

**Review of the Third Reports of the Government of Taiwan
on the Implementation of the International Human Rights Covenants**

**Concluding Observations and Recommendations adopted by the
International Review Committee
Taipei, 13 May 2022**

A. INTRODUCTION

1. In 2009, the President of Taiwan announced the ratification, as a matter of domestic law, of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The act to implement the two Covenants also provided that a reporting system would be created to monitor the Government's compliance with the obligations it has undertaken. Initially, the review process was organised by the Office of the President. In 2020, that responsibility passed to the Executive Yuan.

2. In 2011, the Government initiated the process of preparing detailed initial reports on the rights contained in both Covenants, and in 2013, an independent Review Committee from ten different countries was invited to review these reports in light of information from all available sources, and especially civil society. The Committee consisted of the following ten independent experts, working in their personal capacities: Philip Alston, Nisuke Ando, Virginia Bonoan-Dandan, Theodor van Boven, Jerome Cohen, Shanthi Dairiam, Asma Jahangir, Manfred Nowak, Eibe Riedel and Heisoo Shin. On 1 March 2013, the group adopted a set of Concluding Observations and Recommendations.

3. In 2016, the Government prepared a detailed Response to the Concluding Observations and Recommendations, along with Second Reports on both Covenants and a Common Core Document forming part of the Reports. On the invitation of the Government these reports were subjected to review in Taipei from 16 to 20 January 2017 by a Review Committee consisting of the following ten independent experts, working in their personal capacities: Virginia Bonoan-Dandan, Jerome Cohen, Shanthi Dairiam, Miloon Kothari, Jannie Lasimbang, Peer Lorenzen, Manfred Nowak, Eibe Riedel, Sima Samar and Heisoo Shin. The Committee divided itself into two groups, one dealing with the ICCPR, chaired by Manfred Nowak, and one with the ICESCR, chaired by Eibe Riedel. On 20 January 2017, the Review Committee adopted a second set of Concluding Observations and Recommendations.

4. In June 2020, the Government prepared a detailed Response to the 2017 Concluding Observations and Recommendations, along with Third Reports on both Covenants and a Common Core Document forming part of the Reports. Because of travel restrictions related to the COVID-19 pandemic, the invitation to a review in Taipei had to be postponed on several occasions. From 9 to 13 May 2022, the reports were subjected to review in Taipei by a Review Committee consisting of the following nine independent experts, working in their personal capacities: Virginia Bonoan-Dandan, Shanthi Dairiam, Peer Lorenzen, Rosslyn Noonan, Manfred Nowak, Eibe Riedel, William Schabas, Heisoo Shin and Rukka Sombolinggi. Miloon Kothari participated in the preparatory work but did not attend the Review. The Committee divided itself into two groups, one dealing with the ICCPR, chaired by Manfred Nowak, and one with the ICESCR, chaired by Eibe Riedel. On 13 May 2022, the Review Committee adopted a third set of Concluding Observations and Recommendations.

5. As it did during the first and second review, the Review Committee followed established international monitoring procedures in all relevant respects and applied the accepted international legal interpretations of the relevant rights. Its work involved no comparison with the situation prevailing in other countries, and these concluding observations focus solely on the situation in Taiwan.

6. The Review Committee expresses its appreciation that the Government and the people of Taiwan continue to demonstrate their exemplary commitment to the process of monitoring compliance with the relevant human rights obligations. The Government has again provided valuable and detailed reports and relevant updates and additional information following the pandemic-related postponements of the review, and has engaged in a highly constructive manner with the Committee. Each of the sessions held over a period of three days (from 9 to 11 May 2022) was attended by a large number of Government officials, representing relevant departments of the Executive Yuan, the Judicial Yuan, the Control Yuan, including the National Human Rights Commission, and the Examination Yuan. The proceedings were interpreted into Chinese, English and sign language, webcast live and followed closely by civil society. The Committee is especially grateful to the Minister of Justice, Ching-hsiang Tsai, to the Deputy Minister of Justice, Ming-Tang Chen, to the Deputy Minister of Health and Welfare, Li-Feng Lee, to the Deputy Minister of the Interior, Chang-yueh Chiu, to the Director of the Department of Legal System in the Ministry of Justice, Yu-Yuan Huang, and to Public Prosecutor Tsui-Hua Hsu and her team of colleagues from the Ministry of Justice for their highly efficient and helpful coordination of the overall endeavour.

7. The Review Committee commends the very active engagement of a wide range of civil society groups in all aspects of the review process. The Committee also received a large number of detailed parallel reports and supplementary information, and held focused hearings to enable non-governmental organisations (NGOs) to provide inputs into the process. The response was remarkable and enabled the Committee to develop a deeper understanding of many complex issues.

8. The Review Committee wishes to underscore that these Concluding Observations and Recommendations do not deal with all of the very large number of issues presented to it. As this is an ongoing process, the Committee put particular focus on assessing the progress achieved in implementing its first and second set of recommendations from 2013 and 2017. It considers that the value of the overall process goes far beyond what is contained in these Concluding Observations and Recommendations.

9. Finally, the Review Committee emphasises again that the purpose of the Concluding Observations and Recommendations is primarily to identify areas in which the Government should consider further measures in order to promote full compliance with its obligations. The observations do not, therefore, provide any systematic recognition of the many positive achievements that have occurred in recent years, including the nine years under review. The Committee is, however, deeply impressed by the dramatic progress that has been made since 1987, when Taiwan began to emerge from a long and dark period of martial law. With respect to the recent period under review, the Committee wishes to note that, despite major progress achieved in some areas, such as the legalisation of same-sex marriage, the abolition of the crime of adultery and the establishment of a National Human Rights Commission, other important developments envisaged by the Government, above all the abolition of capital punishment and the protection of the rights of Indigenous Peoples, have failed to materialise. It therefore encourages the Government under President Tsai Ing-wen to take a more proactive approach to the full implementation of international human rights law.

B. GENERAL ISSUES

National Human Rights Institution

10. In 2013 and 2017, the Review Committee recommended the establishment of an independent national human rights commission in accordance with the Paris Principles (1993) as a priority objective. The Committee strongly commends the Government of Taiwan for successfully implementing this recommendation by establishing the National Human Rights Commission (NHRC) within the Control Yuan which became operational on 1 August 2020. The Commission is chaired by the President of the Control Yuan, Chu Chen, and consists of seven additional members of the Control Yuan who specialise in human rights protection, and two other members who are renowned in the field of human rights or are from non-governmental organisations involved in human rights protection, appointed annually by the President of the Control Yuan.

11. The Review Committee welcomes the fact that the NHRC immediately assumed its monitoring function, submitting an Independent Opinion on the Third National Report in December 2020, and actively participating in consultations with the Committee on 9 May 2022. The Committee appreciated the reports provided and the opportunity to engage with the NHRC Chairperson and commissioners.

12. The Review Committee strongly recommends that the NHRC builds the trust and respect of the people of Taiwan by identifying the most pressing human rights issues, reporting and speaking out publicly on them; dealing with complaints of human rights violations; advising the Executive Yuan and the Legislative Yuan on the relevant international human rights standards and their incorporation in legislation and making that advice public; engaging at the grass roots with the communities most marginalised and disadvantaged, including in close cooperation with civil society organisations; and reviewing persistent, long-standing individual claims of human rights violations.

13. The Review Committee encourages the NHRC to develop a relationship with the Global Alliance of National Human Rights Institutions (GANHRI). It should also request the Asia Pacific Forum of National Human Rights Institutions (APF) to assist it to undergo, before the next review, an accreditation process evaluating its compliance with the Paris Principles, similar to that of the Global Alliance of National Human Rights Institutions Sub-Committee on Accreditation (GANHRI-SCA).

United Nations Core Human Rights Treaties

14. The Review Committee once more warmly welcomes Taiwan's acceptance, without reservations, of the obligations contained in six of the core human rights treaties of the United Nations (UN): the two Covenants (ICCPR and ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD).

15. In this spirit, the Review Committee again wishes to encourage the Government to accelerate its efforts to also accept the remaining three core human rights treaties: the Convention against Torture including its Optional Protocol (CAT, OPCAT), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their

Families (CMW) and the Convention for the Protection of all Persons from Enforced Disappearance (CED). This will ensure full coverage of the core international human rights framework.

16. With regard to the two Covenants, the Review Committee wishes to commend the ongoing efforts of the Executive Yuan, the Legislative Yuan, the Judicial Yuan and the Control Yuan to bring domestic law into compliance with the respective rights and obligations. However, the Committee notes the importance of greater clarity about the status of the Covenants to the extent that there are conflicts with either pre-existing or subsequent legislation. It stresses the priority that should be given to the Covenants as the two most important human rights treaties of the United Nations. The Committee reiterates its recommendation that the Covenants be deemed part of the Constitution of Taiwan. It further encourages the Government to strengthen the process of domestic implementation of the Covenants and the other core UN human rights treaties.

17. In addition to the core UN human rights treaties, Taiwan should also consider the ratification of other universal human rights treaties, such as the 1951 Convention on the Status of Refugees and its Protocol. The Committee also recommends that Taiwan recognise the jurisdiction of the International Criminal Court by making a declaration in accordance with article 12(3) of the Rome Statute of the International Criminal Court that applies retroactively to 1 July 2002 and that is without temporal limit for the future.

National Human Rights Action Plan

18. The Review Committee commends the Government for the adoption of the first National Human Rights Action Plan from 2022 to 2024, providing guidelines and proposing specific goals and actions to implement the human rights obligations under the two Covenants and previous recommendations of the Review Committee. Some of the human rights concerns highlighted in the previous Concluding Observations and Recommendations are taken into consideration in the National Action Plan, including a commitment to strengthen the human rights protection system, human rights education, equality and non-discrimination, the right to life, housing justice, and refugee rights protection.

19. While commending the Government for adopting the National Action Plan on 1 May 2022, the Committee is concerned about information it received that consultations were not adequate, and in particular, that there was not enough representation of human rights NGOs or of various disadvantaged and marginalised social groups. The Committee is also concerned that the section on implementation, monitoring and evaluation of the Plan is only aspirational and not concrete.

20. The Committee recommends that the consultation process for future National Action Plans be inclusive, transparent and participatory for all sectors of society, including in particular human rights NGOs and disadvantaged and marginalised groups. The Committee also recommends that the Government adopt a concrete annual plan to implement, monitor and evaluate the National Action Plan, with the full and equal participation of civil society.

Equality of all Human Rights

21. During the review, the Committee was pleased to receive considerably more detailed information and analysis of the status of economic, social and cultural rights in Taiwan than in the written documents. The Committee urges the Government to deal more comprehensively with economic, social and cultural rights in its next reports.

Development Cooperation

22. While congratulating Taiwan for progressing from a recipient country to a donor country in a short period of time, the Review Committee is concerned that Taiwanese Official Development Assistance (ODA) is below the internationally committed level of 0.7% of gross national income.

23. The Review Committee recommends that the Government develop an annual plan to increase its ODA to meet the international commitment. The Committee also recommends that human rights impact assessments be conducted more systematically before ODA is granted.

Business and Human Rights

24. While welcoming the adoption of the National Action Plan on Business and Human Rights, the Review Committee is concerned that there is no legislation that requires business entities to abide by international human rights standards. In addition, despite the Regulations Governing the Management of Corporate Foreign Investments, in the case of massive water pollution in 2016 in Central Vietnam by Formosa Ha Tinh Steel Corporation, the Vietnamese victims are still not compensated at all.

25. The Review Committee recommends that the Government enact legislation which regulates the activities of all business companies, operating at home and abroad, as well as foreign businesses in Taiwan, abide by human rights obligations throughout their supply chains, including redress and remedies. The Committee recommends that the Government undertake wide, open and participatory consultations with all stakeholders including civil society and human rights and environmental NGOs in this process of developing and adopting legislation on business and human rights. The Committee also recommends that the Government immediately establish a national contact point and make it accessible to all victims whose rights have been violated by Taiwanese businesses operating at home and abroad, as well as foreign businesses in Taiwan. The Committee further recommends that the Government seek ways to ensure that the victims of violations by Formosa Ha Tinh Steel Corporation are adequately compensated.

Equality and Non-Discrimination

26. There does not seem to have been much progress on the enactment of a comprehensive anti-discrimination law since the previous review, nor is there evidence of a draft law. There has not been consultation with NGOs but hearings on the law are being held. Current anti-discrimination provisions can be found scattered through laws on employment, gender equality and disability. The Government has not made efforts to harmonise or coordinate how different sectors deal with discrimination. In addition, the current provisions do not impose strong

obligations on the Government and the private sector, fail to demand positive measures and are lacking remedial procedures.

27. The Review Committee is also concerned that administrative agencies and judges often do not have an adequate understanding of various forms of discrimination and the approaches for their elimination.

28. The Review Committee is concerned that the existing legislation on equality does not cover all social groups who are victims of discrimination in their enjoyment of economic, social and cultural rights, including married immigrants, migrant workers, HIV/AIDS-infected persons and intersex persons. Although LGBTI persons enjoy some protection from the Gender Equity Education Act and the Gender Equality Employment Act in schools and workplaces, these are not applied in other contexts. The Committee expresses its concern that anti-discrimination clauses are still scattered in several acts, and that there is no comprehensive anti-discrimination legislation covering all grounds of discrimination in all contexts.

29. The Review Committee recommends the enactment of a comprehensive anti-discrimination law without further delay and within a definite timeline. The law should bind both private and public sectors and private individuals. There should be a clear definition that includes direct and indirect discrimination and imposes the implementation of positive measures to eliminate neutrality in the law that may have the effect of discriminating against disadvantaged groups, including women. The anti-discrimination law must also further address dimensions of gender equality and provide the mandate for positive measures for gender mainstreaming and gender budgeting. In parallel, the Government should take steps to ensure that there is capacity building of all agencies to have an adequate understanding of direct and indirect discrimination according to the interpretation of the relevant treaty bodies.

Terminology and Translation

30. The Review Committee expresses its concern that confusion is created by the incorrect translations of certain terms from English to Chinese and Chinese to English, such as equality and gender diversity. In particular, the Committee is concerned that the Chinese term ‘平等’ is translated as both equality and equity, as shown in the Gender Equality Employment Act and the Gender Equity Education Act. Also, the Committee is concerned that gender diversity is translated as ‘multiple sex’, which is not correctly conveying the meaning of diverse gender.

31. The Committee recommends that the Government solve this problem by only using the term ‘equality’, changing the English title of the Gender Equity Education Act by replacing ‘equity’ with ‘equality’ and applying the correct translation for gender diversity and other terminology involving gender. The Committee recommends that the correct terms and their meanings are commonly understood by government agencies, media and the general public.

Domestic Violence

32. In its 2017 review, the Committee had recommended that while there were several initiatives to address domestic violence in Taiwan, it was necessary to have a comprehensive national action plan consolidating the various initiatives. The Committee strongly reiterates its previous recommendation to develop a comprehensive national action plan on domestic

violence based on an impact assessment of the various existing initiatives and adopting a multidisciplinary and multi-sectoral approach.

Digital and Online Sex and Gender-Based Crimes

33. While acknowledging the National Human Rights Commission's recognition of the seriousness of digital and online sex and gender-based crimes and other human rights violations, and the Government's plan to amend the related laws to increase the levels of punishment and protection, the Review Committee is concerned that illegal sexual audio-visual material and hate crimes are not easily eliminated from the digital or cyberspace, and victims continue to suffer.

34. The Review Committee recommends that the Government expedite its efforts to take all necessary legislative, administrative, financial, educational and other measures to effectively deal with digital and online sex and gender-based human rights violations. The Committee also recommends that victims are provided with adequate compensation and prompt redress, including the complete deletion of audio-visual material from the digital or cyberspace to prevent repeated violations.

Gender Pay Gap

35. The Review Committee recommends that the Government increase its efforts to provide accurate data on the gender pay gap based upon International Labour Organization (ILO) standards. The Committee is concerned about the gender stereotyping and the vertical and horizontal job segregation at the root of the gender pay gap. The Government should further reduce and close the gender pay gap, by eliminating the horizontal and vertical job segregation by gender and by recognising equal pay for work of equal value.

Rights of Indigenous Peoples

36. The Review Committee is concerned that land grabbing of indigenous land without free, prior and informed consent continues to take place in Taiwan. Reports from Indigenous Peoples' organisations and NGOs show the absence of adequate and inclusive procedures in obtaining free, prior and informed consent. This violates the right to self-determination under article 1 of both Covenants, as well as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Without further delay, the Government should review and revise, in cooperation with Indigenous Peoples, the existing mechanisms to obtain free, prior and informed consent in the conceptualising and planning phases of development projects and programmes that affect them. The mechanisms shall include procedures to ensure reparation and return of the land to Indigenous Peoples where necessary.

37. The Review Committee calls on the Government to provide remedies for Indigenous Peoples affected by the storage or disposal of nuclear waste and other hazardous materials on Indigenous Peoples' lands or territories, in compliance with article 29 UNDRIP. A remedy should also be provided to the Tao Peoples in Lanyu with a concrete timetable for the complete removal of nuclear waste and rehabilitation of the environment.

38. The Review Committee remains concerned about the delay in recognition of the status of the Ping Pu Peoples. The current classification of Indigenous Peoples into three categories, of mountain peoples, plain peoples and Ping Pu Peoples, partly a legacy of the Japanese colonial period, does not correspond to the present situation of the 16 recognised Indigenous Peoples. Indigenous Peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. They have the right to determine their own identity in accordance with the Covenants and UNDRIP.

39. The Review Committee notes the establishment of the Council of Indigenous Peoples, but urges the Government to ensure genuine representation of all Indigenous Peoples based on transparent nomination and selection procedures which respect Indigenous Peoples' decision-making processes.

40. The Review Committee recommends the amendment of the Constitution and the Indigenous Peoples Basic Law in line with the two Covenants and UNDRIP. As part of this process, the Government should conduct a national inquiry leading to the development of a National Strategy on Indigenous Peoples in cooperation with them. In addition, the participation of non-recognised peoples, such as the Ping Pu, should be ensured.

41. The Review Committee recognises the efforts that have been made in preserving the culture and languages of the Indigenous Peoples of Taiwan. It encourages the Government to further strengthen the policies, strategies and programmes aimed at promoting and protecting the culture and languages of the Indigenous Peoples.

C. SPECIFIC ISSUES RELATING TO THE ICESCR

Right to Work and Rights in Work (Articles 6 and 7)

Household Foreign Workers

42. In the 2017 Concluding Observations and Recommendations, the Review Committee requested a 'detailed account of the progress achieved' on the passage of the Domestic Workers Protection Act. The Committee notes, however, that no progress has been achieved on the legislation and that it is the position of the Government that such legislation is not required. Instead, the Government reported at the review on some incremental steps taken to better protect household foreign workers from exploitation and abuse. The Committee acknowledges the improvements that have been made but they fall well short of ensuring equality of treatment between foreign and national household workers.

43. Both the National Human Rights Commission and NGOs expressed serious concerns about the continuing vulnerability of household foreign workers to human rights violations and the ongoing discrimination they face. The Committee does not agree with the Government's claim that the Labour Standards Act regulations are not applicable due to the nature of their work.

44. The Review Committee recommends that the Government incorporate ILO Convention No. 189 on Domestic Workers into domestic law to provide robust legal protections for domestic workers; take immediate steps to close the pay gap between national and foreign household workers, including by subsidising those families or individuals for whom home-based

caregiving is essential; and include foreign domestic care workers in the development of the Government's promised long-term care plan.

Foreign Fishers in Taiwanese Fishing Vessels

45. The Review Committee acknowledges the work that is being done to investigate and improve the working conditions of foreign fishers on vessels flying the Taiwanese flag. In the context of conflicting reports, however, it is difficult to determine the actual working conditions and what improvements, if any, have been made.

46. The Review Committee recommends that the Government closely monitor the situation and urgently adopt and implement effective measures such as those contained in the Action Plan developed by the Fisheries Agency.

Social Security (Article 9)

47. While recognising the information from the Government that at the end of 2021, 9.21% of the total population in Taiwan were given cash benefits, the Review Committee is concerned that the system is based on household registration and might create a vacuum where a person in need is not properly registered. The Committee is also concerned that the social assistance system is not providing adequate long-term care for persons with disabilities, putting an unduly heavy burden on families, in particular on the women.

48. The Review Committee recommends that all persons in need, in particular those who do not have the household registration at the place of residence, are provided with adequate social assistance. The Committee also recommends that the Government provides increased personal assistance services for the long-term care for persons with disabilities.

Family Protection and Assistance (Article 10)

49. The Review Committee is concerned about the information that women spend three times more time on carrying out family responsibilities than men. In addition, the Committee is concerned that although both parents can take parental leave, only a small percentage of fathers do so.

50. The Review Committee recommends that the Government take measures to create a workplace structure and environment for both men and women to balance their work-family life, with a view to eliminating gender stereotypes. The Committee further recommends that the Government consider the option of additional parental leave reserved exclusively for fathers. The Committee recommends that the Government take all necessary measures to eliminate gender stereotypes and to encourage equal sharing of responsibilities between men and women in the family and in society.

Right to Housing and Land (Article 11)

51. Secure, healthy, affordable and accessible housing is central to the right to an adequate standard of living. In 2017, the Review Committee expressed grave concern about adequacy of

supply, evictions and land dispossession. It recommended a series of actions to better provide for the right to adequate housing in line with international human rights commitments, including a focus on ensuring security of tenure and protection against displacement and evictions. The Committee reiterates the significance of those recommendations.

52. The Review Committee is appreciative of the detailed report from the Government on its actions to increase social housing supply by 200,000 units over eight years; and other policies to support disadvantaged families in accessing housing. While welcoming the social housing programme, the Committee remains concerned that there is no comprehensive database that establishes the number of people who are informal settlers or homeless, making it difficult to assess the impact of the 200,000 units in reducing homelessness and deficient housing. The Committee recommends the establishment of an effective database providing reliable population figures on informal settlements on central and local government and private land.

53. In view of conflicting information from the Government and civil society concerning forced evictions, the Review Committee recommends that the National Human Rights Commission conduct a national inquiry into systemic eviction and displacement, including the consultation processes, the various cases that have been presented to the Review Committee, and the issue of civil lawsuits against informal settlers; with the relevant international human rights standards and supporting guidelines (e.g., CESCR General Observation No. 7) specified as the basis for the inquiry in the terms of reference.

Right to Health (Article 12)

Mental Health

54. The Review Committee is concerned that in Taiwan mental health issues have been treated primarily with a psycho-medical approach, focusing on suicide prevention and interventions in persons with mental conditions.

55. The Review Committee recommends that a more comprehensive approach be taken, such as health promotion through education on mental health, based on the World Health Organization (WHO) guidelines and reports of the UN Special Rapporteur on the right to health.

56. The Review Committee also recommends the development of indicators and benchmarks to measure the realisation of the right to mental health. It recommends that additional statistical data besides diagnoses and hospitalisation of mental illnesses be developed, disaggregated by sex, age, ethnicity and other relevant criteria, on an annual basis, so that improvements or failings can be assessed and evaluated more clearly.

Health of Indigenous Peoples

57. The Review Committee encourages the Government to expedite the adoption of the Draft Health of Indigenous Peoples Act, and to ensure equal access to healthcare and medical resources for Indigenous Peoples. The Committee refers the Government to the CESCR General Comment No. 21 and UNDRIP.

COVID-19 Pandemic

58. The Review Committee appreciates the considerable efforts that Taiwan has taken to combat the COVID-19 pandemic and the Omicron variant. It notes that the necessary health safety aspect for all must be balanced against human rights and freedoms of individuals and groups, as guaranteed in both Covenants. In this process, states should consider a more careful application of the principle of proportionality and the standard of reasonableness.

59. The Committee recommends that the Government undertake a review of the extent to which decisions taken during this COVID-19 pandemic appropriately applied the principle of proportionality and the standard of reasonableness when making decisions that impacted human rights and freedoms of individuals and groups.

60. The Committee suggests that the Government identify any groups adversely and disproportionately affected by those decisions and put in place measures to ensure that the disadvantages are properly compensated and do not persist.

Sexual and Reproductive Health

61. The Review Committee is concerned about the phenomenon of teenage pregnancies, including a trend of decreasing age of the mothers. It recommends that the Government take all appropriate measures to ensure that teenage mothers continue their education. The Committee further recommends that sex and relationship education, which is evidence-based, scientifically correct and age-appropriate, is provided for all adolescents and the general public.

Right to Education (Article 13)

Education of Children and Young People with Disabilities

62. While acknowledging the Government's policies and initiatives to ensure children and young people with disabilities enjoy their equal right to education; and noting the Government's statement that there is still more to be done to achieve substantive equality for them, the Review Committee is concerned that resource constraints are the main barrier to more inclusive education.

63. The Committee recommends that while maintaining a range of options to meet the educational needs of children and young people with disabilities, the priority should be on greater resourcing to progressively enable more children and young people with disabilities to have access to inclusive education.

Human Rights Education

64. Despite the fact that detailed attention has been given to human rights education in schools, problems remain. Presently there is no well-planned curriculum that would differentiate the development of human rights education, beginning from the lower levels to high school to collegiate level.

65. The Committee strongly recommends a more systematic approach be devoted to curriculum planning for human rights education. For example, the Universal Declaration of Human Rights and both Covenants should be the starting point of all human rights education curricula.

66. The Committee recommends that the National Human Rights Commission take on a leading role in the design and implementation of human rights education at all levels.

D. SPECIFIC ISSUES RELATING TO THE ICCPR

Death Penalty (Articles 6 and 7)

67. Since the review process began in 2013, the number of death sentences and executions has declined. This development mirrors similar changes in several other countries that retain use of the death penalty and is consistent with a global trend.

68. Nevertheless, it is profoundly unsatisfactory that the Government has yet to impose an official moratorium on the death penalty. The Review Committee is extremely disappointed at the failure of the Government to take this step, despite the Committee's recommendations in 2013 and 2017. Taiwan has the potential to become the Asian standard bearer in the recognition and enforcement of international human rights, but it will never achieve this as long as capital punishment remains an element of its criminal justice system.

69. In December 2020, reiterating declarations that it had made for more than a decade, the United Nations General Assembly called upon all states to establish a moratorium on executions with a view to abolishing the death penalty. The explanations that were provided to the Committee for the failure to establish a moratorium are inadequate and unconvincing. The Government suggested that changes in public opinion were required yet it provided no evidence of any efforts to promote such changes.

70. While public opinion should not be ignored, it cannot serve as an obstacle to changes in law and practice that are dictated by the protection of human dignity and the rights set out in articles 6 and 7 of the ICCPR. In this respect, the Committee recalls General Comment No. 36 of the Human Rights Committee, adopted in 2018, that points to the growing recognition that capital punishment constitutes a form of cruel, inhuman or degrading punishment.

71. The Government also claimed that studies of alternatives to the death penalty were necessary before it could proceed with abolition. The Committee considers this to be a feeble rationale for the Government's inaction. The alternatives are well known and have already been thoroughly studied by specialists.

72. The Committee strongly recommends that the Executive Yuan immediately declare a moratorium on executions. The Minister of Justice should no longer sign execution orders. All death sentences should be commuted immediately. Prosecutors should no longer seek the death penalty in ongoing and future prosecutions. The President should refuse to authorise executions and, where appropriate in cases where convictions in capital cases are unsafe, for example because there is evidence that confessions and other evidence has been obtained through torture, exercise the prerogative of pardon. In particular, pardon should be granted to Chiou Ho-shun who has served 33 years on death row.

73. The Committee also calls upon Taiwan to complete its commitment to the International Bill of Rights by incorporating the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty within its national legal order in the same manner as the two Covenants.

Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (Article 7)

74. In 2013 and 2017, the Review Committee recommended that the Government insert the crime of torture (as defined in article 1 of the UN Convention Against Torture) as a separate crime with adequate penalties in its Criminal Code. The Committee notes with regret that although ten years have passed this recommendation has not been implemented. The Government repeatedly and wrongly asserted that the different provisions in the Criminal Code (articles 125 and 134) would cumulatively constitute a special crime of torture. Torture, as defined in international law, i.e. the deliberate infliction of severe pain or suffering, whether physical or mental, on a powerless individual for a specific purpose, is one of the most severe international crimes. This abhorrent practice can only be eradicated if torture is established as a separate crime with severe penalties, irrespective of whether this practice leads to physical injury or even death of the victim. Since fighting impunity is one of the most effective means to eradicate torture and other forms of ill-treatment, the Committee, in the strongest terms, reiterates its earlier recommendations to incorporate, without further delay, a separate and specific crime of torture with adequate penalties into the Criminal Code.

75. The Review Committee has also repeatedly recommended that all allegations or suspicions of torture shall be thoroughly and promptly investigated by an independent and impartial body with full criminal investigation powers with a view to bringing the perpetrators to justice with adequate punishment. Because there does not exist a special crime of torture in the Criminal Code of Taiwan, it cannot be properly investigated. For this reason, the Government is also not in a position to provide accurate statistics about allegations, investigations, prosecutions and judicial convictions relating to torture. The information provided by the Government clearly shows that there are many allegations of torture against law enforcement officials in Taiwan, which unfortunately are not properly recorded and only lead to disciplinary action rather than criminal prosecution. The few criminal convictions cited by the Government relate to cases of homicide rather than torture. In other words, the crime of torture in Taiwan goes unpunished. The Committee regrets that no progress has been achieved in implementing its earlier recommendations aimed at fighting impunity for torture.

76. The Committee, in the strongest terms, reiterates its earlier recommendations that the Government ensure that all allegations of torture are promptly investigated by a special body, which is independent from all law enforcement bodies (above all the police and the prosecutors), but which is vested with full criminal investigation powers.

Principle of Non-Refoulement and the Refugee Act (Articles 6, 7 and 13)

77. Some submissions during the review process contended that Taiwan has no legislation prohibiting refoulement. The Convention on the Status of Refugees, the Convention Against Torture and the Convention Against Enforced Disappearance all contain provisions preventing states parties from forcibly returning a person to a country where they would be subject to violations of some rights that are protected by those instruments. However, these instruments have not yet been incorporated into the laws of Taiwan. The Review Committee observes that

although there is no explicit non-refoulement provision in the ICCPR, the Human Rights Committee has held that states parties to the Covenant may not return a person to a country where they would be subject to violations of the right to life and the prohibition of torture or cruel, inhuman or degrading treatment or punishment. This view has enjoyed broad endorsement from states parties. The prohibition of refoulement may also extend to other rights enshrined in the two Covenants. The Committee was very pleased to learn of judicial decisions by the courts of Taiwan that have recognised the principle of non-refoulement, relying upon the domestic legislation that has implemented the ICCPR. Although it would be desirable that legislation governing the status of refugees include provisions on non-refoulement, the Committee considers that the principle of non-refoulement is already incorporated into the laws of Taiwan as a direct consequence of the ICCPR.

78. In 2013 and 2017, the Review Committee recommended the speedy adoption of a Refugee Act, which should also include the principle of non-refoulement. Despite certain efforts undertaken in this respect, the Committee notes with concern that after almost ten years no such act has been adopted. This has led to the return of asylum seekers to their countries of origin, despite the risk of being subjected to torture or other forms of ill treatment, including capital punishment. The Committee reiterates its previous recommendation to adopt a Refugee Act and regularise the legal status of asylum seekers.

Right to Personal Liberty (Article 9)

79. The Review Committee is concerned about the high number of children detained in juvenile detention houses and reformatory schools. Article 37(b) of the Convention on the Rights of the Child provides that the detention of children ‘shall be used only as a measure of last resort and for the shortest appropriate period of time’. This means that the detention of children should be an exceptional measure to be applied only if there are no alternatives available. The Committee recommends that the Government increase its efforts to transfer children in conflict with the law from the justice system to the child welfare system, thereby applying methods of diversion.

80. Deprivation of liberty of children should also be reduced in the context of migration detention. Where children are kept in temporary detention under the Immigration Act, the Committee urges that language support and counselling is available for these young people.

81. The Committee also recommends the improvement of healthcare services for children in detention, and that further interdisciplinary research and trial projects be set up, involving medical, psychosocial, educational and other professionals, embracing broader, more holistic social determinants of health.

Administration of Justice (Article 14)

82. According to the jurisprudence of domestic courts, judges who have participated in criminal court proceedings at various levels are considered to lack impartiality only if they have decided the case at an earlier level of the proceedings. However, under international fair trial standards judges should not participate in a case if previously they have participated in the pretrial proceedings under such circumstances that the required impartiality to decide the case may give rise to reasonable doubt, in particular due to the number and character of investigative

measures. The Committee therefore recommends the Government to ensure that domestic law is in accordance with the requirements of Article 14(1) of the ICCPR.

83. The use and storage of DNA samples taken in connection with criminal proceedings are regulated in the Post-Conviction Testing Act and various administrative rules. In a report of 3 August 2020, the Control Yuan has found that there are a number of deficiencies in the present regulations. Taking into account the importance of DNA as evidence in criminal proceedings, the Committee recommends that the Government establish an adequate legal framework.

Birth Registration (Article 16)

84. The attention of the Government is drawn to the challenges of birth registration of children whose parents do not have a regular immigration status. The Independent Opinion of the National Human Rights Commission points out that the scale of the problem has been understated and charges that the Executive Yuan has ‘negligently delayed in the improvement and maintenance’ of the basic rights of such children. Clearly, this issue requires more attention than it currently receives. Creative solutions must be found in order to ensure that every child born in Taiwan is properly registered.

Right to Privacy (Article 17)

Facial Recognition Technology

85. The Review Committee recommends that the Government improve transparency in the use of facial recognition technology, including its legal basis, purpose, and methods of storage. Safeguards against abuse by government agencies and third parties should be put in place.

Transgender Rights

86. The Review Committee was concerned to learn about the requirement of compulsory gender affirmation surgery as a precondition for a change of gender classification. This practice should be abolished with immediate effect.

Freedom of Expression (Articles 19 and 20)

87. The documentation provided by the Government indicated a significant number of prosecutions and convictions for an offence of ‘spreading rumours sufficient to affect public tranquility’, in accordance with article 63 of the Social Order Maintenance Act, concerning measures taken to address the COVID-19 pandemic. Taiwan’s efforts to deal with COVID-19 appear to have been very effective but they have nevertheless resulted in the infringement of a range of human rights. Given the extensive scope of the measures taken, it is especially important that there be unfettered public discussion and debate. That this may be discouraged by the threat of prosecution is a matter of concern. The Government was unable to provide convincing examples to show that the application of this penal provision adequately balanced the restriction on freedom of expression with the protection of national security or of public order (*ordre public*), or of public health or morals, as required by article 19(3) ICCPR. Clearly, article 63 of the Social Order Maintenance Act lacks the precision required by criminal law.

88. Article 20 imposes obligations with respect to limitations on freedom of expression. States are required to ‘prohibit by law’ propaganda for war and incitement of national, racial or religious hatred or violence. The fact that the existing national legislation does not properly address the requirements of article 20 does not seem to be disputed. The Review Committee recommends that the Government implement its obligations under article 20 by appropriate amendments to the Criminal Code.

Right to Marriage and Family Life (Article 23)

89. It is highly commendable that same sex-marriages can be legally registered in Taiwan. The Review Committee is however concerned that there is discrimination in the law, which excludes spouses from countries which do not allow same-sex marriages. If the couple then chooses to live together, their rights within marriage are not protected. The Committee is also concerned that married same-sex couples are prevented from adopting children. It recommends that both types of discrimination in the law be eliminated without delay.

Rights of Children (Article 24)

90. The Review Committee is concerned about the high number of stateless children in Taiwan. Article 24 ICCPR stipulates that every child has the right to acquire a nationality. This entails a government obligation to provide Taiwanese citizenship to all children who are born on the territory of Taiwan and who would otherwise be stateless. The Committee recommends that the Government should provide stateless children born in Taiwan with citizenship.

Right to Vote (Article 25)

91. The Review Committee is concerned that thousands of prisoners and pre-trial detainees, who have the right to vote under Taiwanese law are, in fact, unable to exercise this right, as stated in para. 262 of the Third Report. Article 25 ICCPR clearly stipulates that every citizen shall have the right ‘and the opportunity’, without any discrimination, to vote in genuine periodic elections. This means that the Government has an obligation to provide prisoners and detainees with a realistic opportunity, by such means as absentee voting, postal ballots or installing polling booths in prisons, other detention facilities and institutions where people are deprived of liberty or their mobility is restricted, to exercise this important political right. The Committee recommends that an effective opportunity to exercise the right to vote shall be established without further delay for all elections and referenda.

92. The existing administrative division of Indigenous Peoples rooted in the classification by the Constitution and the Basic Indigenous Peoples Law has prevented them from enjoying the right to participate in decision-making, including legislative elections. Indigenous voters often lack the means to participate due to geographical challenges, especially those who do not live in the indigenous territories where they are registered to vote. The division into mountain and plain peoples limits the opportunity for indigenous legislators to be elected. The organisation of elections also creates unfair competition among different Indigenous Peoples. The Committee urges a remedy for effective political participation of Indigenous Peoples, including by means of absentee voting.