Replies of Taiwan NGOs to ICERD LOIs

Parallel Replied NGOs (Ordered by alphabet)

台灣原住民族政策協會	Association for Taiwan Indigenous Peoples' Policies
人權公約施行監督聯盟	Covenants Watch
社團法人西藏台灣人權連線	Human Rights Network for Tibet and Taiwan
原住民族青年陣線	Indigenous Youth Front
財團法人民間司法改革基金會	Judicial Reform Foundation
LIMA 台灣原住民青年團	LIMA Taiwan Indigenous Youth Working Group
台北新事社會服務中心	Rerum Novarum Center
台灣人權促進會	Taiwan Association for Human Rights
社團法人臺灣原住民族長期照顧服務權益促進會	Taiwan Indigenous Long-term Care Service Rights Promotion Association
社團法人台灣國際勞工協會	Taiwan International Workers Alliance (TIWA)
台灣太魯閣族自治協會	Truku Autonomy Promotion Committee

Compiled by Covenants Watch

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1. Article 1, 2 The Convention in Domestic Law and the Institutional and Policy Framework for its Implementation

1.	Both previous international review committees and the NHRC commented that instead of a comprehensive anti-discrimination law, anti-discrimination provisions are found in different sections of Taiwanese law. Are there more recent developments in the enactment of the Equality Law (Implementation Report, para. 38)? What is the timeframe for the enactment? Are representatives of Indigenous peoples and different ethnic groups involved in the drafting and deliberation process?

Reply:

Replied by Covenants Watch:

1. The government replied that four public hearings in Taiwan's different regions will be held after the bill drafting is complete. Covenants Watch holds that such procedure only fulfills participation in formality, as, in the absence of procedural design, each NGO in public hearings could only express their views without real opportunity of deliberation on contested issues.
2. We suggest that consultations with the civil society should be planned to address thematic issues involving various groups, in addition to geographic concerns. For example, the extent and limits of regulations on discriminatory speech and hate speech (referecing the six-part threshold test in UN Rabat Plan of Action), the exemptions (if any) for religious organization in fulfilling anti-discrimination duties (such as in the employment of staff dealing with religious matters), or whether the government should prioritize its enforcement of anti-discriminatory provisions according to the size of the entity, etc.

2.	ICERD entered into force in Taiwan on 9 January 1971, earlier than any of the other UN core human rights treaties ratified from 2007 onwards (Common Core Document, table 31 on pp. 58-60). Why was the ICERD Action Plan only adopted in 2020 and the international review process established thereafter (many years after similar procedures took effect for ICCPR and ICESCR, CEDAW, CRC and CRPD) (see Implementation Report, para. 2)?

Reply:

Replied by Covenants Watch:

3. The implementation of ICCPR, ICESCR, CEDAW, CRC, and CRPD was guided under the "Implementation Act" for each of these instruments. The review and other government actions were required by the provisions in the implementation acts.
4. By contrast, although the Republic of China was a formal state party to the ICERD before it left the United Nations, and the government recognized that ICERD continued to have legal standing afterwards, the ICERD has been mostly ignored until the first review of the two Covenants.
5. The responsible agency, the Ministry of the Interior, asserted that it was not necessary to have an "Act to Implement the ICERD" since it has been legally effective, and decided to implement the measures (compatible with the other conventions) by executive orders.
6. The executive decision of the Minister is not a guarantee, so an "Act to Implement the ICERD" will be able to provide a firm legal basis and make the Convention more visible.

3.	Please provide further details on the implementation of ICERD in the domestic legal order. Please articulate the meaning of "remains binding on Taiwan" as differentiated from the other five international human rights conventions, incorporated into domestic law through the enactment of implementation acts (Common Core Document, para. 86).

Reply:

Replied by Covenants Watch:

7. The fact that it "remains binding" legally does not have any substantial effect, because neither legislative, executive, or judicial power has acted on ICERD in the past decades.
8. For those who suffered from racial discrimination, ICERD could not be relied upon to request administrative or judicial remedies.
9. Based on the experience of Covenants Watch, the Implementation Acts stipulated clearly the duties of government agencies (such as examining the compatibility of domestic laws with the Conventions) and the superiority of the Convention when there exists conflict between domestic law and the Convention (such as Article 10, para. 2 of the Act to Implement the CRPD). Such provisions provide effective guidance to the executive and judiciary powers of the government.
10. Therefore, Covenants Watch maintains that for the three remaining core ventions that have not been domesticated (CAT, ICMW, and ICPPED), it is better to adopt implementation laws for them, rather than through the "Conclusions of Treaties Act"[1] because the latter does not stipulate the duties of the government, even if the treaty becomes legally binding.

[1] https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=E0020021

4.	Please provide examples of the application of ICERD by the courts (not just as a citation but of invocation where the provisions of ICERD were directly applied to determine the rights or duties of the relevant parties) (Common Core Document, para. 116).

Reply:

Replied by Judicial Reform Foundation:

11. The Constitutional Court was established relatively recently (since January 4, 2022), and has delivered only 41 judgments to date. In reviewing judgments related to constitutional interpretations, the scope should still include the precedents set by the Judicial Yuan's interpretation of the Constitution. Upon investigation, it is found that past interpretations by the Judicial Yuan did not apply the provisions of the "International Convention on the Elimination of All Forms of Racial Discrimination." Constitutional interpretations involving racial discrimination or equal rights did not incorporate the perspective of this convention. For example, Judicial Yuan Interpretation No. 708 (case involving the detention of expelled foreign nationals), Judicial Yuan Interpretation No. 719 (case regarding the obligation of government procurement winning bidders to hire a certain percentage of indigenous people), and Judicial Yuan Interpretation No. 810 (case related to government procurement funds for indigenous employment), all lacked consideration of the viewpoints outlined in the convention.
12. As of now, there have been very few judgments in the fields of administrative, criminal, and civil litigations that directly apply the provisions of the "International Convention on the Elimination of All Forms of Racial Discrimination" to determine the rights or obligations of the parties involved. Additionally, the Judicial Yuan has not compiled significant judgments related to legal issues or disputes

relevant to this convention. This includes cases involving racial discrimination, situations where one party claims applicability under the convention, or instances where the judgment results in the refusal to apply the convention.

13. The application of the "International Convention on the Elimination of All Forms of Racial Discrimination" in the State's judgments has not met the desired standards. While the Judicial Yuan has initiated plans for anti-discrimination education and training courses for judicial personnel, there still remains a need to further design litigation cases involving discrimination and equal rights. This would include methodologies regarding applying the provisions of ICERD to render judgments in line with the spirit of the convention and align with human rights treaty standards.

6.	Could you provide us with a list of all members of the Executive Yuan Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination, as well as the steering group for the elimination of racial discrimination established under this Committee (Implementation Report, para. 69)?

Reply:

Replied by Covenants Watch:

14. The task force/committee to oversee the implementation of UN conventions were established through various mechanisms. For CRC and CRPD, the committee was required by the Act to Implement the CRC and same act for CRPD. These two committees have clear legal basis and the composition include organizations of persons with disabilities and children representatives. For the ICCPR, ICESCR it is the Executive Yuan Committee to Protect and Promote Human Rights, and for the ICERD it is the Coordination Committee on Prevention of Human Trafficking and Elimination of Racial Discrimination. The members of these two committees are

mostly scholars, and most of them lack first-hand experience in dealing with human rights violations.

15. In some occasions NGOs will be invited to attend the committee meetings. We believe that the task forces will work better if, conversely, the members consist of NGO workers and scholars are invited for consultation on occasions.

7.	Please provide details on the specialized divisions (units) for Indigenous peoples in the Judiciary. Please provide examples of rights of Indigenous peoples that are only granted to Indigenous peoples (Implementation Report, para. 99).

Reply:

Replied by Judicial Reform Foundation:

16. Since February 14, 2018, the Judicial Yuan has allowed judges to apply for a specialized certification in "Civil and Criminal Indigenous Affairs." As of now, only two such certificates have been issued. However, the low number of certifications suggests that there is insufficient capacity in our country's indigenous peoples-specialized judicial system. There may not be an adequate number of judges with the necessary expertise to handle cases related to indigenous cultures. The reasons for the low issuance of certificates are not clear at the moment. It could be due to a lack of applicants, stringent eligibility criteria, or excessively high standards for obtaining the specialized certification. Regardless of the specific reasons, it is evident that there is considerable room for improvement in developing the functionality of Indigenous Affairs specialized judicial courts in our country.
17. In an effort to safeguard the judicial rights and interests of Indigenous peoples in cases involving their rights, the Judicial Yuan has, since September 3, 2014, established Indigenous specialized courts in various district courts on the main island of Taiwan, the Taiwan High Court and its branches, and High Administrative

Courts. This initiative aims to actualize the protection of the judicial rights of Indigenous peoples. Concerning the safeguarding of Indigenous judicial rights and the operation of cultural defenses, from 2006 to 2011, the Council of Indigenous Peoples initiated a research project spanning eight phases and 14 Indigenous tribes (excluding the Hla'alua and Kanakanavu tribes). The project, titled "Research on the Investigation, Compilation, and Assessment of Traditional Customs of Indigenous Peoples for Integration into the Current Legal System," aimed to consolidate the investigation results into concrete content for Indigenous customary law. However, the Council of Indigenous Peoples found that the research results were challenging to directly apply in judicial practice. Subsequently, from June 2014, a research team was commissioned to assist in reorganizing the completed investigation results into a concise and practical "Compilation of Investigations into the Civil Traditional Customs of Taiwan's Indigenous Peoples." A pilot guideline was also published in 2017. The intention was for it to serve as a reference for legal interpretations in judicial practice regarding the traditional customs of Indigenous peoples. As of now, there have been no civil judgments referencing the "Compilation of Investigations into the Civil Traditional Customs of Taiwan's Indigenous Peoples," and only one criminal judgment has made reference.[2] However, the previous research conducted from 2006 to 2011 on the "Investigation, Compilation, and Assessment of Traditional Customs of Indigenous Peoples for Integration into the Current Legal System" has been more frequently cited in judicial practice, with a total of seven cases referencing it.

18. Based on the resolution 11-2-2 of the first subgroup of the 2017 National Conference on Judicial Reform, there is a recommendation to review the scope of handling Indigenous cases and consider establishing an Indigenous Judicial

[2] Taiwan High Court Hualien Branch, 2017 Yuan-Shang-Su-Zu Verdict No.70.

Consultative Committee. The resolution suggests that the people's participation in the adjudication system should take into account cultural factors in Indigenous cases. It proposes that the Council of Indigenous Peoples should explore the establishment of an Indigenous Judicial Consultative Committee. In cases where there is doubt about whether a case involves a cultural conflict, the Indigenous Judicial Consultative Committee could be consulted to provide opinions on whether a cultural defense is established, serving as a reference for handling the case.

19. As of now, there is no information available from the Judicial Yuan's judgment database regarding the use of the Indigenous Judicial Consultative Committee, as outlined in the "Guidelines for the Establishment of the Indigenous Judicial Consultative Committee" released by the Council of Indigenous Peoples on June 21, 2021. Additionally, the Indigenous Judicial Consultative Committee has stated that it has not received any information at this point. Therefore, it remains unclear how the Judicial Yuan has utilized the Indigenous Judicial Consultative Committee, its legal implications, and effectiveness of the consultation opinions and recommendations provided by the committee in terms of litigation. Further information or updates from the relevant authorities may be necessary to acquire a comprehensive understanding of the implementation and impact of the Indigenous Judicial Consultative Committee in the judicial processes.

CW Contact E-mail: info@cwtaiwan.org.tw

2. Article 2, 4 and 6 Racist Hate Speech, Incitement to Racial Hatred and Hate Crimes

8.	Please provide further information on a national policy on racial profiling (NHRC Independent Opinion, para. 18).

Reply:

Replied by Covenants Watch:

20. The National Police Agency replied that they had provided some training and education, but said nothing about the effects and outcomes.
21. The Police Agency failed to comment on cases like Mr. Nguyen Quof Phi, a former factory worker from Vietnam, who was shot nine times in Hsinchu in August 2017 when he approached the driving seat of a police vehicle, very probably under the influence of alcohol or drugs. Dashcam video showed that the police officer who shot him told the paramedics not to approach Nguyen because he had not been restrained. Transfer to hospital was therefore unduly postponed, and Nguyen eventually died. The Police Agency needs to explain its effort to prevent events like this.
22. We suggest the Review Committee asks the Police Agency to provide information on the incidents where the practices taken by the police officers against migrant workers and other racial minorities were unfriendly or unfair.
23. The government should try to assess the severity of this issue from the standpoints of migrant workers. Please recommend that the government conduct surveys and interviews to be able to appreciate the difficulties encountered at work or daily lives.

9.	Please provide detailed, updated information on complaints filed by the victims of racial hate speech (Implementation Report, paras. 85-95).

Reply:

Replied by Covenants Watch:

24. The Ministry of Justice replied that hate speech could be dealt with by provisions in the Criminal Code for insults (Article 309) or defamation (Article 310). However, these two articles only apply when a specified individual is the target of the speech. When hate speech is expressed toward a group without specifying particular persons, no provision in the Criminal Code (or any other laws) could be resorted to.
25. In the concluding observations of the third review on the State Reports on ICCPR, the committee asked the government to consider legislating against hate speech, but the Ministry of Justice replied in much the same way, so there is no intention for revising the Criminal Code (or other laws).
26. It is still not clear whether the anti-discrimination law now being drafted would include the prohibition of discriminatory or hate speech.
27. Lacking a legal norm, victims of hate speech in recent years often opted to voice in the media rather than to file complaints.

3. Indigenous Peoples

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

28. The contents of jointly replied from indigenous peoples in this parallel response is jointly provided by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group. The content of this parallel response has been collaboratively crafted by the following partners: Savungaz Valincinan, Tapas Katu, Nikal Kabala'an, Shueni Langus Yu, Sened Kuliv Paqaliyus, Leeve Palrai, Yunaw Sili, Yangui'e Tapang, Yuli Ciwas, Pukilringa Daemadelin, Eleng Kazangiljan.
29. We are deeply disappointed with the government agencies' responses, which typically cite the formation of working groups or committees and their meeting frequencies as diversions rather than addressing the issues substantively. It's particularly disconcerting that the procedures of "Indigenous Consultation and Consent Rights" are touted as respecting indigenous self-determination rights, yet there's a glaring insincerity when the procedures' structure fails to reflect this principle.
30. Moreover, it's crucial to highlight that the process for selecting representatives for the Council of Indigenous Peoples, the Indigenous Historical Justice and Transitional Justice Committee in Presidential Office, and the Promotion Committee of the Indigenous Peoples Basic Law has been neither fair, just, nor transparent, lacking a genuine mechanism for the participation of diverse Indigenous groups.
31. We urge government agencies to sincerely engage with indigenous communities when drafting or revising laws and policies impacting indigenous rights, to establish

effective participation mechanisms. Selection of representatives for official organizations should heed the desires of each Indigenous group, ensuring a selection process that is fair, transparent, and democratic. Efforts must focus on actualizing the FPIC principle as detailed in the United Nations Declaration on the Rights of Indigenous Peoples rather than simply employing weasel words.

3-1 General Observations

11.	There are significant overlap of issues high-lighted by reviews of other conventions. While progress is being made, the actual implementation of laws pertaining to Indigenous peoples is lagging behind stated governmental goals and timelines and remains out of alignment with international human rights standards. Rights violations occur in political domains as well as in persistent socio-economic disparities.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

32. In its response, the government claimed a "Presidential Office Indigenous Historical Justice and Transitional Justice Committee"(hereafter referred to as Indigenous Justice Committee), which serves as a platform for dialogue between the government and indigenous peoples in pursuing justice and for reciprocal consultation on policy directions. Because of the Indigenous Justice Committee's lack of legal basis and clear mandate, the Committee could only act as a report-writing unit, and its reports and opinions were not binding on government agencies.
33. Although the Indigenous Justice Committee claims to be a "committee", the mode of the output of the Indigenous Peoples' Representative Committee has always been questioned. The government claims that various indigenous groups recommend the

members. Still, the information about the meetings held by the representatives of many indigenous groups is not open, and there is no mechanism for fair participation and consensus building.

34. The government claims that the achievement rate of enactment and amendment of laws related to the Indigenous Peoples Basic Law (hereinafter referred to as the Basic Law) has reached 94 percent. Still, the fact is that, as stated in para. 64 of the parallel report coordinated by Covenants Watch, most of the adjustments are made to the "terminology". In contrast, the enactment and amendment of sub-laws related to essential rights are not only slow but also limit the interpretation of the Basic Law and seriously infringe upon the rights of the indigenous peoples.
35. The government claims that the "Committee for the Promotion of the Indigenous Peoples Basic Law" regularly reviews the progress of the relevant law amendments. Still, as stated in para. 65 of the parallel report coordinated by Covenants Watch, only four meetings were held between 2020 and 2023. In addition, the representatives of the indigenous groups are unilaterally selected by the Government, not by the indigenous groups, so there is also a problem of representativeness.
36. Please refer to para. 64-69 of the parallel report coordinated by Covenants Watch for complete comments on implementing the Indigenous Peoples Basic Law. We strongly recommend that the government honestly take stock of the current state of the Indigenous Peoples Basic law, propose a timetable for amending the law, and consult with Indigenous groups and tribes on a reciprocal basis to ensure that the outcome of the amendment is in line with the spirit of UNDRIP, including the principle of FPIC in the law-making process.

12.	The NHRC recommends the establishment of an oversight mechanism to address inequalities and discrimination caused by inadequacies within the legal system or lack of enforcement as well as implicit discrimination.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

37. There is insufficient access to complaints and judicial remedies for addressing discrimination and microaggressions. In addition, there is no protection for certain groups from discrimination in the form of collective rights. Although, for verbal discrimination, people can sue the offenders on the grounds of public insult and defamation pursuant to articles 309 and 310 in the Criminal Code, the protected subjects of the law are limited to individuals or corporations.
38. We would like to elaborate on the situation with the following incidents. In 2014, there was a nightclub advertising the theme of "Indigenous Night". In its advertisement video, people dressed in Amis attire in a setting of absurd indulgence in alcohol and sex. It severely diminished the culture of the Amis people. Two Amis people sued the nightclub. However, the prosecutor did not indict the nightclub on the ground that even though the people in the video dressed in Amis attire, it was hard to identify the two Aims accusers were the direct victims of the harm.
39. In 2023, an internet influencer claimed in her video,"don't date any Indigenous people because all they can do and want is drinking and having sex." These harmful statements for Indigenous people could not be held accountable due to the legal framework's limitations because it did not target specific individuals.

40. In conclusion, we need a comprehensive anti-discrimination law and judiciary remedy that applies to the collective rights of Indigenous peoples.

3-2 Issue Areas

3-2-1. Self-determination

13.	Are there recent developments on the 2022 Constitutional Court ruling that ordered the government to amend or formulate laws pertaining to self-identification? .

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

41. In 2022, there were two constitutional rulings related to Indigenous identity. The ruling on constitutional case no. 4 of 2022 (Taiwan Constitutional Court Judgment 111-Hsien-Pan-4, The Indigenous People Status of Children of Intermarriage between Indigenous and Non-indigenous People Case) addressed provisions concerning the identity of children born to Indigenous and non-Indigenous parents, stating that Indigenous identity should be based on the surname of the parent with Indigenous status, thus safeguarding the constitutional rights to Indigenous identity and equality. Despite amendments by the CIP, which only included adding a provision for acquiring identity through listing Indigenous names.
42. The concrete manifestation of the constitutional rights to Indigenous identity and equality should not solely rely on surnames as criteria for recognition. Instead, it should respect the genuine identity and intentions of the individuals involved. Therefore, we believe that further legal revisions are necessary.
43. In constitutional case no. 17 of 2022 (Summary of Taiwan Constitutional Court Judgment 111-Hsien-Pan-17, Case on the Indigenous Peoples Status for the Siraya People), it was determined that all Austronesian peoples existing in Taiwan are constitutionally protected Indigenous peoples. They are entitled to legally acquire recognition of their ethnic group and membership identity based on their own

wishes. The ruling also mandated the enactment of new laws or amendments within three years to implement these provisions.

44. However, it must be further emphasized that the current classification of Indigenous peoples into mountain Indigenous and plain Indigenous categories is also a misclassification against the will of the ethnic groups. This classification system should be included in the overall review of the legislative amendments.
45. In light of the rulings in the two cases and in accordance with the spirit of international conventions safeguarding the right to self-identification and self-determination of peoples, the current erroneous classification system should be dismantled. Instead, the focus should be on returning to the self-determination of each ethnic group and the recognition of members within the ethnic communities rather than relying on an official single standard for classification.

14.	Concerns are raised that inconsistent and sometimes arbitrary criteria are applied for the identification of Indigenous peoples, leading to unrecognized Indigenous groups. What moves are being made to recognize unrecognized tribes?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

46. Same response to prior issue 13.

15.	Concerns regarding the fairness of the selection process and representativeness of the Council of Indigenous peoples have been raised. Please provide information on any efforts to secure the fairness of the selection process.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

47. As per the response provided by the Council of Indigenous Peoples, despite being named a "committee," the substantive representation of ethnic groups lacks an open and fair mechanism for solicitation and selection. Initially, nominees for the chairman of the committee are proposed by the Executive Yuan and appointed by the president. Subsequently, the chairman independently proposes a list of ethnic representatives, which the Executive Yuan then approves.
48. This selection method lacks grassroots representation, as the government directly chooses ethnic representatives without input from the communities themselves. The selected ethnic representatives are also subject to the will of the chairman appointed by the government. While they can propose recommendations internally, these suggestions are often disregarded. They are often replaced if they frequently oppose the chairman or government's intentions.
49. In summary, the policies of the CIP often diverge significantly from the needs and perspectives of Indigenous communities, leading to substantial discrepancies and even contradictions.
50. We strongly recommend that the CIP should be composed of representatives appointed by various ethnic groups. The chairman should also be nominated by these ethnic representatives rather than being unilaterally appointed by the government.

16.	Concerns are raised about Indigenous peoples' participation in all stages of development projects. How can this be secured?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

51. Regarding the issue of Indigenous peoples' right to free, prior, and informed consent, please refer to paras. 124-137 of the parallel report coordinated by Covenants Watch.

17.	How would Tribal Councils fit into the existing legal framework?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

52. Regarding how Tribal Councils are implemented, please refer to paras 49-50 of the parallel report coordinated by Covenants Watch.

18.	Concerning the right of free, prior and informed consent, questions have been raised about existing consultation and consent regulations for Indigenous peoples, and how those processes integrate Indigenous decision-making processes and procedures. This issue was also highlighted by the ICCPR and ICESCR in 2017. What is the progress toward developing, with Indigenous peoples, effective mechanisms to respect Indigenous peoples' right to free, prior and informed consent and effective remedies?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

53. Building upon the points mentioned earlier, we must refute the CIP's attempt to use "the accumulation of over 188 cases of consultation and consent procedures" as evidence that their system is without issues. This assertion is entirely unreasonable!
54. The related procedures have yet to be amended or supplemented to include any requirements on how the government and development entities should conduct consultation processes in accordance with the principles of FPIC. Instead, they only demand that tribes participate in voting after the relevant projects have been planned, which lacks freedom, prior consent, and equal access to information. The exercise of their consent rights is also restricted by a voting system based on household registration, rather than allowing tribes to determine their own members and allowing those self-identified members to vote through a consensus-based process within the tribe. This fundamentally violates the spirit of the United Nations Declaration on the Rights of Indigenous Peoples and is entirely inconsistent with the principles of FPIC.
55. The composition of the legislative amendment working group referred to by the CIP is not publicly available, nor is there information on how to participate. Based on past experiences, the CIP tends to invite compliant scholars and tribal representatives to participate while refusing to solicit opinions from dissenting groups or tribes. Such a legislative amendment working group appears to be nothing more than a rubber stamp for the CIP to appease controversies.
56. We strongly recommend that the CIP and the government establish an open and freely participatory mechanism for discussing legislative amendments.

3-2-2. Legal Framework

19.	Under the Indigenous Peoples Basic Law (2005), the government was supposed to have amended or abolished relevant laws, but it has been reported that some subsidiary laws and regulations (e.g. Indigenous Peoples Land and Sea Law, Indigenous Peoples Autonomy Law) remain unamended. What are the government's plans to amend these? Could you provide a list of laws and regulations that are not in alignment with the Indigenous Peoples Basic Law?

Reply:

Replied by Truku Autonomy Promotion Committee:

57. The Council of Indigenous Peoples (hereafter referred to as "the Council") has been drafting various versions of the "Indigenous Peoples Autonomy Act" since the year 2000. However, due to controversies surrounding issues such as autonomous sites, jurisdiction planning, and fiscal allocation, the legislation has not been successfully implemented, and the law is still pending completion. At present, the Council is assisting various first nations in conducting autonomy opinion surveys and formulating autonomous laws through project-based initiatives.
58. After the Truku people successfully reinstated their official naming in 2004, they established an autonomy preparation group in 2005. Through advocacy and consensus-building efforts, they actively promoted tribal autonomy. The Truku people has organized conferences on tribal autonomy issues, drafted the "Truku Autonomy Act," advocated for an autonomy bureau. In 2023, they also undertook a project from the Council of Indigenous Peoples to implement the "Promotion of Truku Autonomy and Resources Development Program." Up to the present, they have held eight autonomy preparation meetings, 16 autonomy working group meetings, and conducted over 20 advocacy events focusing on Truku autonomy during traditional and related activities. This has contributed to shaping an internal atmosphere and actions conducive to self-determination and autonomy.

59. At the current stage, the scope of the Truku people's demands encompasses the Taroko National Park under the National Parks Administration of the Ministry of the Interior, and the "Lintianshan Forestry Cultural Park" under the Forestry and Nature Conservation Agency of the Ministry of Agriculture, with the aim of identifying them as Truku Autonomous Demonstration Regions. In 2024, an autonomous legal entity called the "Taiwan Truku Autonomous Association" was formally registered, facilitating communication across government departments for future autonomy negotiations and agreements. Plans include the formulation of autonomy rights, as well as the management and utilization of natural resources, gradually moving from autonomy demonstrations towards ethnic self-governance.
60. In addition to the Truku people, the Drekai, Yami, and Pinuyumayan nations have completed their autonomy consultation meetings. The Atayal people have also proposed autonomy during a meeting of the Indigenous Historical Justice and Transitional Justice Committee.
61. In light of this, the Taiwanese government should commit to providing adequate resources and assistance for the autonomy preparations of various first nations, as well as facilitating communication and coordination among different government departments and local authorities. The State should work towards formulating autonomy laws and complementary measures that align with the diverse cultures and historical differences of indigenous peoples. This commitment is essential to realize the equal status and autonomous development guaranteed by the Indigenous Peoples Basic Law, ultimately completing the transition towards indigenous self-governance. Additionally, efforts should be made to strengthen constitutional protections around indigenous status and political participation, ensuring the safeguarding and support of indigenous communities in areas such as education,

culture, transportation, water resources, healthcare, economic development, land, and social welfare.

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

62. The passage and the amendment of a law are not subjected to a single agency as the Council of Indigenous Peoples, rather it involves the discussions and the decisions of the Legislative Yuan(Congress). Nevertheless, bills related to Indigenous peoples' rights are often set aside and not able to be listed in the primary agenda. It impedes the progress of Indigenous peoples' rights.
63. The 6 seats of Indigenous legislators guaranteed by the Constitution remain a numeric minority compared to 113 seats in total. In addition, Indigenous legislators have no direct power to propose bills related to Indigenous peoples. Instead, it depends on the committees under the category of the respective affairs to propose a bill.
64. Indigenous legislators could come from different parties. There is no sub-political group for Indigenous legislators from different parties to fully engage and propose a bill.
65. To sum up, although Indigenous legislators are elected by Indigenous peoples, due to the Legislative Yuan organization regulation, they remain subject to the differences among parties. Therefore, we recommend reorganization of the Legislative Yuan to implement Indigenous peoples' right to self-determination in the legislature.

20.	What are the measures being taken to bring the implementation of the Indigenous Peoples Basic Law up to human rights standards?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

66. Regarding the implementation of Indigenous Peoples' Basic Law, please refer to the parallel report coordinated by Covenants Watch, para.64-69.
67. In the CIP's response, it believes that the "Committee for Promoting the Indigenous Peoples Basic Law(hereinafter, The committee)" serves as an agency to implement Indigenous Peoples' Basic law and meets the international human rights standard. However, besides the issue that we raised above that the committee fails to convene meetings regularly, the Indigenous representatives on the committee are unilaterally appointed by the government which lacks legitimacy of Indigenous representation.

21.	What is the government's position on the UNDRIP? Which steps are taken to align the Indigenous Peoples Basic Law with the UNDRIP and possibly enshrine UNDRIP in the Constitution?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

68. The government asserts that the Indigenous Peoples Basic Law (hereinafter the Basic Law) has many parallels with the United Nations Declaration on the Rights of

Indigenous Peoples (hereinafter Declaration). However, as outlined in the parallel report coordinated by Covenants Watch, para. 66, the collective rights and right to self-determination enumerated in the Declaration are not fully guaranteed in the Basic Law. For example, while the Basic Law aims to restore Indigenous peoples' inherent right to self-determination and autonomy, and complementary systems such as the "The Regulations for Consult Indigenous Tribes on Acquiring Consent & Participation" (or "The Measures for Acquiring Indigenous Consent & Participation") and "Tribal Public Juristic Person" attempt to facilitate healthy autonomous development, practical implementation still faces significant obstacles and fails to fully realize Free, Prior, and Informed Consent (FPIC). Indigenous peoples are thus unable to substantially participate in the planning, discussions, decision-making, and promotion processes of many public and private sector development projects, only having the option to consent or veto through "Tribal Councils."

69. Furthermore, the government claims that the "Committee for Promoting the Indigenous Peoples Basic Law" regularly reviews the progress of related legislative amendments. However, as outlined in para. 65 of the parallel report coordinated by Covenants Watch, this committee only held four meetings between 2020 and 2023. Additionally, Indigenous representatives on the committee are unilaterally selected by the government, rather than being elected by the Indigenous peoples themselves.
70. We request the government to take formal measures and clearly express its position on the Declaration, conducting a comprehensive review of the current legal framework and proposing legislative amendments in accordance with the rights protection provisions outlined in the Declaration. It should engage in equal consultations with relevant Indigenous groups, amend and supplement relevant articles of the Basic Law to implement the spirit of the Declaration. Additionally, we

also urge the government to consider para. 55 of the parallel report coordinated by Covenants Watch, suggesting the direct incorporation of the content of the Indigenous Peoples Basic Law into the Constitution. Recognizing the United Nations Declaration on the Rights of Indigenous Peoples or its intrinsic values within the Constitution would be another viable approach.

22.	How often are laws reviewed to ensure consistency with the Indigenous Peoples Basic Law, the UNDRIP and other international human rights conventions?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

71. Regarding the issues of the failure to convene regularly and the representation of the Committee for the Promotion of the Indigenous Peoples' Basic Law, and the dilemma of Indigenous legislators in Legislative Yuan, please refer to this report in issues. 19-21.

3-2-3. Discrimination in Daily Life

23.	Concerns are raised regarding the government's attitude towards microaggressions which negatively impact day-to-day lives of Indigenous peoples. Is there any governmental plan for the microaggressions?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

72. The media is often referred to as the fourth estate. Yet, the lack of response from the National Communications Commission in the government's reply suggests a neglect of preventive measures against racial discrimination in governing media institutions.
73. Most of the government's responses are of an encouraging nature, but they fail to address the current issues of discrimination and thus lack enforceability.
74. We need comprehensive anti-discrimination legislation and judicial remedies specifically addressing collective claims of discrimination against Indigenous peoples.

3-2-4. Land Issues

24.1 24.2	Concerns have been raised regarding Indigenous peoples' land rights, in particular: • The demarcation of Indigenous traditional territories have excluded private land; • Collective rights;

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

75. The Council of Indigenous Peoples (hereinafter CIP) considers that, due to the current hierarchy of the law in Taiwan, the Indigenous Peoples Basic Law (hereinafter the Basic Law) loses its standpoint when facing the private property rights guaranteed by the Constitution. This situation led to "The Regulations for Delimiting The Area of Indigenous Land, Tribe and Their Adjoin-land" (or "Indigenous Land or Tribal Land Zoning Regulations," hereinafter the Regulations) announced by the CIP in 2002, which only handles the delimitation of public land at the current stage. However, the spirit of legislation underlying the Basic Law is an extension of the Constitution, which means these two laws should be hierarchically on par with each other.

76. Such a viewpoint shows that the CIP failed to understand the significance of social collaboration and inherent sovereignty in delimiting traditional territory and regarding recognizing the landed interest and the purpose of zoning traditional territory. Instead, they view it as an extension of private property ownership under capitalism, which not only brings a severe restriction to delimiting Indigenous traditional territory but also puts a wider gap between the Indigenous communities and mainstream society.

77. The CIP should better explain how the delimitation of traditional territory can co-exist with private property ownership and is a right excluded by market mechanisms and belonging to an interest in social collaboration. It is the first step towards historical justice - proclaiming a tribal community's historical ties to a land area do not conflict with existing private landowners' rights.
78. Though the Constitution indirectly recognizes the collective rights of Indigenous peoples in value, there are multiple challenges in the actual cases related to the establishment of land interests. Many factors have interfered with regulations that can help claim rights and interests, and have yet to be formally passed by the Legislative Yuan.
79. Moreover, there is still a high percentage of misunderstanding in mainstream society about the collective rights of Indigenous tribes in terms of land history and advocacy, indicating that promoting such rights in the mainstream still has a long way to go.

24.3	The implementation of the Indigenous Reservation Land program between 2007 and 2014 saw only about 9% of applications successful due to multiple obstacles and barriers;

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

80. The head of Indigenous Township is in charge of land releases and surveys on Indigenous Reservation Lands. However, the administrative efficiency of the elected local heads (Mayor of Township, etc.) in Indigenous Townships is low, and their work attitude tends to be passive, without facing impeaching or recalling procedures.

81. The local supervisory unit (representative) of Indigenous Township also failed to achieve adequate supervision.
82. There has been a serious loss of Indigenous Reservation Lands. In the western region, non-Indigenous big businesses have taken over ownership, with local heads taking an accommodating attitude. Such a situation is leading to tribal communities losing trust in their rights to Indigenous Reservation Lands.

24.4	Nearly 20 years after the Indigenous Peoples Basic Law, neither the mandated Indigenous Land Survey and Management Committee nor the Indigenous Peoples Land and Sea Areas Act have been effectively legislated;

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

83. In 2018, the chairman of CIP adopted a different approach, aiming to "create legislations separately" to replace the original promotion of the "Indigenous Peoples Land and Sea Law," which must go through four procedures to complete the legislation. This law will also be incorporated into the "Spatial Planning Act," which is expected to be announced in 2025.
84. The Indigenous Reserved Land Rights Review Committee members, which were selected by local heads of Indigenous Townships, operated as usual. Due to the fact that the "Organization Act of the Indigenous Land Survey and Management Committee" was not passed by the Legislative Yuan on the third reading.
85. Out of 113 seats of the Legislative Yuan at present, 6 seats are guaranteed for representatives of Indigenous peoples. Both bills were not promoted persistently by

the representatives of Indigenous peoples in the Legislative Yuan, thus unable to achieve the required procedures and complete the legislation.

24.5	Consultation under the Mining Act takes place in ways that do not align with traditional decision-making systems and there are no penalties for those who do not fulfill their statutory obligations;

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

86. In 2003, the Mining Act was amended and promulgated under the Presidential Decree. The amended provisions encompass the consultation for consent of or participation of Indigenous peoples. In addition, it requires the mineral right holders to conduct the consultation for consent of or participation of Indigenous peoples. With that, we highly acknowledge this amendment.
87. However, the consultation process remains inconsistent with the Indigenous decision-making mechanism. In addition, under the Regulations for Consult Indigenous Tribes on Acquiring Consent & Participation, if the issue in question involves multiple affected Indigenous communities, each community presents its voting result without difference. If the majority votes yes, the issue in question is approved. However, those affected Indigenous communities have different extent of impact with different size of population. Such a decision-making mechanism results in inequality.
88. We strongly urge the government to amend the Regulations for Consult Indigenous Tribes on Acquiring Consent & Participation. If there are multiple affected Indigenous communities involved, the decision should be made in all consensus, ie,

If one Indigenous community disagrees, the whole group disagrees. All laws and regulations should observe such amendment.

24.6	The Indigenous Reserved Land Rights Review Committee is not appointed through an open and transparent process;

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

89. The selection and appointment of the Indigenous Reserved Land Rights Review Committee members in each Indigenous Township, City, or District are assigned directly by the local head, instead of being recommended by the local tribes or indigenous communities. In many Indigenous regions, this has long been a consequence of the unequal distribution of Indigenous Reservation Lands to benefit certain people.
90. The heads of local townships in Indigenous regions must have Indigenous status to stand for election and hold office. However, the household registry composition of many districts has a high proportion of non-indigenous members. Thus, the election results of their heads cannot be regarded as representing the Indigenous Autonomy.
91. Take Xinyi Township in Nantou County as an example; the population surveyed in February 2024 totaled 15,361, and the non-Indigenous population was as high as 6,063. This township also has a long-standing problem of unequal distribution of Indigenous Reservation Lands.

24.7	The allocation of land reserves occurs at a very slow pace due to understaffing.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

92. What is more problematic than human resources is the composition of the local Indigenous Reserved Land Rights Review Committee and the influence of regional factionalism. Usually, the cases highly concerned by local elected representatives progress speedily, while cases that the general Indigenous members apply on their own will be held on and delayed.

25.	What progress is being made in restructuring the land reserve system and establishing how to fund it sufficiently? What progress is being made on a comprehensive review of consultation practices?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

93. Regarding the restructuring of Indigenous Reserved Land, as reported by the CIP, there have been some specific restructuring works over the past few years. However, the relevant regulations are still governed by the "Slopeland Conservation and Utilization Act", and the operation of the system is subject to the various dilemmas presented in replies of points 24.1-24.7 in this report.
94. Raising the hierarchy of the law for the management system alone will not help to improve the relevant problems. It is necessary to make specific adjustments to the

details of the articles, especially in the utilization and distribution of Public Indigenous Reserved Land- improving the guarantee of returning the Indigenous Reserved Land to tribal co-management and adopting the participation mechanism of the Tribal Councils, including but not limited to the election of The Indigenous Reserved Land Rights Review Committee members.

26.	What progress is being made on a comprehensive review of consultation practices?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

95. Article 21 of the Indigenous Peoples Basic Law stipulates that the procedure "shall consult and obtain consent by indigenous peoples or tribes, even their participation, and share benefits with indigenous people." However, "The Regulations for Consult Indigenous Tribes on Acquiring Consent & Participation" (or "The Measures for Acquiring Indigenous Consent & Participation," hereinafter "The Regulation) is formulated in accordance with this Law, only regulates the procedure for voting on yes or no. And there is no requirement regarding a "consultative mechanism" that is in line with the FPIC principles of the UNDRIP, let alone the principle of shared benefits.
96. The Regulation even set up the only system with "household representative" as the voting unit in Taiwan. No matter how many tribal members are within the same household, all of them have only one ticket to vote, resulting in a serious inequality between each ticket.

97. Furthermore, the recognition of tribal members is based on household registration, which ignores the tribe's self-determination in recognizing their members. For example, the Katratripulr Tribe, located in Taitung County Taitung City, belongs to Pinuyumayan. They faced an issue - they were asked to vote yes or no on a Solar Farm Project in their traditional territory. However, those who can vote are required to have Indigenous status, and the household registry is within the tribal territory. This qualification gave voting rights to the households of Amis, Paiwan, but not Katratripulr, that were registered in this territory.
98. Worse still, the Tribe was skeptical about the Solar Farm Project then and requested a complete expiation from the developer and the Taitung County Government, where the project was located. Unfortunately, the Regulations did not stipulate a specific "consultative mechanism"; therefore, the Tribe that did not receive a response boycotted the project and refused to vote on it. There is an outrageous article in the Regulations that authorizes the local government to convene a meeting and vote of the Tribe, with after two months after the developer submits the license application. Such a situation has caused serious conflicts and ruptures in the Tribe.
99. In the above case, an administrative litigation to revoke the license was lodged in 2020, and the Taipei High Administrative Court decided in favor of the Tribe in 2022. Evidently, the problems with the Regulations are not as the CIP responded, “This indicates that the Tribal Council system is being reliably utilized and can fulfill the demands of the majority of Indigenous peoples. Yet misunderstandings have surfaced in a small number of projects, […]”. Contrarily, the procedure is designed in a way that is fundamentally against the spirit of the mother law and utterly inconsistent with the principle of FPIC. Even the Administrative Court was unable to agree to this.

100. According to the response of the CIP, "The working group has convened four amendment meetings to date," but the related information is completely undisclosed. The tribes and Indigenous members have no way to participate, nor do the so-called experts and scholars have any idea of who they are and what opinions they have put forward.

101. We expect that the CIP, as the agency-in-charge of the relevant law, should also uphold the spirit of the FPIC principles in the process of adjusting this law. They shall thoroughly consult with and respect the Indigenous peoples and tribes on an equitable basis, instead of repeatedly keeping themselves in the ivory tower of politics and academia, to formulate a system that not only fails to meet the expectations of the Indigenous peoples but also infringes on the protection of various human rights covenants, which continuously jeopardizes the collective rights of the Indigenous Peoples.

27.	In para. 37 of its concluding observations on the implementation of the two International Covenants of 13 May 2022, the International Review Committee called upon the Government to provide remedies for Indigenous peoples affected by the storage or disposal of nuclear waste and other hazardous materials on their lands or territories. In its parallel Report on ICERD, Covenants Watch also expresses concern regarding the lack of progress in removing nuclear waste from Indigenous lands. What has the Government and the Taiwan Power Co (Taipower) done in the recent past to remove nuclear waste from Indigenous lands and territories and in providing other effective remedies to Indigenous peoples?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

102. The response of the Government admits that they are incapable of dealing with the follow-up issues of nuclear wast, including giving a specific timeframe and planning for the relocation, as we stated in para. 148-153 of the parallel report coordinated by Covenants Watch.

103. The "compensation" offered by the government as a response to the Tao people's overwhelming demand for the removal of nuclear waste and the restitution of their land. Such an action is the worst insult to the local Tao people, who have been victimized by nuclear waste, and their land has been occupied for decades.

3-2-5. Indigenous Languages

28.1	Issues are raised, in particular: • There are concerns about the protection of the right of Indigenous peoples to register their names in their own languages;

Reply:

Replied by Judicial Reform Foundation:

104. The Legislative Yuan has made several amendments to the Name Act since 1994, allowing Indigenous peoples to restore their tribal names in different forms. For instance, in 1995, an amendment to the Name Act allowed Indigenous peoples to restore their traditional names, but only in the form of transliteration into Chinese characters. In 2001, another amendment to the Name Act permitted Indigenous peoples to register their traditional names alongside their Han Chinese names in Romanized form. In 2002, the Ministry of the Interior issued a directive stating that Indigenous peoples were not allowed to register names solely in their tribal language's phonetic system. This directive was justified on the grounds of maintaining "social order and stability."[3] In 2003, the Name Act underwent further amendment, allowing Indigenous peoples to retain their existing Han Chinese names and register their traditional names in Romanized form. However, registering the tribal name alone was still not permitted.

105. The amendments to the Name Act, which allow Indigenous peoples to reclaim their traditional names and offer more choices, have indeed expanded options. However, the path to reclaiming traditional names has proven challenging. For instance, during the period when the older versions of identification cards and household registration records were in use, there was a character limit in the name field. This

[3] Tai-Nei-Hu-Zu letter No. 09100095152 from the Ministry of the Interior dated December 4, 2002, regarding household registration.

limitation made it difficult for some Indigenous individuals to restore their traditional names. Even with the current identification cards, which have a 20-character limit, there are challenges. If a name exceeds this limit, it must be manually written on the card. For Indigenous peoples, the process of reclaiming traditional names faces structural constraints. Currently, the population of individuals who have successfully reclaimed their traditional names is only 28,583, representing less than 5% of the total Indigenous population.

106. On May 21, 2022, Indigenous organizations held a press conference at the entrance of the Ministry of the Interior, the competent authority for the Name Act, expressing their demands. They called for the inclusion of tribal names, respect for Indigenous culture, the presentation of diverse cultures, and the implementation of proper naming practices. Subsequently, administrative lawsuits were filed against the household registration authorities, leading to two victorious judgments in November 2023 and January 2024.[4] Both judgments indicated that the Ministry of the Interior's directives were in violation of the "Indigenous Languages Development Act" passed in 2017 and the "Development of National Languages Act" passed in 2019. Both laws explicitly state that the languages of all Indigenous peoples are national languages. Therefore, the interpretation of the Name Act should understand that Indigenous peoples can register their tribal names alone. However, the Ministry of the Interior has cited administrative inertia as a reason, arguing that the system for changing names on national identification cards has not been upgraded. They also contend that the victorious judgments only have binding force on the parties involved and relevant agencies, not allowing for the registration of tribal names for other non-litigant applicants on the grounds that the judgments are not applicable to them.

[4] Taipei High Administrative Court, 2021 Su-Zu Verdict No.1140, Taipei High Administrative Court, 2021 Su-Zu Verdict No.1084,

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

107. We must reiterate that the national laws do not explicitly prohibit the sole use of Indigenous scripts for the registration on national ID cards. In the response from the overseeing authority on this issue, point 1. and 2. assert that the interpretation of the existing "Name Act" as prohibiting the solitary use of Romanized spellings (where such Romanization is equated with Indigenous scripts) represents an erroneous understanding of the statute.
108. Towards the end of 2023 and the onset of 2024, the Taipei High Administrative Court issued rulings in favor of seven appellants involved in two separate legal actions. These appellants had contested the denial of their requests to feature their names exclusively on Indigenous scripts on their national ID cards (hereinafter "exclusive listing of Indigenous names").
109. The court's judgment states that the right to a name is encapsulated within the personal rights protected under the national Constitution, and the existing "Name Act" does not specifically prohibit the exclusive listing of Indigenous names on national ID cards. It was determined that the existing legal framework, supplemented with relevant legal interpretations, are sufficient for application without necessitating any legislative amendments. As of now, one of the successful appellants has obtained the first national ID cards in Taiwan that exclusively lists an Indigenous name, in accordance with the court's ruling. The remaining six individuals are in the process of their applications, with another individual still engaged in litigation. Nevertheless, the Ministry of the Interior has been reluctant to systematically offer the option for exclusive listing of Indigenous names on national

ID cards, reasoning that "court verdicts are binding only on the particular cases ruled upon."

110. Since at least 2016, the issue of exclusively listing Indigenous names on national ID cards has drawn attention from multiple Indigenous legislators. To assess public opinion, one such legislator deployed an online survey, resulting in 3,456 responses. Of these, 1,867 were from Indigenous individuals, with 96.4% in favor of exclusively listing indigenous names on ID cards; among the 1,438 non-Indigenous respondents, an overwhelming 94.7% expressed their support in this issue. Although this survey is not a strict scientific poll, these results clearly indicate a broad consensus in Taiwanese society for respecting Indigenous scripts and names.

111. For an extended period, the Ministry of the Interior has sidestepped the expectations of the Indigenous communities for allowing the exclusive listing of Indigenous names on national ID cards. They have excused their lack of action with reasons such as "lack of societal familiarity," "the necessity of time for system adjustments," and "the need for further research and discussions." This inaction represents a continued passive infringement on the Indigenous peoples' rights to self-determination and cultural rights.

112. Therefore, we call on the Ministry of Interior to reevaluate its interpretation of the "Name Act" in light of the Constitution and the ICERD, taking into account the multiple court rulings that can serve as guidance. Given the existing precedents for issuing national ID cards that exclusively list indigenous names, the Ministry is urged to promptly implement the necessary procedures to accommodate the needs of Indigenous peoples seeking this option, without further delays.

28.2	There are concerns about the quality and accuracy of interpretation in Indigenous languages during legal proceedings;

Reply:

Replied by Judicial Reform Foundation:

113. The recognition of Indigenous peoples in Taiwan officially includes 16 ethnic groups, with a total of 42 Indigenous languages. However, the Judicial Yuan currently provides interpretation services for only 11 languages, which is less than half of the total. Moreover, there are only 30 reserve Indigenous language interpreters, indicating a severe shortage of qualified personnel. The current quality issues in judicial interpretation are not uniform across all ethnic groups, and not all Indigenous languages are covered. Despite the passage of the "Indigenous Languages Development Act" in 2017 and the "Development of National Languages Act" in 2019, both of which explicitly recognize Indigenous languages as national languages, the judicial interpretation services have not yet been extended to cover all Indigenous ethnic groups.
114. It is noted that statistics from the Judicial Yuan and the Ministry of Justice do not currently provide specific data related to Indigenous language interpretation in the judicial system. Having detailed, aggregated data is beneficial for conducting research regarding judicial interpretations in Indigenous Affairs litigations, thus leading to further improvements and policy guidelines.

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

115. Staffing shortage: According to Article 97 of the "Court Organization Act," "Mandarin should be used in trial proceedings." However, Article 3 of the "Development of National Languages Act" clearly states, "'National language' as referred to in this Act shall mean the natural languages and sign languages used by the different ethnic groups in Taiwan." From this perspective, the languages of Taiwan Indigenous and other ethnic groups are to be considered as "national language" within the framework of the "Court Organization Act." However, the position of "interpreter" within the courts primarily serves as an administrative function, encompassing duties such as recording proceedings, managing case documents, and assisting in maintaining courtroom order, with actual interpretation tasks outsourced to external professionals (contracted interpreters). According to the Judicial Yuan's registry of contracted interpreters, there are a total of 31 interpreters for indigenous languages, which falls far short of meeting the essential personnel needs for the current 16 officially recognized indigenous communities and 42 dialects.
116. In courtroom practices, the application of Indigenous languages is restricted to the verification of factual procedures and thus fails to acknowledge the juridical significance of the customary expressions inherent to Indigenous languages. Furthermore, the court transcripts do not feature a bilingual presentation of Indigenous and common languages side by side, hindering further evaluation of the quality of the written translation.
117. Following the previous discussion, the customary terms and tribal norms pertinent to Indigenous communities have not been adequately transitioned from scholarly fields into the processes for cultivating legal interpreters.

28.3	The teaching of Indigenous languages in schools is in many instances considered ineffective.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

118. Well-intentioned objectives: In addition to the integration of Indigenous languages into teaching goals beyond the general language curriculum outlined in the 2019 new curriculum guidelines, the Ministry of Education has further complied with the provisions of Article 9 of the "Development of National Languages Act," enacted in 2020, which states: "The central supervisory agency for education shall implement mandatory classes in national languages at all stages of compulsory education."From the 2022 academic year onward, Indigenous language courses have been included as required or elective subjects, with curriculum guidelines noting that teachers at each learning stage may choose appropriate teaching materials based on the proficiency levels of their students.
119. Discrepancy in implementation: Aside from experimental schools for Indigenous education, the native languages courses in general public schools are conducted once a week (approximately 40-45 minutes). These sessions are treated as additional language classes alongside Mandarin Chinese and English, rather than as specialized courses focused on "Austronesian languages: specific to the student's own ethnic group/language."
120. Teachers, students, and schools seeking alternatives: Following the enactment of the three foundational laws governing Indigenous experimental education–namely the "Enforcement Act for School-based Experimental Education," "enforcement Act

for Non-school-based Experimental Education at Senior High School Level or Below," and "Act Governing the Commissioning of the Operation of Public Schools at Senior High School Level or Below to the Private Sector for Experimental Education"–schools in Indigenous areas and experimental schools now have the means to integrate cultural courses, practical lesions, and elder-guided learning into their curriculums, thus improving conversational situations in Indigenous languages. However, in light of the initial guideline that "at each learning stage, teachers may select teaching materials appropriate to the students' proficiency levels," the curriculum for all 12 educational levels was finalized only in the previous year (2023). The effectiveness of these teaching materials and their impact on education outcomes are yet to be assessed over time.

29.	Is there any progress on regular national surveys and reviews of implementation of language policies and increased Indigenous peoples' participation in decision-making?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

121. In the implementation of educational policies: Besides language certification, according to the native language curriculum guidelines, there was an initial plan to introduce standards-based assessment tools (criterion-referenced assessment) primarily. Currently, standards and sample questions for the first to third learning stages (equivalent to CEFR levels A1, covering basic daily conversations, to B1, facilitating bidirectional translation in everyday conversations) have been developed

for teachers and students reference. Work on developing standards and materials for the fourth and fifth learning stages is in progress.

3-2-6. Employment

30.	Are there any investigations into the employment ratio of Indigenous peoples in government agencies and organizations?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

122. The data responded to by the government agency do not show the regional distribution, the types of work field of the administrators, and the comparative figures with those of the civil servants as a whole. We would like to see further information.

123. For more information on the issues and recommendations relating to the examination of civil servants from indigenous peoples, please refer to para.123 of the parallel report coordinated by Covenants Watch.

31.	Is there any need for a mechanism for enhancing employment of Indigenous peoples in government agencies and organizations?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

124. For the issue of employment discrimination against Indigenous peoples, please refer to para.186-189 of the parallel report coordinated by Covenants Watch.

125. In response to the measures to promote the employment of Indigenous peoples, the relevant regulations often require public departments and entities to employ Indigenous peoples based on the ratio of employment. Still, it is inappropriate to

use the ratio of the number of people to review the results of implementing measures to promote the employment of indigenous peoples. For example, increasing the proportion of indigenous people in the civil service is expected, and only indigenous people are allowed to apply for some lower-paying jobs and labour positions. Yet, in the recruitment of personnel for major positions, there are instead many problems of discrimination towards indigenous applicants.

126. The Special Civil Service Examination for Indigenous Peoples has no subjects related to Indigenous peoples' rights, culture, and knowledge systems. We have even heard many indigenous civil servants privately mention that the incentives for upgrading their performance in their units have nothing to do with the knowledge of their positions, such as the results of the English language proficiency test.

127. As the parallel report coordinated by Covenants Watch, the CIP is not the only one responsible for Indigenous peoples' affairs. The division of labour about indigenous affairs in the national administrative system is complex and detailed. The part on education involves the Ministry of Education, the part on the co-management of mountains and forests involves the Forestry Bureau, and the part on the utilisation of land resources involves the Ministry of the Interior. We need further data to assess and analyse the proportion of indigenous people in these authorities, their work, and whether it contributes to the realisation of indigenous rights and dialogue with the national state.

3-2-7. Education

32.	How can teacher education for Indigenous peoples be strengthened in order to help address teacher shortage?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

128. The current policy is not sufficiently attractive to new teachers, and the reason for culture transmission does not have more ways for teachers to stay as teachers actively or passively. It only makes teachers stay in discriminatory environments and take on more administrative tasks, reducing their willingness to do so.
129. There is a significant education gap in indigenous talent training at the (senior) high school and university levels since the schools prioritise subjects for further education. Currently, the average age of indigenous language teachers is around 50 years old, and we have yet to see the relevant organisations actively training young teachers, so there will be a gap in the future, accelerating the disappearance of indigenous cultures. Moreover, indigenous students in higher education are over-concentrated in technical and vocational education, making it impossible for them to develop comprehensive thinking and nurture elites in various fields. It takes work for indigenous groups to develop.
130. By registering teachers' indigenous cultural or linguistic expertise, the status of indigenous culture in the educational environment can be more comprehensively enhanced. Priority is also given to those serving teachers who wish to return to their hometowns to be eligible for transfer.

33.	What is the progress toward a comprehensive background data investigation and review of the Education Act for Indigenous Peoples to improve policies and their outcomes?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

131. We added our different views on the response of the Council of Indigenous Peoples (hereinafter CIP) and the Ministry of Education.
132. CIP claims to have completed the Indigenous Peoples' School Act. However, the subjectivity of Indigenous peoples has not been fulfilled at the education level, and there is still no education model based on Indigenous peoples. In the current education environment, it is also necessary to re-examine whether there is any long-term planning for the cultivation of Indigenous peoples as the prime of the training of talents in such a way as to safeguard the dignity of Indigenous peoples, sustain the future life of the Indigenous peoples, and enhance the well-being of Indigenous peoples.
133. There is still a need to strengthen the promotion of anti-discrimination measures. Discrimination and prejudice on campus have a profound impact on indigenous students and teachers. In addition to enacting "the Anti-Discrimination Act", introducing a curriculum that provides understanding and respect for diverse cultures, enhances cultural sensitivity, and reduces discriminatory speech and subjective bias from the educational level is also essential to the anti-discrimination measures.

134. We should practically promote the "Indigenous Education for All". In addition to the need for diverse cultural learning for indigenous students and teachers, non-indigenous students and teachers are the key to a friendly campus. For the existing textbooks, the coverage of indigenous peoples is fragmented and superficial, and many errors and stereotypes about the history and culture of indigenous peoples are not accurate to history, as well as the history of inequality of Taiwanese Indigenous peoples that have been presented in textbooks.

34.	How can preschool Indigenous language instruction be better resourced?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

135. Abolishing elementary schools in rural areas in response to the low birth rate has also led to the disappearance of affiliated kindergartens, thus increasing the pressure on preschool education in rural areas. Gathering students of different language clusters in the same kindergarten also makes it difficult to provide an excellent environment for learning indigenous languages.

136. Provide a preschool indigenous language environment in urban areas, and the children of indigenous individuals in urban areas should have access to an excellent indigenous language learning environment. Furthermore, the Government should think more carefully about how to put forward practicable proposals for different regions, taking into account factors such as the local indigenous community, industries and culture, to build up a learning environment in a more flexible way.

137. To actively assist in establishing preschool and childcare centres in indigenous communities and establishing a preschool education system for Indigenous peoples by introducing cultures of local indigenous communities, with the culture of the indigenous peoples as the subject matter. While developing the talents, we also preserve the traditional indigenous culture of co-raising children.

3-2-8. Housing

35.	Are there any efforts to improve and create remedial measures for housing policies for Indigenous peoples that are formulated in a culturally responsive way?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

138. Taiwanese indigenous people have built housing settlements for different indigenous peoples following their living environments and cultural traditions. However, through modern laws and regulations, the government has labelled houses constructed by indigenous people according to traditional craftsmanship as unauthorised buildings and has not assisted in legalising various traditional houses.
139. Those who have migrated to urban areas still face difficulties such as economic disadvantages, a lack of social support systems, and neglect of Indigenous peoples' subjectivity. In urban areas, indigenous people choose to form "unauthorised" settlements in places close to their original homeland and fill in the gaps in the social security system through the culture of sharing and mutual aid. However, the government lacks awareness of the collective and social functions of these tribes.
140. In the face of forced evictions of unauthorised housing or post-disaster resettlement, the government has failed to consider the subjectivity of the indigenous culture. The Government has transferred the problems of forced eviction and resettlement to the social welfare sector, providing welfare care on an individual basis, ignoring the network of mutual help and care within the tribes and breaking up the original organisations of the tribes, thus lowering the income, depriving them of the

essential protection of their livelihood. The issue of relocation of indigenous people has been simplified into a housing issue.

141. Since the time of the Japanese rule, all kinds of forced evictions and resettlement, no matter what the reasons are, have resulted in an irreversible loss of culture. During the transition, the Government did not have an effective platform to communicate with the indigenous peoples. It did not involve the views of the indigenous peoples in the legal system (e.g., communication methods, building styles, site selection, land and housing allocation, living patterns, etc.). The Government is ignoring the needs of indigenous people and focusing on the convenience of the governor, and this is just a reproduction of the colonial tactics on the contemporary indigenous people.

142. Therefore, we hope that:

(1) The government should proactively and positively investigate and clearly explain the difference between urban indigenous collective tribal sovereignty and their right of residence. It should also avoid simplifying the tribal issue into one of an individual residence or social welfare subsidy.

(2) The Government should include the viewpoints of Indigenous peoples in the legal framework and allow the indigenous people actually to participate in and influence government decisions or suggestions to establish a platform for effective communication.

(3) When confronted with the issue of indigenous sovereignty, the Government should not repeat the cultural loss caused by the colonial policy in the past, and it should actively assist the tribes in preserving and developing their traditional culture.

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3-2-9. Health

36.	It has been reported that significant disparities remain in health indicators between Indigenous and non-Indigenous citizens of Taiwan. How can Indigenous peoples' health care services be targeted based on their needs rather than on how services can be delivered?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

143. According to the government's response, the average remaining life expectancy of the indigenous peoples is indeed increasing year by year, but this is the average remaining life expectancy of the indigenous peoples as a whole; Taiwan's indigenous peoples legally comprise 16 tribes, with the most populous tribe, the Amis, having a population of more than 200,000, and the least populous tribe, the Kanakanavu, having a population of about 380. Therefore, evaluating the health of the indigenous peoples based on the increase in average remaining life expectancy will overlook the actual health conditions of the less populous tribes. Relevant indicators should be set based on the actual demographics and lifestyles of different indigenous tribes when evaluating the health of Indigenous peoples. An increase in the health of Indigenous peoples should not be assumed simply by evaluating an increase in the average remaining life of the Indigenous peoples in Taiwan as a whole. Taking the median age at death as an example, the overall national median age at death is 77 years old, the Amis is 69 years old, and the Sakizaya is 56 years old. The difference between different tribes can be as much as 13 years old, so it can be seen that different indigenous tribes in Taiwan are facing different health issues and conditions, which is an issue that the Taiwanese government should address

immediately instead of using the same standards and indicators of need to look at the health needs of Indigenous peoples. The Government's attitude towards this one-size-fits-all standard can be seen in its fifth response point. Article 1 of the National Health Insurance Act states that this Insurance is compulsory social insurance. Benefits shall be provided during the insured term under the provisions of this Act in case of illness, injury, or maternity occurring to the beneficiary. Its regulations and benefits are applied uniformly, with no difference in benefits based on a specific race (indigenous people).

144. The government has not answered how it will determine the health needs of the Indigenous people. As the government responds to point 2, they launched the Indigenous Health Inequalities Improvement Strategic Plan in 2018 and are also planning similar Indigenous Health Improvement Plans for 2025 and 2030. However, formulating these plans involved many health experts and scholars, including those with Indigenous peoples' identities, discussing and participating in formulating the plans. However, there was a lack of statistics on the actual situation of the Indigenous peoples at the time of writing. Due to the lack of integration of the government's cross-sectoral information and the construction of a health database of Indigenous peoples, the health status and needs of the different tribes within Indigenous peoples have not been seen. In addition to the lack of health statistics, there is also a lack of involvement of representatives of different tribes in decision-making when designing or planning health programmes for Indigenous peoples. The government thinks having health experts and academics with indigenous identities participate is enough. However, these experts and academics, firstly, cannot obtain actual figures from health surveys, and secondly, they are not representative of different tribes, and they may not necessarily understand the health and hygiene patterns of all the tribes. As in the Government's response to point 3,

the "Indigenous Peoples Health Act" was enacted on 21 June 2023, and the Ministry of Health and Welfare has established the "Health Policy Conference of Indigenous Peoples" to discuss and deliberate on Indigenous Peoples' health issues through members such as representatives of Indigenous peoples and experts and scholars. However, the government has not discussed the policy with the representatives of Indigenous peoples, experts, and academics. It has chosen to publicly announce the membership list without discussing it with the various tribes of Indigenous peoples and the indigenous health advocacy groups.

145. The government should ensure the implementation of ethnic and regional data on the health of Indigenous peoples and fully involve representatives of different tribes and organizations in the decision-making process when planning health-related policy to construct health service programmes for Indigenous peoples that are based on the needs of Indigenous peoples and that emphasize cultural safety.

37.	Is there any enhanced training for health care professionals in Indigenous areas?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

146. The government is strengthening training for healthcare professionals in indigenous peoples' regions. Although the "Indigenous Peoples Health Act" also encourages healthcare professionals to take courses related to the cultural safety of indigenous peoples, we have not seen any planning and implementation of these courses from June 2023 to the present. In addition to the cultural safety programmes, many of the government's continuing education training programmes for healthcare

professionals are mandated by the government to be undertaken by medical institutes or professional institutions. However, most of these institutions are located in urban areas far away from the indigenous regions, which results in healthcare professionals in the indigenous regions having to spend more time and travel costs than the general public to participate in these training programmes.

147. The government should invest training resources directly in workforce training in the indigenous regions, for example, by bringing training instructors and equipment directly to the indigenous regions for teaching. In addition, the threshold for the number of trainees should be lowered to allow healthcare professionals in indigenous regions to enjoy the right to study further and education.

3-2-10. Political Participation

38.	How can obstacles to Indigenous peoples' full and effective participation in political life be removed?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

148. In regard to the issues of Indigenous suffrage, please refer to the parallel report coordinated by Covenants Watch, para. 117-122.

39.	How can the election system for Indigenous legislators be redefined and reformed?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

149. In the matter of reforming the electoral system for Indigenous legislators, it has often been the case that institutions have attributed delays to the complexities of amending the constitution. However, we maintain that numerous adjustments can still be made without engaging in constitutional revisions, offering considerable flexibility for reform. For instance:

(1) It is possible to modify the seats allocated to mountain and plain Indigenous peoples in the constitution, transitioning from an "identification" requirement to a division based on geographic areas.

(2) Allow Indigenous constituencies the option to participate in the elections and voting for general regional legislators, thereby restoring their general civil rights.

(3) A specific method could involve adopting the New Zealand model, allowing Indigenous voters and candidates to select the electoral district in which they wish to vote. Alternatively, the seats for Indigenous legislators could be arranged in a manner similar to legislators-at large positions, enabling Indigenous voters to vote for both their general regional legislators and Indigenous legislators.

(4) Prioritizing the implementation of an absentee voting system for Indigenous voters. If postal voting still raises concerns within Taiwanese society, a system similar to the currently debated referendum voting registration system could be considered. This would allow Indigenous voters to register their preferred voting district within a specified period before voting day, thereby ensuring the protection of their right to a secret ballot.

150. Nonetheless, it is fundamentally imperative to underline that there should be a vigorous push for constitutional amendments to abolish the outdated and incorrect classification of Indigenous peoples into "mountain-" and "plain-" categories. The aim is to revert to a system that allows each Indigenous groups to self-identify and independently nominate representatives to participate in the Legislative Yuan's operation, following democratic principles. Prior to any constitutional amendment, it is also vital to ensure the protection of Indigenous suffrage through strategic adjustments in the system's design.

3-2-11. Hunting/Fishing

40.	It has been reported that many Indigenous individuals have been prosecuted for practicing their traditional hunting and fishing practices. Please provide more information about this problem.

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

151. Please refer to para.70-79 of the parallel report coordinated by Covenants Watch.

152. Regarding the frequent prosecution of Indigenous peoples for traditional hunting and fishing activities, the Ministry of the Interior's National Police Agency has responded by drafting "the Regulations on the Permission and Management of Self-made Hunting Guns and Fishing Guns by Indigenous Fishermen". However, the current content of the Measures imposes restrictions that are not found in "the Regulations Governing Permission and Management of Guns, Ammunition, Knives and Weapons", which will make it easier for the indigenous peoples to be prosecuted by the judiciary and this has been repeatedly criticized and protested by indigenous legislators, indigenous communities and Indigenous peoples' organizations. However, apart from holding additional "briefing sessions" to continue promoting the issue in a one-way mode, the National Police Agency has not responded further to the questioned parts of the draft and amended the contents of the relevant draft.

41.	Is there any progress toward dialogue with Indigenous peoples so that policies and regulations can be aligned with ICERD and UNDRIP regarding free, prior and informed consent?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

153. The response from the government authorities was disappointing. We want to emphasize once again that the Government should build a fair and open policy communication platform for equal dialogue with the Indigenous peoples and open up the Indigenous peoples' representatives in the various organizations and task forces for free participation rather than for the Government to solely decide on the members to endorse the Government's erroneous policies.

3-2-12. Transitional Justice

42.	Which progress has been made in the field of transitional justice for Indig-enous peoples? Could you provide further information on the activities of the Presidential Office Historical Justice and Transitional Justice Committee (Implementation Report, para. 57)? Could you provide further information on the work of the Ex-ecutive Yuan's Department of Hu-man Rights and Transitional Justice (Implementation Report, para. 68)?

Reply:

Jointly replied by the Association for Taiwan Indigenous Peoples' Policies, Indigenous Youth Front, Taiwan Indigenous Long-term Care Service Rights Promotion Association, and LIMA Taiwan Indigenous Youth Working Group:

154. Taiwan's transitional justice focuses on events such as the 228 Incident and the White Terror under the authoritarian rule of the Kuomintang party-state. Indigenous peoples in Taiwan have long suffered from colonial oppression, resulting in intergenerational harm: land confiscation, the assassination of political elites, inappropriate implementation of the "mountain-to-plains" policy erasing names, languages, and cultures, among other injustices requiring urgent transitional justice. However, mechanisms for uncovering historical truths, compensation, and reconciliation remain unclear.

155. The government claims to have established the "Presidential Office Indigenous Historical Justice and Transitional Justice Committee" (hereinafter "The Committee"), as a platform for dialogue between the government and Indigenous peoples to explore justice and negotiate policy directions on an equal footing. However, the Committee lacks clear authority and legal basis (excluded from the "Act on Promoting Transitional Justice," leading to protests from Indigenous groups), rendering its reports or opinions non-binding on the government. Despite being called a "committee," the method of selecting its representative members is

highly questionable. While the government claims selection through ethnic group recommendations, the transparency and fairness of the recommendation process are debatable, and there is a lack of consensus-building mechanisms.

156. Furthermore, as stated in our parallel report coordinated by Covenants Watch, in para. 329, according to the Executive Yuan's "Executive Yuan's Promoting the Medium- and Long-term Planning and Monitoring Indicator Establishment Plan for Transformational Justice (Year 112 to Year 115)" in 2023, Indigenous transitional justice is only in the draft or temporary research and promotion project stage. The government's remedial measures for the injustices suffered by Indigenous peoples are not specific or clear.

157. For a comprehensive view on Indigenous transitional justice, please refer to paras. 325-330 of the parallel report submitted by our organization. We urgently call for:

(1) The Executive Yuan's promotion of transitional justice should include the goal of addressing "improper rights infringements against Indigenous peoples." This entails investigating and publicly disclosing the historical truths of Indigenous rights violations, followed by the restoration of rights, compensation, or redress.

(2) Mechanisms should be established in the policy formulation process to ensure the effective participation of Indigenous peoples.

4. Migrant Workers

4.1 General Observations

43.	Most of the pressing issues have been raised repetitively by previous reviews of the ICCPR, ICESCR, CEDAW and CRC. There is also significant consensus among NGOs and the National Human Rights Commission (NHRC) on the main persisting issues for migrant workers.

Reply:

Replied by Covenants Watch:

158. We advocate for equal pay for all workers, regardless of nationality. If migrant workers continue to be treated as cheap and disposable labor providers, the further opening up of migrant labor markets will only lead to a deterioration of working conditions for all workers working in Taiwan, regardless of nationality.

159. In light of the persisting issues with migrant workers, the government is currently considering further opening up to Indian migrant workers, citing a shortage of labor. However, this decision has not undergone a human rights impact assessment, including its effects on the rights of existing migrant workers and its impact on the rights of local labourers of the marginalized communities (e.g., indigenous and persons with disabilities). Taiwan's shift towards sourcing labor from India may be influenced by some countries of origin advocating for higher wages or establishing minimum wage standards for their nationals employed in Taiwan. Over the years, the Ministry of Labor has claimed that migrant workers are only supplementary labor, but in reality, over 750,000 migrant workers have become a substitute for local labor in various industries. Meanwhile, the unemployment and under-employment rates among marginalized groups remains high.

160. Covenants Watch emphasizes the need for a comprehensive human rights impact assessment before further opening up to migrant workers. The decision-making

process for migrant labor policies, including labor agreements with the countries of origin, must undergo extensive consultations with labour unions, migrant workers' organizations and CSOs and substantive scrutiny by legislative bodies and.

161. The protection of the rights of domestic workers cannot be fundamentally resolved without considering long-term care policies. For instance, many employers of domestic workers themselves belong to disadvantaged groups (such as people with disabilities). Many home care workers, who are part of government social service programs (often new immigrants themselves), or those providing individualized support services to people with disabilities, struggle to receive fair compensation. Therefore, any policy regarding domestic workers should also consider the impact on similar workers, especially if further opening up to domestic workers without providing adequate labor condition safeguards (including wages, social benefits, working environment, etc.) may undermine the efforts to improve the conditions of home care workers and other support workers.

44.	Reported developments are mostly incremental e.g. promised inter-Ministerial Working Groups etc.; previously promised legislation appears to have made little or no progress. The relationship between freedom from racial discrimination and religious freedom / religious discrimination is questioned by some NGOs with an emphasis on the relevance and importance of the right to be free of religious discrimination.

Reply:

Replied by Taiwan International Workers Alliance

162. Regarding the government's response to this issue, it is evident that there is a common bureaucratic tendency to avoid tackling substantial problems and opt for superficial or temporary responses.

163. The Parallel Report submitted last year, particularly points 194 to 197, addressed issues related to high placement fees; paras. 198 to 203 discussed the restriction on the freedom to transition between employers and the problem of migrant workers being forced to go out of contract; paras. 204 to 206 addressed the high occupational accident rate for migrant workers; paras. 213 to 223 highlighted the lack of protection for domestic workers, and paras 224 to 242 illustrated the dire situation of both domestic and overseas migrant fishery workers — each of these points has a significant impact on the plights of migrant workers in Taiwan. Migrant worker groups have repeatedly addressed these issues and have even proposed policy directions and solutions. However, it appears that the Taiwanese government has not been responsive to these concerns. As reflected in the questions raised in this List of Issues, and in response to the issues presented in the parallel report concerning the challenges faced by migrant workers, the government has previously promised to establish inter-agency working groups. The President has even made commitments regarding legislation to address these concerns. However, there has been no progress to date, and government agencies seem to be turning a blind eye, addressing other issues and avoiding the core problems. This indicates that the various challenges faced by migrant workers in Taiwan, as outlined in the parallel report, are not being genuinely prioritized by the Taiwanese government.

164. Regarding the issues of migrant workers not being able to freely transition between employers, being forced to go out of contract, the high occupational accident rate among migrant workers, and the lack of protection for domestic caregiving workers, we will address these points below. Now, we will respond to and provide additional information on the issue of excessive broker fees and the illegal collection of high fees by brokers.

165. Taiwan institutionalized the introduction of migrant workers through the enactment of the Employment Service Act in 1992, establishing a system where "private employment service agencies" (commonly known as "broker companies") are responsible for introducing and managing migrant workers. However, the profit-driven nature and profit-oriented operation of these broker companies created a situation where they stand between employers and workers, exploiting information disparities and profiting from the desire of migrant workers to improve their livelihoods. Currently, there are over seven hundred thousand migrant workers in Taiwan, and there are over a thousand local broker companies, with many operating transnationally in the workers' countries of origin. They earn fees from both the countries of origin and within Taiwan, capitalizing on this dual revenue stream. The Taiwanese government's laissez-faire approach to the privatization of job matching for cross-border vulnerable workers over the past three decades has not only led to the monopoly of the entire migrant worker employment market by private brokers, but has also allowed the exploitation of migrant workers' labor for the benefit of private brokers.
166. Before each migrant worker comes to Taiwan, they must pay a substantial broker fee ranging from NT$80,000 to NT$200,000 to their home country's broker company, a significant portion of which ends up in the pockets of Taiwanese brokers. Additionally, during their stay in Taiwan, Taiwanese brokers can legally charge migrant workers a service fee every month. The accumulated service fee over a three-year contract can reach up to NT$60,000. However, during this period, the broker may not necessarily provide substantial services.
167. After the abolishment of the "One-Day Return Every Three Years" provision in 2016, the brokerage industry lost a significant source of income, and in an attempt to recover their losses, they started charging migrant workers illegal "labor

purchasing fees" for changing jobs in Taiwan. These fees, ranging from NT$20,000 to NT$90,000, are explicitly prohibited by the Ministry of Labor. Moreover, the process is conducted covertly, making it challenging to gather evidence. While migrant workers can choose not to pay, the consequence is difficulty finding a job, ultimately leading to either going out of contract or being repatriated.

168. Especially after the end of the COVID-19 pandemic in October last year, with the reopening of borders, brokerage agencies, seeking to compensate for the reduced income during the pandemic, have become more creative and intensified their methods of profiting from migrant workers. They introduced new forms of illegal fees, such as labor purchasing fees, processing fees, interview fees, job change fees, deposits, and final payments, using various deceptive practices. Currently, the market for illegal fees in migrant workers' employment is rampant, particularly in the manufacturing sector, where it has almost reached a point where "labor purchasing fees" are demanded for almost every job.

169. These facts prove that as long as the government continues to choose not to shoulder the responsibility of migrant worker employment services, private brokers can perpetually monopolize the migrant worker job market. When the lifeline of migrant workers' employment opportunities is tightly held by these brokers, their control over migrant workers remains unshakable. This control structure will not be satisfied with illegal fees, but will also lead to a continuous deterioration of overall labor conditions for migrant workers.

170. Since 2016, the Ministry of Labor has responded vaguely to the illegal collection of broker fees, claiming they will "control" and "penalize with evidence." However, in practice, the burden of proof has been placed on migrant workers, making it challenging for them to collect evidence of wrongdoing. Seven years later, illegal fees have evolved from simple broker fees to include processing fees, interview fees,

conversion fees, deposits, final payments, etc., with increasingly detailed charging items. The entire fee system has expanded to involve intermediaries, messengers, mules, and dummy accounts, creating a complex network. What was strictly prohibited by the Ministry of Labor has now become the norm in the migrant worker job market. The ministry's weakened authority not only diminishes its credibility but also allows brokers to exert greater control over migrant workers without restraint.

171. When migrant workers face unreasonable treatment from employers and brokers, even if they have substantial evidence of the employers' or brokers' wrongdoing, many find themselves in a dilemma regarding whether or not to file a complaint. This is because, whether voluntarily changing jobs or being forced into unemployment , "finding a new job means paying a broker fee," and "even if you pay the fee, there's no guarantee of getting a job because job opportunities are controlled by brokers." If a worker is blacklisted by the broker for filing a complaint, it can lead to future job prospects being blocked. Migrant workers often feel compelled to endure such situations due to the brokers' control, and as they become more reluctant to assert their rights, brokers become even more emboldened. The increasing prevalence of bizarre and unsettling "broker horror stories" is a testament to the worsening structure. The press conferences held by the Migrants Empowerment Network in Taiwan on September 4, 2023, and November 13, 2023, where both workers and employers made accusations against brokers, showcase the deteriorating situation where both employers and employees are victimized by the overall structure.

172. After the two press conferences, the Ministry of Labor responded with almost identical documents, simplifying their stance to "penalize if there is evidence." Clearly, the Ministry of Labor prefers to address individual cases rather than tackle

systemic issues. Moreover, the Ministry seems to deliberately distort the widespread challenges faced by migrant workers as mere individual cases. What is the current situation for migrant workers in Taiwan? While labor officials sit in air-conditioned offices drafting these documents, how many migrant workers are being forced to borrow money or fall victim to unscrupulous brokers just to gather the funds for broker fees? How many migrant workers are forced to flee or return home burdened with debt because they cannot afford these fees? How many migrant workers endure unreasonable or even illegal treatment in the workplace because they cannot file complaints or afford to switch employers? The root of these problems lies in the government's failure to take responsibility over the past thirty years, never providing public, comprehensive, and substantive cross-border or on-site job-seeking services, and allowing the private broker system to monopolize the migrant worker job market!

173. The cross-border labor of migrant workers not only improves the economies of their home countries but also sustains numerous industries in Taiwan, allowing Taiwanese society to function. Therefore, migrant worker groups have consistently advocated for the justice of cross-border employment, emphasizing it as a government responsibility. The term "government responsibility" encompasses various measures, including direct government-to-government hiring, the employment of bilingual personnel at service stations, the provision of comprehensive and substantive cross-border and on site job-seeking services, simplification of documentation processes, and the provision of multilingual information in functional regulations. Additionally, it involves government agencies such as the Bureau of Labor Insurance, National Health Insurance Administration, Motor Vehicles Offices and authorities on different levels to ensure that a migrant worker arriving in Taiwan from overseas can access information and services

conveniently, and independently complete various work and life procedures without relying on brokers. Simultaneously, "government responsibility" absolutely must include the abolition of private broker systems. Both abolishing private brokers and strengthening public services are facets of government responsibility. We urge the Taiwanese government to assume this accountability.

45.	Are there any more recent developments regarding accession to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), as mentioned in the Common Core Document in para. 86?

Reply:

Replied by Rerum Novarum Center:

174. Principle of nondiscrimination:

(1) Union of Family Members: The government treats the family members of migrant workers differently in terms of the rights to visit or join them in Taiwan compared to the family members of white-collar workers. The family members of migrant workers are limited to visiting Taiwan through means such as tourism, pursuing educational opportunities, or visiting for emergency medical reasons.

(2) Discrimination Regarding Temporary Residencies and Temporary Leave Permits: The duration of a migrant worker's stay in Taiwan is influenced by the employment letter. Upon receiving a termination notice, a migrant worker must find a new employer within sixty days, or they are required to leave the country. The ability of a migrant worker to transition to a new employer is significantly affected when there are limited job opportunities in the labor market. Additionally, temporary departures from Taiwan by migrant workers require the consent of both the employer and the brokerage agency. The decision-making

authority lies with the employer and the agency. If a migrant worker chooses to leave against the wishes of the employer and agency, they must terminate the contract and reapply to come to Taiwan, incurring costs such as fees to the home country agency and related expenses. During the employment period, if personal factors such as illness, pregnancy, or family emergencies require a temporary leave, the worker's rights are also influenced by the employer and agency, potentially affecting both work rights and residency rights.

175. Equal Treatment as Nationals:

(1) Working Conditions: Currently, there are various channels for employing foreign fishery workers, including domestic and overseas recruitment, hiring Mainland Chinese crew members, and employing workers on FOC (flag of convenience) vessels. Different employment methods correspond to varying labor conditions and management safeguards. The labor conditions in the marine fishing industry differ significantly from those on land, making it challenging to implement regulations effectively, along with making labor inspections more challenging. The government has therefore established specific regulations for the labor conditions of foreign migrant workers, especially in the context of the marine fishing industry. During labor inspections, the working conditions of foreign fishery workers shall be examined alongside those of local workers.

(2) Freedom of Choosing Occupations and Employment Assurances

(3) Social Security

(4) Right to Unions

(5) Right to Participate in Public Affairs

4.2 Right to Work

46.	The Employment Service Act continues to restrict migrant workers' right to change employers; and there are a number of related discriminatory provisions including accommodation, access to health services, right to organise and join trade unions especially in relation to migrant domestic workers, farm workers and fishers; survivors' benefits (as identified in the state report); migrant workers are significantly disproportionately represented in occupational health and safety fatalities and injuries.

Reply:

Replied by Rerum Novarum Center:

176. Currently, migrant workers in Taiwan are yet to be granted the freedom to switch employers. Additionally, there is a lack of comprehensive understanding among migrant workers regarding their rights in terms of labor insurance, occupational health, and occupational accident insurances. This lack of awareness sometimes leads to workers neglecting their entitlements to benefits and compensation. For family caregivers and fishing industry workers, many are only allowed to rest and reside within the workplace. They are often not given the freedom to choose their place of residence independently.

Replied by Taiwan International Workers Alliance

177. Regarding the response from government agencies on this point, we will address the following three issues : "Restrictions on Transitions Between Employers," "Difficulties for Migrant Workers in Organizing and Joining Unions," and "High Occupational Accident Rates Among Migrant Workers."

178. Restrictions on Transitions Between Employers:

(1) First of all, we find it shocking and disgraceful that the Ministry of Labor considers the provisions of Article 59, Paragraph 1 of the Employment Service

Act as an answer. The Article states that "migrant workers may change employers or jobs upon approval by the Ministry of Labor due to reasons beyond their control" and "migrant workers may also agree with the employer, and the new employer shall take over upon mutual agreement between the three parties or both parties," which implies that "migrant workers can freely change employers in Taiwan." Do we need to spend time explaining what "freedom to change" means? Does the requirement that "foreign workers must have reasons beyond their control" and must be "approved by the Ministry of Labor" for a change qualify as "freely"? The need for "agreement with the employer," and the employer's willingness to sign the consent form "mutually agreed upon by three parties or both parties" for the change - is this freedom to change? Where is the freedom under such conditions? The fact that government agencies are making such misleading statements is truly shameful, isn't it?

(2) What's even more shameful is that the response clearly indicates that migrant workers in Taiwan not only "cannot freely change employers" but are also restricted in the "type of industry they can switch to." Furthermore, the Ministry of Labor's silence on the restriction of industry change for migrant workers during the pandemic – a move that is both secretive and regressive – is an attempt to evade responsibility and whitewash the situation. It truly reflects their unwillingness to take action.

(3) The struggle for "freedom to transition between employers" for blue-collar migrant workers in Taiwan has been a journey marked by blood, sweat, and tears. In 1992, the introduction and management of blue-collar migrant workers in Taiwan was legislated through the Employment Service Act. However, at the same time, the basic right of migrant workers to freely change employers was

taken away through Article 53 of the Employment Service Act. After years of advocacy and protests by migrant worker groups, it wasn't until 2002, with the amendment of Article 59 , introducing the principle of "prohibition with exceptions," that the prohibition on changing employers began to loosen. In 2003, the Ministry of Labor formulated the "Guidelines for the Procedure of Changing Employers or Jobs for Foreigners Engaged in Work as Specified in Article 46, Paragraphs 8 to 11 of the Employment Service Act" (hereafter referred to as the "Conversion Guidelines"). These guidelines outlined the procedures for changing employers or jobs under "exceptions" while still specifying that public employment service agencies should handle the conversion operations for foreigners in the same job category as their original industry, meaning cross-industry conversion was still prohibited.

(4) In 2008, the Ministry of Labor amended Article 7 of the Conversion Guidelines. Foreigners applying for conversion registration were restricted to the same job category as their original industry. However, there were exceptions for the following situations: 1. Re-employment applied for by an employer qualified under the provisions of the first or second subparagraph of the preceding article. 2. Approved by the central competent authority. This amendment added the Cross-Industry Transfer exception, and introduced the possibility of cross-industry transfer when both parties (employer and employee) or all three parties (original employer, new employer, and employee) agree. Although the conditions remain stringent, it opens up the possibility of cross-industry transfer for domestic caretaking workers without labor law protection and for migrant fishery workers who have long struggled to enjoy the protections of labor laws. This provides a sliver of opportunity for them to transfer to factories and attain better working conditions.

(5) During the COVID-19 pandemic in 2021, the lack of new migrant workers due to border controls led to a widespread labor shortage across various industries. It is well-known that domestic caretaking workers, particularly those engaged in family caregiving, lack any legal protections under labor laws. The proposed Domestic Services Act advocated for by NGOs has also been left idle for many years, leaving domestic caregivers in poor working conditions. Therefore, if given the opportunity, caretaking workers would naturally want to transfer to factory jobs that are covered by the Labor Standards Act.

i. On May 5, 2021, legislator Su Chiao-hui questioned the phenomenon of domestic caregivers transitioning to factory jobs and requested that the Ministry of Labor present countermeasures. Minister of Labor Hsu Ming-chun responded that they had already begun looking into potential solutions.

ii. On May 6, 2021, the Migrants Empowerment Network in Taiwan held a press conference titled "Hsu Ming-chun, Don't Ignore the Blood and Sweat of Caregivers – Only with Protection Can Both Employers and Employees Win." During the conference, we pointed out that the fundamental reason some domestic caregivers consider transitioning to factory jobs is due to the harsh working conditions they often face. The government should start by safeguarding labor conditions for domestic caregivers and providing sufficient long-term care services for families in need, instead of resorting to measures like prohibiting cross-industry transitions, which effectively forces domestic caregivers to continue in unfavorable conditions akin to modern slavery.

iii. On May 7, 2021, the Ministry of Labor issued a notice to various NGOs, proposing a multi-party meeting on May 13. However, due to the COVID-19 pandemic, this meeting was postponed.

iv. On May 25, 2021, the Ministry of Labor issued another notice requesting that all NGOs "provide opinions within 7 days based on the attached opinion form."

v. On May 28, 2021, a total of 14 civil organizations issued a joint statement titled "Intense Pandemic, Arrogant Government," opposing the Ministry of Labor's hasty and reckless handling of this controversial amendment during the pandemic. They made the following requests: 1. Re-adjustment of the information collection timeline. 2. Provision of bilingual explanations for the proposed regulatory amendments. 3. Public disclosure of opinions provided by all parties after information collection. 4. Publication of the Ministry of Labor's final decision with explanatory notes.

vi. On July 16, 2021, the Ministry of Labor announced the draft amendment on its website, maintaining the direction of prohibiting cross-industry conversion, with the absurd reason of "ensuring that the priority of subsequent employment matches the foreign worker's original industry expertise." The Ministry of Labor did not hold any meetings, did not provide bilingual explanations, did not disclose opinions from all parties, and did not offer sufficient explanatory notes, conducting the process in an entirely opaque manner.

vii. On August 27, 2021, the Ministry of Labor implemented the draft amendment, prohibiting cross-industry conversion, disregarding the initial policy mistakes, ignoring the long-term public demands to open up free conversion for migrant workers, and reversing the gradual direction

towards open policies over the years. The move tightened the space for migrant workers to access cross-industry conversion, rolling back labor rights protections for migrant workers to a pre-2008 state—a full regression of thirteen years!

(6) When faced with demands for allowing migrant workers to freely transition between jobs, the Ministry of Labor often cites a "lack of social consensus" and the "impact on employment stability." First and foremost, we pose a stern question to the Ministry of Labor: Apart from the employers and brokers who benefit from the provision that "blue-collar migrant workers cannot change employers or jobs," who else opposes the free job conversion for migrant workers?

i. In 2010, Kuomintang (KMT) legislator Cheng Li-wun questioned the then-chairman of the Council of Labor Affairs, Wang Ju-hsuan, about when they would open up job conversion for migrant workers. Chairman Wang expressed support for allowing migrant workers to have the freedom to change jobs.

ii. In 2014, a research report commissioned by the Ministry of Labor, titled "Analysis and Discussion on the Causes of Unknown Whereabouts of Migrant Workers," recommended "gradually opening up the system of job conversion." Another research report commissioned by the National Development Council, titled "Research on the Direction of Changes in Taiwan's Migrant Labor Policy for the Next Decade," also suggested "relaxing the regulations prohibiting foreign workers from freely changing employers."

iii. In 2018, the Control Yuan's investigation report also pointed out, "Migrant workers who wish to terminate their employment contract must have

mutual consent from both the employer and the foreign worker, and complete the certification process. In cases where there are other reasons beyond the control of the hired migrant worker, approval is required to change the employer or job. Under this imbalance of power it is difficult to terminate the contract midway, leading to difficulties in cases of sexual assault, with most choosing to endure or escape……"

iv. In October 2020, Chiu Chang-yue, then Deputy Minister of the Ministry of the Interior, in a special report to the Legislative Yuan's Health and Environment Committee, directly advised the Ministry of Labor to "open up the freedom of migrant workers to change employers, allowing them the opportunity to choose jobs, to address the root causes of so-called runaway foreign workers."

v. In light of the various research outcomes and scholarly recommendations that clearly point out the current regulations' unreasonableness and the associated problems, the repeated responses from the Ministry of Labor claiming "no social consensus" are cause for concern and may lead to the perception that the Ministry is prioritizing the interests of employers and capital at the expense of the basic labor rights of migrant workers.

(7) Secondly, we must emphatically respond to the Ministry of Labor and state that "blue-collar migrant workers' inability to freely change employers or jobs" contributes to "employment instability." What is the premise of "employment stability"? It is employers providing good working conditions, and workers having the freedom to choose their jobs based on their own free will.

(8) However, blue-collar migrant workers' inability to freely change employers or jobs has created an imbalance of power between employers and workers. This not only prevents migrant workers from choosing to stay or leave according to

their own wishes, but also relieves employers of the pressure to improve working conditions. Ultimately, this imbalance of power hinders the overall improvement of Taiwan's labor environment. For employers of migrant workers, they no longer need to consider improving working conditions or find ways to retain workers because the Taiwanese government has used the "rule of law" to oversee employers, allowing them to focus on using cheap labor, earning profits, and accumulating capital.

(9) However, this ultimately results in the forced labor of migrant workers, causing tension in labor relations, compelling migrant workers to go out of contract and escape, and leading to stagnating labor conditions in Taiwan. The only beneficiaries of this systemic imbalance are the employers. This institutionalized imbalance is, in fact, the root cause of "employment instability."

179. Challenges for Migrant Workers in Organizing and Joining Unions:

(1) The idea of organizing and joining unions for migrant workers goes beyond mere membership; fundamentally, it addresses the rights of workers to solidarity and protection.

(2) Article 9 of the Labor Standards Act states: "Labor contracts shall be divided into fixed-term and non-fixed-term contracts. Temporary, short-term, seasonal, and specific jobs may be performed under fixed-term contracts; continuous work shall be performed under non-fixed-term contracts. Labor contracts entered into between a dispatch agency and dispatched workers shall be non-fixed-term contracts." It is clear that the work performed by migrant workers in Taiwan, involving continuous tasks, should be governed by non-fixed-term contracts.

(3) However, Article 46, Paragraph 3 of the Employment Service Act stipulates: "Employers hiring migrant workers under the provisions of Subparagraphs 8

through 10 of Paragraph 1 shall conclude a written labor contract, limited to a fixed-term contract; in the absence of a fixed term, the term of the labor contract shall be the same as the period of employment permission. The same shall apply to contract renewal." This provision excludes migrant workers from enjoying the rights listed under Article 9 of the Labor Standards Act, completely restricting migrant workers engaged in continuous work to fixed-term contracts, each limited to the duration specified in the employment permit, typically three years.

(4) Various forms of labor dispatch and fixed-term contracts hinder the formation of labor unions and weaken their bargaining power, as highlighted in numerous research reports. In summary, even if migrant workers establish a union to negotiate with the employer for their rights, once the three-year contract expires, the employer can terminate the employment without the need for severance pay. If the worker fails to secure new employment before the contract ends, they are compelled to return to their home country.

(5) Indeed, the monopolization of the migrant worker employment market by private brokers, their strong control over the workers, and the absence of adequate public employment services provided by the government are significant barriers for migrant workers to join or form unions. Additionally, the lack of provisions to facilitate the transition of workers to new employers after the expiration of their three-year contracts, especially when the current employer decides not to renew, creates immense challenges for workers who wish to stay and work in Taiwan. These systemic limitations and structural issues make it extremely difficult for migrant workers to organize or join labor unions.

(6) The government's response, merely citing Article 4 of the Labor Union Act and stating that migrant workers can join unions, appears dismissive and fails to address the practical challenges faced by migrant workers when joining or forming unions. Mere acknowledgment of legal provisions is insufficient without considering the real-world obstacles and limitations that impede the effective exercise of workers' rights, especially for migrant workers.

47.	Are there commitments with timelines to reduce remaining discriminatory provisions impacting migrant workers? If not, why not?

Reply:

Replied by Taiwan International Workers Alliance

180. Whether migrant workers in Taiwan are subjected to other discriminatory regulations is evident from other points in the Parallel Report. Frankly, we do not expect the government to make immediate comprehensive changes, but at the very least, there should be an acknowledgment of the issues and a demonstrated determination to address and solve these problems. However, it is apparent that our government lacks even the commitment to promise reforms, as evidenced by statements like "Taiwan treats migrant workers on an equal basis with nationals," which blatantly contradicts the current reality and is truly disappointing.

4.3 Women Migrant Workers

48.	Issues relate to the treatment of pregnant migrant workers; notably the disproportionate number of women migrant workers who "go missing", especially those from Indonesia and the Philippines (Implementation Report, table 18 on p.50).

Reply:

Replied by Rerum Novarum Center:

181. Female migrant workers often face challenges to their employment rights when they become pregnant. There is a common occurrence of job loss or fear of repatriation due to misinformation provided by employers or brokers. In the case of female caregivers, employers might express concerns about the worker's ability to perform duties during pregnancy, leading to termination of employment or a desire for the worker to return to their home country. Due to the apprehension of being unable to find a new employer, pregnant female migrant workers may decide to terminate the pregnancy or go out of contact. The government's advocacy for the rights of pregnant migrant workers remains insufficient. Addressing these concerns is crucial to ensuring the well-being and rights of female migrant workers during pregnancy.

Replied by Taiwan International Workers Alliance

182. Regarding this point, in the response from government agencies in the fourth point "New Measures for Preventing Migrant Workers from Losing Contract and Recent Measures for Domestic Workers," several measures are mentioned. The following response will be in four parts: "Relaxing qualifications and quotas for various industries to employ migrant workers," "Establishing a centralized service center for direct hiring to expand the handling of special project worker selections," and "Migrant Workers who Went Out of Contract."

183. Relaxing qualifications and quotas for various industries to employ migrant workers:

(1) The Ministry of Labor stated in its response: "in addition to addressing the issue of migrant workers easily shifting towards illegal work in construction and agriculture after losing contract, we have opened up the total quota for the general construction industry, increased the total quota for agricultural migrant workers, and relaxed the qualifications for applying for institutional caregivers and home caregivers." Such statements are nothing but blatant lies. It is truly appalling that a government agency would resort to such deceitful tactics to handle international scrutiny.

(2) Firstly, the Ministry of Labor announced a regulation amendment notice on May 23, 2023, with a preview period of only 7 days. Setting aside the questions of "how were the opinions on the policy amendment submitted by civil organizations during this time frame handled?" and "what other opinions were submitted by different parties?", as well as inquiries regarding the usual opaque processes, like "how did the government ultimately deal with these differing opinions?", this policy amendment that concerns the rights of all workers in Taiwan was given a mere 7-day notice period! The Ministry of Labor's "solicitation of opinions" this time was not just a perfunctory "going through the motions" in a black-box manner; it was essentially a speedy walk-through for the benefit of the employers!

(3) Furthermore, in the amendment notice for the regulation, the Ministry of Labor clearly stated the reasons for once again opening up and loosening restrictions around the hiring and introduction of migrant workers, which is the labor shortage that has continued since 1992. This time, the expanded scope of introduction includes all four sectors of migrant labor: construction, manufacturing, agriculture, and social welfare workers.

(4) Manufacturing - Compensatory Introduction Leads to Escape, Benefiting Blood-Sucking Brokers?

i. In the manufacturing sector, apart from 3D industries like aquaculture processing, tofu manufacturing, and metal shipbuilding, there is one key point: "To encourage employers to prioritize taking in migrant workers who are already in Taiwan, to avoid the problem of migrant workers losing their contracts as a result of unemployment, and at the same time, to quickly assist employers with their manpower needs, manufacturing employers who take in domestic manufacturing migrant workers will be able to increase their quotas by an additional 5%." The Taiwan International Workers' Association issued a statement pointing out that the situation of "loss of contract due to not taking in workers" is a result of broker agencies' compensatory introduction after the pandemic. According to statistics provided by the Ministry of Labor, two statistical charts showing the new entry rate and number of workers out of contract for the manufacturing sector and home caregivers were drawn. Taiwan entered the pandemic period in early 2020; in May 2021, due to the outbreak of the pandemic, the Taiwanese government began border controls and suspended the introduction of migrant workers entirely. It wasn't until February 2022 that it began opening up project-based introductions from 4 countries, gradually relaxing thereafter, and now fully resuming introductions. With the time points of these policies in mind, along with the two charts, we can see that after the border controls were lifted, the new entry rate for the manufacturing sector sharply increased, and simultaneously, the number of workers out of contract also soared. In comparison to home caregivers, although the new entry rate also increased

after the border controls were lifted, the number of workers out of contracts remained low compared to previous years due to a salary increase in August 2022.

ii. This aligns with the actual experiences of the Migrants Empowerment Network in Taiwan frontline dispute cases: after the border controls were lifted, there were increasingly more cases of migrant manufacturing workers being harassed and dismissed for minor reasons. For those migrant workers who had opportunities to switch jobs during this period, they encountered difficulties in finding work. Either they were asked to pay high fees for employment, or because there were no non-broker job-seeking channels available, the migrant workers, in their desperation to find work and with no other options, fell victim to scams and fraudulent brokers. Ultimately, in a vulnerable situation with no help available, they were forced to choose to go out of contract and escape.

iii. Through the Ministry of Labor's statement: "To encourage employers to prioritize taking in migrant workers who are already in Taiwan and avoid the problem of migrant workers losing their contracts as a result of unemployment" it is evident that the Ministry of Labor is well aware that the recent increase in the rate of migrant workers going out of contract is mainly due to the difficulty of finding jobs for transferred workers. The policy of "increasing the hiring quota by 5%" may encourage employers who have not yet reached the 40% limit to hire transferred-out migrant workers.

iv. However, the reason why migrant workers have difficulty finding jobs after being transferred out is precisely because of the broker agencies that monopolize the job market by using quotas for profit, creating various fees

such as employment fees, introduction fees, or job transfer fees. Yet now, the Ministry of Labor is not addressing the root cause. It is not tackling the monopoly of brokers in the job-seeking process, not reviewing the lack of simplified hiring procedures by the government, not addressing the lack of bilingual services, and not examining the formalization issues with the current employment matching assistance programs. Instead, this policy seems to please everyone on the surface, but fundamentally, it allows the main culprit of this wave of issues - private brokers - to continue profiting from an additional 5% service fee! This policy may seem like a win-win situation, but in essence, it is perpetuating the exploitative system of contemporary servitude by leaving the issue of broker abuse unaddressed and allowing brokers to profit further.

(5) Construction Industry - Chaos in Public Projects, Adding Insult to Injury for Private Projects?

i. In 2020, Deputy Minister of the Interior Hua Jing-chun's absurd statement about "importing construction workers to lower housing prices" sparked widespread discussion. Apart from debunking the claim that labor wages only account for a small part of housing prices, much criticism was directed at subcontracting practices in construction projects and the revelation that so-called "public construction projects" are actually profit-sharing schemes set up by a few large construction companies.

ii. At that time, the Director of the Management Division of the Workforce Development Agency, Ministry of Labor, Hsueh Jian-zhong, told the media: "Some experts and scholars believe that if we are to loosen restrictions on the introduction of migrant workers in the construction industry, we should follow the model of introducing migrant workers for agricultural labor

shortages. We should first have experts and scholars study the rational supply and demand of labor in the construction industry." He also mentioned that according to data from the Directorate-General of Budget, Accounting, and Statistics in August 2019, the job vacancy rate in the construction industry was 2.62%, which was not more severe than the 2.69% in the service industry. This raised doubts about whether opening up the construction industry should also mean opening up the service industry. However, several years have passed, and the number of migrant workers in Taiwan under the guise of "government major projects" has more than doubled from 4,179 in 2019 to 16,223 in April 2023. Despite this increase, the Ministry of Labor has not presented any rational labor supply and demand studies nor conducted any equal pay for equal work investigations for this industry. Yet now, they are considering opening up the hiring of construction migrant workers for "private projects"!

iii. Even in public construction projects, there have been numerous labor disputes involving migrant construction workers: many migrant workers signed contracts for 3 years, only to be required to leave the country after the project was completed, possibly without having repaid their broker fees. Additionally, in 2021, the "RSEA-WIKA Worker Case" erupted, where workers in the Sanying Line of the New Taipei Metro were reported to be earning less than NT$10,000 per month. These are all cases of the exploitation of the rights of migrant workers under the guise of public construction projects. Before improving the working conditions for migrant construction workers in public projects, the Ministry of Labor is once again opening the doors to hiring cheap migrant labor for private projects. This move not only helps construction companies save money,

but also allows these capitalists to copy and paste the exploitative model used in public projects onto private projects as well!

(6) Agriculture - No Labor Insurance for Groups of Fewer than Five, How are the Rights of Agricultural Workers Protected?

i. The Control Yuan's press release in January 2023 highlighted the issue of high "runaway" rates among agricultural migrant workers: "If we look at the rate of migrant workers going out of contract, the rate for agricultural outreach workers is 11.86%, while for agricultural, forestry, fishing, and animal husbandry migrant workers it reaches as high as 17.94%. This is significantly higher compared to the 3.15% for caregivers, 5.15% for manufacturing migrant workers, 10.29% for construction migrant workers, and 5.86% for foreign fishery workers employed domestically, all during the same period."

ii. Among migrant workers in the agriculture, forestry, and fishing sectors, the majority are fishery workers. They not only endure long working hours, low wages, and lack of overtime pay, but also face the issue of not receiving labor insurance. Even though employers of fishery workers are supposed to provide labor insurance coverage according to Article 6, Paragraph 1, Item 5 of the Labor Insurance Act, even if the number of employees is fewer than 5, many employers take advantage of the fact that the Ministry of Labor may not perform inspections, and as such do not provide labor insurance for their workers. Instead, they may only offer a story of being covered by commercial group insurance. When workers are injured or killed on the job, it is these hard-working fishery workers whose basic rights are sacrificed.

iii. According to the Ministry of Labor's expansion that allows small-scale farmers or farmer groups with 10 or fewer employees to hire migrant workers, the reality is that many of these are households with fewer than 5 people. Such groups are not listed in Article 6 of the Labor Insurance Act, and according to Article 8, "Business units employing fewer than 5 employees may voluntarily participate in labor insurance." This means that employers who hire fewer than 5 people are not required to have labor insurance. Therefore, under this expanded plan by the Ministry of Labor, migrant workers in various agricultural and food industries not only face weak enforcement but also lack legal grounds to require their employers to provide labor insurance coverage.

iv. The aforementioned Control Yuan press release clearly states: "There should be complete supporting measures and strengthened guidance for farmers, otherwise it will not help to solve the current agricultural labor shortage problem. Instead, it will impact the operation and development of agriculture and the economic livelihoods of farmers, increasing the hardships and grievances." Yet now, the Ministry of Labor is determined to proceed unilaterally, loosening the qualifications for hiring agricultural migrant workers without fully reviewing the related supporting measures.

(7) Social Welfare Institutions - Overwork and Unpaid Wages as the Norm, How Can Long-Term Care Avoid Exploitation?

i. Social welfare institutions, as part of the overall long-term care system, are unfortunately filled with the blood, sweat, and tears of migrant workers! Currently, caregivers in these institutions often face numerous challenges. It has become common for each caregiver to simultaneously care for 15 or more individuals (the legal ratio is 1:5). Additionally, social welfare

institutions exploit a provision in Article 84-1 of the Labor Standards Act, making it so that migrant workers work 12-hour shifts. This not only results in inadequate rest time, but also inadequate time to eat meals.

ii. Even worse, many times employers fail to pay overtime wages as required by law. They do this by having workers clock in and out with two different cards, A and B, to evade inspection by labor authorities. When a worker raises a dispute, the common scenario is that the employer only presents the record from the "legal" version of the card. If the worker does not have photographic evidence or a copy, everything is at the mercy of the employer's "evidence." This time, the Ministry of Labor seems to have increased the manpower for social welfare institutions by lowering the ratio threshold. In reality, they are replicating the exploitative long-term care model of these institutions through manpower, using more of the blood, sweat, and tears of migrant workers to sustain the institutions' operations. These issues not only erode the ability of migrant workers to protect themselves and continue to be exploited but also prevent social welfare institutions in the long-term care system from becoming a second spring for the elderly or a hope for the aging population. Expanding the recruitment policy on this foundation might "enrich the available manpower for institutions," but it certainly will not "improve the quality of care"!

(8) The Migrants Empowerment Network in Taiwan held a press conference on May 30, 2023, at the Ministry of Labor to protest against the failure to improve labor conditions and the dangerous policy of loosening quotas. We emphasize that the Network's position is not against the cross-border movement of labor, nor is it against having more non-citizens living and working in Taiwan.

However, the Network opposes the government's arbitrary and opaque policy decisions, and it opposes placing cross-border workers into a contemporary servitude system and cheap labor conditions under the guise of "addressing industry labor shortages." This indirectly lowers overall labor conditions to meet the needs of employers. This policy not only fails to address the labor shortage issue in industries but also does not solve the problem of migrant workers going out of contract. For migrant workers, it is clear that exploitation is continuing to expand! This is the truth behind the policy of loosening quotas, yet the Ministry of Labor shamelessly presents it as a solution to the plight of missing migrant workers. This is nothing short of shameless audacity.

184. Setting up Joint Employment Service Centers to Expand Special Project Recruitment

(1) The Ministry of Labor, in response to the second point under "Prevention of Migrant Workers Losing Contract and Recent New Measures for Household Service Migrant Workers," mentioned the establishment of Joint Employment Service Centers to expand the handling of special project recruitment.

(2) Looking back at the history of Direct Hiring Centers, it's essential to note that the Ministry of Labor did not proactively establish them to prevent migrant workers from losing their contracts. Instead, it was after years of advocacy by migrant worker groups that the Ministry of Labor established "Direct Hiring Centers" in 2008. Over the direct hiring system's 15 years of existence, the highest annual proportion was only 11.9%, and by 2018, it had dropped to 1.13%.

(3) For many years, the Ministry of Labor's response to criticism of the private broker system monopolizing the job market has consistently been to cite the existence of Direct Hiring Centers and multiple employment channels.

However, in reality, the current Direct Hiring Centers are entirely incapable of assisting migrant workers in any procedures from their home countries to Taiwan. This is because the current Direct Hiring Centers can only assist with domestic direct hiring and cannot address the issue of private broker monopolies. Even for domestic hiring, the Direct Hiring Centers have not integrated required documents and procedures from various agencies, such as the National Immigration Agency, National Health Insurance Administration, and Labor Bureau, for direct hiring. This means that employers who want to use the direct hiring process still have to complete procedures with these agencies themselves. Private brokers allow employers to bring in migrant workers at a lower cost, while the cumbersome process of the Direct Hiring Centers has led to a decrease in employers' willingness to use direct hiring.

(4) Indeed, the Direct Hiring Centers are among the few public agencies that offer bilingual services for forms, counter services, and telephone inquiries. They have also hired bilingual staff. However, the existence of the private broker system has ultimately reduced the Direct Hiring Centers' functions to merely "collecting documents for the Ministry of Labor." This situation has made the Direct Hiring Centers a mechanism of false accountability for the Ministry of Labor.

(5) Furthermore, in the thirty years since the introduction of migrant workers, the Public Employment Service Stations across Taiwan have been responsible for assisting migrant workers in job searching and changing employers. These stations hold a Migrant Worker Employment Matchmaking Meeting every Thursday. However, the so-called matchmaking is actually a process wherein a batch of migrant workers is randomly selected by a computer each week and forced to attend and check-in. If they fail to check-in, they are seen as giving up

their right to change jobs, and they may face forced repatriation. Setting aside the unreasonable nature of this requirement, when these randomly selected migrant workers ask the station staff, “Where is the employer who is supposed to interview me today?” the response they receive is often, “There may not be any employer coming; you have to find a broker yourself.” Additionally, the only language available to these migrant workers is “simple English,” because none of the employment service stations across Taiwan have bilingual staff. This means they cannot answer the workers' questions about finding jobs, nor can they introduce them to job opportunities. For thirty years, the emphasis has been on "control over service," rather than fulfilling any substantial "matchmaking function.”

(6) In February and September 2023, the Ministry of Labor established "Employer Hiring Migrant Worker Transition Service Centers" in Changhua and Taoyuan. Taking Taoyuan as an example, the location of this center is the same as the original "Taoyuan Employment Service Station." Formally, they also hold a weekly "computer selection" matchmaking meeting, where migrant workers are required to attend and "check-in." Interestingly, the matchmaking events are filled with only migrant workers, and no employers ever show up, just like the Public Employment Service Stations. It appears that the Ministry of Labor intends for these centers to replace the functions of the original Public Employment Service Stations.

(7) Regardless of why it is not named Employer Change Service Center for Migrant Workers, the only encouraging change is that "finally quadrilingual staff have been hired." However, after waiting for thirty years, migrant workers who can finally communicate in their own languages at the public job service centers are still left waiting empty-handed every Thursday during the matchmaking sessions.

Even if they fill out resumes provided by the multilingual staff, they still cannot find job opportunities. This is because even the service center staff themselves know that if migrant workers want to find a job, they still have to go through brokers. The staff simply don't have any jobs to introduce to the migrant workers for matchmaking. Even though the staff are aware that the brokers are illegally taking placement fees, they are helpless to do anything about it. This further demonstrates how serious the monopolization of the job market by private brokers is.

(8) The newly established "Employer Hiring Migrant Worker Transition Service Center" still lacks substantive matchmaking functions, despite the Ministry of Labor's press release claiming: "The center provides three main functions: 'matchmaking,' 'information provision,' and 'information exchange,' to accelerate the transition of employers or work operations through services such as start-to-finish case handling, job information, in-depth consultations, and appointment matchmaking." The reality is quite far from what was described in the press release.

185. Structural factors remain unresolved, yet laws are amended to increase penalties for runaway migrant workers:

(1) The response from the Ministry of Labor regarding measures to prevent runaway migrant workers, as mentioned in this point, is largely inaccurate and misleading, much like the previously discussed "Relaxation of Qualifications and Quotas for Various Industries to Use Migrant Workers" and "Establishment of Direct Hiring Joint Service Centers to Expand Project Employment Selection" initiatives. Other measures mentioned also suffer from discrepancies between legislative intent and actual implementation. For instance: The establishment of "Accident Insurance for Household Migrant Workers"

was the result of years of protests from local labor unions and organizations advocating for occupational accident insurance. It was only after joint efforts from migrant worker groups that household migrant workers were included. The legislative intent was not primarily to prevent migrant worker runaways. The "Adjustment of Household Migrant Worker Salary to NT$20,000 from August 10, 2022" was indeed implemented, but the reality is that on September 1 of the same year, the basic wage under the Labor Standards Act was adjusted to NT$26,400, and further increased to NT$27,470 in 2024. The salary for household migrant workers remains significantly lower than the salary laid out in the Labor Standards Act, and household migrant workers are still excluded from said act, as the Domestic Workers Act has not been enacted to provide legal protection for household migrant workers. Respite Service and Short-term Alternative Care Service for Family Care Migrant Workers (up to 52 days per year)" was mentioned as well. However, it was only in December 2020 that employers of domestic migrant workers were allowed to apply for respite services, with a limited number of days (an average of only four days per month). The available manpower for long-term care services is also insufficient, and home care services have not been fully opened. These issues result in the general public still relying on cheap foreign household migrant workers to bear the burden of long-term care. In practice, these policies have had minimal impact on reducing instances of runaway workers. In summary, many of the preventative measures mentioned by the Ministry of Labor are either inadequately implemented, do not address the root causes of runaways, or have legislative intents that differ from their actual outcomes.

(2) However, ironically, the government has not been entirely idle in terms of its purported "measures to prevent runaway migrant workers." One of the most

significant efforts, which curiously went unmentioned in the “Government’s Responses to the List of Issues," is the enactment of laws to increase penalties for runaway migrant workers. Moreover, the legislative process for these amendments has been remarkably swift.

(3) On January 12, 2023, the Executive Yuan announced draft amendments for certain provisions of the Immigration Act. Among these amendments was the revision of Article 74-1, which proposed increasing the fine for overstaying residents by 15 times, raising the fine from the original 2,000 to 10,000 NT dollars to 30,000 to 150,000 NT dollars. The Migrants Empowerment Network in Taiwan (MENT) and some Legislative Yuan caucuses strongly opposed this move because the amendment completely ignored the structural factors that lead to workers "running away." It was seen as merely reinforcing the societal stigma and discrimination against "undocumented individuals." However, despite the opposition, government agencies ultimately decided to pass the amendment, increasing the penalty by 5 times. This means that in the future, migrant workers who overstay will face fines ranging from 10,000 to 50,000 NT dollars, up from the previous 2,000 to 10,000 NT dollars.

(4) The Taiwan International Workers' Association conducted an analysis based on publicly available government information (such as the Ministry of Labor's statistics on migrant workers and the National Immigration Agency's statistics on runaway workers) before the amendment was passed. We focused on "runaway workers," which constituted 70% of the overstaying population. Detailed graphs and analysis can be found on the TIWA website. Our analysis showed the following trends based on the proportion of undocumented workers over the years: After the abolishment of the "three years out of the country" rule in December 2016, the number of "runaway workers"

significantly decreased. With the Ministry of Labor's announcement on July 16, 2021, prohibiting cross-industry transfers, the proportion of undocumented workers continued to rise. As the COVID-19 situation improved in November 2021, special projects for hiring foreign workers were reopened gradually. However, due to brokers seeking to recover their lost profits from the past two years of being unable to bring in workers due to the pandemic, they adopted a "retaliatory introduction" tactic of "not accepting domestic workers but only introducing foreign workers." This led to domestic workers who were looking to switch jobs not being able to find employment, forcing them to "run away."

(5) From the above observations, it is evident that policy relaxation helps reduce migrant worker "runaways," while policy tightening has the opposite effect. Migrant worker organizations have repeatedly reminded government agencies that the "no free transfer" clause and the "private broker system" monopolize the migrant labor market, leading workers to choose to become “undocumented." Government agencies and lawmakers are reluctant to challenge the interests of employers and brokers, and instead only dare to target the lowest level, the voiceless migrant workers. Ignoring opposition from various quarters, they forcefully pass amendments. This demonstrates the Taiwanese government's true attitude towards runaway workers. It is clear that the so-called "measures to prevent runaway migrant workers" mentioned by the Ministry of Labor in the Government’s Response to the List of Issues are merely superficial cover-ups.

49.	What reasons have been identified for the number of women migrant workers who' go missing'? What provisions are in place to support those who are pregnant?

Reply:

Replied by Rerum Novarum Center:

186. Many cases of female migrant workers going out of contact are attributed to the financial responsibility they bear for their families back in their home countries, including both their husband's and natal families. The burden is exacerbated if they have significant debts, leading them to seek higher-paying jobs and potentially resulting in a decision to go out of contract. Currently, all pregnant migrant workers are covered by the Gender Equality in Employment Act. Factory workers and caregivers in caregiving institutions are also protected by the Labor Standards Act, enabling them to claim labor insurance. However, many migrant workers still have limited awareness and understanding of the relevant regulations and their rights.

4.4 Right to Justice

50.3	• access to legal aid for undocumented migrant workers;

Reply:

Replied by Rerum Novarum Center:

187. Currently, migrant workers who have gone out of contact can apply for legal aid through a special project. In cases where there are significant violations that impact residency rights, the prevailing practice often relies on court convictions as the basis for recognition.

50.4	• poor, uneven quality of interpretation services – across the public sector as a whole.

Reply:

Replied by Rerum Novarum Center:

188. The quality of interpretation services has suffered due to the lack of a consistent inspection system or certification method. Providers of education for interpreters remain largely within the realms of private or governmental training, often consisting of single-day courses lasting a few hours. Upon completion of these courses, participants receive a certificate without undergoing assessment or testing. This has led to a disparity in the skills of interpreters, making it challenging to ensure a standardized and controlled quality of interpretation services.

Replied by Judicial Reform Foundation:

189. The interpretation system in Taiwan is characterized by decentralization and lack of a standardized training, certification, and evaluation system. There is no defined

interpreter training system, and the existing systems lack unified standards. The official systems include two distinct special contract interpreter systems, such as the Ministry of the Interior's Interpreter Database and the court's special contract interpreter regulations, each with different qualification requirements. The Ministry of the Interior's Interpreter Database requires individuals to undergo training and exams conducted by government agencies, universities, or private organizations. Upon completion and certification, individuals can become interpreters. In contrast, the court's special contract interpreter regulations have stricter requirements and higher thresholds. Individuals must undergo a rigorous process, including written examinations and attending court classes covering topics like court procedures, legal knowledge, professional skills, ethics, and more. The eligible period of the certification in the court's database is only two years. A significant issue arises from the fact that the same person registered in different regions is considered different individuals in the databases, leading to a situation where about one-third of individuals listed in the interpreter database for a particular language are duplicates. This indicates a lack of detailed verification in the registration process and highlights the need for improvements in identity verification procedures within the databases.

190. Indeed, the interpretation system in Taiwan lacks a comprehensive legal framework. The existing interpreter regulations are scattered across various legal provisions, lacking an integrated and specialized legal framework. A search with the keyword “interpretation” in the National Legal Database constructed by the Ministry of Justice yields a total of 89 regulations related to interpretation. These regulations are formulated by different agencies, including the Judicial Yuan, prosecution agencies, the National Police Agency under the Ministry of the Interior, the National Immigration Agency under the Ministry of the Interior, and others. Most of these regulations take the form of "guidelines," “points," or "provisions," typically

pertaining to internal operational guidelines within their respective agencies. This scattering of interpreter regulations across various legal provisions highlights the absence of a consolidated and specialized legal framework for interpretation in Taiwan.

191. Furthermore, the differences in interpreter regulations and procedures between the courts and prosecution agencies contribute to challenges in criminal proceedings. In the context of criminal cases, starting from the initial police interrogation during the pre-investigation stage, to the later stages of prosecutor interrogation, and finally to the trial stage in court, different interpreter regulations may apply. This inconsistency in applicable regulations also implies variations in the personnel involved and the resources allocated. These discrepancies can create practical challenges in the execution of interpretation services and may potentially disadvantage foreign defendants in exercising their right to an effective defense.

6. Refugees and Asylum Seekers

57.	What is the status of the refugee bill that is currently being drafted by the government (Common Core Document para. 171)? Are there any more recent developments on the draft refugee act (Implementation Report, para. 121)?

Reply:

Replied by Taiwan Association for Human Rights:

192. The National Immigration Agency of the Ministry of the Interior provided a response during the January 2024 Executive Yuan meeting regarding the progress of the Refugee Act in line with the implementation of the National Human Rights Action Plan. It was stated, "We hope to submit the draft bill to the Executive Yuan in July of this year and anticipate submission to the Legislative Yuan in October. In terms of the legislative process, relevant government departments and non-governmental organizations will be invited to discuss and deliberate together."5 We anticipate the government will adhere to the proposed timeline and pass the Refugee Act by the end of this year. However, as the National Immigration Agency has yet to disclose the contents of the draft, civil society organizations have repeatedly requested collaborative drafting despite repeated declination from the National Immigration Agency on the grounds of the draft's incomplete status. In light of this, we urge the National Immigration Agency to promptly disclose the draft's content for joint discussion with relevant entities, allowing scrutiny to ensure its alignment with international human rights standards.

Replied by Covenants Watch:

193. Due to the unique relationship between Taiwan and China, Hong Kong, and Macau, even with the enactment of a refugee law in the future, asylum seekers from these

[5] January 23rd, 2014. National Human Rights Action Plan, Table of Second Review Meeting First Session with Civil Society Opinion p.43, https://reurl.cc/YVQZal

countries and regions cannot be treated as refugees in the sense of international human rights law. Therefore, until political issues with these areas are resolved, in addition to a refugee law, there must be corresponding provisions for protection, placement and resettlement in the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, the Act Governing Relations with Hong Kong and Macau, as well as the Immigration and Emigration Act.

58.	How many asylum requests have been received by the government of Taiwan in recent years? How many have been accepted or rejected, respectively? (Implementation Report, para. 122)

Reply:

Replied by Taiwan Association for Human Rights:

194. In recent years, our organization has received varying numbers of petitions in light of significant international conflicts. Upon receiving these petitions, the organization issues official documents to the National Immigration Agency explaining the circumstances of individuals facing persecution and their needs for seeking asylum, applying for residency, or extending their residence permits. Among these cases are participants in the "Gulen Movement" in Turkey, asylum seekers from Afghanistan following the Taliban's takeover, individuals seeking refuge from Ukraine after the outbreak of the Russo-Ukrainian War, those seeking asylum in Ethiopia's Tigray region due to persecution based on ethnicity or conflict impact, and individuals from various regions seeking refuge due to persecution based on religion, gender, or sexual orientation. However, the National Immigration Agency often rejects their requests for residency or extension of residence permits, quoting limitations of existing laws. Furthermore, the Agency consistently avoids directly addressing their pleas for asylum.

195. In previous years, due to a lack of relevant legal frameworks and standard procedures for processing asylum cases, the vast majority of government agencies did not accept asylum applications. However, with the amendment of the "Immigration Act" last year, after negotiations between Legislator Hung Sun-han and various ministries, the National Immigration Agency pledged to issue "Temporary Alien Registration Certificates" through special procedures. This would provide individuals seeking asylum in Taiwan with an "assumed resident status." After a thorough review, these individuals might have the opportunity to enjoy rights such as working, studying, and participating in social insurance programs. Since June 2023, our organization has assisted 12 individuals from Myanmar and 1 individual from Mali in applying for this special program. Currently, all cases are still in the review stage, and none have received the outcome of their special application yet.

196. In the response provided, the National Immigration Agency acknowledges the only asylum seeking case it has accepted. While the agency did accept the asylum request, the assistance provided was legally limited. Although the individual was recognized by the Taiwanese government as having clear evidence of persecution, the support extended was constrained by legal restrictions. The individual was informally notified of being granted "deferred deportation" and deemed to have "no legal residency status," while allowing them to stay in Taiwan. Despite this recognition, they have been stranded in Taiwan for seven years without legal residency, thereby lacking essential rights such as the right to residence, employment, and health, leading to a dependence on support from non-governmental organizations and facing challenges in self-sustainability. The investigation results from the Control Yuan also indicate that there is a lack of concrete living and care mechanisms based on the non-refoulement principle in Taiwan. It suggests that the State falls short in

fulfilling its obligations to align with the non-refoulement principle as a signatory under the International Covenant on Civil and Political Rights.

Replied by Covenants Watch:

197. Currently, the Taiwanese government handles the residency status of Tibetans entering Taiwan from India and Nepal under Article 16 of the Immigration and Emigration Act. The eligibility criteria include: the individual must have enterred Taiwan before June 29, 2016, be a "stateless person" from the regions of India and Nepal, be certified as a Tibetan, and be unable to leave the country.

198. However, in recent cases of Tibetans applying for residency in Taiwan, we have observed that the administrative authorities overlook the fact that Tibetans are forced to exile abroad, resulting in their entry into Taiwan by using “fraudulent passports”. Simultaneously, they arbitrarily determine the status of statelessness. In several dozen cases handled by non-governmental organizations (HRNTT, TAHR and Covenants Watch), each person has entered Taiwan by purchasing or using fake Nepalese or Indian passports, with similar circumstances. Additionally, through voluntary surrender, they had received prosecutorial decisions of suspension or non-prosecution of passport fraud. Surprisingly, the decisive factor in determining their eligibility to reside in Taiwan was whether the "fake passport" was still valid for leaving the country, without considering the potential threats to the individuals' life and personal safety if deported due to their religious beliefs or Tibetan identity.

199. In the judicial litigation process, the Supreme Administrative Court has misinterpreted the principle of non-refoulement, been reluctant to investigate specific evidence presented by the individuals, resulting in five Tibetans facing deportation as they have exhausted domestic judicial remedies. Some of these individuals fled China to escape religious persecution and seek freedom from fear,

entering Taiwan through Nepal as Tibetan Buddhist monks, nuns, or ordinary Tibetans. There are also second-generation Tibetan refugees who have been living in Taiwan for over 10 years, who were born in India but unable to obtain legal citizenship of India. In these cases, both administrative and judicial authorities of the Taiwanese government have violated international human rights principles regarding the protection of the status of refugees and stateless persons.

59.	In the current absence of a Refugee Act, the Review Committee is concerned about the visa requirements for stateless Tibetan students requiring them to leave and re-enter Taiwan every six months, "imposing enormous stress and a heavy financial burden" according to the NHRC (para. 94), and an alternative to this procedure should be identified.

Reply:

Replied by Taiwan Association for Human Rights:

200. Currently, stateless Tibetan students often come to Taiwan for the purpose of studying Chinese at language centers, making it challenging for them to directly apply to Taiwanese academic institutions or research units. If stateless Tibetans wish to pursue education in Taiwan, they must follow the regulations outlined in Article 23, Paragraph 4 of the "Immigration Act," which was amended and implemented on January 1, 2024. According to this provision, they must first enter Taiwan with a temporary visa, study at a Mandarin teaching institution affiliated with a Ministry of Education-approved tertiary institution for at least four months, and then continue their registration for an additional three months before being eligible to apply for residency with the National Immigration Agency. However, the conditions for applying for residency as stipulated by the Act remain stringent. To address the fundamental issues faced by stateless Tibetan students in applying for education and

residency, it is recommended to directly amend the discriminatory procedures outlined in the "Procedures for Applying for Temporary Visas for Nationals of Designated Countries Coming to Taiwan."[6]

Jointly replied by Human Rights Network for Tibet and Taiwan and Covenants Watch:

201. According to the Regulations for International Students Studying in Taiwan, non-Taiwanese individuals coming to Taiwan for study must possess foreign nationality. However, the largest group of Tibetan refugees, who reside primarily in India, usually only holds an Identity Certificate (IC) and Registration Certificate (RC) issued by the Indian government. This does not meet the requirement for foreign nationality as stipulated in the aforementioned regulations. We urge the Taiwanese government to either broadly interpret foreign nationality to include individuals without Taiwanese nationality, thereby encompassing stateless persons, or to amend the regulations to ensure that Tibetan students, like students of other nationalities, have an equal opportunity to pursue academic degrees in Taiwan.

60.	Covenants Watch states that the "deferred forced deportation" status does not protect refugees from countries, such as Myanmar, Ukraine and Afghanistan, against deportation in violation of the principle of non-refoulement. Which actions is Taiwan taking to regularize the residence status of refugees who are not allowed to be deported?

Reply:

Replied by Taiwan Association for Human Rights:

202. In the last year, to our knowledge, four asylum seekers had been deported:

[6] "Procedures for Applying for Temporary Visas for Nationals of Designated Countries Coming to Taiwan." https://reurl.cc/M4Gqxv

(1) Last August (2023), our organization received a petition from an Indian asylum seeker. The individual asserted that returning to their place of origin , Manipur in India, would expose them to cruel and inhumane treatment. They hoped to submit an asylum request at the border. However, due to the absence of a designated competent authority for processing asylum applications at the border, the individual was deported on the evening of their arrival, with the reason cited being incomplete visa documentation. This occurred without any verification by the National Immigration Agency and the Border Affairs Corps.

(2) On January 30, 2024, three Chinese dissidents claiming to possess United Nations Temporary Refugee Identification arrived in Taiwan while in transit from Malaysia. During the transit, they refused to continue their journey, expressing their intention to stay temporarily in Taiwan until obtaining political asylum from a third country. Despite their plea, both the National Immigration Agency and the Border Affairs Corps did not respond to their asylum request. Without conducting verifications and citing the lack of a valid visa or permission to enter Taiwan, the three individuals were deported to Malaysia the morning after their arrival.[7]

203. In its response, the National Immigration Agency stated that its approach would be to assist the individuals in transferring to a third country. However, due to Taiwan's unique international political status and past experiences with both private and official channels, establishing connections with international refugee-related organizations has proven difficult. There is no publicly known government-assisted experience in transferring individuals, and sporadic successful cases typically involve the individual's own personal network resources. When inquiring about how the National Immigration Agency and the Ministry of Foreign Affairs would assist

[7] Taiwan Deports 3 Chinese Dissidents Seeking Asylum in Third Country，https://reurl.cc/j3O2yp

individuals in the transfer process, the response received was that they would provide information on refugee protection in a third country for the individuals to independently inquire about and contact, rather than establishing a formal referral channel.

204. The National Immigration Agency stated in its response that when individuals are awaiting transfer, they will issue a "Temporary Alien Registration Certificate" to them through a special project. After the Registration Certificate is issued, relevant authorities will, based on individual needs, lawfully provide project permits allowing the individuals awaiting transfer to work (or exempt them from applying for a permit), enroll in health insurance, and pursue educational measures. Based on our organization's experience in assisting with cases applying for this project, the following issues have been identified that may impact the rights of the aforementioned individuals:

(1) Entering the project does not provide asylum seekers with written proof of their participation in the project. There is no issuance of interim stay or residence permits during the waiting period for the review results. Additionally, there is a lack of provisions for living assistance. This leads to increased days of stay for applicants without valid documents. If subjected to inspection by police or Immigration Agency personnel unaware of the project, applicants may face arrest or detention. If local law enforcement does not properly synchronize its information with central competent authorities, there is even a risk of deportation for applicants.

(2) The project lacks a concrete legal basis, execution details, review standards, timelines, and remedial procedures. This lack of clarity may result in fluctuating review standards. Additionally, if there is a change in Taiwan's political situation, such as a party rotation, the absence of clear legal authorization cannot

guarantee the continuation of this project. The lack of explicit regulations for review timelines has resulted in cases being under investigation for over six months without an outcome. Additionally, there are no clear specifications for remedial procedures after the project's results are announced.

(3) There is a lack of a budget allocation for hiring interpreters and qualified translation personnel. The budgetary documentation provided by the National Immigration Agency does not include an allocation for this project.[8] Personnel responsible for conducting case interviews at Immigration Service Stations have expressed difficulty in securing additional funding to hire trained interpreters. Currently, the only available option is for NGOs to independently hire interpreters to prevent any infringement on the rights of the applicants during their statements.

(4) There are insufficient training resources for relevant personnel. Currently, the government has not established requirements for personnel to annually undertake courses on relevant international human rights conventions, interview skills, and other necessary knowledge. Additionally, there is a lack of external supervision and oversight mechanisms, making it challenging to ensure that personnel conducting interviews and reviews have the professional competence to handle asylum cases.

(5) After approval via this project, individuals can only obtain a "Temporary Alien Registration Certificate" that needs to be renewed annually. This certificate only provides temporary legal status for individuals during the waiting and transfer period. It is currently unclear whether this certificate can further serve as a mechanism to transition t residency or permanent residency in Taiwan.

[8] Budget for National Immigration Agency of the Ministry of the Interior, fiscal year of 2024. https://reurl.cc/g4EVLR