2016: https://reurl.cc/V598yQ

have become increasingly prevalent, with a subset of it also containing facial recognition functions. The State lacks an understanding of the use of biometrics in the private sector, nor has it issued guidelines in a timely manner to prevent the misuse of biometrics and related identification technologies.

74. The content of the State's reply also lacks a systemic investigation, for instance, a time-sequenced review via purchase records, private-public cooperation pilot projects, of the use of facial recognition by the public sector. As indicated by a preliminary search on the Government e-Procurement System, at least tens of bidding records can be revealed, including Ministry of Justice Investigation Bureau,[14] New Taipei City Police Department,[15] MOTC Directorate General of Highways Chiayi Motor Vehicles Office Directorate,[16] Ministry of Justice Agency of Corrections,[17] and Ministry of Science and Technology.[18]
75. Some household registration and land administration agencies also implemented facial recognition systems. According to the *Operational Guidelines of the System for Identifying and Confirming the Use of Auxiliary Personnel in Household Registration Offices*, as long as the parties sign a consent form, when the comparison result is lower than the threshold, the household registration agency can further compare the historical photo files of their siblings.
76. The police mobile computer "M-Police" featured facial recognition functionalities (real-time photographs and comparison with photos of all the nationals in the system), and can query multiple databases (pawn records, quarantine requirements, criminal history, car registration, etc.), in addition, reports of individual cases of abuse persisted,[19] clarification regarding the legal basis and necessity of data correspondence is required.

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[14] The 2016 Ministry of Justice Investigation Bureau NEC face recognition database (including portable facial recognition device) maintenance contract: https://pse.is/3w7u74

[15] Award of bidding announcement of 2017 New Taipei City Government Police Department Establishment of Smart Image Analysis and Facial Recognition System and its Relevant Software and Hardware Equipment: https://pse.is/3xbb5f

[16] Award of bidding announcement, 2016, MOTC Directorate General of Highways Chiayi Motor Vehicles Office Directorate Facial Recognition and Inspection System for Examinees: https://pse.is/3znwus

[17] Award of bidding announcement, 2019, Ministry of Justice Agency of Corrections Inmates Image Recognition and Identity Comparison System Establishment and Outsourcing Services: https://pse.is/3y8sry

[18] Award of bidding announcement, 2017, Ministry of Science and Technology Facial Recognition and Attendance System Establishment Project: https://pse.is/3zvara

[19] Liberty Times, Taipei City Police Involved Abuse of Personal Information and Leaked to Private Investigator, Personal Information of 25 Leaked, November 18, 2021: https://reurl.cc/KrGzpp

77. The State has yet to launch a discussion regarding the limitations and boundaries for applications of facial recognition technologies. For instance, the Ministry of Education published its *Guidelines for the Protection of Personal Data Using Biometric Recognition Technology on Campus* had adopted consent of the parties and did not discuss the prohibition of use in specific situations or specific places.

34. Please specify further whether there are any measures to prevent personal data from being misused by the public and private sectors; an effective system for conducting risk assessment concerning those innovations and monitoring of their operationalization; and a mechanism to receive complaints and ensure corrective action in conformity with human rights. Please provide information on incidents of abuse about the scope, use, access and storage of such data, and related remedial measures.

Response of Taiwan Association for Human Rights:

78. Taiwan does not have an independent and dedicated bureaucratic setup for personal data protection. Privacy might not be properly protected while the utilizing agency is also the supervisory agency. The National Development Council, the interpretation organ of the *Personal Data Protection Act*, publicly stated that it will set up a personal data protection agency in the future, however, no specific timeline was given thus far. In addition, relevant drafts addressing how the agency can be equipped with sufficient independence and resources, are also non-existent.
79. Regulations were yet to be drafted to stipulate necessary personal data impact assessment (or privacy risk assessment) before the establishment of large databases or introduction of new technologies (e.g., biometric data).
80. The *Personal Data Protection Act* lacks regulation regarding usage for purposes other than that originally specified. For instance, the criterion of "public interest" in Article 16 of the Personal Data Protection Act is unclear.[20]
81. Relevant cases of usage for purposes other than that originally specified: the National Health Insurance Database. The State has provided the database for applications in academic research applications for a long time without obtaining the consent of the parties concerned and rejecting the parties' application for withdrawal. The said case is awaiting the Justices' constitutional interpretation. In recent years, the State also has further provided medical images for the industry to apply for the development of artificial intelligence,[21] and has introduced

[20] Personal Data Protection Act: https://reurl.cc/6D84gk

[21] Liberty Times, Liberty Health Network, 1.3 Billion of Medical Inspection Images will be Conditionally Released for Use In Attempt to Accelerate the Development of AI, August 5, 2019:

medical information of 3.5 million deceased people onto the platform provided by enterprises through industry-academic cooperation,[22] highlighting the agency's focus on "data disidentification" and cybersecurity, rather than the notion of informed consent, and the right to withdraw/deletion, and the subsequent adversity to achieve respect and protection of privacy from the source.

https://reurl.cc/Gb1qdd

[22] Next Media, Health Insurance Information Controversy | Release of 3.5 Million Deceased's Information, National Health Insurance Agency Criticized for "abusing legal loopholes", November 24, 2020: https://reurl.cc/MkemAX

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 6

8. In addition to §§ 72 to 75 of the *Third Report*, please provide more relevant and concrete information that directly responds to the repeated calls by the International Review Committee for the Government to pass the *Domestic Workers Protection Act* without further delay. Please indicate the timeframe within which the work of the Domestic Workers Task Force referred to in § 76 of the *Third Report* will be completed.

Response of Rerum Novarum Center:

1. Per regulation, a copy of the labor contract signed by a migrant worker must be kept by the worker themselves, in practice, however, migrant workers might not receive the contract. On the other hand, for migrant workers, there is no time to read the contents of the contract clearly at the time of signing, and should the employer violate the contract, there is no way to know or judge that the employer has violated the labor contract.
2. The understaffing of labor inspectors and visitors of labor authorities in various counties and cities had resulted in low visitation rates and ensuing incapability to inspect whether employers are in compliance with labor contracts or with *Employment Service Act* and its relevant provisions.
3. Visitations of the State were seldomly accompanied by interpreters due to understaffing, or visitor and interpreter may lack thorough understanding of the situation of migrant workers, which leads to insufficient sensitivity. As a result, the visit is often mere formality which focuses on checking relevant formal documents or uses questionnaires to allow migrant workers to fill in; often it is not until the migrant workers take the initiative to lodge a complaint by calling 1955 can the employer's violation of the law be discovered. If migrant workers are unaware of relevant regulations and resources and broker also would not interfere, issues such as major labor disputes, personal injury, or human trafficking will often occur.
4. Upon the occurrence of labor disputes, migrant workers often suffer from the lack of evidence or insufficient evidence, such as the inability to keep evidence via photos, audio recordings, or videos. As a result, competent agencies might be unable to penalize employers when handling labor disputes upon request, leaving the employer able to hire other migrant workers and its illegal conducts

once the complaint was transferred to other posts. Therefore, in practice, we often see situations where the same employer frequently changes and hires new migrant workers.

Response of Vietnamese Migrant and Immigrant Office:

5. Domestic care workers shall be included in the *Labor Standards Act*, given that the *Act* is able to accommodate occupational accidents, insurance benefits, working hours, and death benefits, without the need to dedicate the time to draw up special provisions and related insurances. Factory workers and domestic care workers, being indistinguishable in nature of their labor, shall be unilaterally included by the *Labor Standards Act* despite the different content of their work. In the second-round review meeting for the third state report for ICCPR and ICESCR in 2019, the Ministry of Labor stated that the inability to include domestic care workers in the *Labor Standards Act* and to define their work hours originates from: "the inclusion in the *Labor Standards Act*, given the understaffing in long-term care, implies that families will have to pay more for supplementary personnel. In terms of technicality in legislation, the working hours, resting hours and standby hours of domestic care workers are difficult to distinguish." Regarding this, we had emphasized that care in its nature needs the cooperation of families, the community (long-term care system) and external resources (migrant care workers), which will enable distinguishing work hours. What the State ought to do is to define the scope, enhance accessibility of the long-term care system, and at the same time establish the working hours for domestic care workers. At present, the families that employ migrant care workers assume that the worker themselves can address the workload, which needs the State to vigorously debunk.
6. In addition, the taskforce on protection for domestic care workers had never invited NGOs in its operation. During its duration in existence, the taskforce also had not exerted any efforts whatsoever. Only when NGOs are allowed to participate, the taskforce can include professionals to draft solutions to protect workers' rights.

9. Please provide detailed information on the measures undertaken by Government to protect the human rights of migrant domestic workers during the period of waiting for the adoption of the *Domestic Workers Protection Act*.

Response of Rerum Novarum Center:

7. The respite care service program promoted by the State had failed to provide sufficient opportunities for families to hire migrant workers, since:
   (1) The incomprehensive dissemination of information has caused many families which hired migrant workers unaware of the existence of such

resources or shied away from applying due to the complicated procedure. In addition, employers still need to pay fees for respite services, which costs more than paying low overtime pay to original migrant workers, thus failing to provide migrant workers with appropriate break time.

(2) Due to the long-term shortage of long-term care resources and manpower, respite resources might not be immediately available if the migrant worker cannot announce a leave in a few weeks advance. Families hiring migrant workers also reflected that respite service cannot fully replace the content of work carried out by migrant workers, and it has also led to the failure to increase the utilization rate.

8. The State has yet to propose initiatives to carry out a publicity plan to include household migrant workers and their employers in compulsory coverage of occupational accident insurance, and there are no publicity leaflets and information packs in multiple languages. According to the past experience in advocacy of migrant workers' rights, it takes at least six months to one year for the advocacy period for most migrant workers to receive information about major rights and interests; if most migrant workers still don't know this policy information, even if the insurance is covered next year, migrant workers still will be aware that they are eligible for occupational disasters, thus renders the protective significance null.

Response of Vietnamese Migrant and Immigrant Office:

9. The work of care in itself is very taxing, the expansion of respite services is rightly needed to meaningfully address labor rights. The State shall release comprehensive instructions and promotion for families to access the respite service system, to adjust the dependence on migrant workers, and to assist the families to establish a set of procedures to address the burden of care.

Article 11

18. Please provide more information on the general situation of how the right to an adequate standard of living including the rights to adequate food, to adequate housing and to clean water are being fulfilled in practice.

Response of Environmental Jurists Association: regarding the right to adequate food

10. Prior to May 19, 2016, the State adopted an on-site counseling improvement policy for low-pollution or non-pollution factories; however the relevant subset of regulations did not establish a reasonable review standards in accordance with Articles 28-10 of the *Factory Management Act*, which led to a result where "comprehensive management" equates to "permanent on-site legality", further

causes permanent fragmentation of agricultural areas and also exposes agricultural products to the hazards of pollutions from farmland factories.

11. For unregistered factories newly added after May 20, 2016, water and power supply will be cut off, and relevant construction and land organs shall be notified to demolish the factory in accordance with the law. The competent authority, the Ministry of Economic Affairs, however, declared that "one can't produce or process without water and power, which renders it a warehouse, an office, or a packaging plant, not a factory" which implies the jurisdiction of the Ministry cannot extend to those factories and demolish them; it also stated that *Factory Management Act* does not contain penal provisions of demolition, which lies in the discretion of construction authorities of local governments. This obviously violated the announcement on "demolition in accordance with the law" and also endangered the target value of national agricultural land demand.
12. We suggest:
    (1) Prioritize relocation plan than land alternation to solve the problem of farmland factories. Relocation plans and policies shall be proposed first, and list demolition, relocation and preferential loan accommodations as compulsory legal means. Both carrots and sticks shall be used to guide firms into industrial areas, rather than continuing to be scattered in agricultural areas, affecting food security.
    (2) The wording of "demolition" shall also be explicitly included in the penal provisions, alongside with "citizen litigation" clauses; so that the public can file litigation against local governments which refused to demolish said factories. The processing procedures for illegal farmland construction shall be normalized, to ensure immediate demolition after reporting to ensure the maintenance of the target value of national agricultural land demand.
13. The land provided by the Taiwan Sugar Corporations as newly developed industrial park in accordance with the policy are not farmland for rice, wheat, core, and other primary commissariat sources, but this does not indicate that it is not suitable for farm use or contained in the 740,000 to 810,000 hectares of target value of national agricultural land demand. In other words, relevant development projects are nevertheless in conflict with the national land plan's goal of ensuring a certain quality and quantity of agricultural land for food production and avoiding the loss of agricultural land resources.

Response of Organization of Urban Reformers (OURs): regarding the right to adequate housing

14. In the third quarter of this year, the Cathay Pacific National Real Estate Index indicated that the housing market price and volume have risen explosively. Compared with the second quarter, the transaction price increased by 4.05%; the

transaction volume index also rose by 63.9%. The Xinyi Real Estate Price Index also showed that real house prices in most metropolitan areas in Taiwan soared to record highs. The Quarter on Quarter (QoQ) growth rate rose by 2.4%; the annual revenue growth rate (Year on Year, YoY) also rose by 9.76%.

15. Behind the 1.08 to 1 ratio of houses to households, is the concentration of housing ownership and a large number of vacant houses:
    (1) The number of vacant homes reached a new high: According to the 2020 Population and Housing Census, the total number of vacant homes reached a record high of 1.64 million; even excluding the type of "occasional self-occupation", the number of vacant homes in Taiwan is nevertheless as high as 1.175 million.
    (2) The number of multi-housing owners increased by 7% per year: National Non-Owner-Occupied Household Housing Tax Registered Individuals Return Statistics Table of 2015 to 2021 of the Ministry of Finance shows that number of individuals with more than 3 housing properties rose from 336,000 in 2015 to 502,000 in 2021, indicating a 7% annual growth rate.
    (3) More than half of the newly increased residences in the past six years are held by multi-housing owners: Household Housing Tax for self-occupied and non-self-occupied Households and Tax Amount Statistics Table of 2015 to 2020 of the Ministry of Finance indicated that among Taiwan's newly added 526,000 housing properties in the past six years, more than half (53.5%) are owned by owners with multiple housing properties.
16. The policy target of the 80,000 households chartered and managed adopts the concept of "simultaneously valid leases", but in practice, the actual calculation of results uses the concept of "service visits" instead of the concept of "simultaneously valid leases", counting rental properties on the basis of tenants. The repeated and cumulative calculation had indicated that the actual stock is far below the 30,000 households claimed by the State.
17. "Affordability" is of the utmost importance in housing assistance policies for those who are socially and economically disadvantaged. The current measures have the following problems:
    (1) Article 35 of the *Housing Act* clearly stipulates that the central competent authority shall set a tiered charging principle for social housing, which has not yet been implemented.
    (2) Article 11 of the *Housing Act* explicitly stipulates that the central competent authority shall establish a tiered standard for rent subsidies. In the tiered rent subsidy implemented in 2021, the burden calculation basis does not adopt the international standard of "rental income ratio above 30%". The more subsidized "level one" subsidy requires family members to have low-income or low-to-middle-income household status, but Taiwan's standards

for this type of status are extremely strict. As for June 2021, only 2.53% of Taiwan's population has low- or low-to-middle income household status.

18. The *Rental Housing Market Development and Regulation Act* had not fundamentally addressed the issue where the rental market had gone increasingly "underground". According to estimates with relevant data from the Ministry of Finance, about 70%-90% of the rental housing market in Taiwan is in an underground state of tax evasion and deregulation in 2019. In this climate, landlords often bar tenants from applying for rent subsidies because of concerns about exposure of tax evasions; in a 2018 data, for instance, only 19.5% of low-income households without their own houses had applied for rent subsidies. In addition, due to the deregulated nature of the underground rental market, the quality and safety of rental housing is not ensured. For example, in October 2021, a serious fire occurred in the "City in a City" building in Kaohsiung which eventually took at least 46 lives, and most of the casualties were vulnerable tenants. The Residential Lease Contract Permissible and Impermissible Items of the Ministry of the Interior contains no penal provisions, which renders it a formality which bears no protective function for the rights and interests of the tenants.
19. The effective tax rate of Taiwan's national real estate holdings is 0.06%-0.17% (quoted from CommonWealth Magazine Issue 736, research by Huang Yao-hui and Li Ming-hsuan). The excessively low holding tax rate has caused the scenario that the increase of short-term transaction tax rate can only combat short-term speculation and cannot address the serious problem of idle real estate and hoarding in Taiwan.

Response of Taiwan Association for Human Rights: regarding the right to adequate housing:

20. The State has not conducted a review of the residency indicators in the national human rights report or other statistics of administrative departments, causing the difficulty in comprehensively evaluating the implementation. It is suggested for the State to propose a explicit timetable of implementing the "illustrative indicators on the right to adequate housing" submitted by Office of the United Nations High Commissioner for Human Rights (OHCHR) in its 2008 (revised in 2012) "Human Rights Indicators: A Guide to Measurement and Implementation", to inspect the actual implementation of the right to adequate housing with indicators published by the United Nations, and prevent state reports from becoming general or over-represented.

19. Please provide an estimate on the scale of the informal settlements in Taiwan and the measures the Government is undertaking to improve their security of tenure.

Response of Taiwan Association for Human Rights:

21. The State has yet to produce comprehensive statistics on the scale of informal settlements. From the perspective of legal regulations and governance systems, four types of informal settlements on public land can be named: on state-owned public land, on state-owned non-public land, on locally governed public land, and locally governed non-public land. The table the State attached to the reply only included state-owned public real estate and did not include the number of households on state-owned public land, only showing the "area" of the land occupied. In addition, informal settlements on private land may also be of considerable scale; in some rural areas where landowners habitually lend land to the villagers, litigations might arise after the ownership changed hands and subject its residents to litigations, demolitions, and land restoration; more prolific cases include the Magang Village in the northeast coast of Taiwan. Other cases also exist where a public legal person sells the land while ignoring the occupants of the land, causing the residents to face the subsequent demolition and land repatriation litigation; more prolific cases include the forced eviction of Liugongjun Irrigation Association in Taipei.
22. Development projects are not the sole reason for forced evictions of informal settlements on public lands. Should a non-public land have no development plan, the State can lease the land to households who have lived and used the land before July 21, 1993. Households on public lands, however, have no such legal basis of renting, even when the organ governing the land lacks the will to hand the land back to National Property Administration, its occupants might nevertheless face litigation, demolition, and compensate improper profits on the basis of "clearing the land".
23. The development methods faced by informal settlements not only include land acquisition, but also other overall land development institutions such as urban rezoning and urban renewal. These institutions were not equipped with settlement mechanisms for informal residents on the land. Furthermore, those who suffered from eviction and relocation will not have the priority to the State's housing programs, including social housing and public housings, and will have to register with other citizens to draw lots.

20. Please indicate whether the *Urban Renewal Act, the Land Expropriation Act*, and the *Urban Land Consolidation Act* are consistent with international standards including the General Comments No. 4 and No. 7 of the ICESCR, and the UN Basic Principles and Guidelines on Development-based Displacement and Evictions. Please clarify why the Government has not adopted the *Forced Relocation Settlement and Reconstruction Act* as stated in § 231 of the 2021 NHRI *Independent Opinion*.

Response of Taiwan Association for Human Rights:

24. Generally speaking, regardless of whether the development method is land expropriation, city rezoning, urban renewal (hereinafter collectively referred to as: overall land development method), the administrative process of eviction and demolition in Taiwan will not notify the occupants of the eviction date. The administrative authority will instead issue a notice requesting people to leave before a certain point in time; this uncertainty causes great psychological pressure on those who refused to leave and is in violation with the requirements stipulated in the General Comment No.7 on clear notification before eviction and demolition. The more prolific case would be Huang Chun-hsiang, who objected to the eastward movement of the TRA tracks in Tainan.
25. In addition, there is no legal regulation on the date of the administrative execution of the mandatory demolition of the above-mentioned overall land development methods should the parties concerned are still in judicial relief proceedings. Parties in judicial relief proceedings may petition the court to cease execution, the court in practice, however, rarely rules a suspension; which is in violation with Paragraph of A/HRC/4/18.
26. The overall land development methods listed by the administrative organs are omitted from section expropriation. Civil society organizations hold that the reason for the omission of the development project is that the Ministry of the Interior misinterpreted the notion of section expropriation into cooperative development. On the website of the Ministry, however, section expropriation is clearly defined as "the expropriation and reorganization of an entire area based on the needs of new urban development and construction, old urban renewal, rural community renewal or other development purposes". Because the original owner's land and house ownership are forcibly deprived during the development process, this is a type of land expropriation. However, this type of development has been actively involved in a large mass of lands and has been strongly criticized by the citizens in the past few years, lawyers and scholars have also pointed out that there are doubts about its constitutionality.
27. The Ministry of the Interior maintains that in the sectoral expropriation system, the parties concerned can reclaim the "land of sale" instead of expropriation. Regarding this, the response of the civil society is in line with Judicial Yuan Interpretation No. 731 which pointed out that two types of compensation methods exist: monetary compensation and compensation via land of sale, which indicated that land of sale is a form of compensating expropriation, with "reclaiming the land of sale" cannot change the fact that the landowner completely loses their original land ownership. In addition, sectoral expropriation is a reverse social redistribution, which exacerbates social inequality. The basis of compensation is based on the value of the existing land, therefore, under the

current distribution mechanism, for tenants without property rights, informal residents, or property rights holders they cannot stay in place and cannot participate in the allocation of land.

28. Regarding land expropriation: the State's response to the land expropriation process is the current common process of general expropriation and sectoral expropriation. In these procedures, however, local residents can attend meetings and express their opinions with no procedure that can fairly evaluate the alternatives proposed by local residents. The hearing procedure performed by the administrative authorities does not regulate the hearings for development plans of larger areas; the hearing on specific agricultural areas in the development zone is for determining the necessity of expropriation, with most developments reaching a foregone conclusion, it is difficult to achieve the effect of "alternative relocation".
29. Regarding rezoning: the rezoning can be divided into government-initiated and private-initiated. The government-initiated rezoning is compulsory for citizens, and advancement of the private-initiated rezoning does not require the consent of all the people, just the consent of one-half of landowners when the consented area reaches one-half of the rezoning area, which rose the problem of direct infringement of the right of residence by using the majority resolution. In addition, the development party does not need to propose a resettlement plan. Therefore, this type of development may result in forced evictions for small landowners, persons without properties such as tenants and informal residents, and it is extremely easy to infringe on the right of residence.
30. Regarding urban renewal: In practice, urban renewal lacks a holistic vision of city development, which leads to the excessive development of urban architecture space and the creation of real estate speculation which causes the destruction of ecological resilience. Regarding the impact on the right of residence, there are no provisions for resettlement; the current *Urban Renewal Act* explicitly stipulates that the economically and socially disadvantaged are "rendered houseless as a result of planned demolition or relocation" which will be eligible access social housing, rent subsidies, or specific programs provided by the local competent authority. This institutional setup was plagued by following problems: a. Households to be resettled will inevitably have to move out of their original place of residence under this mechanism. b. There are separate regulations governing the occupancy of social housing. Even those who are evicted due to demolition may not be able to connect to the social housing immediately when they were expelled, and they must also apply for a lottery to move in with other people. In practice, the winning rate is less than 10%. c. Rent subsidies were applied every July, that is to say, those who experienced eviction cannot receive timely subsidies even if they can find a rental residence on their own and are eligible to

apply for the subsidy. On the level of demolition, all negotiations were established on the presumption of the necessity of demolition as negotiations does not contain the connotation of "the residents can be exempted from demolition if they disagree", which also violated the General Comment No.7.

21. Please discuss the number of people who have been forcibly evicted from their homes due to development plans and indicate the criteria for assessing compensation for those who are evicted.

Response of Taiwan Association for Human Rights:

31. The State holds that compulsory demolition in accordance with the current legal procedures does not involve the forced eviction of the people, which is a misunderstanding of the intent of the Covenant. Before the State established human rights indicators, it is recommended for it to consolidate the overall land development methods (general expropriation, sectoral expropriation, land rezoning, and urban renewal) and its effect in the past five years in terms of households, and the number of households that have been affected by administrative compulsory demolition to utilize as preliminary reference standards. In addition, the number of protests and disputes caused by land development in recent years is still quite large.
32. At present, compensation for land expropriation focuses on compensation for tangible losses, such as land, houses, aquaculture or livestock products, operating equipment, agricultural improvements, and population relocation fees. Many who had experienced expropriation, however, have been accused of meager compensation funds. In comparison with the norms in Paragraph 60 of A/HRC/4/18, it is recommended for the State to assess whether the current compensation projects for land expropriations are in line with international human rights standards.
33. The Taoyuan Aerotropolis is the largest case of sectoral expropriation in Taiwan, with its first phase of expropriation of 2,599 hectares and more than 3,600 households. The authorities that initiated the land expropriation were the Civil Aeronautics Administration of MOTC and the Taoyuan City Government, among which the MOTC expropriated 1,413 hectares, with 1,185 hectares expropriated by the Taoyuan City Government. The notice of land expropriation was issued in 2020, and the building acquisition notice was issued in 2021. Residents in the priority relocation area will be relocated in October 2021. The relocation deadline for other residents is in 2024. Some residents who oppose the acquisition have also filed for judicial relief proceedings. Please refer to paragraphs 26 and 27 of this document for the disputes on sectoral expropriations. After the announcement of the expropriation, even if the residents can continue to use the land within a short period of time, they cannot reverse the fact that the land has

been expropriated. They are bound to relocate. Due to the administrative process of land expropriation, most are still oblivious to the exact information about the allocated land for self-built houses and resettlement houses, but only the policy direction can be obtained, this case is very likely to create a large number of forced evictions in the foreseeable future.

Article 13

37. What plans are there for extending support for children with all types of disabilities – not just those with physical disabilities – to enable them to participate fully in their local schools and to ensure their access to the higher education level?

Response of Taiwan Education Association:

34. The response of the State to this point had only pasted the names of present regulations and policy commentaries, while ignored the substantive problem where the State had failed to provide sufficient and complete support to students with varying types and degrees of disabilities in its existing regulations and policies. We reiterate:
    (1) The identification process for the qualifications and needs of students with disabilities, at a substantive level, is similar to the identification system for persons with disabilities in general, which retained the biomedical model, rather than comprehensively observing the results of the interaction between the person's impairments and the external social environment.
    (2) In practice, as described in the Parallel Report, whether and how much support a student with disabilities can acquire is directly affected by the budget and the adequacy of resources. Not every student with disabilities in need can get assistance and get relevant assistance, and for those students, such assistance also may not be sufficient.
    (3) The needs of people with less observable disabilities are often ignored in practice. In addition to the State's failure to actively provide comprehensive assistance, needs submitted by students with less observable disabilities might be rejected on the basis of not conforming to the existing stereotypes.
    (4) Students with disabilities have yet to be able to achieve the goal of inclusiveness in the general education system, instances where students with disabilities clash with students without disabilities and/or their parent persists.[1] The State has yet to provide sufficient support for inclusive

[1] In September 2020, an emotionally disabled student in a junior high school in Taoyuan was attacked and injured by other students' parents with tasers on the campus. This case has attracted attention because of the relatively vicious methods and severe results. It is commonplace for students with disabilities to encounter conflicts with peers or their parents in the general education system, which

education, which has caused the students with disabilities and their parents feel uneasy in the general education system and reduce their willingness to leave the special education system. The government's failure to provide a comprehensive plan has caused the students with disabilities in the general education system to be harmed, and the realization of integrated education is nowhere in sight.

(5) Regarding enrollment to higher education for students with disabilities, discrimination faced by student with varying types of disabilities, and the scarcity of admission opportunities for prospective students with disabilities, as detailed in the Parallel Report, the State have yet to propose improvement plans for it. Other admission channels (" The Star Plan", General Scholastic Ability Test, and the Advanced Subjects Test) also failed to enable students with disabilities to perform well with their limited accessibility policies. The State shall not claim the fulfillment of its obligations under the Covenant on this basis.

includes bullying or harm as presented in this case. Such situations are physically and psychologically torturous to students with disabilities and students without disabilities alike. The government's inability to propose a comprehensive solution and improvement plan for this situation also shows that the current stage of education for students with disabilities is still at the "integrated" stage, rather than the substantive level of "inclusive education".