

2022 Replies of Taiwan NGOs to ICCPR and ICESCR Second LOIs

財團法人環境權保障基金會	Environmental Rights Foundation
台灣無辜者行動聯盟	Taiwan Alliance for the Innocent
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)

Covenants Watch

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Taiwan

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Regarding The International Covenant on Civil and Political Rights

Articles 6 and 7

10. The Replies from the Government relating to the death penalty (pages 17-18, 27-28) suggest that Taiwan is on the way toward the “gradual elimination of the death penalty” with effective achievement. The Taiwan Alliance to End the Death Penalty states, however, that the “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”, and that it “is only because of NGOs’ persistent advocate, the issue of the death penalty was added in the National Action Plan on Human Rights”. Can you please explain which measures the MOJ has taken to gradually eliminate the death penalty?

Response of Taiwan Alliance to End the Death Penalty:

1. As indicated by the data, the State had neglected the Concluding Observations and Recommendations of the International Review Committee since the second international review of ICCPR and ICESCR in 2017 with it executed death row inmates Li Hongji and Weng Renhsien in 2018 and 2020 respectively. The two executed death row inmates, ludicrously, were determined to be persons with mental or/and psychosocial disorders in the trial process. In recent years, the government had failed to implement any positive measures for abolishment of the death penalty or attempt a imposition of a moratorium, and further perpetuated the execution of death penalty. From 2019 to 2020, as many as four inmates had died in prisons from illness or suicide.
11. The Replies of the Government (page 27) refer to two cases of persons sentenced to death, where a re-trial was successfully granted and both defendants were eventually found not guilty. According to the Government, these “are best examples to illustrate Taiwan’s careful execution, respect for life, and protection of human rights”. How is it possible that these two persons, who were later found not guilty, were originally sentenced to death? Are these not rather “best examples” of miscarriage of justice to support the argument that the death penalty should be eliminated without further delay or at least that a moratorium on executions should be implemented immediately in order to avoid that further innocent people will be sentenced to death with irreversible consequences?

Response of Taiwan Alliance to End the Death Penalty:

2. The observations of the Review Committee are quite equitable. Regrettably, however, among the 38 death row inmates, remains cases which civil society organizations deemed as cases of injustice, including Chiou Hoshun, Wang Hsinfu, Shen Honglin, and Lien Kuowen. Another major problem is that, the verdict of death penalty of the 38 death row inmates were issued from 2000s to 2020s; with many of those were solely based on confession evidence, and majority of those were imposed without a sentencing evaluation/investigation process. Furthermore, since 2015, most death row inmates have sought presidential pardon or commutation, with no response whatsoever. Taiwan, as of present, lacks a substantial process for death row inmates to request pardons or commutations, in conjunction with an opportunity to be heard on their personal or other relevant circumstances or to be informed in advance of the request.

Articles 6 and 24

Supplementary information on issues not mentioned in the second LOIs: Children of Inmates

Response of Taiwan Alliance to End the Death Penalty:

3. In judicial proceedings in which a child's parents are prosecuted and sentenced to death, the best interests of the child of the defendant were not adequately considered and assessed, the State also failed to provide any necessary psychological or other forms of support to children whose parents were sentenced to death. For example, both Shen Wen-bin, who was sentenced to death in 2020, and Li Hong-ji, who was executed by the Ministry of Justice in 2018, had minor children, yet the courts claimed in their verdicts that the best interests of these children were not required to be considered in the imposition of the death penalty; when the Ministry of Justice executed Li Hong-ji in 2018, it even claimed that the execution was in compliance with the ICCPR and the Convention. With domestic provisions failed to recognize rights of children whose parents were imprisoned or sentenced to death, and the State's inability to know where they are or how many are there, those children were rendered as the collateral invisible victims of the death penalty.
4. Recommendations: The State shall conduct comprehensive executive, legislative, judicial, and policy reviews and assessments on the impact against children whose parents were prosecuted or sentenced to death. Courts shall recognize the existence of these children and assess their best interests while sentencing. Prosecutors ought to consider the best interest of these children and refrain from making a death sentence plea, the State shall also provide psychological and other necessary support for children whose parents were sentenced to death.

Article 14

12. It is alleged in the Report of the CAHR that persons who have been sentenced to death but are later acquitted have a less favourable access to protective measures to return to society than that of guilty persons who have completed their imprisonment. Is the allegation correct and if so will the Government consider to rectify it?

Joint Response of Taiwan Alliance to End the Death Penalty and Taiwan Alliance for the Innocent:

5. In practice, just as it does for those who have been redressed on non-death penalty offenses, the State does not provide any protective measures for societal reintegration to those who have been sentenced to death and been subsequently acquitted. Furthermore, in some cases (for instance, the cases of Su Chien-ho trio and Hsieh Chih-hong) of criminal compensation, the State made allegations that the innocents bear partial responsibilities. Those who have been sentenced to death and been subsequently acquitted, thus face a plethora of difficulties in terms of judicial rehabilitation and protective measures for societal reintegration. It is recommended for the State to address the aforementioned problems, and propose specific protective policies to provide appropriate assistance for the acquitted.

Article 21

23. For what reasons is the draft submitted to the Legislative Yuan in 2016 aiming at rectifying a violation of Article 21 of the ICCPR by the Assembly and Parade Act not yet adopted by the Legislative Yuan? In this connection the Government is asked to explain why it has been necessary to take more than 6 years to clarify the meaning of the terms “security distance” and “compulsory exclusion” in the draft bill of the 6 Assembly and Parade Act submitted to the Executive Yuan in January 2016 taking into account that the existing legislation is in violation of ICCPR Article 21?

Response of Taiwan Association for Human Rights:

6. Positively, the draft amendment of *Assembly and Parade Act* which passed first reading of the Legislative Yuan, contained removal of penalties and amendments to alter the permittance system into a reporting system, as per the recommendations of the Review Committee of the last international review. In its response, however, the State might be inconsistent with the facts, as it states that it had “narrowing the scope of ordered dispersal with relevant limitations provided” and “replacing the concept of prohibited area with security distance”.

(1) The substance of “security distance” is verily indistinguishable from “prohibited area” in the present law. Should the assembly enter the perimeter of the “security distance”, it may be “mandatorily excluded” from

the said perimeter in accordance with the next provision. Without the notion of “peaceful assemblies”, the “security distance” can be regarded as a legal vacuum, despite the nature of the assembly. The insistence of the National Police Agency and the Office of the President is evident in the legislative bargaining, and a certain distance was asserted.

- (2) The rubrics for imposing “mandatory exclusion” and the “order of dismissal” in the present law lack an explicit and practical prerequisite of imposition.
- (3) With the legislature unable to settle the aforementioned disputes and failed to reach partisan consensus, the draft was thwarted from entering the second reading, and no progress was made until the end of the ninth term of the parliament.
- (4) As supplementary information: The tenth term parliament had amended Article 10 of the *Assembly and Parade Act* to alter the wording of age restriction of responsible persons from “under 20 years of age” to “a minor”, in order to accommodate the amendment of the age of maturity (18 years old) in the *Civil Code*. The remainder of the articles have yet to be amended.

Regarding The International Covenant on Economic, Social and Cultural Rights

Article 2(1)

Supplementary information on issues not mentioned in the second LOIs: Business and Human Rights

Response of Environmental Rights Foundation:

Government's prolonged failure to effectively regulate Taiwanese companies abroad violates its extraterritorial obligation to protect

1. The Government cited art. 6 of the Regulations Governing the Management of Corporate Foreign Investments in its response to the 2017 COR, para. 17, claiming that “companies making foreign investments exceeding NTD 1.5 billion must apply for and obtain Ministry of Economic Affairs approval and that where a company’s foreign investment would violate international treaty obligations, the application is denied”.¹ However, no investment applications have been denied pertaining to this article since its enactment in 2011, calling into question the effectiveness of this particular provision of the law.
2. Additionally, once approvals are given, there are no mechanisms in place to effectively monitor companies’ human rights impacts abroad or to revoke permits and hold companies accountable should they be found to have caused or contributed to human rights abuse on foreign land.
3. The soft approach the Government has taken by asking companies to “comply with its host country’s regulatory requirements in terms of its own management and that of businesses it is investing in, and actively fulfil its corporate social responsibilities” in approval notices is ineffective as it is not legally binding and it fails to recognise that many of the host states have less advanced environmental and human rights law that are sometimes not in conformity with international

¹ Regulations Governing the Management of Corporate Foreign Investments, Art. 6, <https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=J0040052>. MOEAIC may refuse an overseas investment application for one of the six following reasons: if the overseas investment hinders national security, has adverse impact on national economic development, violates international treaties or agreements, infringes upon intellectual property rights, has unresolved major labour disputes arising from violation of the Labor Standards Act or damages the national image.

environmental and human rights standards, while some of them are governed by authoritarian regimes.²

4. This runs counter to the Committee on Economic, Social and Cultural Rights clarification in General Comment No. 24 (2017) that States parties' obligation to protect requires it to adopt legislative and administrative measures to ensure effective protection against Covenant rights violations linked to business activities and provide victims with access to effective remedies.³

5. Recommendations:

- (1) Immediately amend the Regulations Governing the Management of Corporate Foreign Investments to give teeth to MOEA to effectively ensure that Taiwanese companies are held accountable when they cause or contribute to human rights abuse through their own operations or the businesses in which they invest or with which they have relationships;
- (2) Conduct a thorough study on Taiwanese companies' adverse human rights impacts abroad, in particular large corporations; and put in place mechanisms to monitor and review these impacts, for instance through legal requirements for human rights impact assessments and disclosure;
- (3) Commit and take appropriate measures to enact human rights due diligence legislation in Taiwan and ensure effective consultation with all stakeholders in its initiation, development and implementation.

Lack of legal framework hinders victims right to effective remedy

6. Formosa Ha Tinh Steel Corporation (FHS) is co-invested by a Japanese company and two Taiwanese companies; the two Taiwanese companies being Formosa Plastics Group (FPG) and China Steel Corporation (CSC). Both companies are among the top ten shareholders of the national Labor Retirement Fund (old system), with a combined hold of approximately 5% shares.⁴ Additionally, the Government holds 20% shares in CSC.

7. In 2016, FHS polluted approximately 200 kilometres of coastal waters in Central Vietnam, causing mass fish deaths and affecting the livelihoods of an estimated 20,000 people.⁵ Please refer to the Parallel Report 2020 and Shadow Report 2016

² State's Response to the Concluding Observations and Recommendations 2017, para. 17

³ E/C.12/GC/24 General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras. 14 - 16.

⁴ Ministry of Labor, Bureau of Labor Funds, Labor Retirement Fund top ten investments, Dec. 31, 2021: <https://reurl.cc/RjaOjx>

⁵ The Guardian, Vietnam investigates mass fish deaths, April 21, 2016, <https://reurl.cc/GoMXxy>

- compiled by Covenants Watch for details of the disaster.⁶ In 2019, victims of the 2016 disaster filed a civil lawsuit against FPG in Taiwan following three failed attempts to access Vietnamese courts.
8. In November 2021, Taiwan's Supreme Court ordered foreign-based plaintiffs to verify their Power of Attorney at Taiwan's economic and cultural offices in Vietnam. To have documents verified at the offices, however, plaintiffs must first have their identification documents verified at Vietnam's Department of Foreign Affairs, a move that would expose their identities.⁷
 9. Given the Vietnamese government's crackdown on those who protest against FHS, as evidenced by numerous records and personal accounts of harassment, arrests, arbitrary detentions and sentencing of members of civil society, including bloggers, journalists, environmental human rights defenders and local priests in the aftermath of the 2016 disaster, it is beyond reason to ask plaintiffs to subject themselves to such danger which is highly probable should their identities be exposed.⁸
 10. It is far from enough for the Government to simply "strengthen the company's corporate social responsibility education so as to prevent any infringement of human rights from reoccurring", in particular when two of the largest shareholders are companies over which the Government can exercise control or assert influence.⁹
 11. Passivity and inaction on the part of the Government when FPG and CSC had clearly caused and continues to pose risks of human rights violations to the Vietnamese people through FHS is contradictory to art. 2 (1) and in non-compliance with its obligation to protect under this Covenant, as attested by the Committee on Economic, Social and Cultural Rights in 2011 and 2017.¹⁰

⁶ Covenants Watch coordinated, 2020 Parallel Report on ICCPR and ICESCR, para. 122, <https://reurl.cc/OpxGr9>. Covenants Watch coordinated, Shadow Report 2016 on Government's Response to the Concluding Observations and Recommendations, paras. 79 - 81, <https://reurl.cc/AKG43Z>

⁷ Instructions on Document Verification, Item 2, Taipei Economic and Cultural Office in Vietnam, <https://www.roc-taiwan.org/vn/post/4630.html>. Non-official translation: Vietnamese documents must be verified by this office. They must be translated and notarized by the Department of Justice / Notary Office and verified by the Ministry of Foreign Affairs / Ministry of Foreign Affairs of Vietnam, and then sent to this office for verification.

⁸ The Guardian, Vietnam jails activist for 14 years for livestreaming pollution march, February 6, 2018, <https://reurl.cc/ak6aeG>. Amnesty International, Vietnam: Further Information: Maximum prison sentence for anti-Formosa activist: Hoàng Đức Bình, February 28, 2018, <https://reurl.cc/zMmrQk>

⁹ State's Response to the Concluding Observations and Recommendations 2017, para. 18

¹⁰ E/C.12/2011/1, para. 5; E/C.12/GC/24, para. 27.

12. Recommendations:

- (1) While plaintiffs await a decision from Taiwan's Supreme Court, it is imperative that the Government takes appropriate measures to effectively ensure that the judiciary, in particular judges and lawyers, are well informed of the obligations under the Covenant and exercise their functions in complete independence.¹¹
- (2) Facilitate access to relevant information and collection of evidence in Vietnam by strengthening mutual legal assistance, review trade agreements and incorporate human rights provisions within;
- (3) Stocktake and identify gaps in existing legislations and policies that have proven ineffective in ensuring effective remedies, and make plans to improve and narrow those gaps in a timely manner.

National Action Plan on BHR requires more inclusiveness and transparency to be effective and legitimate

13. In reference to the Government's response to issue number 3 of the first LOIs, while civil society welcomes the launch of the *National Action Plan on Business and Human Rights* in December 2020, at least two of the indispensable criteria of an effective and legitimate NAP require attention.¹²

- (1) Inclusiveness: Apart from two meetings with a few academics and members of civil society, there has been no formal consultations or dialogue with civil society since its launch in 2020.
- (2) Transparency: The only information on the development and implementation of the NAP publicly available is the meeting minutes from the two meetings mentioned above. The results of assessments and studies, mentioned in para. 19 of the Government's response to the COR 2017, have not been shared with civil organisations and relevant stakeholders as advised by the UN Working Group on Business and Human Rights.

14. While we acknowledge that the development and implementation of an NAP is progressive and continuous, in the meantime, to ensure effectiveness and legitimacy of the NAP moving forward, we recommend that the Government:

- (1) immediately set up a multi-stakeholder monitoring group to engage regularly with non-governmental stakeholders and define modalities of monitoring, as recommended by the UNWG on BHR;¹³

¹¹ E/C.12/GC/24 para. 47

¹² Guidance on National Action Plan on Business and Human Rights 2016, UN Working Group on Business and Human Rights, p.4

¹³ Ibid., Steps 3 & 12.

- (2) share and make publicly available the results of assessments and studies through an online portal or other accessible platforms.
- (3) Involve and cooperate with the National Human Rights Commission and/or independent experts to educate and communicate with stakeholders on issues regarding business and human rights.

Article 11

6. While noting the various data that have been provided in the *Replies of the ROC* and previous sources, they still do not provide a sufficiently clear picture of the actual scale and scope of informal settlements. In this regard, please provide more detailed and comprehensive information on each of the following four types of settlements found in both public and private ownership in land:

- (1) State-owned public use of land;
- (2) State-owned non-public use of land;
- (3) Local government public use of land;
- (4) Local government non-public use of land.

Response of Taiwan Association for Human Rights:

15. With informal settlements predominantly regarded as illicit occupation without property rights, the residents in those settlements are nevertheless vulnerable to evictions with the lack of security of ownership and under the circumstance where courts generally prioritize property rights over residential rights.

- (1) Other than the data provided by the Ministry of Finance in the Response to List of Issues of the Review Committee, the scale of informal settlements on state-owned non-public land and land assets owned by local governments remained generally unknown.
- (2) In addition to those on public land, informal settlements on private properties also face grave threats of eviction, while its scale remained uncharted by evaluating systems of the State. In Paragraph 27 of a 2013 report by then Special Rapporteur on the right to adequate housing Raquel Rolnik, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context* (A/HRC/25/54), it is explicated how the right to adequate housing for informal settlements on private assets can be guaranteed, Taiwanese law, however, have yet to develop relevant amendments.

7. The Government states on page 40, para. 1 of the *Replies from ROC* that “in the past five years, there have been no cases of evicting people from their homes in

development plans of the Ministry of the Interior.” Please clarify why civil society documented reports claim otherwise.

Response of Taiwan Association for Human Rights:

16. With the conception that all of its operations are conducted in accordance with its domestic law, the state holds that no instances of forced eviction had occurred in Taiwan in the last 5 years, whilst ignoring Article 8 of the *Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights*, which promulgated that “All levels of governmental institutions and agencies should review laws, regulations, directions and administrative measures within their functions according to the two Covenants. All laws, regulations, directions and administrative measures incompatible to the two Covenants should be amended within two years after the *Act* enters into force by new laws, law amendments, law abolitions and improved administrative measures.”

- (1) As detailed in the previous paragraphs, informal settlements face grave threats of eviction. With it centered around the notion of private property rights, informal settlements or parties without property rights (for instance, tenants) cannot partake in the participatory process of overall land developmental policies (including: urban renewal, urban land consolidation, general expropriation, and zone expropriation) and may be unable to continue to live on the original location after the completion of the development.
- (2) For residents with property rights, under the circumstance where overall land development provisions have yet to be reviewed in accordance with *The basic principles and guidelines on development-based evictions and displacement* (A/HRC/4/18, Annex I) and does not comply to international human rights standards, the State was not required to formally respond to alternative projects submitted by the civil society, does not provide procedural safeguards (such as eviction date notifications), and the administrative orders of eviction would not be halted by ongoing judicial processes of relief.
- (3) Supplementary information on the inadequacies of settlement programs of overall land development policies:
 - i. The settlement provisions in the *Urban Renewal Act* was voided by the fact that the *Act* had authorized local governments to arrange resettlements by providing social housing, rent subsidization, or set up special programs to respond to cases where vulnerable individuals who “end up becoming homeless after their homes are dismantled or relocated”. Refer to 2021 Replies of Taiwan NGOs to ICCPR and ICESCR

LOIs, ICESCR para.30, Coordinated by Covenants Watch for more information.

- ii. In the urban land consolidation institution, the developers would not be required to submit resettlement programs, rendering small landowners, persons without property rights (for instance, tenants) and persons living in informal settlements having to face the predicaments of eviction. Refer to 2021 Replies of Taiwan NGOs to ICCPR and ICESCR LOIs, ICESCR para.29, Coordinated by Covenants Watch for more information.
- iii. In cases of land expropriation and zone expropriation, an overwhelming majority of small landowners, persons without property rights (for instance, tenants) and persons living in informal settlements could not be settled in the original location or be resettled appropriately. Refer to 2021 Replies of Taiwan NGOs to ICCPR and ICESCR LOIs, ICESCR paras. 26-28, Coordinated by Covenants Watch for more information.

9. Since the issuing of the first LOIs, a number of urgent situations have arisen resulting in inadequate notice, evictions and inadequate resettlement. According to civil society reports the following examples are referred to:

- (1) The Underground Railway Project in Tainan: The Railway Bureau had torn down the final resistant household (Huang) in their third attempt in August 2021. This project affected over 300 households (para. 256 in the 2020 Parallel Report).
- (2) The Taoyuan Aerotropolis (para. 33 in the NGO Replies to ICESCR LOIs, No. 8; para. 255 in the 2020 Parallel Report): the largest zone expropriation case in Taiwan, with its first phase of expropriation of 2.600 hectares of private land, affecting more than 3,600 households.
- (3) The Lo-Sheng Sanatorium: the restoration of the old sanatoriums may cause forced eviction (paras. 325–328 in the 2020 Parallel Report).

Please comment on these examples.

Joint Response of Taiwan Association for Human Rights and Environmental Rights Foundation:

- 17. The current emergency cases are as follows.
- 18. Regarding zone expropriation, please refer to 2021 Replies of Taiwan NGOs to ICCPR and ICESCR LOIs, ICESCR paras. 26-28, Coordinated by Covenants Watch.

- (1) The Taoyuan Aerotropolis: This is the largest zone expropriation case in Taiwan. Up to 2,600 hectares (6424.73 acres) of land had been expropriated in the first phase of the project. Private property rights had been transferred to the government. Construction in the phase 1 area is slated to begin in 2024. However, at time of writing (March 2022), the government has yet to provide concrete plans for resettlement. Resettlement for land-rights holders is prioritized over house owners who fail to obtain legitimate building certificates and those without property titles. Even though some residents have filed for judicial remedies, subsequent administrative enforcement continues to be carried out, as seen in other land and zone expropriation cases during the same time period. It is probable that once the slated date for construction arrives, residents will be force-evicted despite decisions having yet been made in the courts.
 - (2) Shezidao, Taipei: This is another case of zone expropriation. It is expected to expropriate up to 296 hectares (731.43 acres) of land, with an estimated 11,000 people facing forced eviction. While civil society had proposed alternatives that could drastically reduce the number of forced evictions, they were completely ignored by the government. Under current laws, there is an independent body having constitutional authority that could mediate, arbitrate or adjudicate in such cases.¹⁴ The government is not legally obligated to adequately weigh alternatives and therefore may miss out on opportunities to significantly reduce forced evictions.
19. Losheng Sanatorium: The present plan of the State is to renovate the old sanatoriums which were not demolished for the MRT project into a human rights park, of which was nevertheless resided by residents. In recent years, as the construction for the human rights park had commenced, the sanatorium has not provided basic information on the renovation and relocation to the residents, and further refused to evaluate alternative proposals from self-help associations and solidarity groups to reduce the extent of relocation, subsequently causing the residents who reside in the old sanatoriums to be subjected to grave psychological pressure. The request of relocation of the sanatorium and the Ministry of Health and Welfare, had also violated the General Comment No.7 and the Basic Principles and Guidelines on Development-based Evictions and Displacement (A/HRC/4/18).
20. Xindian Liugongjun Residence: A typical case of informal settlement on private assets which was currently under the procedure of mandatory demolition. The family of the house owner had lived on the site for more than 70 years; without

¹⁴ Please refer to A/HRC/4/18 The basic principles and guidelines on development-based evictions and displacement para.38.

legal ground for protection to accost the landowner who purchased the land around 2012, the family were subjected to an imminent crisis of displacement. The case highlighted the inadequacy of legal protection, and the indiscretion where courts prioritize property right owners as recipients of protection.