2023 Parallel Report on ICERD

Coordinated by: Covenants Watch

Contact Email: info@cwtaiwan.org.tw, yibee.huang@cwtaiwan.org.tw

Participating NGOs

(in alphabetical order)

台灣原住民族政策協會	Association for Taiwan Indigenous Peoples' Policies
LIMA 台灣原住民青年團	LIMA Taiwan Indigenous Youth Working Group
人權公約施行監督聯盟	Covenants Watch
社團法人環境法律人協會	Environmental Jurists Association (EJA)
社團法人西藏台灣人權連線	Human Rights Network for Tibet and Taiwan
財團法人民間司法改革基金會	Judicial Reform Foundation
社團法人臺灣文化安全心理健康促進會籌備會	Preparatory Committee for the Nonprofit Organization Taiwan Cultural Safety and Mental Health Promotion Association
財團法人天主教耶穌會台北新事社會服務中心	Rerum Novarum Center
台灣廢除死刑推動聯盟	Taiwan Alliance to End the Death Penalty
台灣人權促進會	Taiwan Association for Human Rights
台灣原住民族社會工作學會	Taiwan Association of Indigenous Social Work
社團法人台灣民間真相與和解促進會	Taiwan Association for Truth and Reconciliation
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
台灣國際醫學聯盟	Taiwan International Medical Alliance (TIMA)
台灣國際勞工協會 TIWA	Taiwan International Workers Alliance (TIWA)
國際臺灣克里奧爾語言促進會籌備會	The Preparatory Committee of the International Taiwan Creole Language Promotion Association
財團法人天主教會新竹教區越南移工移民辦公室	Vietnamese Migrant and Immigrant Office
宜蘭縣崗給原住民永續發展協會	Yilan County Kanke Indigenous Sustainable Development Association
宜蘭縣漁工職業工會	Yilan Migrant fishermen's Union

Regarding Arts. 1, 2, 5, 6, and 7

July, 2023

TAIWAN

The Editing Team (in alphabetical order)

Editors in Chief

HUANG, Yibee	Covenants Watch
HUANG, Song-Lih	Covenants Watch
HSU, Wei-Chun	Covenants Watch

Editors

Aika	Covenants Watch
CHIANG, Meng-Chen	Covenants Watch
YANG, Kang	Covenants Watch

Table of Content

List of Figures

List of Tables

Arts. 1-2: General Principles

Domestication of the UN core human rights conventions

Regarding ICERD

1. The Republic of China was a formal party to the ICERD before it was forced to leave the United Nations, and the Government recognized ICERD as an effective domestic law. However, unlike the conventions that have been in force since 2009 through domestic-implementation acts, the ICERD has no primary authority and lacks the various relevant government obligations expressly required by the Implementation Acts of other conventions, and therefore has not had any practical effect for a long time. It was not until 2013 that the Ministry of the Interior was requested to promote ICERD in accordance with the resolution of the Presidential Office Human Rights Consultative Committee
2. In 2018, the Ministry of the Interior designated the Department of Immigration as the responsible agency, and in 2020 the "Plan to Promote ICERD" approved by the Executive Council will begin four operations in 2021: (1) reviewing laws and regulations on its compliance with the ICERD, (2) education and training, including teacher training, training materials and agency courses, (3) the national report on ICERD and international review, (4) promotion, including website construction, advocacy operations. These efforts are carried through "executive program" and lack a legal basis.
3. The Ministry of the Interior designates the Immigration Department as the primary authority, but racial discrimination in the country includes discrimination against indigenous peoples, new immigrants, and migrant workers. The Council of Indigenous Peoples and the Ministry of Labor should be involved in the planning process.
4. To deal with the problem of racial discrimination, the Anti-Discrimination Act is needed as a basis for clarifying the various forms of racial discrimination, regulating the specific duties of the Government in eliminating discrimination, and providing the basis for judicial remedies. In the National Human Rights Action Plan 2022-2024, the Executive Yuan expressed the intention to draft the bill on a comprehensive anti-discrimination law.
5. Response to paragraphs 86 and 87 of the Common Core Document: As stated in the Common Core Document, since 2009, Taiwan has given domestic legal effect to the core United Nations human rights treaties mainly through the enactment of implementing legislation. Although there are differences in the contents of each implementing law, such as the monitoring and evaluation mechanism of each convention, or the way of handling conflicts between domestic laws and conventions (for example, the implementing law of the Convention on the Rights of

Persons with Physical and Mental Disabilities (CRPD) directly gives CRPD priority status, but the implementing laws of the other conventions do not stipulate whether or not CRPD has priority in case of a conflict of laws and regulations), there are still some differences in the obligations of governmental agencies at various levels in the implementation of the conventions, and the interpretation of conventions that need to be referred to by treaty bodies. However, there are still relatively clear provisions on the obligations of government agencies at all levels in implementing the Convention, the interpretation of the treaty bodies that are required to interpret the Convention, etc., so that the agencies at all levels have a clear source of law for administration in accordance with the law, and a clear basis for the right of petition when they are responsible for the government's human rights obligations (e.g., Article 8(1) of the CRPD Implementation Law). In contrast, ICERD only promotes programs to protect all persons from enforced disappearance, and the International Convention on the Protection of All Persons from Enforced Disappearance has to be implemented by a treaty law that does not specify how to implement the obligations of the Convention, which makes people worry that the effectiveness of the implementation of the Convention will be greatly undermined.

6. The Taiwanese government has domesticated the two Conventions, CEDAW, CRC and CRPD, which emphasize more than ICERD that non-nationals should be treated equally in terms of various rights. This is especially true in light of the concluding observations of the international reviews of these conventions and the fact that Taiwan has long been a developed country and should not treat non-citizens differently from citizens, except in a few areas, such as political participation. The Taiwan government's obligation to eliminate racial discrimination and promote equality should not be limited to the national obligations of the ICERD, but should be considered in the context of the human rights obligations of all human rights treaties that have the force of law in Taiwan, with priority given to the fulfillment of those obligations that are most beneficial to the people (cf. Article 5 of the ICCPR and Article 4 of the CRPD).
7. Suggestions:
   (1) The core human rights treaties should be domesticated by means of comprehensive implementing legislation.
   (2) The implementation of national human rights obligations should not be limited to those of a particular treaty, but should be prioritized to comply with the human rights obligations common to all human rights treaties that have the force of law in Taiwan. The Ministry of the Interior should invite the Council of Indigenous Peoples and the Ministry of Labor to participate in the planning and discussions on implementing ICERD and pay attention to inter-ministerial coordination.

(3) When holding discussions on the incorporation into domestic law of related international covenants and conventions, the government should invite a wide range of representatives from various ethnic groups and civil society organizations, including indigenous peoples, Pingpu people, Hakka people, Tibetans resident in Taiwan, new immigrants and migrant workers, to jointly discuss how to realize the early ratification of related international human rights conventions.
(4) The Ministry of Interior should ensure that the process of such deliberations are open and transparent.
(5) The Government should expedite the legislative work of the Anti-Discrimination Act, and at the same time consider the establishment of an Ethnic Equality Act.
(6) Establish a legal basis for the work currently being carried out in the form of an executive program.

Regarding the ICRMW

8. Taiwan's small and medium enterprises, household care services and ocean-going fishing boats all depend heavily on the contributions of the large numbers of migrant workers from Southeast Asian nations. However, Taiwan has been subject to criticism for the lack of adequate human rights protections for migrant workers and for having a "sweat and blood" system which infringes on the human rights of migrant workers. Therefore, incorporation into domestic law of the ICRMW is extremely important. In 2022, the Ministry of Labor requested the Executive Yuan to review the accession to the convention. Following the resolution of the Executive Yuan meeting, they invited the Human Rights and Transitional Justice Office, the Executive Yuan Regulatory Reform Committee, and the Ministry of Foreign Affairs to jointly study the domestic legislative process and related procedures for incorporating this convention into national law. After the review by the Executive Yuan is completed without any issues, the subsequent process will involve sending the legislation to the Legislative Yuan for deliberation.
9. In December 2014, the Ministry of Labour (MOL) completed a subcontracted research assessment on how to incorporate the ICRMW into domestic law, but the MOL has not taken any further action. On the other hand, the Executive Yuan is considering the domestication of the ILO Work in Fishing Convention (C188). We urge the government to pay equal attention to the rights of migrant workers in different sectors.

Regarding CAT & OPCAT

10. In 2018 and 2020, the Executive Yuan sent the draft act to implement the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment and its Optional Protocol to the Legislative Yuan for deliberation. In 2018, due to the principle of discontinuous expiration of the Legislative Yuan, it was re-proposed in 2020. At present, the 2020 draft of implementing act has passed the first reading in the Legislative Yuan and has been reviewed by the three committees, including foreign affairs and national defence, internal affairs, and justice and legal system. There has been no progress for two and a half years.

11. During the review of Taiwan's third National Report on two Covenants in 2022, the Committee's Concluding Observations and recommendations strongly reaffirmed the importance of adopting the CAT and OPCAT, and cautioned the government against the persistent misperception that Taiwan's existing *Criminal Code* provisions effectively cover the crime of torture as alleged in the CAT. In the draft bill of the Implementation Act, the NHRC was designated as the responsible authority to establish the National Preventive Mechanism (NPM), there obviously is the need for organizational plans and substantial and effective capacity building of the NHRC as Taiwan's NPM.
12. Taiwan will face re-election of the president and legislators in 2024, and pending bills will have to go through the legislative process from the beginning again. If the draft cannot be passed within the term of the current legislator, the domestic legalization of CAT and OPCAT will continue to be delayed.
13. We recommend:
    (1) The Legislative Yuan should seize the time of its term and pass the draft act to implement the CAT and OPCAT as soon as possible. If it is not passed, the new Congress should pass the draft as soon as possible, and the new government should also promote the remedy, protection and prevention of human rights related to torture and CIDTP.
    (2) The National Human Rights Commission should play an important role in human rights policy recommendations in the domestication of CAT and OPCAT. At the same time, NHRC should continue to carry out related capacity building and education improvement works.
    (3) Before the draft is passed, the government should still implement the principle of non-refoulement in accordance with Article 7 of the ICCPR, and establish an effective review and protection mechanism.

National Human Rights Commission

14. NGOs in Taiwan had advocated for the establishment of a National Human Rights Commission (NHRC) since 1999, yet the Government was unable to decide how the commission should be formed. Through extensive advocacy led by the Covenants Watch, the Legislative Yuan passed the "Organic Act of the Control Yuan National

Human Rights Commission" on December 10, 2019,[1] and the NHRC was inaugurated on August 1, 2020.

15. There are in total 29 Control Yuan members. The president of the Control Yuan serves as the Chief Commissioner of the NHRC. According to the Organic Act, 7 of the 29 Control Yuan members are ex-officio NHRC commissioners with a 6 - year term, and the President will assign 2 out of the remaining 21 members as NHRC commissioners every year. As stipulated in the Control Act, "The Control Yuan shall exercise the powers of impeachment and censure through its members and propose corrective measures through its committees."[2] The NHRC commissioners shall exercise the powers and functions as per art. 2 of the Organic Act.
16. The following are issues we believe require some attention:
    (1) The identity of NHRC: Though the NHRC is established within the Control Yuan, the commission must develop in the direction of a fully independent institution, rather than "a unit under the Control Yuan" in order to function independently. At the moment, the NHRC's relationship with the Control Yuan remains undetermined.
    (2) The roles and identities of the Commissioners: As NHRC commissioners are simultaneously members of the Control Yuan (serving primarily ombudsman functions), by law, they can initiate investigation on individual civil servants or governmental agencies and exercise the power of impeachment and censure. If commissioners put too much emphasis on this role, it would not only make it difficult to separate their unique identities as NHRC commissioners from traditional Control Yuan members, but also place themselves in a confrontational position with the government.
    (3) While the NHRC is still working on defining its institutional characteristics, several NHRC commissioners have already assumed the role of ombudsperson and collaborated with other Control Yuan members on investigations. Actions like these do not help in shaping the unique functions of the NHRC and may hamper NHRC's independence from the Control Yuan.
    (4) The NHRC should adopt working methods different from traditional Control Yuan members. These include systematic monitoring of national human rights situations, national inquiries into systemic human rights violations, and utilizing tools such as human rights indicators, statistics, and impact assessments. In addition, according to CRPD, general comment #2 of the Child's Rights Committee, general comment #10 of the Committee on Economic , Social and Cultural Rights, and general comment #17 of the Committee on the Elimination of Racial Discriminations, the NHRC should bear

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

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

the responsibility of monitoring these international treaties, all of which enjoy the status of domestic laws.

(5) Relationship with the Legislative Yuan: The Control Yuan used to have very limited interaction with the Legislative Yuan, and the Control Yuan was proud to say that it did not have to answer to anyone. However, in the future, the NHRC must submit annual reports to the Legislative Yuan to meet its minimum requirement of accountability. In addition, these two Yuans should build a platform of cooperation according to the Belgrade Principles to facilitate communication on legislations and amendments.

(6) Relationship with the Judiciary: The relation between Control Yuan and the Judiciary has been tense because of the dispute over whether Control Yuan members could initiate investigations on judges based on the application of laws. Control Yuan's investigations were regarded by the judiciary as intervening legal opinion formation, a privilege granted exclusively to judges. New models of interaction have to be built if the NHRC is to take up the role of amicus curiae and intervene in legal cases, and the legal opinions have to be cautious and professional enough to earn the respect of judges.

(7) The draft bill of the Enabling Law for the NHRC has not yet been reviewed by the Legislative Yuan.

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

17. A related issue is that the Presidential Office Human Rights Consultative Committee (POHRCC) has ceased to function after the establishment of the NHRC. Although the POHRCC is consultative in nature, it served as a platform for high level officials of the Executive, Judiciary, and Control Yuans to meet regularly and coordinate on interdepartmental issues.
18. Currently there is no institutional mechanisms in the Legislature to protect human rights. We suggest that a Human Rights Committee be established in the Legislative Yuan to discuss and resolve any disputes on provisions in laws which potentially may pose a threat to human rights.
19. The bill on the "Act to Implement the Convention Against Torture and its Optional Protocol" the Executive Yuan is currently drafting sets to place the National Preventive Mechanism (NPM) against torture within the NHRC.
20. We suggest that the NHRC:
    (1) Further examine its relationship with the Control Yuan, and strive to develop into an independent institution.
    (2) Evaluate and re-orient its relations with the Executive, Legislative, and Judicial Yuans, and develop mechanisms of accountability.

(3) NHRC commissioners hold the power to impeach, rectify and correct. Should the NHRC make recommendations to government agencies on human rights policies, it must clarify clearly the nature of these recommendations, so as not to become a threatening guide.
(4) The Legislative Yuan should review the functional law of the NHRC, and make sure to consult with international experts and the civil society in the process.
(5) Engage with the international human rights system and its knowledge, and build these capacities within the Commission to avoid over-delegating.
(6) Establish methodologies for conducting national inquiries, compiling human rights statistics, indicators, and impact assessments.
(7) The government should consult with the NHRC during drafting of laws and regulations. The Legislature should establish mechanisms in compliance with the Belgrade Principles to maintain communication with the NHRC
(8) Set up a Human Rights Committee in the Legislative Yuan.
(9) In case progress can be made on constitutional reform, it should clearly stipulate that the NHRC is a fully independent constitutional body.

Establishing a comprehensive equality law/anti-discrimination law

21. In response to para. 38 of the ICERD State Report: The reviewing committees of both conventions have repeatedly emphasized the importance of comprehensive anti-discrimination legislation. The 2022 National Human Rights Action Plan of the Executive Yuan includes the study of the 'Equality Act,' and it is planned to submit the Equality Act draft to the Legislative Yuan for deliberation before 2024. We are pleased to see the government taking action to promote legislation and look forward to the government expediting the legislative process and publicly explaining the achievement of more specific and detailed interim goals.
22. At present, aside from the provisions of the Constitution guaranteeing the right to equality, anti-discrimination policies exist within many different laws, principally those which are related to labor and education. For instance, the *Employment Service Act*, the *Act of Gender Equality in Employment*,[3] and the *Gender Equity Education Act* are all regulations targeting "people in specific scenarios", such as the fact that **employers** must not discriminate based on the gender or sexual orientation of their **employees**. Apart from work and education,the rights and interests of people in common social life such as daily transactions and renting property, have not been protected by the current laws. Current laws are also insufficient for the protection

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

of specific groups and insufficient in addressing intersectional discriminations they face. Furthermore, none of the laws had a clear definition of discrimination, and the government has not been able to explain to the public the difference between "positive measures" and "specific measures" (affirmative measures) in countering discrimination. This resulted in stigmatization associated with the affirmative action for indigenous students in college entrance examinations. On the other hand, the government has been reluctant in regulating discriminatory speeches and hate speeches, for concerns of protecting the freedom of expression.

23. We suggest:
    (1) At present, discriminations based on gender, disability, and ethnicity grounds are regulated by different laws, and we recommend that the government conduct a rigorous legal review similar to the process of combining different anti-discrimination laws into the Equality Act in the United Kingdom.
    (2) The anti-discrimination law should take reference from UN human rights conventions including the ICERD, and clearly define the various forms of discrimination, for instance, CRPD Committee's General Comment No. 6 provides a detailed description of discrimination on the basis of disability, and can be used as a reference for discrimination based on other grounds.
    (3) In addition to prohibiting discrimination, the anti-discrimination law should stipulate the government's obligation to proactively promote equality, and establish a human rights (and equality) impact assessment mechanism.
    (4) The law should state clearly the role of the National Human Rights Commission in the elimination of discrimination and the promotion of equality.
    (5) Taking as an example the provision of reasonable accommodation, its practice requires precedents for reference and guidance, and it is suggested that the anti-discrimination law refer to the practice of the UK's "Code of Practice" and empower either the National Human Rights Commission or other executive authorities to produce operational guidelines to the benefit of the executive agencies, the Petitions Committee (which handles the petition before administrative litigation against governmental bodies can be filed), the Employment Discrimination Review Board of local governments, and the courts in determining whether discrimination arises.
    (6) The training of administrative bodies, petition committee members, employment discrimination review committees and judges on anti-discrimination laws should be conducted on an ongoing basis.
    (7) The State shall promptly promote the legislation of a comprehensive anti-discrimination law which encloses self-identification of ethnicity and language, gender identity, sexual orientation, and gender expression. The law shall explicitly define discrimination and its patterns and shall stipulate a competent authority equipped with mechanisms for accountability and relief. This is

necessary so that the State can fulfill its obligation to further protect the substantive equality of its citizens.

Points of indigenous peoples

24. Taiwan is a country composed of diverse ethnic groups. However, discrimination against indigenous peoples is not uncommon in mainstream society. Many incidents of discrimination are even led by the public sector. For instance, at the Taiwanese historical drama performed at the presidential inauguration in 2016, indigenous peoples were described as "rough and wild." In 2020, at the Golden Bell Awards finalists press conference held by the Ministry of Culture, the head of the jury panels made a “ho ho ho ho ho” noise when announcing that the FM96.3 Alian Radio (Indigenous Radio) made the finalists, and said to the Indigenous Radio representatives “This is how you yell, right?" In 2023, racial discriminatory remarks targeting indigenous people appeared on both high school and university campuses, such as the use of terms like "烯環鈉" (meaning "savage indigenous people") and "火冒 4.05 丈" (meaning “the obstruction of Indigenous students' access to higher education is an act of oppression against the Plains people”).

25. These two cases are the rare few that caught the attention of mainstream media. This goes to show that contemporary discrimination often stems from the lack of cultural sensitivity rather than malice. Although these cases of microaggression did not cause harm to life or body, they reaffirm the rooted stereotypes of indigenous peoples in mainstream society, leading to incessant collective trauma and unfair treatment against indigenous peoples. The public sector took the lead in presenting these stereotypes of indigenous peoples, which were then spread by the media, deepening public misunderstandings and impeding equal understanding and respect for diverse ethnic groups in Taiwan.

Anti-discrimination clauses under the Immigration Act

26. In response to para. 25 of the ICERD State Report: To protect non-nationals from discrimination, a “Regulation for Petitions against Discrimination against People Residing in the Taiwan Area” was enforced in 2008 in accordance with paragraph 3, Article 62 of the Immigration Act, but the law has not effectively enforced the anti-discrimination clauses under the Immigration Act. In other words, these clauses are seen as mere references and have not been examined in detail. In the past, the Anti-Discrimination Group of the National Immigration Agency often dismiss complaints on the grounds of “the complainant is not a party concerned,” “unable to determine if the complainant’s rights have been violated,” and “the complaint subject’s cognition and strong perceptions are protected under freedom of speech.” [4] This indicates that the current review mechanism has an overly narrow interpretation of factors that constitute discrimination, and completely overlooks the damage that hate speech inflicts on victims and groups of discrimination.

4 The Ministry of the Interior’s Decision on the discrimination complaint filed by the TransAsia Sisters Association, Taiwan (TASAT) in 2011 (Link: http://ppt.cc/kqTXM)

In addition to the incompetence of the anti-discrimination clauses of the Immigration Act, other regulations that protect the principle of equality are scattered in various specific regulations. No special laws exist to uniformly prohibit all forms of discrimination that individuals and groups must bear.[5]

27. We suggest the government to draft a special anti-discrimination law that includes specific penalties, which can effectively amend damage caused by discriminatory speech or behavior. In addition, sensitivity training on equality should be enhanced for future agencies responsible for reviewing discrimination complaints, because while safeguarding freedom of speech, review units cannot ignore the imbalance in power relations between advantaged groups and disadvantaged groups. Finally, the government should proactively promote social education that promotes equality.

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

28. Since the Taiwanese government has passed the Act to Implement the ICCPR and the International ICESCR, it should comply with the principle of non-refoulement stipulated in Article 7 of the ICCPR. The applicability of the principle of non-refoulement should not be limited to cases about refugees or stateless persons. The principle is applicable to all cases concerning extradition, expulsion, and repatriation of foreigners. To fulfill the non-refoulement obligations, the state should have established relevant standards and procedures to handle relevant cases. The state has repeatedly claimed that there is a series of standard procedures in place, but it refuses to make them public. People have no access to such information, so oftentimes they have difficulty believing the state's fulfillment of its non-refoulement obligations. In April 2020, a Filipino worker in Taiwan was asked to be returned for her remarks against President Rodrigo Duterte.[6]
29. According to the "Principles in Compiling State Report" of ICCPR, the government should clearly address the methods that the State will take to ensure no one will be extradited, repatriated or expelled to any place that will cause non-recoverable harm. Despite years of NGO advocacy, the Legislative Yuan has not passed the *Refugee Law*, and there are no other legal provision censuring the principle of non-

5 Transcript of the public hearing held on the legislation of the Anti-Discrimination Act (Link: http://ppt.cc/44cZi)

6 Rappler, DOLE asks Taiwan to deport OFW with Facebook posts criticizing Duterte, 04/25/2020, https://www.rappler.com/nation/dole-asks-taiwan-deport-ofw-facebook-posts-criticize-duterte

refoulement, which protects the rights of asylum-seekers and refugees, in the *Immigration Law* or any other laws. In recent years the National Immigration Agency has already repatriated at least 4 asylum-seekers from People's Republic of China, and 3 Kurdish refugees who attempted to seek political asylum in Europe, as well as several Tibetans who came to seek asylum from Nepal or India. There are still 4 Chinese asylum-seekers currently on trial for illegal entry.

30. As mentioned in para. 122 of the ICERD State Report, the case of the Ugandan woman illustrates the limited assistance provided to asylum seekers under the current legal framework. Although the Immigration authorities did accept her asylum request, the assistance provided was limited due to the lack of clear legal framework. While the woman was acknowledged by the Taiwanese government as a refugee with well-founded fear of persecution, she was only granted a "deferred forced deportation" status and recognized as "not having legal residency qualifications," leaving her stranded in Taiwan for seven years. Lacking legal residency status, she was unable to obtain basic rights such as housing, work, and healthcare, relying on support from civil society for survival. A petition was filed with the Control Yuan regarding this case.[7] The investigation by the Control Yuan also revealed that "Taiwan lacks a specific life care mechanism for the non-refoulement principle and fails to fulfill the obligations of a contracting state of the non-refoulement principle under ICCPR." In recent years, many asylum seekers from Ukraine, Myanmar, Afghanistan, etc., countries experiencing severe social unrest, face the same predicament as the Ugandan woman. Until now, no one has obtained residency status in Taiwan under the format of case handling claimed by the Immigration Agency in para. 122 of the ICERD State Report. Since there is no clear legal framework or asylum mechanism has been put in place in Taiwan, leaving asylum seekers with, at most, the status of "deferred forced deportation" and temporary residency. This lack of concrete protection measures highlights Taiwan's longstanding challenge in providing a secure and lawful residence for asylum seekers, often resulting in the deprivation of their basic human rights while staying in the country.
31. We again appeal to the Taiwanese government to pass the Refugee Law as soon as possible, and implement the principle of non-refoulement when the refugee law has not been legislated

The pending refugee act should be sent back to the legislature

32. The Executive Yuan handed the draft refugee act over to the Legislative Yuan for examination in 2016, and the Legislative Yuan went through the deliberation phase, yet the legislation wasn't passed. According to Article 13 of the *Law Governing the*

7 Control Yuan, Case No. 111-Inquiry-0033. https://reurl.cc/AAl3vK

Legislative Yuan's Power, [8] if incumbent legislators leave bills unpassed, the bills cannot proceed to the new parliament unless the new parliament reopens discussions in the new legislative procedure. As a result, unless the act is passed by the end of 2023, the Executive Yuan will have to propose again, or legislators will have to propose the draft refugee act to resume legislation.

33. Despite several attempts by different party caucuses to reintroduce the refugee act bill and restart the legislative process, it has not been included for review, and thus, the refugee act has yet to be passed. Para. 121 of the ICERD National Report alleges that the refugee act was not passed due to the lack of social consensus, which is actually an example of the government shifting the responsibility of fulfilling human rights to the consensus of the public.
34. Additionally, according to National Human Rights Action Plans, government pledges to submit the refugee act draft to the Executive Yuan for deliberation in 2023 and submit it to the Legislative Yuan for examination before the end of 2024.[9] However, as the deadline approaches, there is still no sign of the relevant authorities presenting the refugee act draft, and no clear progress has been communicated externally
35. Civic groups have jointly unveiled their draft of a refugee law on June 19, 2020, one day before World Refugee Day. In the past few years, Taiwan has passed the *Act to Implement ICCPR and ICESCR*, *Enforcement Act of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, *Implementation Act of the Convention on the Rights of the Child (CRC)*, as well as *Act to Implement the Convention on the Rights of Persons with Disabilities (CRPD)*. Besides, the Taiwanese government has approved to incorporate the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) into domestic law in 1970. In view of the backdrop, civic groups set the bar high compared to the 1951 Convention Relating to the Status of Refugees, and drew up principles and measures more suitable for the international human rights challenges Taiwan is currently dealing with when they proposed their draft refugee law. For example, the draft incorporates the interpretation and suggestion of the principle of non-refoulement, children's best interests, as well as necessary reasonable accommodation, procedural accommodation, and appropriate remedies for individuals with disabilities and sensitive issues stipulated in the General Comment No. 4 of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Notably, it is necessary to adopt follow-up

8 Law Governing the Legislative Yuan's Power https://law.moj.gov.tw/LawClass/LawAll.aspx?pcode=A0020058

9 Office of Human Rights, Executive Yuan, 112.5.9 National Human Rights Action Plan Progress Report - First Review Meeting - Amendment by Responsible Authorities. https://reurl.cc/XEbZYa

measures to handle cases of asylum seekers who do not meet the definition of refugees and who will be at risk of being subjected to torture or to cruel, inhuman or degrading treatment if they are repatriated or expelled.

The residency of Tibetans remains an unsolved issue in Taiwan

36. Since 2000, the situation in Tibet has become grimmer. Tibetans from China, India, and Nepal began coming to Taiwan. They choose to leave their home voluntarily or involuntarily because they want to flee from China's persecution of culture, religion, beliefs, and other kinds of freedom, or because they hope to pursue a better life. Tibetans in India, Nepal, or other countries are deprived of their right to education, right to work, right to property, or even right to travel freely across states just because their identity is not officially recognized.
37. In response to para. 145 of the ICERD State Report: It is difficult for Tibetans to acquire legal and valid travel documents in China, India, or Nepal, so they are often running a big risk when they decide to purchase fake passports and travel to Taiwan. In 2015, Article 16 of the *Immigration Act* was amended. Stateless Tibetans who had entered Taiwan before December 31, 2008 could apply for legal residency after the Mongolian and Tibetan Affairs Commission (MTAC, abolished) recognized their identification. The amendment means that Tibetans arriving in Taiwan after 2009 and Tibetans arriving in Taiwan before 2009 but weren't recognized by the MTAC can no longer obtain legal identity through the *Immigration Act*. Therefore, they are in danger of being expelled at any time, and will have difficulty making a living due to their illegal status. They will find themselves in a dire predicament.
38. Among the cases contacted by NGOs, 6 individuals were deemed to have the nationality of India or Nepal based on the formal possession of forged passports from these countries. As a result, their residency applications were denied, and they were subsequently subjected to forced deportation, leaving them in a precarious situation with the possibility of being rendered stateless and unable to work legally. These Tibetans had already severed ties with their former countries of residence and established social networks and families in Taiwan. Furthermore, since they initially entered Taiwan with forged passports, they did not have the nationality of their previous residence countries. If deported, they would become stateless individuals, making it difficult for them to survive in their previous residence countries. Among them were Tibetans who fled to Taiwan to escape religious persecution in China but might face deportation back to China via Nepal, where they could be subjected to torture and denied fair trials and remedies.
39. In General Recommendation 30 of the ICERD, Part 6 stipulates the principles of "expulsion and deportation of non-citizens". Paragraph 25 under Part 6 states that state parties should observe the principle of non-discrimination and provide

remedies. Paragraph 26 requires state parties to ensure that non-citizens are not subject to collective expulsion. Paragraph 27 demands state parties to ensure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses, including torture and cruel, inhuman or degrading treatment or punishment. Paragraph 28 asks state parties to avoid expulsions of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life.[10] Some Tibetans in Taiwan are running away from China's tightening grip on religion. Many of them are nuns or lamas who make a detour to Nepal before coming to Taiwan. Once they are repatriated to Nepal, it is highly likely that they will be repatriated to China, where they will encounter torture or to cruel, inhuman or degrading treatment or punishment. On top of that, they will not receive fair trials or effective remedies.

40. After years of litigation efforts, the six Tibetans mentioned above lost their cases and failed to obtain legal residency status in Taiwan because the judges' lack of understanding of the situation of Tibetans and the lack of cooperation from other governments in providing accurate information. They are now facing deportation.

Kurds from Syria are repatriated

41. In March 2018, two male Kurds and one female Kurds from Syria had just flown from Malaysia to Taiwan. They intended to have a transfer to Europe, where they planned to apply for asylum. The National Immigration Agency spotted their fake passports, and they were sent to Yilan Foreigner Detention Center. Later, they were prosecuted for forgery. Their lawyer argued in the pleading that the defendants had taken a transit flight to Taiwan as asylum seekers, so the state should be bound to the principle of non-refoulement. However, the defendants were still convicted. They were expelled from Taiwan and returned to Malaysia, their last point of departure after completing serving the sentence. During the process, the Taiwanese government turned a deaf ear to the female defendant's safety concerns that the Syrians in power regarded Kurds as enemies, women were likely to be exposed to violence and sexual assault in Syria, and the government has not or is unable to track whether the Malaysian government has carried out repatriation on individual cases. This is the second repatriation case about Syrian Kurds that came to civic groups' knowledge.
42. From the handling of such cases, it is quite apparent that neither the front-line law enforcement agencies nor the judges are legally sensitive enough or capable of coping with refugee cases. They simply see these individuals as illegal immigrants, and convict them with the *Immigration Act* and the *Criminal Code of the Republic of*

10 General Recommendation 30 of the ICERD https://covenantswatch.org.tw/wp-content/uploads/2019/01/INT_CERD_GEC_7502_E.pdf

China. The convicted foreigners are detained in detention centers and are repatriated. One the one hand, law enforcers overlook the needs of defendants. On the other hand, they do not fully understand the implications of the principle of non-refoulement and the obligations our country should honor. At the same time, the reliability of the content mentioned in para. 122 of the ICERD State Report still needs to be confirmed through the analysis and research of repatriation cases.

Myanmar people subjected to forced deportation

43. Since the 2021 coup, the Myanmar military has launched widespread attacks on its own people, including shooting protesters, conducting indiscriminate airstrikes, and arresting dissidents. There have been reports of people being arrested and sentenced for donating small amounts to organizations not approved by the military.[11] The turmoil and persecution in Myanmar are well-known, yet the immigration officers have arrested several Myanmar individuals who overstayed in Taiwan since the coup. During their arrest and deportation process, there was a lack of Myanmar language interpretation and translation of documents, like disciplinary citation, leaving the individuals uninformed of their rights. Some of these cases involved individuals who had participated in supporting the Myanmar democratic movement and had donated to the National Unity Government. Others came from regions with long-standing unrest and severe internal conflicts in Myanmar. The immigration authorities failed to assess the potential risks these individuals might face if sent back to their home country and hastily issued deportation orders. If not for the intervention of NGOs appealing to the Immigration Agency, these cases might have been sent back to regions where their lives would be at risk.

Taiwan lacks a comprehensive asylum procedure in place for Hong Kong protesters

44. In response to para. 123 of the ICERD State Report: In light of the special political relations between Taiwan and China, the Taiwanese government has formulated the *Act Governing Relations between the People of the Taiwan Area and the Mainland Area* (hereinafter referred to as "*Act Governing Relations between the People of the Two Sides*") and the *Laws and Regulations Regarding Hong Kong & Macao Affairs* (hereinafter referred to as "*Laws Regarding HK & Macao Affairs*") to handle matters concerning China, Hong Kong, and Macao. Officials claimed that the existing *Laws Regarding HK & Macao Affairs* had an adequate legal framework and no new laws were needed to process Hong Kong asylum seekers who had participated in the anti-extradition bill protests in 2019 and the new Hong Kong *National Security Law*

11 Myanmar Now, Teen sentenced to 10 years in Myanmar prison for alleged $7 donation to resistance group 01/04/2022, https://reurl.cc/3xQMlj

protests in 2020. Although Article 18 of the Laws states that "necessary assistance shall be provided to Hong Kong or Macau residents whose safety and liberty are immediately threatened for political reasons",[12] the clause does not specify execution details or other clauses for reference, e.g. work allocation of the competent authority to provide such "assistance", the definition of "political reasons", and the standards for reviewing such cases. The lack of clear legal authorization endangers the continuity of this program.

45. The Mainland Affairs Council under the Executive Yuan has set up special projects and a special office according to the said Laws. Nonetheless, the uncertainty and incompleteness of the existing human rights system open up a wide gap between the asylum policies in Taiwan and the asylum policies in other countries or of the Refugee Convention.
46. Currently, the special project handling Hong Kong cases still has many limitations and areas for improvement. Under the project, cases are subject to joint review, and the Mainland Affairs Council assists in obtaining general residency. However, subsequent livelihoods must align with the purpose of residency, such as studying or working. Many Hong Kong protesters have made unnecessary sacrifices in their lives to meet the residency requirements, which hinders their integration into Taiwanese society as foreigners. If a person wishes to become a Taiwanese citizen, they must satisfy different conditions based on their residency purpose before becoming eligible to apply for permanent residency. Although the conditions for permanent residency are more easing than general residency (reducing the required salary from two times the minimum wage to 1.5 times after five years of work), the conditions within the project lack clear legal provisions, posing risks of policy continuation due to unclear legal authorization. The current incomplete mechanism and unclear allocation of government responsibilities have also led to insufficient social welfare resources, making it challenging for Hong Kong protesters under the special project to be self-reliant in Taiwan. As a result, many protesters face difficulties in applying for residency and settlement in Taiwan.

Lack of enforceability of conditions for providing asylum to people from China

47. As mentioned in para. 124 of the State Report on ICERD, the government explained that asylum seekers from China may seek refuge in Taiwan based on the "Regulations Governing the Residency, Permanent Residency, and Settlement of People from the Mainland Area in the Taiwan Area for Reunification with Family

12 Laws and Regulations Regarding Hong Kong & Macao Affairs https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=Q0010003

Members."[13] However, the requirement for asylum based on "specific facts showing outstanding performance in leading democratic movements and immediate danger of persecution" is abstract and stringent. As of now, there have been no Chinese asylum seekers granted legal residency in Taiwan based on this requirement. The law needs to be reexamined and amended to establish criteria for seeking asylum that conform to international human rights standards.

48. Our suggestions:
    (1) The state should provide sufficient training in relevant issues for immigration personnel, front-line law enforcers, and legal professionals, including judges.
    (2) The state should promptly proclaim relevant standards and systems concerning refugee status screening, repatriation, expulsion, and extradition of asylum seekers and foreigners for the public to examine if the mechanisms fit the benchmark of international human rights protection. If the state's approaches fail to meet the requirements of the said international standards, they need to make immediate adjustments.
    (3) The state should take the draft proposed by civic groups into consideration, and formulate a Taiwanese refugee law that complies with human rights obligations stipulated in international covenants as soon as possible.
    (4) The state should amend relevant clauses in the *Act Governing Relations between the People of the Two Sides, Laws Regarding HK & Macao Affairs*, and *Immigration Act* to uphold the spirit of the refugee act and other covenants on human rights.
    (5) The state should immediately stop executing and making administrative acts of compulsory expulsion of Tibetans and Burmese in Taiwan. Instead, the officials should thoroughly weigh every piece of evidence, go through the recognition process of their identity, grant them legal identity according to the *Immigration Act*.

Right to self-determination

49. According to ICCPR*Article 1* is intended to safeguard Indigenous Peoples' right to self-determination . The government once mentioned in State Report on Two Covenants that the government has adopted "*the Regulations of Consult and Acquirement of the Consent and Participation from the Indigenous Peoples and*

13 Regulations Governing the Residency, Permanent Residency, and Settlement of People from the Mainland Area in the Taiwan Area for Reunification with Family Members https://reurl.cc/949nlV

Communities"[14] and legalizing the "Tribal Council as public juristic person"[15] as the efforts they made to achieve Indigenous Peoples' self-determination. However, there are still many obstacles when implementing Indigenous Peoples' right to self-determination. For example, in the development projects of public or private sectors, Indigenous communities can only passively make the decision of accepting or rejecting the project, but cannot participate fully in the process of planning, discussion, decision-making and promotion. In addition, the operation of power of autonomy among Indigenous Peoples is to form the agent of management in different scales and to decide the rules of management, according to the issues in question; these were traditionally carried out within the system of each people. The purpose of legalizing the *Indigenous communities as public juristic person* is to promote independent development of indigenous tribe at its will, as stated in *the Indigenous Peoples Basic Law*. In other words, to recognize the Indigenous communities' public juristic person is to return the inherent rights of self-determination and autonomy to indigenous peoples through the modern legal mechanism of states.

50. We urge that：
    (1) When enforcing and monitoring all the land utilization and development programs, all level of the national institution shall actively safeguard local Indigenous Peoples' right to fully participate in all stages of project planning, execution, and assessment as to facilitate realization of the right to self-determination.
    (2) When drafting the Regulation of Establishing the Public Juristic Persons of Tribal Councils, the Council of Indigenous Peoples shall make sure that there remains flexibility and freedom in the regulation, and avoid basing its decisions on single dimension and stereotypic viewpoints which would limit the inherent autonomy of Indigenous communities.
51. Regarding to "Implementation of the Indigenous Peoples Basic Law", the current actions are still far from the standards listed in the Concluding Observations and Recommendations, *ICCPR* article 1, and articles 3, 4, and 5 of the UN *Declaration on the Rights of Indigenous Peoples*.
52. The current regulations regarding to the right to political participation in the

14 In respond to Indigenous People Basic Law Amendment Paragraph 4 of Article 21:" The central indigenous competent authority shall stipulate the regulations for delimiting the area of indigenous land, tribe and their adjoin-land which owned by governments, procedures to consult, to obtain consent by indigenous peoples or tribes and to participate and compensation to their damage by restrictions in preceding three paragraph." administrative orders and related measures.

15 Indigenous People Basic Law article 2-1 section 1: " In order to promote independent development of indigenous tribe at its will,the tribe should establish Tribal Council.The tribe which ratified by the central authority in charge of indigenous affairs shall be considered as public juristic person."

Constitution poses a great obstacle to Indigenous Peoples' political participation and actual self-determination and governance, especially in the legislator elections. The current system of legislator elections still follows the arbitrary division of indigenous constituencies into "Mountain Indigenous Population" and "Plain-land Indigenous Population", a practice inherited from Japanese colonial period and KMT totalitarian period, which undermines the differences among indigenous groups, imbalance of representativeness among indigenous groups, and inequality in the value of each vote.

53. Because the regulations about election are based directly on the Constitution, the government should seriously consider constitutional amendment. On the other hand, only the election of Legislative Yuan is regulated by the Constitution, so this categorization of eligibility for candidate and voters should not be applied in other elections. Since the representativeness in the parliament is flawed, it is unlikely that the legislature would pass laws of governance at the local level capable of reflecting the true will of indigenous peoples.
54. Even if the "Tribal Public Juristic Persons" was seen as a progress to safeguard the self-governance and self-determination of indigenous peoples, it remains unsolved how this would fit into the existing legal framework of local self-governing bodies. Furthermore, when it comes to delineating the actual scope and matters under the jurisdiction of self-governance, a great deal of legal regulation and accommodations need to be negotiated, to clarify the rights and obligations between the self-governing institutions and the central government. Thus, it seems that apart from the downward legal amendments extending to the local level, there is a need to enact a "upward" reform to the constitution level, to eliminate the obstacle to Indigenous Peoples' political participation and engage in dialogue in political arena with other groups on an equal footing. By doing so, there could be a possibility to implement the Indigenous Peoples Basic Law in a concrete sense.
55. Therefore, we recommend a constitutional amendment to remove obstacles to Indigenous Peoples' full and effective political participation. To be concrete, the government should consider putting the content of the Indigenous Peoples Basic Law's directly into the text of Constitution in the form of a special chapter. And with the mothed of Constitutional Order (Verfassungsauftrag) commanding the government branches to act promptly, to solve the problem of legislation sloth and executive procrastination. Lastly, it would be worth considering i to recognize in the Constitution the special status of Constitution the UN Declaration on the Rights of Indigenous Peoples or the principles therein.

Indigenous peoples' judicial self-determination rights violated by the State

56. In reference to ICERD and Article 1 of the Two Covenants the government should

respect the language, cultures, customs, and values of the Indigenous Peoples when formulating laws and regulations, administering justice and various procedures (incl., administrative remedial procedures, notarization procedures, mediation procedures, and arbitration procedures). In addition, the government shall provide interpreters fluent in the languages of Indigenous Peoples who are unfamiliar with Mandarin.

57. Not every case involving Indigenous Peoples (e.g., driving under influence and drug-related offenses) has to be tried in the Special Court of Indigenous Peoples. To enhance the quality of rulings produced by the Special Court of Indigenous Peoples and maintain reasonable utilization of judicial resources, we suggest that only cases concerning the protection of or impact on indigenous culture be tried in the Special Unit of Indigenous Peoples or Special Court of Indigenous Peoples. We also recommend that the government reinforce the training of legal enforcement personnel regarding indigenous cultures.
58. We suggest that the government incorporate a traditional jury system comprising jurors who are familiar with the cultures of the parties concerned into the Special Court (Unit) of Indigenous Peoples. The existing Special Court (Unit) of Indigenous Peoples can be reinforced by inviting two or more jurors who are familiar with the cultures of the parties concerned when reviewing the cases regarding indigenous traditional or cultural affairs and using the jurors' suggestions as references in ruling. Prior to the implementation of the aforementioned system, judges shall conduct field surveys or appoint impartial experts to facilitate their understanding of the cultural practices of the parties concerned. Verdicts formulated without tangible evidence or investigation and merely based on the a cultural understanding out of imagination should be regarded as unlawful.

Solar panel construction project affected right to self-determination for indigenous nations

59. The "Settlement of Solar Power Generation Equipment and Education Demonstration Zone Bidding Project in the Zhiben Chienkang Section of Taitung City, Taitung County" by the government of Taitung County affected the self-determination rights of the Katratripulr tribe of Puyuma people.
    (1) The Taitung County Government intended to develop the land of Zhiben Chienkang Section of Taitung City as a designated area for solar power generation equipment and educational demonstrations, and proceeded into the bidding process without consulting the approval of the tribe.
    (2) Although the winning bidder, Vena Energy, conducted a vote in accordance with the *Measures for Consultation to Indigenous Tribes to Obtain Approval to Participate*,[16] however, the provisions in the the measures did not respect the

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

tribe's traditional methods for deliberation, permitted non-tribe members to participate in the votes, and limited votes per household, all of which grievously infringed upon the right to self-determination of the tribe. When the tribe had doubts on the voting process regarding the scope of voting, total votes, and availability to cast delegated votes, the Taitung City Office unilaterally convened a vote on the tribe's behalf, infringing on their rights.

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

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

Identity determination of the Pingpu indigenous peoples

61. At present, the government has officially recognized 16 tribes of indigenous peoples.[17] However, there are 10 tribes of indigenous people who belong to the Austronesian linguistic family that have not yet been officially recognized by the central government, including the Ketagalan, Taokas, Papora, Pazeh, Babuza, Kavalan, Hoanya, Siraya, Makatau and Taivoan peoples. The above tribes, whom are usually referred to as Pingpu indigenous peoples, originally inhabited plains and low-lying hills on Taiwan's west and east coasts. However, beginning in the 16th century, Taiwan was occupation by successive regimes of the Dutch, Spanish and the Qing Empire and experienced massive Han Chinese immigration. Subsequently, the distribution and cultural patterns of these people underwent huge transformations and they faced cultural extinction. Since the 1990s, the Pingpu indigenous people have actively launched movements for identification and restoration of their names and have struggled for recognition of their individual and national identity through lobbying and administrative legal action as well as street protests.[18] Nevertheless, due to the government's erroneous imposition of a "plains/mountain compatriots" identification for indigenous peoples in the 1950s,[19] even if the Pingpu indigenous peoples have made major gains in language,

17 A list of "the Tribes in Taiwan" can be found at the Council of Indigenous People website: < https://www.cip.gov.tw/zh-tw/tribe/grid-list/index.html?cumid=8F19BF08AE220D65>

18 For more information on the process of the restoration of the names of the Pingpu tribes, see Hsieh Jolan (2011), "The Challenge of the Pingpu Indigenous Peoples Identity Movement and Official Identity Determination," (in Chinese), Taiwan Journal of Indigenous Studies, 4(2), pp.121-142.

19 For information on the loss of the identity of indigenous peoples in the 1950s, see Yap Ko-hua, "Exclusion of Renunciation? Identification of Plains Tribes and Mountain Compatriots,"

culture, rites and community rebuilding and have an intense sense of identity, their status as indigenous peoples still not been recognized by the State.

62. The government has been reluctant to recognize the indigenous status of the Pingpu peoples, because the status is associated with a long list of "benefit measures". However, on October 28, 2022, the Constitutional Court ruled that the provision in Article 2 of the "Status Act for Indigenous Peoples" unconstitutional. The Court added that the recognition of status does not have to be tied with all the benefits measures. The Legislature has three years to revised the law and decide which of the 158 benefit measures should apply.
63. In order to promote work regarding the identity recognition of Pingpu people, we propose the following:
    (1) The government should immediately collect statistics on the population of Pingpu indigenous peoples and, using the Japanese colonial government era household registration data as the foundation, allow all local governments to accept registration by the people to facilitate subsequent identity recognition and resource distribution planning. In fact, local governments have already leaped ahead of the central government in terms of identity recognition for Pingpu indigenous people. For example, the former Tainan County (which was incorporated into Tainan City in 2012) took the lead in recognizing the Siraya people as a "county designated indigenous people" in 2005 and initiated a complete system for status registration including notification and publicity measures. As of April 15, 2009, 12,478 persons had registered as Siraya indigenous people in Tainan City, thus providing the only case of a Pingpu indigenous people with contemporary population reference data.[20]
    (2) The government should immediately propose concrete policies and budgets for the restoration of the Pingpu peoples indigenous status. The Executive Yuan should guide the CIP and other related ministries and agencies in promoting necessary legal revisions, legislative work and other measures and must restore the national and individual status and complete national rights of the Pingpu indigenous people. The State report relates that the government has already ensured indigenous peoples rights through indigenous tribal meetings and corporation of tribes, however, such measures cannot be realized for Pingpu people given the lack of government recognition of the Pingpu indigenous people. The government should promptly realize transitional and historical justice in order to avoid yet another abrogation of the right of self-determination of indigenous peoples.

Taiwan Historical Research, Vol 20, No.3 pp.117-206, September 2013. Institute of Taiwan History, Academia Sinica, Taipei, Taiwan (in Chinese).

20 Statistics (in Chinese) collected by the Tainan City Ethnic Affairs Committee can be found at <http://www.tainan.gov.tw/nation/page.asp?nsub=H2A2A0/>.

On the implementation of the Indigenous Peoples Basic Law

64. The government has repeatedly claimed that they have completed the review and coordinated tasks as stipulated in the Indigenous Peoples Basic Law (IPBL), however, the fact is that the so-called "revisions" were mostly adjustments to the terms, for instance, changing "Indigenous People" to "Indigenous Peoples". Meanwhile, there is no progress on the amendments to sub-laws concerning major rights of the indigenous peoples, such as the Indigenous Peoples Land and Sea Law, the Indigenous Peoples Autonomy Law. Furthermore, regarding the very critical matter of the delineation of traditional territories and the implementation of consultation and consent rights, administrative regulations have seriously infringed the rights of the indigenous peoples, and have misinterpreted the legislative intent of the Indigenous Peoples Basic Law.
65. As for the Indigenous Peoples Basic Law Promotion Committee, following its establishment in 2013, it convened for three times that year and then ceased to operate for years. After the Democratic Progressive Party (DPP) took over the reins in 2016, the Committee convened three times each year in 2017 and 2018, and then twice in 2019. Only 4 meetings were held from 2020 to 2023. Although there were reports on laws that should be revised, there has been no progress on laws having been substantially revised or formulated.
66. The government is keen to point out the similarities between the "United Nations Declaration on the Rights of Indigenous Peoples," and the Indigenous Peoples Basic Law. However, the collective rights and right of self-determination stressed in the Declaration are not specifically guaranteed in the IPBL. We urge the government to officially and clearly express its position regarding the Declaration and revise and strengthen the IPBL through the incorporation of the provisions for indigenous peoples rights contained in the Declaration.
67. Article 34 Paragraph 1 of the IPBL states that "(t)he relevant authority shall amend, make or repeal relevant regulations in accordance with the principles of this law within three years from its effectiveness." After the IPBL was promulgated in February 2005, a re-examination of other laws and regulations showed that 82 were in conflict with the IPBL. However, in ICERD State Report, there is no description of the progress of the amendment and the unrevised schedule. The CIP should clearly explain what the timetable is for the revisions and publically disclose a detailed list of the laws and regulations that have been revised. In addition, Paragraph Two of the same article mandates that before the completion of the amendment, enactment or repeal of such laws and regulations, "the central indigenous competent authority" shall interpret and implement the relevant laws and regulations in accord with the principles of this law. Based on this provision, the CIP should list laws and regulations that are not in accord with the IPBL and

disclose the progress on discussions with other competent agencies for their revision or repeal.

68. For example, Article 15 of the Forestry Act mandates the Forestry Bureau of the Council of Agriculture and the CIP to jointly decide the rules for the use of forestry resources within the traditional territory of indigenous peoples. Nevertheless, since the revision of the Forestry Act in 2004, there has only been once case in which this provision has been utilized. In October 2007, the CIP issued a set of "Directions for harvesting forest products of indigenous peoples in the Yufeng and Xiuluan Villages, Jianshi Shiang, Hsinchu County" in the wake of the "Smangus Beech Tree Incident" in which three young men of the Atayal community of Smangus in Yufeng Village, Hsinchu County were indicted for stealing national property after moving part of a fallen tree after a typhoon in October 2005. Even though Articles 19 and 20 of the IPBL explicitly mandate that indigenous people have the right to use national resources on their own land, indigenous people who engage in the harvesting and use of natural resources in traditional domains can still be prosecuted and sanctioned by the State. Similar absurd situations occur with regard to other laws. From the standpoint of the indigenous peoples resistance movement it can truly be said that "a decade has passed like one day."[21] It is a matter of regret that the CIP did not say one word about this type of administrative sloth and dereliction in the State report but instead has touted its progress in revising laws and used the unwillingness of the legislative agencies to cooperate as an excuse for stalling. We call on the CIP to seriously face this issue and put forward concrete solutions.
69. In addition, the content touched up by the IPBL is not limited to questions related to land, but also includes self-governance, education, medical care, employment, judicial affairs, economics, environmental protection and women and gender affairs. Concerned government agencies should submit supplemental material into the State report on the above - mentioned issues and explain the related progress and implementation of the IPBL.

Regarding indigenous peoples' rights to hunt

70. According to the statistical analysis conducted by Taiwan Legal Aid Foundation,

21 Regarding the demands of the indigenous peoples movement, see: Juan Chun-ta (2015), "The Trajectory of the Taiwan Indigenous Movement (1983-2014)" (in Chinese), M.A. thesis, Graduate Institute of Sociology, National Taiwan University, Taipei City, Taiwan. The three Atayal men were ultimately acquitted. See Loa Iok-sin, "CIP defines boundaries over Smangus," Taipei Times, October 19, 2007 <http://www.taipeitimes.com/News/taiwan/archives/2007/10/19/2003383782/> and Loa Iok-sin, "High Court acquits three Atayal in Smangus case,"Taipei Times, February 10, 2010 <http://www.taipeitimes.com/News/taiwan/archives/2010/02/10/2003465656>.

more than 230 Indigenous persons have been prosecuted and sentenced for violation against the *Wildlife Conservation Act* since 2004 to March, 2016. Also, more than 100 Indigenous person were prosecuted for violating the *Act Governing the Control and Prohibition of Gun, Cannon, Ammunition, and Knife,* and sentenced for probation or even imprisonment. The most severe one is the case of the Bunon hunter who was sentenced to 3 years and 6 months by the Supreme Court. These has shown that the state has obviously violated the regulations mentioned above and failed to protect Indigenous cultures, and offended Indigenous natural/inherent sovereignty.

71. We recommend the government to amend the Wildlife Conservation Act and Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs, as well as restoring Indigenous hunting management system to the communities:
72. The current Wildlife Conservation Act and Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs in Taiwan both failed to define "traditional culture", which caused some law enforcement personnel who are not aware of the hunting culture of Indigenous Peoples to make discriminative verdict and administrative measures that could oppress Indigenous Peoples' hunting culture.
73. According to academic research,[22] the Indigenous Peoples' hunting activities are not only ecologically tolerable, but also properly balance the amount of wild animals, and further promote ecological harmony.
74. We recommend legislators to consider all the facts above, and make amendments of the *Wildlife Conservation Act* article 21-1 and amend article 3 section 15 with definition of traditional culture and omitting or amending the *Regulations Governing Indigenous Peoples Hunting and Use of Wild Animals Based on Traditional Culture and Ceremony Needs* that limit the definition of Indigenous traditional culture.

Regarding indigenous peoples' cultural rights to fishing, hunting, and collecting

75. The Taitung Country Government established the Fu-Shan Fishing Resource Conservation Zone according to *the Fishery Act* article 44 claiming restriction on collecting and fishing activities.[23] The Coast Guards penalized local Amis Peoples

22 Professor Pei Jiaqi analyzed the number and types of wild animals in the Dawu Mountain area, and the hunting quantity of the local Rukai people, and found that the number of local wild animals has always maintained a balanced number.

23 *Fisheries Act* art. 44 para. 1 "For the purposes of resources management and fisheries structure adjustment, the competent authority may promulgate regulations on the following matters: (1) Restriction or prohibition of the catching, harvesting, or processing of aquatic

several times, and even requested the people to put their catch back to the water. The restriction has damaged Amis Peoples' lifestyle, the inherent sea ceremony, fishing, gathering and other traditional culture and it also influenced the heritage of ocean culture of Amis Peoples.[24] In addition, Amis Peoples are often prosecuted for theft according to *the Forestry Act* article 52 for collecting rattan hearts, bamboo shoots, and anthodia mushrooms.[25] So it is absolutely necessary to reassess the

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organisms. (2) Restriction or prohibition of the sale or possession of aquatic organisms or the products made therefrom. (3) Restriction or prohibition of the use of fishing gears and fishing methods. (4) Restriction or prohibition of fishing area and fishing period. (5) Restriction or removal of any object obstructing the migratory routes of aquatic animals. (6) Restriction or prohibition of placing or dumping of objects harmful to aquatic organisms. (7) Restriction or prohibition of placing or removal of protective objects necessary for the propagation of aquatic organisms. (8) Restriction or prohibition of transplantation of aquatic organisms. (9) Other matters as deemed necessary. Any fishery operator violating any provisions of subparagraph 4 to 9 of the precedin g paragraph, shall be imposed with administrative disposition by the authority that made the promulgation. The municipal or county (city) competent authorities shall report to the central competent authority for approval prior to any promulgation pursuant to the provisions of paragraph 1." 」

24 TSAI Zhengliang, Micinko／Mipacin (Fishing)——A Preliminary Study on Amis Marine Culture and Diving and Fishing Culture, Documentation of Aboriginal Peoples Committee of Indigenous Peoples Committee, October 23 2015 (in Chinese): https://ihc.cip.gov.tw/EJournal/EJournalCat/270 Liberty Times Net (in Chinese): http://news.ltn.com.tw/news/local/paper/925901

25 *The Forestry Act* art. 52: "Those who violate Paragraph 1 and Paragraph 2 of Article 50 and are involved in the circumstances listed below shall be liable to imprisonment for at least one year but not more than seven years; in addition thereto, a penalty fine of at least one million New Taiwan Dollars (NT$1,000,000) but no more than twenty million New Taiwan Dollars (NT$20,000,000) shall be imposed: 1. Offenses committed in a conservation forest. 2. Offenses committed by an individual obligated to protect the forest according to a consignment to an organization or other contract agreement. 3. Offenses committed while exercising the right to harvest forest materials. 4. Offenses by more than two conspirators or the employment of other individuals therefor. 5. Using stolen goods as raw materials for producing charcoal, turpentine or other products, or for cultivating mushrooms. 6. Those who use livestock, vessels, vehicles or other equipment for transporting stolen forest products. 7. Those who excavate, destroy, incinerate or hide roots to cover up traces of crime. 8. Those who use stolen forest yields as fuel, for mining of minerals, refining lime, or for manufacturing bricks, tiles and/or other articles. 9. The felling, sawing, or excavating of living trees or other actions that damage trees growth. Those who attempt any of the above shall be subjected to penalty. Those who violate Paragraph 1 by stealing primary forest products shall be liable to a penalty that is 50% higher if the stolen product is precious wood. This may be commuted to a penalty fine of ten- to twenty-fold the value of the stolen property. The aforementioned precious wood refers to species of trees with high economic or ecological value as defined by central competent authorities. For offenses stipulated herein, articles used for the commitment of or preparation for the offense or articles derived from or acquired through the commitment of an offense shall be seized whether they belong to the offender or not. Violators or suspects of offenses listed in Article 50 and this Articl may have their penalties reduced or may be exempted from penalties if during the investigation process, they provide statements on probandum highly related to the offense or evidence against other principal offenders or accomplices that enable prosecutors to prosecute the other principal offenders or accomplices involved in the offence, only with the permission of prosecutors."

current laws.

76. We urge to amend *the Fishery Act* article 44, *the Fishing Port Act* Article 18,[26] *the Commercial Port Law* article 36,[27] *the Act for the Development of Tourism* article 36,[28] which remove daily fishing, hunting, and collecting, ceremonies from restrictions and prohibitions. Lastly, we recommend that the *Executive Yuan* to issue an order to the *National Police Agency of the Ministry of the Interior* to minimize police interference on Indigenous People's' hunting, fishing, or using rifles in hunting for ceremonial purposes. We also recommend to review and amend the *Act of Forestry* and other laws or regulation offending Indigenous collecting rights in the forests, and exclude traditional Indigenous collecting from criminal penalization.

Indigenous peoples' rights to use advanced technology

77. The Act on Controlling Guns, Ammunition and Knives, *Article* 20 section 1 was amended, and the use of self-made hunting rifles for livelihood was exempted from criminal penalty and changed to administrative penalty.[29] However, *the Regulation Governing Permits and Administration for Guns, Ammunition, Knives and Weapons* article 2 section 3 and 4 still goes beyond the authorization from the above law and

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26 *Fishing Port Act* art.18 "Following conducts are strictly forbidden in the fishing port area: 1. Conducts that jeopardize safety and voyage of vessels. 2. Discharge of toxic materials, hazardous materials and waste oil. 3. Discharge of wastewater and other wastes. 4. Catching or raising marine products. 5. Other conducts announced by the competent authority as strictly forbidden. Any violation against the above, the coastal patrol authority shall take proper measures to put it to stop. The fishing competent authority shall designate areas and enact related measures that allow public fishing under the circumstances of no impeding business operations, safety and no polluting the port area. This is not bound by the restriction of the Subparagraph 4."

27 *The Commercial Port Law* art. 36 "The following acts are prohibited within a commercial port area: 1. Anchoring in an area where submarine cables or pipelines are crossing. 2. Raising and catching marine life. 3. Any other acts which may affect the safety of the port area. In accordance with Section 2 in the preceding Paragraph, the commercial port authority and related registered associations may coordinate to set measures and to delimit a fishery area for the public without affecting port operations, safety and causing pollution."

28 *Act for the Development of Tourism* art.36 "For the safety of tourists, the competent authorities of aquatic leisure activities may impose restrictions on the types, range, time and behaviors in aquatic leisure activities. The competent authorities may also announce the areas in which aquatic leisure activities are forbidden. The competent authorities shall, in consultation with other related authorities, promulgate the related management for regulation."

29 *Controlling Guns, Ammunition and Knives Act* art.20 para.1 "Indigenous people who manufacture, transport, or possess self-made hunting guns, theirs main component parts and ammunition without approval, or indigenous people and fishermen who manufacture, transport, or possess self-made harpoon guns as tools for making a living without approval shall be sentenced to a fine of no less than NT$2,000 and no more than NT$20,000. Other imprisonment punishments prescribed in this Act shall not be applicable to the said offenders."

limits Indigenous Peoples' rights of using technologically advanced and safer hunting rifles and fishing spears, the regulation also set stringent limits on the definition of "self-made hunting rifles". [30]Because of these limitations, some indigenous hunters had to use unsafe rifles and several cases of severe injuries and even deaths occurred. The ICERD initial State Report states that relevant measures will be revised in accordance with Justice Yuan's Interpretation No. 803. At present, only the Ministry of the Interior has proposed relevant drafts in 2023. However, as of the parallel report deadline, the government has not implemented the 2-year statute of limitations mentioned in the Justice's Interpretation complete the legislation.

78. Furthermore, the *Act for Controlling Guns, Ammunition and Knives* article 5-2 section 1 subsection 6,[31] which stipulates that if the owner is convicted and sentenced to a fixed term of imprisonment, the gun permit will be revoked or cancelled. It could lead to the situation in which elders with rich hunting skills and knowledge to lose the opportunity to use legal hunting guns for good and interfere with their mandate to pass down the culture to future generations. The above act clearly violates the principle of proportionality.
79. We recommend amending the *Regulation* mentioned above. Revoking of gun license should be reserved for those with repeated and intentional offenses (Article 5-2, section 1 sunsection 6). For article 20 of the same *Regulation* to allow use of safer and advanced hunting rifles and fishing spears not limited to the self-made rifles in accordance to the Self-defense Guns Control Act. The Ministry of Interior and

30 The Regulations Governing Permission and Management of Guns, Ammunition, Knives and Weapons art. 2 paras. 3-4 "3. Self-made hunting gun: The tool made by the applicant independently or with the indigenous people for non-profit-seeking purpose, for traditional customs and cultures and earning a living, in the following manners and at the location approved by a police office. (1) To reject the filling materials, it is necessary to fill black powder in the gun barrel from the muzzle one-by-one and trigger it by percussion primer or in any other manner, or ignite with blanks for the primer of a staple gun with the caliber less than 0.27 inch. (2) The filling materials shall be filled into the self-made hunting gun barrel for rejection and smaller than the glass lens and lead pellet in the gun caliber. The gun is not equipped with a bullet and any other cartridge similar to emitter, cartridge case, primers and fire. (3) The total length of gun (including barrel) shall no less than 38 inches (about 96.5cm). 4. Self-made harpoon gun: The tool made by the applicant independently or with the fishermen or indigenous people for non-profit-seeking purpose, for the indigenous people or fishermen to earn a living, to launch sharp objects made of steel, hard plastic materials or wood to attack fish by means of the tensile strength of rubber, instead of such explosive as gunpowder, at the location approved by a police office."

31 *Controlling Guns, Ammunition and Knives Act* art.5-2 para.1 "If the firearms, ammunition and knives which are permitted according to this Act have one of the following facts, the owner's permit will be revoked or cancelled. The said firearms, ammunition and knives will be purchased by the competent authorities, but those which were purchased and used by the governmental agencies or used against this Act shall not be purchased…6. The owner is finally convicted and sentenced to a fixed term of imprisonment."

Council of Indigenous Affairs should establish channels for Indigenous Peoples to obtain safe and technologically advanced hunting rifles and ammunitions. We recommend amending or removing *the Regulation Governing Permits and Administration for Guns, Ammunition, Knives and Weapons* articles 2-4, and articles 15-19 with regards to definitions and applications of self-made rifles and fishing spears.

Special challenges facing indigenous persons with disabilities

80. In ICERD State Report, there is no explanation of the special situation that people with disabilities of indigenous peoples face when they carry out intertwined identities. And there is no relevant data on people with disabilities of indigenous peoples in the relevant demographic data. In addition, the *People with Disabilities Rights Protection Act*, as a domestic regulation to protect the rights of persons with disabilities, does not mention the protection of related rights and interests of indigenous peoples. It is only mentioned in Article 26 of The *Indigenous Peoples Basic Law* that the government handles the welfare of indigenous Special protection should be given to the rights and interests of persons with disabilities
81. Indigenous peoples encounter many obstacles and hardships due their racial status in society. Indigenous persons with disabilities often encounter even more inconveniences in daily life, barriers at work, and discrimination against their mental or physical disabilities, as well as their Indigenous origin. All these intersectional factors lead to discrimination against Indigenous persons with disabilities on multiple fronts, and this is even worse for Indigenous women with disabilities. There is an urgent need to establish a protection scheme specifically addressing the situation and the need of Indigenous persons with disabilities, further strengthening their basic rights, including social, civil, education and employment rights.
82. The government agencies that are directly mandated with addressing the issue of Indigenous persons with disabilities should be the Ministry of Health and Welfare and Council of Indigenous Peoples. However, these two agencies have not set up a specific unit or allocate staff member in charge of Indigenous persons with disabilities. Furthermore, The State Report does not specifically address the current situation of Indigenous persons with disabilities. This reveals that the national policies and system do not take into consideration the specific needs of Indigenous persons with disabilities. In addition, there is no representative from the Council of Indigenous Peoples or non-government Indigenous Peoples organizations included as members in the Committee on the Protection of Rights of Persons with Disabilities set up by the Social and Family Affairs Administration, Ministry of Health and Welfare (See para. 10 of the 2017 State Report on CRPD). The challenges

and specific needs of Indigenous persons with disabilities could not be reflected and discussed in such Committee.

83. The Ministry of Health and Welfare only started to collect relevant statistical data on Indigenous persons with disabilities in 2014. Comparing Indigenous statistics with the national data, it shows that the proportion of Indigenous persons with physical disabilities and mental disabilities is higher than national proportion while the proportion of Indigenous persons with chronic psychosis is lower than national proportion. However, the numbers collected are submitted by the local governments based on the number of disability cards or other certified documentations issued. There is no way to verify the accuracy of these numbers. There is also the need for further research and investigation on the gap of the classification of disabilities between the Indigenous and national proportion to clarify if the gap is caused by Indigenous Peoples' particularities in terms of cultural, economic, political and social perspectives.
84. The causes of Indigenous persons with disabilities should be addressed more. factors might include physical disabilities caused by being exposed to high risk working environments, or mental disabilities caused by difficulties in social adjustment and historical colonizations. Indigenous persons with disabilities living in urban or rural areas should receive the same level of protection. Indigenous persons with disabilities living in urban areas are particularly vulnerable to the feeling of loneliness and insecurities, having left their existing social network and support in their hometown and facing the daily pressure of livelihood. Indigenous persons also experience many challenges integrating into mainstream society due to loss of their traditional land and the fast pace of societal modernizations. This significantly increases the rate of education dropout, unemployment, alcoholism, and suicide compare to the general population. However, current psychological counselling and physical and mental health branches of government have no strategies in place to provide the assistance needed to address these specific challenges facing the indigenous people. National policies and frameworks on indigenous people also ignores the specific psychological need of the group, therefore failing to provide adequate systematic protection.
85. The government framework in determining and assessing physical and mental disabilities do not take into account of specific culture and language differences between indigenous people and the general population. Key indicators of learning assessment should take into account the student's own unique cultural and societal backgrounds. In 2013, the government passed Regulation on the Method of Assessing and Determining Students with Physical and Mental Disorders and Gifted Students. Article 10 of the Regulation provides that in the process of assessing a child's learning disability, one should exclude influencing environmental factors such as insufficient cultural stimulation and inappropriate

teaching methods. However, according to the Ministry of Education's Special Education Transmit Net, the number of indigenous students with special needs is higher than non-indigenous students. Many indigenous students are assessed to have learning difficulties, developmental disabilities and Attention Deficit Hyperactivity Disorder (ADHD) by the assessing authorities purely because of their different structural upbringing within their families. For example, an indigenous student may lack Chinese language skills because they were brought up by their grandparents speaking their native languages, this can also influence their world view being more aligned to that of their local community than the views shaped by mainstream education. In addition, the severe shortage of special need educators with indigenous specializations means many indigenous students are labeled with learning difficulties by mainstream teachers, causing further harm to the students. We strongly recommend that the identification and assessment process of indigenous students with special needs should involves parents, regular and special need teachers to minimize cultural and societal bias during the process.

The negative impact of international cooperation and development assistance on indigenous people

86. Has the Ministry of Foreign Affairs (MOFA), in the course of engaging in its work on international cooperation and development assistance, contributed to any misunderstandings or even negative impacts with respect to the country's Indigenous populations? Moreover, when performing its diplomatic mission, has the Ministry, in a desire to exhibit the unique characteristics of Taiwan through displays of Indigenous culture, but actually misinterpreted those cultures and, to the contrary, perpetuated stereo-typical representations of Indigenous Peoples and even exacerbated their discrimination? For instance, in the Ministry's promotion of its young ambassadors program there have occurred over the years several cases where performance troupes, when interacting with host countries at international events for displays of Indigenous songs and dances or during celebratory activities for designated diplomatic holidays, have perpetrated numerous misrepresentations of the costume, dances or songs of specific group of Indigenous Peoples. Such instances create erroneous impressions and disseminate false information that causes harm to many of the country's Indigenous Peoples. MOFA should present a concrete policy that promotes better understanding and respect to Indigenous Peoples amongst its diplomatic staff and relevant international planners.

Art. 5: Rights Protection Measures

Equal access to justice

Judicial and human rights of indigenous people

87. In response to para. 102 of the ICERD State Report, Article 31, Paragraph 5 of the *Code of Criminal Procedure* states, "If the accused or suspect, who is unable to make a complete statement due to mental disorder or other mental deficiencies, or who is an aborigine, has not retained a defense attorney during an investigation, the prosecutor, judicial police officer, or judicial police should notify a legally established legal aid agency to assign an attorney for the accused's or suspect's defense. However, if the accused or suspect requests an immediate interrogation or questioning, or if the defense attorney is not present after more than a four-hour wait, the interrogation or questioning may be commenced." The law clearly states that Indigenous Peoples have the right to request legal aid. However, past data show that the majority of Indigenous defendants forfeited this right, and mostly took place during the police investigation stage.
88. According to the data released by the Taiwan Legal Aid Foundation, the *First Criminal Interrogation Accompanied by Legal Aid Attorney Program* was launched on 15 July 2012. Up to 31st December 2015, There are 25,113 cases qualified for legal aid program. However, only 3,401 cases were provided with legal aid attorneys, and 21,060 forfeited their right to legal aid during interrogation, which makes up the rate of 83.86%. We request the authorities investigate the reasons for the high forfeit rate and ensure that improvements are made.
89. Article 31 of the *Code of Criminal Procedure* clearly states that Indigenous Peoples have the right to mandatory defense. However, in reality, there are some prosecutors adopting the summary trial proceeding to evade legal defense for the defendants.[32] There are 2,495 summary judgments and ruling were made in the Hualien and Taitung regions in 2015. We recommend that the authorities investigate the appropriateness of Indigenous Peoples prosecuted by the police on account of practicing the traditional customs and being ruled using summary trial proceeding, even though they may be ruled innocent in the court. And we further require to ensure the improvements are made.

32 Summary judgement and ruling refers a simple judgement procedure claimed by the prosecutor or exercised by a court judge for cases in which the accused confessed to petty crimes or the court deems the evidence sufficient to rule against the accused, and the sentence is probable, detainable, or six months or less and commutable by a fine. Such procedures do not require oral arguments, which bar legal representatives from providing a defense, even if the case is a conflict of Indigenous customs and rule of law, such as firearms and hunting rights of Indigenous Peoples.

Judicial interpretation

90. According to Article 14 Paragraph 3 and General Comment no. 32 of the UN Human Rights Council, a criminal defendant should have free assistance of an interpreter. This is related to the principles of just and equal rights in a criminal trial, and it is not only applicable in all phases of criminal cases, but also to those cases where foreigners are involved with crimes.
91. As the number of foreigners entering the country has rapidly increased in recent years, the number of cases that involve foreigners has gone up as well. Therefore, it is very important that our government provides the minimum protection for foreign defendants, such as sufficient interpretation assistance (provided by the judicial system) , the brief of the case, and a full explanation of the trial. Take for examplethe well-known, 2013 fishing boat murder case of Te Hung Hsing (No. 368). When the 9 Indonesian defendants were investigated in the Prosecutor's Office, the prosecutor assigned an Indonesian spouse who married a Taiwanese person as the interpreter. But there were problems like a lack of understanding of the case, and their poor grasp on legal terms. After the case was brought to court, the judge interrogated the 8 defendants at the same time, but the court only assigned a Malaysian interpreter for them. Although their languages are similar, it is still questionable if the key terms could be fully conveyed and understood. During the trial, the judge, the prosecutor and the defendants had to communicate frequently, but the interpreter was too busy to translate every detail, which affected the defendants' rights to participate in and understand the content of the trial. Worst of all, the court only assigned one interpreter at first, and due to the number of defendants and the complications of the case, the interpreter was soon overloaded, which forced the court to assign another interpreter as an assistant. After countless trials, the interpretation went smoother, but the right to a fair trial was still violated during the first half. It also indicates that the court was totally unaware of the basic concept that interpretation is the minimum protection of a defendant's rights. The fact that the whole procedure had to adjust along with the trial shows that interpretation has been considered a non-important issue in the judicial reform, and the right to a fair trial for foreigners is easily violated.
92. Although the competent authorities of the Judicial Yuan and the Ministry of Justice have started training sessions for legal interpretation professionals, and recruited official and specially employed interpreters in all courts and prosecution offices, the number of interpreters and languages available is still severely inadequate. For example, the number of cases which needed interpreters from January to August 2021 was close to 6000, but there were only 271 specially employed interpreters, which showsa huge gap between the supply and demand. Also, interpreters obviously do not have the time or capability to understand the details of all cases they're in charge of. The problem of insufficient interpreters also exists in the courts

and offices in non-urban areas and the languages of defendants are rarely used (e.g. Arabic, Russian, Turkish). When trials have opened and no interpreters could come, there were cases where the defenders served as interpreters, or the defendants brought their own interpreters to trial. This is clearly against the "neutrality and objectivity of an interpreter" rules in the Court Organic Act and procedure acts. Moreover, the right to have the free assistance of an interpreter protected in Article 14 Paragraph 3 of the ICCPR should include all phases of a criminal case. Since there are many cases that won't even go to prosecution or court, the amount of criminal cases is like a pyramid, and most cases stay in the police investigation stage. However, the Ministry of Justice has long ignored interpretation in investigation processes. Many foreign defendants have their first interrogation in a police station without interpretation. If the process is flawed in the beginning, the trial afterwards stands on a fragile foundation.

93. Finally, the Judicial Yuan and Ministry of Justice have set up "Operational Regulation Governing the Use of Interpreters of Courts and Instructions for Prosecution Offices Using Interpreters in Criminal Cases". However, such executive orders are too brief and only deal with the administrative process. There is still no explicit rule or operational regulation to protect the right to interpretation for foreigners. Issues that should be addressed include the training of officially and specially employed interpreters, the threshold of authentication, examination and assessment, the allocation of interpreters, and rewards and travel allowance that would affect the performance of interpreter.
94. Therefore, the government should not only focus on the training and assessment of interpreters, but also consider setting a specific law, and establishing competent institutions for judicial interpreters, so that the covenant right to interpretation for foreigners can be fulfilled.
95. For the protection of fair trials and to reassure the neutral role of the interpreter, "an interpreter should take the initiative to report to the court if there is any cause for refusal of interpretation or a conflict of interest, as well as of there is any reason that may potentially affect the faithfulness or neutrality of an interpreter performing duties." (Article 8 of the Code of Conduct for Court Interpreters). Article 10 also states: "an interpreter shall not accept solicitation or other favors, or receive improper benefits, and shall avoid making any unnecessary contact with parties, witnesses, expert witnesses or other relevant parties." In Article 25 of Code of Criminal Procedure, it says that "the provisions of this chapter relating to the disqualification of a judge (Article 17 Paragraph 6) shall apply mutatis mutandis to a court clerk or interpreter," which indicates that the interpreter should disqualify himself from a case if it concerns his own motions. However, for a judicial interpreter who speaks the same language as the defendant (who is also from the same country as the defendant) and not only keeps contact with parties outside the

court, but also stands as a witness to address the case, his conversation with the defendant could be evidence to prove the defendant guilty in court.

96. By law, it is not neutral for a witness to also act as an interpreter, and it is difficult to see how duties could be executed "fairly" in such instances. It is against the justness of the interpreter to contact a defendant outside the court, and it is directly against the law of the "disqualification of the interpreter". Particularly in the courts of Taiwan, unless there are many defendants or it is a significant case, there are usually less than two judicial interpreters in the court. When a trial is lacking an assistant interpreter to reassure the accuracy of an interpretation, it can hardly be deemed "fair".

Improve interpretation services

97. The government should perform a thorough review on the need for various types of interpretation services both within individual agencies and in an interagency setting, and establish a comprehensive set of standard operating procedures for each type of interpretation services, as well as rules securing interpreters' labor rights. Budgets should be allocated, in accordance with Article 7 of Taiwan's Act to Implement the ICCPR and ICESCR, to create comprehensive training and certification standards for different forms of interpretation services, as well as service quality evaluations and proofreading mechanism for translated judicial documents.[33] Meanwhile, budgets should also be allocated specifically for translation of judicial proceeding documents, in order to ensure the right to a fair trial for those who do not understand the language used in these proceedings.
98. There is no clear and uniform mandate among government agencies for the allocation of sufficient budgets to train, provide and manage interpretation services, and various agencies have their own regulations regarding the provision of interpretation services.[34] As a result, central government agencies, local

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

34 Code of Criminal Procedure Art. 99: "Where an accused has a hearing or speech impairment or has difficulties in understanding the language used, the service of an interpreter shall be used; such an accused may also be examined using written words or ordered to make a statement in written words." Court Organization Act Art. 98: "If litigants, witnesses, expert witnesses, and other people relevant to the case are not familiar with Mandarin, the communications shall be assisted by interpreters." Regulations Governing the Implementation of Interview by the National Immigration Agency, Ministry of the Interior Art. 6: "If an applicant is audibly or orally challenged or can not communicate in language, an interpreter may be provided by the Agency or the interview may be conducted in writing." Detention Unit of the Immigration and Migration Administration, Ministry of the Interior questioning detainees about operating standards Art. 8: "Detainees who are deaf or mute or have language barriers may be assisted by interpreters and may be asked or ordered to make written statements."

governments, the police and the legal aid system often find themselves short on interpretation capacity. In addition, since there is no comprehensive interpretation system within the central government, the following issues are prevalent in practice for interpretation services: unreasonably low wages, insufficient regulations on duty of recusal, insufficient protection on personal safety, ambiguous application requirements and procedures.

99. As prescribed by Articles 9, 13 and 14 of ICCPR, [35] the State shall not violate the people's right to liberty and security of person, nor the right to a fair trial. UN's CCPR General Comment No. 32 also notes that the State must provide free interpretation or translation of related documents.[36] Therefore, interpretation serves not only to ensure the defendant's right to defend, it also directly affects the party's rights to life, to liberty and property, as well as personality rights in matters such as medicine and household registration, among others. Taiwan's lack of a comprehensive interpretation system is not only inconsistent with ICCPR, but also a violation of the due process principle in a modern legal state.

Legal aids for asylum seeker

100. Currently, Article 14 of the *Legal Aid Act* states that legal aid is granted to non-citizens who legally entered the border, are victims of human trafficking cases, and those who lost their residency due to incidents not imputed to themselves.[37] However, according to the current regulations, legal aid is not applicable for non-citizens who entered the border illegally seeking political asylum or as refugees.

101. We suggest:

(1) The Board of Legal Aid Foundation may decide to provide legal aid to non-citizens without legal status, according to Subparagraph 7 of the same Article.

(2) Judicial Yuan as the competent authority, shall also support the decisions by the Foundation and allocate a sufficient budget at the Foundation's disposal.

Right to liberty and security

Human rights of indigenous people in prison

102. In December 2014, an Atayal inmate with bipolar disorder, Mr. Wei-Hsiao Lin, was sexually assaulted and tortured to death in prison.[38] This incident not only highlighted the management and care issues for mental patients in prisons but also

35 Articles 9, 13 and 14 of ICCPR http://ppt.cc/atBk8

36 Paragraph 40 of UN's CCPR General Comment No. 32

37 Legal Aid Act <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0030157>

38 Mr. Wei-Hsiao Lin, an inmate with mental disorder, was placed in solitary confinement for extended periods and subjected to the illegal use of constraints 49 times. He eventually died of asphyxiation after being bound and handcuffed to a corridor railing in a sitting position for five hours.

exposed the illegal use of constraints. Relevant supervisors involved in this incident were impeached by the Control Yuan. The human rights of Indigenous Peoples in prisons remain a grave concern, yet no data is currently available. Therefore, we request that the Agency of Correction, Ministry of Justice, investigate and release the report on human rights conditions of Indigenous Peoples (incl., juveniles) in prison. Data should include the number of Indigenous inmates, ethnic, genders, and offense. Moreover, the Agency of Correction should make additional efforts looking into whether the appeals of Indigenous inmates are related to racial discrimination.

103. The government has established employment counseling and vocational training systems to facilitate the reintegration of inmates and juvenile delinquents into society. However, these systems do not take into account the specificities of Indigenous Peoples' social structures. The underlying social backgrounds of Indigenous inmates and juvenile delinquents are typically ignored by the rehabilitation and protection system. Therefore, the existing rehabilitation and protection system is ineffective in helping reintegration into schools, general society, or Indigenous communities is extremely difficult for former Indigenous inmates and juvenile delinquents. Instead, they are prone to both ethnic and socioeconomic discrimination, leading to a vicious cycle. We suggest that the Ministry of Justice establish a rehabilitation and protection system that are culturally sensitive and takes into account the Indigenous Peoples, communities, and groups, thereby fulfilling restorative justice.

Consensus concerning the human studies on indigenous peoples

104. Consent must be acquired from Indigenous Peoples through consultation for research involving human subjects. Although Article 15 of the *Human Subjects Research Act* clearly stipulates that when the research involves Indigenous Peoples, additional consultation to obtain the consent of the indigenous group is required. However, a number of academic researchers failed to fully understand the definition of indigenous peoples' collective consent, leading to the illegal establishment of databases using the biological specimens of Indigenous groups without proper collective consent. For example, the Taiwan Biobank Ethics Committee approved the recruitment of Indigenous Peoples in the third meeting in 2014 and commenced the collection of samples from Indigenous Peoples and communities in 2015.

105. The Council of Indigenous Peoples and the Ministry of Health and Welfare jointly announced the Regulations on the Consultation and Approval and Engagement Business Benefit of Human Subject Study Involving Indigenous Peoples on 31st December 2015, taking effect on 1st January 2016, and amended some provisions in 2017. By checking the Council of Indigenous Peoples "Human Body Research

Project Consultation Obtaining Indigenous People's Consent Promotion Project" dedicated webpage, we can find that it continues to carry out promotion operations and research case application review operations. However, the ICERD State Report of ICERD does not explain this promotion plan, and civil society has no way to track and understand the actual implementation.

Post-disaster community relocation of indigenous peoples

106. The government once state in the First State Report on ICESCR (para. 9) that "during post-disaster reconstruction of Indigenous Peoples, when implementing 'special zone demarcation' for disaster-ridden areas (also known as the 'dangerous zone') or utilizing land involving the traditional territories of Indigenous Peoples…, informed consent made by Tribal Council or community-based decision-making progress must be required, as to respect diversified and different voices in the communities." However, this issue is not mentioned in ICERD State Report. The fact is that this principle was not adhered to in the regulations of disaster prevention and relief, organization establishment and mechanisms in village relocation, neither in the National regulations and Disaster Prevention and Relief System. The mechanism of participation, indigenous peoples' traditional knowledge on disasters referring to the site, decision-making, and consultation was not comprehensively understood by the government; neither was it based on survey data of tribal disaster prevention options. The prevention and relief system, therefore, is unable to meet the essential demand of indigenous peoples without embracing indigenous viewpoints in existing process of disaster prevention and relief plan and the establishment of the organization.
107. *The Indigenous People Basic Law* article 25 indicates that "*The government shall establish a natural disaster prevention and relief system in indigenous peoples' regions and natural disaster prevention priority zones to protect physical and property safety of indigenous peoples.*" This shows that the national laws neither lack a mechanism for direct engagement of Indigenous experts and representatives of Indigenous Peoples nor propose post disaster reconstruction mechanism with Indigenous Peoples' consensus. Besides, the government invited only the authorities on level of central government, such as National Science and Technology Center for Disaster Reduction and Council of Indigenous Peoples, to participate in the making of natural protection zones, yet without Indigenous experts and representatives of Indigenous Peoples.
108. The restrictions above mentioned have not only affected Support network and relocation decision-making mechanism of indigenous peoples, but also lead to the invasion of culture right of indigenous peoples. For example, Typhoon Morakot in 2009 forced the numerous indigenous communities to relocate from the original sites, which makes the indigenous peoples face serious challenges in adapting new

environment and cultural heritage. The fundamental problem is that Indigenous knowledge is not entirely respected, heard, and included in communities' relocation decision-making process. The government even ignored Indigenous traditional decision-making mechanisms, including site selection, decision-making, and consultation, which resulted in severe communities' disruption and vulnerability of physical and spiritual recovery. However, the National Science and Technology Center for Disaster Reduction hasn't showed any regret in this regard. Yet even after amending the laws for so many times, the indigenous knowledge of disasters and traditional decision-making are not yet included in the policy whatsoever, and even the basic research work has not been started.

109. In sum, we suggest that the government to look into the indigenous knowledge of disasters, site selection, traditional decision-making mechanism, and Free Prior Informed Consent of Indigenous Peoples. Meanwhile, we recommend the government to establish the indigenous community-based support network of disasters; to facilitate the implementation of the traditional decision-making mechanism in indigenous communities, and to respect the will of Indigenous Peoples in planning and make sure the indigenous peoples being included in the research projects of National Disaster Prevention and Relief Center. Also, we suggest the government to work together with Indigenous Peoples to amend the article 25 of *the Indigenous Peoples Basic Law*. And we recommend the government to establish the regulations to empower indigenous peoples of disaster prevention and relief and climate change research focus on indigenous regions and make them the central rules in National Disaster Prevention and Relief Center.

Custody of foreigners

110. We affirm the actions taken by the MOI, the Mainland Affairs Council and the Judicial Yuan in response to interpretations by the Constitutional Court and the Concluding Observations and Recommendations of the Experts of submitting and securing legislative approval for important revisions to the Immigration Act and the Act Governing Relations between the People of the Taiwan Area and the Mainland Area, both effective July 2015, and the Habeas Corpus Act. The first two bills of revisions require that any restriction of the physical freedom of foreign citizens or their detention be in accord with the principle of the retention by a judge (See Paragraphs 212-215 of the State Report Response to the Concluding Observations and Recommendations). The Judicial Yuan's revised Habeus Corpus Act takes a further step in allowing persons whose physical freedom is restricted for non-criminal cases to gain opportunity for judicial review by filing a writ of habeus corpus. However, an analysis of cases of habeus corpus conducted by civil society human rights organizations showed that many courts simply wanted to ensure the legitimacy of the trial process and refused to substantively examine the

necessity for detention.[39] This state of affairs is not in keeping with the requirement of Two Covenants review committee's recommendation that courts must have the power to "decide whether the detention is lawful."

111. After the release of Interpretation No 708 by the Constitutional Court on February 6, 2013, the Immigration Act was revised to reduce the period of administrative detention to 15 days. If a detained person cannot be repatriated within 15 days, immigration authorities can apply to judges for an extension, but the period of detention cannot exceed 45 days. If repatriation still cannot take place, immigration authorities can apply for another extension of 40 days, but the grand total of days detained cannot exceed 100 and immigration authorities must allow detained persons who object to being detained the right to apply for "habeus corpus."[40]

112. The Code of Administrative Procedure has amended on February 5th, 2015 and included a new chapter 4 to address the procedure, categories of petition on custody cases, the court in charge and the procedure of the trial. The involved person or family can appeal for an objection, and request an arraignment. However, according to the statistics, the was 6.3% of cases will be released. The trial usually only examines on the laws but the fact, and it never consider the necessity of "custody." Article 38 of *Immigration Act* addresses that, only when a compulsory exit order is difficult or impractical to enforce, a defendant can be temporary detained. Therefore, it shall be considered in the court that whether detention is the ultimate measure.

113. No asylum-seeker in Taiwan had received any legal aid when he was detained in the detention centers for the crime of illegal entry or overstay. Since Article 14 of the *Legal Aid Act* limited the provision of legal aid to non-citizens who "reside legally within the border of the Republic of China" or "victims or possible victims in a human trafficking case" , the illegally entered or overstayed aliens would not receive any aid. Plus, since Taiwan hasn't passed the Refugee Law, all asylum-seekers would be considered as illegal immigrants, and would be excluded from all legal aid.

People of the People's Republic of China

114. Point 62 of Taiwan the Conclusions and Recommendations on Two Covenants and Interpretation No. 710 issued by the Constitutional Court issued July 5, 2013 maintain that the lack of a ceiling on the days of temporarily detention and lack of

39 See the news release of a news conference to review implementation of the revised Habeus Corpus Act held on January 6, 2015 (in Chinese): < https://www.jrf.org.tw/articles/68 >. The Habeus Corpus Act had been revised in January 8, 2014 and took effect in July 2015. An English translation is available here: <http://law.moj.gov.tw/Eng/LawClass/LawHistory.aspx?PCode=C0010008>.

40 See Article 38-4 of the Immigration Act at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=D0080132>.

provision for judicial review for citizens of the People`s Republic of China clearly constitute discriminatory treatment compared to persons of other nationalities. Therefore, the Act Governing Relations between the People of the Taiwan Area and the Mainland Area has also been revised so that its Article 18-1 mandates that the number of days of temporary detention cannot exceed 150 days. However, this provision is still discriminatory compared to people of other nationalities.

115. There are only three scheduled repatriations by ship between Taiwan and China annually and this number has been reduced to two in some years. As a result, the time needed for repatriation is extended and the days of temporary detention hereby increased. In order to ensure that the conditions of temporary detention for PRC citizens are consistent with those of other nationalities, the Mainland Affairs Council should carry out further negotiations with the Chinese government.

116. With regard to foreigners whose period of temporary detention has exceeded the legal ceiling or for whom there is no need for detention, the National Immigration Agency (NIA) should cooperate with civil organizations and permit release on bond to the custody of others and provide alternative shelters.

Right to political participation

Right to political involvement of indigenous peoples

117. The Constitution of the Republic of China (Taiwan) reserves 6 (out of a total of 113) legislator seats for Indigenous Peoples. However, numerous unreasonable limitations exist in the election system that constitutes inequality of political involvement and violates Article 25, Paragraphs 1 and 2 of the *ICCPR*. Several of these items are discussed in the following section.

118. Concerns arising from the division of mountain and plain areas based on identity rather than space or ethnic: The current division of mountain and plain areas is based on the geographical division adopted by the Japanese government during their occupation for the convenience of management. These divisions neither have anthropology or ethnology bases nor acknowledged by Taiwan's Indigenous communities. After the Taiwanese government had assumed governance, it followed the divisions set by the Japanese but changed their original spatial orientation into identity orientation. In other words, the Taiwanese government previously conducted a demographic survey and categorized the residents in the mountain regions of Taiwan as Taiwan's Indigenous population. This identity does not change with relocation, and it is inherited by future generations. The outcome is that the Indigenous Peoples and their descendants that have moved to the city are still categorized in the "mountain" Indigenous population. Nevertheless, this "identity" contains no tangible ethnical value.

119. Electoral districts for Indigenous legislators are larger than their actual jurisdiction:

Currently, the electoral districts of the six Indigenous legislator seats encompass the entire country. By comparison, the only other candidates that have nationwide electoral districts are the presidency and vice presidency candidates. In terms of election costs, that for Indigenous legislator campaigns far exceeds that of non-Indigenous legislator campaigns, creating an invisible election threshold and benefits strong political parties from monopolizing legislator seats. Another distinct difference between the election of president/vice president and that of Indigenous legislators is that the citizens nationwide are potential voters for the presidency and vice presidency campaigns. Indigenous legislator campaigns only target Indigenous Peoples, which are further split into Indigenous Peoples residing in mountain and plain areas. The consequence of this system is that the residing legislators have a considerable advantage in both media coverage and control over voter lists. Opponents almost never stand a chance. Therefore, even with an election system, legislators are almost always reelected.

120. Deprivation of Indigenous voters' citizenship rights: Although Indigenous legislator seats are protected by the Continuation in Taiwan's current legislator election. The regulations also stipulate that only indigenous citizens are permitted to vote for Indigenous legislators, which is synonymous to segregation policies. These regulations allow non-Indigenous legislators to completely ignore Indigenous affairs, creating an irreducible gap between ethnics. Overall, these regulations have marginalized Indigenous affairs and rights from mainstream society.
121. Concerns of disclosed voting: Indigenous legislator candidates are responsible for a nationwide electoral district. However, the Indigenous population accounts for a mere 2% of the total population in Taiwan. Beside a comparatively denser Indigenous groups residing in a small number of urban areas in their home districts, votes in other districts are largely in the single digits. Some areas even accumulate as little as a single vote. Therefore, candidates are able to easily estimate the number of votes in each area, leading to doubts in anonymity. This situation is in clear violation of Article 25, Paragraph 2 of the *ICCPR*, which states that votes should be conducted in the form of a secret ballot to ensure the freedom of expression rights of all voters.
122. Based on preceding discussions, we strongly recommend that the government redefine the election system of Indigenous legislators to conform with the requirements of the Two Covenants, thereby reinforcing the representability (ethnically and regionally) of the electorates and eliminating implicit thresholds and limitations created from unfavorable system designs. As a resolve, Indigenous legislator candidates can first engage in postal voting to ensure the anonymity of the voters, as well as the rights of the Indigenous Peoples and Taiwanese citizens in general.

Civil service special examinations for the indigenous peoples and examination subjects

123. The Civil Service Special Examinations for the Indigenous Peoples should not only guarantee the employment rights of Indigenous Peoples[41] but also aim to encourage Indigenous Peoples to participate in public affairs so as to restore their special political status. Since the ratification of the *Indigenous Peoples Basic Law* in 2005, numerous regulations regarding the rights of Indigenous Peoples have been enacted or amended, and the affairs of Indigenous Peoples within the Taiwan's administration system have become more sophisticated and detailed. Civil servants tasked with the administrative affairs related to Indigenous Peoples (e.g., Forestry Bureau) should be proficient in Indigenous cultures and knowledge. Ministry of Examination, Examination Yuan, should consider the changes in Taiwan's legal system when selecting Indigenous candidates for civil services and comprehensively review the subjects tested in the current Civil Service Special Examinations for the Indigenous Peoples, including essential subjects or revising extant content[42], so that the knowledge and skills tested are relevant. .

On indigenous peoples' rights to consult and consent

124. Regarding the right to indigenous peoples' consultation and consent, the ICERD State Report only briefly mentions it in para. 196. The government published the Regulations on Obtaining Consent and Participation of Indigenous Communities through Consultation (hereinafter referred to as the Consultation and Consent Regulations) in January 2016. Based on the name of the Consultation and Consent Regulations, it seems to conform to the Free Prior Informed Consent principles disclosed in the UN Declaration on the Rights of Indigenous Peoples, but in substance, there are many problems.

125. First, the Consultation and Consent Regulations only regulates how the indigenous peoples and communities exercise their rights to give consent, while having no stipulations on the developer or the government to fulfill consultation requirements. Moreover, one has to be a member of a community to enjoy the right

41 Article 6, Paragraph 2 of the Civil Service Examinations Act states, "In order to meet staffing needs of institutions of a special nature, as well as to provide for the employment rights of Indigenous Peoples and the disabled, Special Examinations are held at grades 1 through 5 in accordance with the above said levels and grades. Except where this Act stipulates otherwise, persons qualifying under Special Examinations are not permitted to transfer outside the originally allocated agencies for a period of six years. Regulations regarding this six year restriction vary by the nature and scope of the examining organization and are stipulated in the respective examination regulations."

42 For example, after the ratification of the Patent Act in 2008, intellectual property administration was separated into an independent subject in the civil services examination to meet the growing requirement of relevant administration tasks.

to consent. However, the identification of community members is based on the government's household registrations, rather than the indigenous peoples' self-identification, nor the actual and current situation of the community.

126. Secondly, the Consultation and Consent Regulations require communities to establish community councils in accordance with government requirements, before they are eligible as a subject of consultation and consent. But the problem is that most communities have their own decision-making mechanisms. This requirement stipulated in the Consultation and Consent Regulations prevents the indigenous peoples from acting in accordance with their norms, forcing them to comply with government requirements that do not conform to their traditions and cannot reflect their actual will.

127. Thirdly, the right to consent is decided by a majority vote. This approach is inconsistent with the way many communities make their decisions, which require absolute consensus. The Consultation and Consent Regulations make it impossible to implement the spirit of the way decisions were usually made, forcing the indigenous people to choose between yes or no, causing internal conflicts.

128. Fourth, if the community is unwilling to convene a meeting to exercise the right to consent, the government can surpass the community and hold the meeting on its behalf. The fact that the government can override the community is a serious infringement upon the indigenous peoples' and the community's exercising of collective rights.

129. Take the photovoltaic (PV) power BOT project at the Katratripulr Community of the Pinuyumayan Peoples in Taitung as an example, which received great public attention in 2019. Many Katratripulr Community members who had registered their residency in the metropolitan area due to school or work were not allowed to participate in voting, while many households that were eligible to vote were only eligible because they registered their residency in the administrative area where the community was located and they had indigenous status, even though they did not belong to the Katratripulr Community. The incident above shows great absurdity.

130. In this case, because the community council found the procedure disputable, and that consultation with the community was insufficient, the council refused to convene a meeting to exercise the right to consent. The Taitung City Office then held a meeting and voted on the community's behalf, and in the end passed the BOT project by a vote of 187 to 173. The 14 vote - difference was even less than that of "delegated votes", causing a great divide within the community.

131. Another problem is regarding remedies. Even if litigation is possible, by the time the court renders its decision, relevant development projects might have already been completed, and irreversible damage may have already been made. There have been cases as such in the past, for instance the BOT development project at Taitung Shanyuan Bay and Miramar Resort, hence we ought not to repeat the same

mistakes.

132. It is made abundantly clear that the current set of deficient Consultation and Consent Regulations does not respond to the reminders of the two convention review committees to the Taiwan government that it "strongly recommends that the Government urgently develop, together with Indigenous peoples, effective mechanisms to seek the free, prior and informed consent of Indigenous peoples on development plans and programs that are affecting them to ensure that they do not infringe on the right of indigenous peoples, and to provide access to effective remedies in instances where such infringements have already occurred. Such mechanisms should comply with the United Nations Declaration on the Rights of Indigenous Peoples and other international standards."[43] The Consultation and Consent Regulations should be amended immediately to stop the infringement of the rights of Indigenous peoples and communities.

133. In recent years, there has not been noticeable improvement in the protection of the right of consent and the right of participation in decision-making for indigenous peoples. In the overwhelming majority of cases of public - and private - sector development, research, regulation and land-use planning, indigenous peoples have only been able to at most only able to hold "tribal councils" and resolve either to give consent or reject the plan. Only in rare cases have indigenous peoples been involved in the processes of advance planning discussion and formulation. In addition, even though the Executive Yuan Council for Indigenous Peoples (CIP) drafted and enact on January 4, 2016 "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" based on Articles 21, 22 and 31 of the Indigenous Peoples Basic Law (IPBL), the substantive content of the new regulations is divorced from the social reality of indigenous peoples in Taiwan.

134. For example, Article 2 of the "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" require the members of an indigenous village to establish their household registration in the village instead of allowing the village itself to define the qualifications for membership in the community. This provision infringes on the rights of participation in village decision - making and development for indigenous people who are working or studying outside of the village. Article 5 of the regulations decrees that the "village council" is the highest institution of executive power in the village and Article 11 also mandates that "(t)the convention, resolutions and all procedures or methods

43 Point 28, 2017 Concluding Observations and Recommendations on Review of the Second Reports of the Government of Taiwan on the Implementation of the International Human Rights Covenants: https://www.humanrights.moj.gov.tw/media/12296/327200414160793f3e.pdf?mediaDL=true

decided upon by village officers that violate the stipulations of these regulations or the bylaws of the village are invalid." These powerful articles compel indigenous peoples and all indigenous villages to set aside traditional pluralistic internal decision making or regulation models and require that they can only accept the council format recognized by the government. These stipulations gravely restrict the right of self-determination of indigenous peoples and clearly transgress the provisions of Article 4 and Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.

135. The self-governance functions of indigenous people traditionally formed through a pluralistic autonomous decision-making and regulation model within the scope of each indigenous people and tribe. On December 16, 2015, a revision to the IPBL was enacted after passage by the Legislative Yuan including a new Article 2-1 which stipulated that: "In order to promote the healthy autonomous development of indigenous peoples tribes, each tribe should establish a tribal council. Each tribe will be recognized as 'tribal public corporations' through the central indigenous peoples responsible agency." This provision aimed to use the legal institutions of a modern state to grant a status of a subject to indigenous peoples law and use the form of "tribal public corporation" to return the capabilities of self-determination and self-governance to indigenous peoples. However, how the government will take any concrete action to realize this concept must still be monitored.[44]

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

137. we recommend:

(1) When government agencies at all levels implement or monitor development, research, regulation or land utilization planning in indigenous peoples regions, they should uphold the comprehensive rights of indigenous peoples to participate in the formation of the content of planning, evaluation and

44 Lin Shu-ya, "The Right of Approval of Indigenous Peoples and village corporate persons (draft)," p.7-8, Sixth Conference on Traditional Customs and Rules and National Rule of Law" (in Chinese). National Taipei University of Education, May 1, 2016.

implementation and realization of self-governance.

(2) Besides realizing the provisions of Article 21 of the IPBL, government policy making should respect the principles of the Declaration on the Rights of Indigenous Peoples to secure their "free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them" (Article 19) and to ensure their full and effective participation of indigenous people in related processes.

(3) When drafting and enacting regulations for the organization of tribal public corporations based on Article 2-1 of the IPBL, the CIP should ensure that the scope of the new rules has considerable flexibility and freedom and should avoid adopting a legalistic unitary and stereotyped image that would restrict the existing tribal autonomy. The current "Regulations for Indigenous Peoples or Tribes Being Consulted, Obtaining Their Consent and Participation" should also be revised based on similar standards.

On the delineation of traditional territories

138. First of all, we must clarify that under current Taiwanese laws, the only item of rights extended in the traditional territories is "right to consult and consent." It is stipulated in art. 21 of the Indigenous Peoples Basic Law, [45]that when conducting "land development, resource utilization, ecology conservation and academic research" on indigenous land, one must "consult and obtain consent from the indigenous peoples or tribes, even their participation, and share benefits with indigenous people." This has nothing to do with the return of land, and it will not impact the land rights of existing public or private ownerships.

139. The government has repeatedly claimed that they have made a lot of effort, but the most serious problem is that the Regulations on the Delineation of Indigenous and Community Land (hereinafter referred to as the Land Delineation Regulations) announced in 2017 misinterpreted the definition of traditional territories by excluding private lands from the realm of traditional territories. In other words, if or when the delineation of indigenous lands is completed, lands that have been lost to private hands within the traditional territories remain lost. The indigenous peoples' rights to consult and consent are forcibly forfeited along the way. The Land Delineation Regulations completely surpassed the authorization of its mother law, seriously infringing on the rights to traditional territories of the indigenous peoples.

140. When the Land Delineation Regulations were first made public, indigenous groups staged numerous protests and voiced complaints, but the Executive Yuan and the Council of Indigenous Peoples, the competent central authority, were reluctant to

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

amend the misinterpretations. After the official announcement in February 2017, some indigenous activists camped in front of the Presidential Palace to protest. In the process, they were constantly harassed and driven away by the police. In the end, they could only continue the protests in a manner similar to guerrilla warfare in the adjacent park. This continued for more than three years, yet there has been no positive response from the government.

141. Moreover, after the announcement of the Land Delineation Regulations, there were many large-scale development projects, which, through various methods, avoided going through the indigenous peoples for consultation and consent. For example, the ATT Group, by way of private land acquisition, managed to surpass the consultation and consent procedure and acquired land within the traditional territories of the Amis 'Atolan Community in Taitung County, upsetting the locals.
142. In addition, in the "Golden Sea Resort Development Project" located in the traditional territories of the Karoroan Community and the Fulafulangan Community of the Amis Peoples in Taitung City, nearly half of the targeted area of the development project belonged to public lands, which should have been acquired in accordance with the provisions of the Indigenous Peoples Basic Law and obtain consent from the aforementioned two communities. However, after the development project was submitted for review, all public lands in the area were purchased by the consortium through negotiations, resulting in a situation where the entire area of the development project is located in traditional territories but is on private land. According to current regulations, which is incorrect in this aspect, the developers are then no longer required to consult with and get consent from the local indigenous peoples.
143. Legally speaking or practically speaking, aforementioned evidence shows that the Land Delineation Regulations misinterpreted the definition of traditional territories, wrongly limited the implementation of the consultation and consent rights, seriously violating indigenous peoples' land sovereignty. The government cannot ignore the fact that the rights of indigenous peoples continue to be infringed, and should correct related errors with no further delay.
144. The government continuously states that when government or private parties intend to engage in development plans, they should first consult with and obtain the consent from indigenous people as mandated by Article 21 of the IPBL to ensure the guarantees for the land rights of indigenous peoples. Nevertheless, the decisive point is how the "traditional lands" of indigenous peoples land should be determined and by whom? During a meeting convened by the Executive Yuan on August 1, 2013 to resolve the "Hsiang Shan (Hsiang Mountain) BOT" dispute between the Thao people over a government - sponsored BOT (build, operate and transfer) project earmarked for their lands in the Sun Moon Lake area, the responsible state minister (minister without portfolio) and the Ministry of Justice

submitted a joint resolution which declared that the traditional lands of indigenous people must be officially designated and promulgated before they could be considered under the scope of application of the IPBL's Article 21. The tone struck by the government on the question of traditional land itself has sparked a series of land disputes. [46]

145. The meaning of the term "native title" is based on an appreciation of the linkage between indigenous peoples and their land and, from the standpoint of cultural pluralism, sets aside the notions of land derived from officialdom, Han Chinese or science and affirms that indigenous people can meld a relationship between humans and land based on the knowledge of their ancestors that predates the intervention of the state or colonialism.[47] After the IPBL was promulgated in February 2005, the State on one hand affirmed the traditional territorial rights of indigenous peoples, but on the other hand mandated that "official designation" as the basis for such rights without apparent realization of the mutual contradiction between these positions.

146. In terms of administrative affairs, the CIP as early as 2002 began to gradually carry out surveys of indigenous peoples traditional territories.[48] Subsequently, after repeated demands by indigenous peoples organizations and individuals, the CIP finally in April 2013 disclosed the results of these surveys on the CIP website. Afterward, CIP officials during related meetings only used the term "make known" when asking development agencies or responsible agencies to comply with related regulations and specifically avoided using the term "promulgate" a term which has legally binding significance. This State report did not explain what considerations or difficulties the CIP had regarding this difference in usage.

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46 The Hsiang Shan BOT dispute between the Thao people involved the "Sun Moon Lake Hsiang Shan Tourist Resort BOT Project" to be carried out by the Sun Moon Lake National Scenic Area Administration with the authorization of the MOTC. In January 2009, the contract signing ceremony took place between the Sun Moon Lake Administration and Hong Kong's Bond Group and officially announced that the project had completed the bidding process. However, this process did not secure the consent of the Thao tribe who owned the land in question as required by the IPBL's Article 21. in November 2012, Thao tribe members held a protest outside of the Legislative Yuan against the Sun Moon Lake National Scenic Area Administration's Hsiang Shan Cable Car Station Project and the Hsiang Shan Tourist Resort BOT project and calling for the return of their land. See Lee I-chia, "Resort project gains approval, despite protests," Taipei Times, August 31, 2013 <http://www.taipeitimes.com/News/taiwan/archives/2013/08/31/2003571014>.

47 See Lo Yung-ching, "Practice and Application of Digitalisation Methods for Surveys of Traditional Lands of Taiwan Indigenous People" (in Chinese), Taiwan's Indigenous People Resource Center, No.3, September 2007 <http://www.tiprc.org.tw/epaper/03/03_tradarea.html/>.

48 See Da-Wei Kuan, Yi-Ren Lin, "What Tradition? Whose Territory?: A Critical Review to the Indigenous Traditional Territory Survey and the Translation of Spatial Knowledge in Marqwang Case, Taiwan"(in Chinese), Bulletin of the Department of Archaeology and Anthropology, No. 69, December 2008

147. In order to respond to the difficulties actually faced by indigenous peoples, we urge that the government should take action to "promulgate" the scope of indigenous peoples traditional land as soon as possible and demand that all agencies and private development parties strictly respect the provisions of Article 21 of the IPBL. At the same time, we also strongly call on the government to as soon as possible conduct an inventory and disclose all laws and regulations that are in conflict with the IPBL and the two covenants and immediately launch efforts to amend such laws and regulations in order to avoid indigenous people being put in a situation in which they are unable to effectively receive complete guarantees for their basic rights due to disorder in the domestic legal system.

Nuclear waste and the rights of indigenous peoples

148. The Ministry of Economic Affairs (MOEA) stated that it has already begun dialogue in preparation for referenda on possible low-level radioactive waste (LLRW) repositories. In the future, the location of a possible LLRW final repository may be decided by referendum, in which at least 50 percent of resident citizens. If a proposed LLRW repository site is near indigenous peoples communities, the plan will require prior approval by nearby indigenous peoples villages before the county-level referendum is held, according to Article 31 of the IPBL. Nevertheless, this kind of narrative is overly simplified and cannot explain the exact implementation plan.
149. During two meetings convened on August 28 and November 6, 2013 by the CIP, indigenous peoples organizations and representatives of affected villages proposed that based on Article 31 of the IPBL (which mandates that "The government may not store toxic materials in indigenous peoples regions in contrary to the will of indigenous peoples") such a referendum should be based in the scope of the areas influenced by the establishment of such a repository. Indigenous peoples representatives agreed that the threshold for passage should be raised to two-thirds approval and that success in finding a site not be a precondition for the transfer of low-level radioactive waste from Lanyu (Orchid Island). However, years passed, there has been no sign that the MOEA has turned these recommendations into substantial policies or any indication of what the current situation is.
150. There has also been no concrete action taken by the Taiwan Power Co (Taipower) with regard to the demands that it immediately remove nuclear waste from Lanyu and the MOEA also admits that there are difficulties in meeting this demand.[49] According to the proceedings of the eight review meeting of the second round off

49 See "A Broken Promise! MOEA: It will be difficult to remove nuclear waste from Lanyu," New Talk (Chinese), February 29, 2016 <http://newtalk.tw/news/views/2016-02-; Loa Iok-sin, "Taipower still wants to ship nuclear waste overseas," Taipei Times, March 12, 2016 < http://goo.gl/MWIj9M>.

the Second Regular Report on the ICCPR-ICESCR held on October 22, 2015 provided by the Ministry of Justice, Taipower and the Lanyu Township government had completed on April 17, 2015 procedures for an extension of the land lease for the nuclear waste storage facility on the grounds that the lease extension was in the public interest. These statements are clearly contrary to the expectations of indigenous people and are not in accord with the resolutions reached at the CIP public hearing. The fact that this narrative was not included in the final "Response to the Concluding Observations and Recommendations" issued in April shows the government's intention to evade this issue. [50]

151. Discussion of the controversy over nuclear waste storage not only impinges on the issue of the threshold and scope of related referenda, but also must probe the background for the policy decision to designate Lanyu as the site to store low-level radioactive waste in the mid-1980s. At the time, Taipower deposited the nuclear waste at Lanyu without obtaining the free, advance and knowing consent of the Dawu people on Lanyu.

152. In addition, based on the "Regulations on the Final Disposal of High Level Radioactive Waste (HLRW) and Safety Management of the Facilities" first issued by the Atomic Energy Council (AEC) in August 2005 [51] and the "Preliminary Technical Feasibility Evaluation of Our Country's Final Repository Site for Spent Nuclear Fuel" issued by Taipower in June 2010,[52] the government is scheduled to select a HLRW final disposal facility during 2017-2028. During the survey and evaluation of several sites, Taipower has violated Article 21 of the IPBL. Without securing the permission of local indigenous peoples villages, Taipower drilled exploratory wells and carried out other related geological structural survey operations in the area of Xiulin Township in Hualien County and Nanao Township in Yilan County. The AEC even cooperated with the Ministry of Science and Technology to carry out at "Area 146" the border of Xiulin and Nanao townships "the AEC-MOST underground tunnel research office program to study the experience of Finland's Onkalo spent nuclear fuel repository and aim to design the underground tunnel that will link with the proposed HLRW final depository. Despite numerous protests by indigenous people, the MOEA and AEC still refuse to disclose complete information or to legally obtain the agreement of local

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50 That paragraph was not included in the final version of the State report. The original version was as follows: "Removal of the Lanyu Depository is government policy, but before the completion of the establishment of a final repository for low-level radioactive waste, the extension of the operating and the land leases for the Lanyu repository are necessary to maintain positive interaction with Lanyu. The Taiwan Power Co and the Lanyu Township Government completed the extension of the land lease for the Lanyu Depository on April 17. Besides avoiding sparking protest activities by local residents, this extension is accord with the public interest."

51 See <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=J0160070/>.

52 The feasibility evaluation can be accessed at <http://ppt.cc/DeN18/>.

indigenous people for this research project.

153. The events related above are developments concerned with the issue of nuclear waste storage that surfaced after the Two Covenants international review of the first State report in January 2013. Despite numerous reminders, information and data regarding the above mentioned disputes were still not included in the second Two Covenants and first ICERD State report. We call on the government to provide a comprehensive and concrete explanation and clearly respond to the concerns of indigenous peoples organizations and affected communities.

Indigenous reservation land

154. Regarding the indigenous reservation land issue, the dispute regarding the land for the Shihtiping Fishing Port in Fengpin Village in Hualien County was only one example of such a land dispute and not the single example. The concerned ministries should explain the following: the measures to protect rights during the window from the time of application for determination as indigenous reservation land through the time of approval and the disposition and remedial measures available if such land is expropriated or seized during that window.

155. Practically from the beginning of implementation of the "Program for the Supplemental Addition of Indigenous Reservation Land" in 2007 to 2014, only 9.2% of applications have successfully obtained land. The obstacles and challenges faced by indigenous people in the process of applying for supplemental land have sparked numerous disputes.[53]

156. There are many contradictions in the process for applying for supplemental land for indigenous reservation land. Historically speaking, most indigenous tribal land had been violently seized and redistributed by the State during the Japanese colonial period. Beginning in late 1945, these lands were inherited by the ROC government or state enterprises. At present, when indigenous people apply to take back the land of their ancestors, they must themselves collect and submit all kinds of land-use evidence. Layers of review by the village government, the city or county government and the CIP follow until finally land management agency can express its opinion and decide whether to approve the application. However, when faced with the possibility of losing control over land in which they have had a long-term vested interest, the public asset management agencies often have antagonisms and contradictions with indigenous people or refuse to implement the procedure or even turn around and file legal action against the indigenous applicants

53 This figure, derived from the statistics of the Council of Indigenous People, was contained in a report by the Taiwan Indigenous Television (TITV) on "As of the end of the year, less than 10 percent of supplemental land applications will have been approved," broadcast November 24, 2014. See: <https://www.youtube.com/watch?v=0E3jHq9Hd7A/>.

themselves.[54]

157. On one hand, the adoption by the government of Western concepts of property and its use of cadastral records as the only evidence to survey the land use of indigenous peoples when making dispositions of land passed on generation by generation from the ancestors of today's indigenous peoples can easily trigger conflicts since the lack of recorded frameworks of land use make it difficult for indigenous people to prove their exclusive use rights or ownership of their land. On the other hand, since the intention of the policy is to restore the land to its original owner, why does the application process generate conflicts between the land management agencies and indigenous peoples? Moreover, when the CIP, as the competent authorities, encounters this kind of conflict, it does not have legally clear decision - making power, but can only constantly "coordinate" between the different sides. If the land management agency is unwilling to make any concessions, the CIP is essentially powerless. [55]

158. The above - mentioned difficulties encountered by indigenous peoples in the process of applying to register indigenous reservation land have improperly abrogated the borders of exclusive use rights of indigenous peoples over reservation land and exposed the chronic problem of the discrimination against indigenous peoples' traditions and customs by Han Chinese law. We recommend that:

(1) The procedure for applications to supplement indigenous peoples reservation land should be thoroughly reviewed and adjusted. Indigenous people should

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54 At the end of 2013, a dispute erupted concerning the Mei-Feng Farm of National Taiwan University. Members of the Seediq people filed an application under the Program for the Supplemental Addition of Indigenous Reservation Land to register land which they had long cultivated and resided upon as indigenous reservation land. However, after receiving the application materials, National Taiwan University (NTU), which was the land management agency, not only directly refused to agree to the application but also filed suit under the Civil Code against the Seediq people that required the demolishment of the unlicensed housing and the return of the land to the state and sparked protests by indigenous people. See Juan Chun-ta (2015), "The Trajectory of the Taiwan Indigenous Movement (1983-2014)" (in Chinese), Graduate Institute of Sociology, National Taiwan University, M.A. thesis, pp.152-161.

55 Conflicts frequently still occur in situations when the land management agency, while the application for reservation land is still in the review stage, may act to avoid its responsibility to allocate supplemental land by rapidly redistributing plots of land or submitting its own applications to use some of the land in the application for various purposes. The dispute over the Shihtiping Fishing Port in Fengpin Township in Hualien County is a typical example. From 1990 - 1993, indigenous peoples applied to the township office to register indigenous reservation land, but in 1993 the National Property Administration of the Ministry of Finance allocated that land to the "East Coast National Scenic Area Administration". From 1996-1999, local indigenous people again submitted many petitions to the Ministry of Transportation and Communications (MOTC), but the MOTC "declined to accept" the petitions on the grounds that the area in question had already been turned into the Shihtiping-Hsiukuluan River Scenic Zone.

be able to obtain ownership if they can demonstrate the fact that they are actually engaged in the use and cultivation of land based on traditional knowledge.

(2) If indigenous reservation areas are found to have substantial utilization and are in accordance with related regulations, the Executive Yuan should carry out cross-ministerial consultations and directly retrieve the land in question from the land management agency and transfer it to the indigenous reservation area management agency (i.e., the Council of Indigenous Peoples). The CIP should then complete the procedure for allocation as indigenous reservation land in order to avoid indigenous peoples traditional lands from becoming the prize of a property war between vested interests. In addition, we advocate that the disposition powers of land management should be frozen during the period after an area of land has entered the application process to be designated as indigenous peoples reservation land and prior to the completion of the process as a means to preserve the integrity of the affected land during the window between application and approval.

(3) Finally, should the methods to resolve the land problems of indigenous peoples be restricted to only allowing individual indigenous persons obtain individual ownership of indigenous reservation land? The government should thoroughly reconsider this question and launch a wide-ranging dialogue with indigenous peoples to search for alternative ways to resolve land rights problems.

New residents' right to participate in political affairs and right to group representation repeatedly hindered

159. The Executive Yuan directed the establishment of "Fund for the Specific Care of Spouses of Foreign Nationality" at the 2900th meeting in 2004 with the enormity of 1 Billion NTD, however, given that it differed from the norm of human rights with its incentives being based on benefits of national development and care and assistance. The fund was later renamed as "New Residents' Development Fund" and oriented at establishing new residents' family service centers, providing childcare for new residents, promoting multicultural policies, promoting family education, consummating social safety nets and providing talent training programs.

160. In 2020, the National Immigration Agency amended the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations*, reducing the number of seats for representatives from new immigrant groups in the Fund Management Committee from 11 to 7. This reduction decreased the proportion of seats held by new immigrant group representatives from the original 33% to 24%. As a result, not only did it diminish the decision-making influence of new immigrant communities concerning the fund's usage, but it also significantly weakened their right to participate in politics as a minority.

161. In addition to the hurdle to political representation, the qualification hurdle for new residents to access the New Residents' Development Fund persists. Although the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* have undergone several revisions, the fund has continuously failed to separate civil organizations and government agencies as different items, resulting in the scenario where projects from government agencies occupied 80% to 90% of the total amount of the annual fund, or even became the source of policy subsidies for entities which are more capable at mastering methods of application and evaluation (e.g municipal governments, large scale foundations or large for-profit corporations), meanwhile excluding small units or entities that are less familiar with the application and verification process (e.g., governmental agencies of rural areas, or grassroots organizations populated by immigrants), and eventually precluded the direct access of new residents to the New Residents' Development Fund.

162. We suggest:

(1) Immediately amend the draft of *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* to increase the proportion of seats held by representatives from new immigrant groups in the Fund Management Committee, and robustly implement the right to participate in political and policy decision-making processes of new immigrants. Especially in policy planning concerning them, deprivation and restriction without justifiable reasons shall be prohibited.

(2) The New Residents' Development Fund shall abolish the subsidy type of "short-term projects", and reinstate the regular establishment in local governments or relevant units, to thoroughly address the issues of resource misplacement, waste and regional imbalance.

(3) Amend the *New Residents' Development Fund Revenues and Expenditure, Safekeeping, and Utilization Regulations* to restrict the qualifications of applicants to enable the fund to comprehensively subsidize and encourage local grassroots new residents' organizations, and to address the fact that most subsidized entities are government agencies.

Right to nationality

New immigrants under domestic violence

163. New immigrants may be repatriated consequent to filing a divorce: In response to para. 35 of the ICERD State Report, although the State amended article 31 of the Immigration Act,[56] permitting spouses of foreign nationality with children to be

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

able to continue their residency status in Taiwan after filing a divorce due to instances of domestic violence. For new immigrants who have lived in Taiwan for less than 5 years and are childless, however, since they do not meet the qualification to apply for permanent residency, should they suffer domestic violence at this stage, they may lose their residency status, even face repatriation. For new immigrants from Vietnam, Indonesia and other countries, filing for divorce while in the process of naturalization might result in statelessness for the individual as a result of having lost their original citizenship and were denied legal residency status in Taiwan.

164. We suggest:

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

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

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

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

(5) Extend the duration of shelter and establish long-term shelters: The State shall cease the habitual regard of victims of domestic/intimate violence as a

dependency population, and assist their reintroduction to community and workplaces in order to live independently by extending the duration of sheltering and provide mid or long-term shelters and accommodations for empowerment of self-reliance. At the same time, the sheltering system shall provide more training on psychological counselling, legal resources, vocational training for the victims to live independently, and education and childcare resources for children who have suffered from domestic violence.

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

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

Basic social security for aliens in Taiwan

165. The 2016 State Report on ICESCR stated that 89 persons were recognized as Tibetans under Article 16 of the *Immigration Act* as of September 2015 and approved for residency and employment in Taiwan. However, Article 16 contains a sunset clause that excluded Tibetan refugees that entered Taiwan after 2008 from all social security. In accordance with the *Immigration Act*, social security is only provided to aliens that enter Taiwan during designated periods, and not provisions are currently available that universally provide basic social security for aliens.

Active issuance of legal residency status of stateless children and their birth mothers

166. Albeit stipulated in the Article 46, paragraph 3 of *Employment Service Act* that labor contracts for migrant workers only applied to fixed-term contracts, which barred contents in violation with *Act of Gender Equality in Employment*,[57] including

57 According to the Ministry of Labor's statement on the protection of the right to work for pregnant migrant workers in Taiwan, the content of labor contracts for migrant workers must not violate relevant labor laws and regulations and employers must not terminate the contract or force the migrant worker to leave the country due to pregnancy.
Statement: https://www.mol.gov.tw/announcement/33702/26461/?cprint=pt
The Act of Gender Equality in Employment also stipulated that "Work rules, labor contracts and collective bargaining agreements shall not stipulate or arrange in advance that when

repatriation upon pregnancy, listed in the contractual agreement, until the end of 2019, the Control Yuan had yet to propose corrective measures to the Executive Yuan, the National Immigration Agency of the Ministry of Interior, and the Ministry of Labor on the matters of the failure to implement the protection of identity rights for the children of migrant workers, and the exclusionary outcome of the *Act of Gender Equality in Employment*. [58] According to investigations, article 15 of the *Act of Gender Equality in Employment,* which addresses maternity leave, the employer's obligation to administer childcare facilities and maternity protection were not implemented for the sake of migrant workers. Once a migrant worker becomes pregnant, it is very likely for the employer to terminate her employment status due to lack of manpower, resulting in repatriation. Fearful of being repatriated, pregnant migrant workers might become undocumented migrant workers with illegal residency status. Although para. 13 of the ICERD State report mentioned that the Ministry of Labor has established a mechanism for verifying contract termination to protect the rights of pregnant migrant workers, it did not provide further investigation or reports to assess whether the situation of pregnant migrant workers has indeed improved compared to the findings of the Control Yuan's investigation in 2019.

167. Illegal residency status of birth mothers adversely affects their children: Article 38-1 Paragraph 1 Subparagraph 3 of the Immigration Act stipulates that relevant social welfare agencies must be notified to provide shelter for children under the age of 12.[59] However, whether the sheltered children can obtain legal residency status

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employees marry, become pregnant, engage in childbirth or child care activities, they have to sever or leave of absence without payment. Employers also shall not use the above-mentioned factors as excuses for termination." Text of the Act: https://law.moj.gov.tw/LawClass/LawSingle.aspx?pcode=N0030014&flno=11

58 See the press release of the Control Yuan: "on the matters of the lack of implementing conducts for the protection of identity rights of the children of migrant workers and the exclusionary outcome of the Act of Gender Equality in Employment, the Control Yuan propose corrective measures to he Executive Yuan, the National Immigration Agency of the Ministry of Interior, and the Ministry of Labor" https://www.cy.gov.tw/News_Content.aspx?n=124&s=14906 The text of corrective measures: https://www.cy.gov.tw/CyBsBoxContent.aspx?n=134&s=3924

59 Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080132 An alien who falls under any of the following circumstances, may have his/her detention sanction temporarily suspended: is mentally impaired or physically sick, and the detention could affect treatment or endanger his/her life has been pregnant for five (5) months or longer, or has given birth or had a miscarriage for less than two (2) months children under 12 years old; has contracted an infectious disease indicated in Article 3 of the Communicable is unable to take care of himself/herself due to senility or physical or mental disability has been banned from exiting the State at the request of judicial authorities. Based on the preceding paragraph revoking temporary detention, the National Immigration Agency would desist or cease from detaining an alien in accordance with Paragraph 1 of Article 38-7, and may impose an alternative to detention in line with Paragraph 2 of the preceding Article, as well

correlates with the residency status of the child's birth parents. According to Article 2 Paragraph 1 Subparagraph 3 of the *Nationality Act*, a person born within the territory of the ROC with both of his/her parents unascertainable or stateless, can be granted the nationality of the ROC.[60] At present, birth mothers of a large number of cases are undocumented migrant workers, even if the state is made aware of their identity, the birth mothers would not be willing to come forward for the fear of repatriation or the inability to support said children, causing the children to only be able to obtain, at most, one year of residency status with an Alien Resident Certificate,[61] (applied by local Departments of Social Welfare and issued by the National Immigration Agency) in lieu of acquiring legal residency status. If the birth mother is still unascertainable, in principle, the court shall deprive the birth parents of their parental rights in accordance with Article 1094 of the *Civil Code*, and then grant the child Taiwanese nationality with adoptive parents in accordance with Article 4 of the *Nationality Act*. At present, however, only a minority of cases have been established where the parental rights of said children were deprived and processed through adoptive procedures. Most of the cases have been related to birth mothers unwilling to come forward, rendering the children to be taken care of by children's institutions, foster families, and caregivers. Not only do these children not have legal residency status, they are also not entitled to National Health Insurance (hereinafter the "NHI"), education services and related social welfare resources.

168. There is a gap between the actual number of stateless children and reported cases, the actual number being unbeknownst by the state. According to para. 182 of the 2020 State Report on ICESCR, there are 372 cases of stateless children registered by the State since June 2019, of which 178 are unregistered due to adulthood or repatriation. However, this number can only describe the reported cases. As revealed in multiple news reports about stateless children and pregnant migrant workers, the state registered a mere fraction of the total population of stateless children in Taiwan.[62] Unreported by the birth mother and unregistered by the state, some of the stateless children were revealed to have died prematurely due to diseases after their birth mothers were arrested, indicating a gap in the reported population data of stateless children in the country.

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as notify registered social welfare institutions that provide social welfare medical resources and shelter.

60 Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0030001

61 Regulations Governing Visiting, Residency, and Permanent Residency of Aliens, art.6: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080129

62 According to a report by the Storm Media "Discrimination kills! Pregnant migrant workers were forced to flee, perils of unregistered children: died from inaccessible vaccination, the mother wished to bury him at a mosque….. " Text of the report: https://www.storm.mg/article/1546158?page=1

169.We suggest:

(1) Implement maternal protection in the workplace for pregnant migrant workers and redraw the quota policy: the rights and interests of birth mothers and children cannot be separated. If the rights of pregnant migrant workers in the labor force are not protected, migrant workers will have to constantly face the risk of unemployment and repatriation, causing their children to become unregistered. Therefore, the rights of pregnant migrant workers promulgated in the *Act of Gender Equality in Employment* must be implemented, including adjusting contents of work during pregnancy and the obligation for employers of more than 100 people to administer childcare facilities, and enable migrant workers to have the right to await the delivery of their child in Taiwan or return to her country of origin for resettlement, whilst retaining her position at work. The unfavorable circumstances faced by pregnant migrant workers are partly caused by statuary quota restrictions on migrant workers. Under quota restrictions, employers are unwilling to and unable to find alternative labor power. Therefore, it is recommended for the state to consider the reality that female migrant workers may become pregnant, redraw the quota policy of migrant workers, and formulate a more flexible hiring system for migrant workers.

(2) Normalize the legal right of residence for migrant workers who have children after coming to Taiwan: it is highly recommended for the state to grant temporary legal residency rights to unregistered migrant workers, to ensure migrant workers and their children have the right to family unity which was guaranteed by the Covenants, to refrain from presenting a dilemma of self-perseverance and rights of children to migrant workers, and to fully comply with Article 16 of the ICCPR and Article 7 of the CRC which concerned the right of children to bear name and nationality, to recognize their parents, and the right to enjoy parental care.

(3) Accelerate the process of granting stateless children temporary residency status: although, the Executive Yuan has adopted the principle of facile evaluation since 2017 and stated it will exhaust all possible measures to grant children whose birth parents are unascertainable of nationality of ROC in accordance with article 2 of the *Nationality Act*.[63] Children with a known mother who are not willing to come forward still have to go through a long "search" process to obtain a one-year residency status with an "Alien Resident Certificate", and are still deprived of their right to health and education during the waiting period. Therefore, it is recommended for the state to issue an "Alien Resident

63 See report from Upmedia, Jan. 25th, 2017: "[Exclusive] Stateless children born to migrant workers might be able to acquire ID, terminating their legal limbo": https://www.upmedia.mg/news_info.php?SerialNo=11234

Certificate" directly to the children after the case is reported, and consider revising Article 2 of the *Regulations Governing Visiting, Residency,*[64] *and Permanent Residency of Aliens* to relax the restrictions for the children to extend their residence period.

(4) It is prohibited to repatriate children of non-nationality when it is not in their best interest: the state should ensure that children of non-nationality are not separated from their parents and their original environment of upbringing. In recent years, Taiwan's primary method of handling children born to migrant workers primarily is to repatriate them to social welfare institutions of the country of origin with the consent of the birth mother. This may result in the child being only able to reunite with the birth mother after she returns to the country for adoption. Relatives in the country of origin might also be unwilling to claim the child for social stigmatization from the country's religious or cultural prejudice for children born out of wedlock. This contradicts with Article 24 of the ICESCR which guarantees that all children have the right to birth registration and acquisition of nationality without discrimination, and with articles 3, 10, and 18 of the CRC which disclosed the right of family unity and the best interests of children. The decision on whether to return children of non-nationality to their country of origin for resettlement must be assessed in the best interests of the child. The state shall also cooperate with the social affairs unit of the country of origin to regularly and continuously monitor the conditions of said cases, to ensure the compliance with article 27 of the 6th General Comment of CRC,[65] and to ensure the child is protected from torture or disadvantageous circumstances.

Children and nationality and birth registration regime

170.In response to paras. 13 and 148 of ICERD State Report, survey indicates that once

64 According to the article 2 of Regulations Governing Visiting, Residency, and Permanent Residency of Aliens, in principle, extension shall not surpass six months; however, on the basis of pregnancy, disease or natural disaster, said extension can be further lengthened. We recommend the state to include stateless children in the concession. Text of the Regulation: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=D0080129

65 "27. Furthermore, in fulfilling obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention, either in the country to which removal is to be effected or in any country to which the child may subsequently be removed. Such non-refoulement obligations apply irrespective of whether serious violations of those rights guaranteed under the Convention originate from non-State actors or whether such violations are directly intended or are the indirect consequence of action or inaction. The assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services."

migrant workers become aware of their pregnancy, they would choose either to leave the employer's household or to attempt to conceal their pregnancy, thereby making prenatal examinations impossible and health of the newborn difficult to manage.

171. Since the newborn's biological mother would be a foreign national, if the Taiwanese biological father does not claim the infant, birth registration would be impossible, and the newborn would not receive social welfare benefits.

172. Given the government's stringent recognition of abandonment, and the difficulty in determining the responsibility of care, newborns are often left in the care of placement agencies. As such agencies receive newborns each month, even with vaccinations supported by the government, matters of medical care and nutritional supplement remain the overwhelming burden for the agencies, thereby creating a vicious cycle.

173. We suggest that the government should give due consideration to migrant workers' pregnancy situation, and speed up the implementation of measures to protect the rights of children who have not obtained nationality.

Family right

Child care and nursery of urban indigenous peoples

174. In response to point 182 of the ICERD State Report, the content can only see the summary of government policies in areas of indigenous peoples, without more detailed implementation. At the same time, there is no provision of childcare policies that help children understand their cultural background for young children of urban aborigines.

175. In order to support the family, most indigenous people immigrant to urban areas for better working opportunities who also encounter high living expanses of the urban areas, rent of the house and cost of the original family from the indigenous communities, so adults of the family are expected to work for less financial stress. Due to the weak social supporting system and the lack of family connections, however, after moving to urban areas, the concern over child mining has become a common problem of urban indigenous people.

176. For example, normal families might experience less childcare stress by public nursery and childcare facilities; however, suffering from insufficient social resources, urban indigenous peoples have limited access to the useful resources in the urban areas. The highly demand of public childcare services in the populated cities, regardless of the private childcare units, has made most of the indigenous parents choose to leave the children in the traditional communities with families and relatives due to large childcare fares.

177. Regarding insufficient family care resources of urban indigenous people and

kinship care and grandparenting in the traditional communities, we recommend,

(1) In accordance with Ministry of Education, Council of Indigenous Peoples should provide possible assistance with education regime and policy resources for families of grandparenting and kinship care in the communities, who will be equipped with fine communication and more parenting experiences to form a strong support to indigenous children in the family.

(2) Nearly half of the indigenous population now lives in urban areas. High stress among indigenous parents in urban areas is linked to poor economic resources and inadequate social support. The government should develop sufficient patterns of care in respect of multiple cultures to solve the difficulty of economic instability which cause the urban indigenous children to have lack of self-confidence and loss of cultural identity due to vulnerable household background and poor adaptation.[66]

178. No matter being raised in urban areas or rural areas, the complete and sufficient care should be equally enjoyed by indigenous kids. The state should not confine the childcare system to local childcare units; instead, the differentiate of disparate areas and ethnic groups should put into consideration. With various patterns of care result from different social structures, the integration of relevant policy-making levels, e.g. Ministry of Health and Welfare, Ministry of Education, Council of Indigenous Peoples and etc., enables the state to fully support and assist indigenous families which is also the foundation to ensure every child grows up in a safe and healthy environment.

Flaws in the marriage interview system and violation of family unification rights caused by Visa flags

179. To prevent the occurrence of sham marriages, the Taiwanese government implemented a transnational marriage interview system between Taiwanese citizens and citizen of 18 Southeast Asian countries. This system constitutes institutional discrimination. Subsequently, the interviewers for the Ministry of Foreign Affairs (MOFA) are assigned to relevant tasks following three days of training. Moreover, the lack of human resources has caused the application process to become extremely tedious. The Control Yuan highlighted numerous flaws in the interview system in its *Investigatory Report on the Management and Review of*

66 In the past, in order to solve the dilemma of indigenous parents maintaining their jobs in the city and raising their children, as well as the subsequent problems of children's safety and low academic achievement, some childcare institutions set up "au pair" and "material-based" services in metropolitan areas. The model of “bartering” to replace tuition fees continues the care characteristics of sharing and exchange in the traditional indigenous society to reduce the burden on parents, but in the end it was banned due to the rigid regulations on childcare institutions.

Transnational Marriage Affairs released in 2012.[67]However, the Ministry of Foreign Affairs has yet to make relevant improvements. The Transnational Marriage Interview and Family Unification Rights Dialogue Forum was held in the TransAsia Sisters Association, Taiwan (TASAT), on 5 November 2014.[68] MOFA dubiously claimed that most of the Vietnamese spouses interviewed were married migrant workers flagged by customs in the attempt to rationalize the overly subjective discretion of its interviewers. Further inspection into the meeting minutes provided by MOFA showed that they were inconsistent with the data[69]submitted to the Foreign and National Defense Committee, Legislative Yuan[70]. Moreover, a former first secretary of the Taiwan representative office in Vietnam was indicted by the Taipei District Prosecutors Office on suspicion of taking bribes for visa approvals.[71] We recommend that MOFA promptly evaluates its operations in this regard.

180. Article 23 of the *Immigration Act* [72] enables MOFA to flag the visas of overseas spouses that have received their dependent visa with a previous record of overstaying. These flags prevent overseas spouses from converting their temporary visas into permanent visas even if they are legally married, have families, and support their children and parents in Taiwan. They are required to leave the country every two to six months, and they are prohibited from legally working in Taiwan, severely affecting their family unification rights. In response, the Control Yuan produced a corrective measures report[73] targeting the MOFA on 31 July 2009

67 Page 147 of the Investigatory Report on the Management and Review of Transnational Marriage released by the Control Yuan in December 2012 stated, "Completely eliminating illegal immigration by solely relying on an interview system is extremely difficult, and requires subsequent mechanisms to track the living conditions of PRC spouses ex post facto. The majority of PRC and overseas spouses pass their interviews and remain in Taiwan to start a new life. Constantly enforcing investigatory measures may exacerbate negative stereotypes towards transnational marriage." (Link: http://ppt.cc/PgkRx)

68 The TASAT organized the Transnational Marriage Interview and Family Unification Rights Dialogue Forum themed "Are Marriage and Neutralization Possible?" on 5 November 2014. A summary of MOFA's presentation can be viewed on Page 8 (Link: http://ppt.cc/IP7gl)

69 The Dependent Interview Statistics of the Representative Office in Hanoi, Vietnam, published in the Commonwealth Opinions Webpage (Link: http://ppt.cc/ABZzg)

70 Page 6 of the survey report (Doc. No. 1030008315) submitted by the MOFA concerning the overseas interview and consultation agencies in the 14th Meeting in the Sixth Period held by the 8th Legislative Yuan (Link: http://ppt.cc/UrX8O)

71 "Taiwanese Diplomat Charged for Yaking Bribes for Visas in Vietnam," Politics Section of the Liberty Times Net on 30 April 2014 (Link: http://ppt.cc/Q3N5a)

72 Article 23 of the Immigration Act (Link: http://ppt.cc/owFq)

73 Abstract of the corrective measures report announced by the Control Yuan on 31 July 2009: The approval or rejection of visas for overseas spouses by MOFA is a political issue rather than a judicial issue. MOFA is clearly in violation of the basic human rights of the claimant and abuses the discretionary power endowed by the Regulations for the Issuance of ROC Visas to Foreign-Passport Holders. Overseas spouse visas should not be rejected in writing and applicants should be advised on remedial approaches to prevent a breach of basic

distinguishing foreign spouses from general foreigners. The measures explicitly state that the approval of visas for general foreigners can be freely decided upon by competent authorities. However, visas for foreign spouses involve the family unification rights of Taiwanese citizens. If MOFA is to exercise the same rights as the National Immigration Agency, it would be required to foresee that the stringency of all laws, regulations, and procedures are consistent with that of the National Immigration Agency. If the competency of MOFA staff cannot match that of other institutes, they cannot flag visas voluntarily without the sufficient capacity to review each individual situation. In accordance with the *Investigatory Report on the Management and Review of Transnational Marriage Affairs*[74] announced by the Control Yuan in December 2012, Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders*[75] provides vague descriptions concerning the criteria for visa rejection, causing inconsistencies in the review outcomes for dependent visas by representative offices. MOFA should acknowledge the severity of this problem.

181. Flagging visas constitute substantive legal order that serves to issue administrative punishment to the flagged persons. This not only violates administrative procedures stipulated by Taiwanese law, but also breaches provisions concerning family unification and protection stipulated in Articles 10 and 16 of the *ICESCR*[76] and Articles 17, 23, and 24 of the *ICCPR*.[77] In actuality, the MOFA should not have the power to flag visa applications to eliminate the conflicting positions of the National Immigration Agency and the MOFA and the effects that negative processing has on family rights. In 2012 parallel report published in 2012 has clearly highlighted this problem. However, no improvements have been made in the

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human rights, equality of arms, and proper legal procedures. The approval or rejection of overseas spouse visa applications (temporary or permanent) should be distinguished from applications of general foreigners to prevent a breach of the equality principles stipulated in Article 8 of the Constitution of the Republic of China (Taiwan) and the right to family unification and reunion. (Link: http://ppt.cc/6vxvq)

74 Page 141 of the Investigatory Report on the Management and Review of Transnational Marriage Affairs announced by the Control Yuan in December 2012 states, "The rejection criteria for visa applications are stipulated in Article 12 of the Regulations for the Issuance of ROC Visas to Foreign-Passport Holders. With the exception of the following: 'Persons that are unable to sustain themselves in Taiwan or are suspected of engaging in illegal employment,' 'persons with evidence of intentional evasion of the law to remain in Taiwan,' 'Persons that may damage national interest, public safety, public order, and moral standards.' These items are considered ambiguous legal concepts that have yet to adopt a determination standard. Thus, they currently cause inconsistencies in the review outcomes for dependent visas by representative offices."

75 Article 12 of the Regulations for the Issuance of ROC Visas to Foreign-Passport Holders (Link: http://ppt.cc/ndDA4)

76 International Covenant on Economic, Social, and Cultural Rights (Link: http://ppt.cc/VXwR0)

77 International Covenant on Civil and Political Rights (Link: http://ppt.cc/atBk8)

review meetings for laws, regulations, and administration measures hosted by the Ministry of Justice.

182. We recommend that

(1) Amendments be made to Article 23 of the *Immigration Act* to relinquish the right of the MOFA to flag visa applications. Moreover, the National Immigration Agency and the MOFA should cooperatively address this issue before this amendment is ratified. The National Immigration Agency should not treat flags as absolute administrative punishment.

(2) Applicants of overseas spouse visas that conform to the exclusion criteria of Article 8 of the *Operation Directions for Banning Entry of Aliens*[78] should be permitted to enter Taiwan. MOFA should not, under any circumstances, flag the visa to prevent violating the applicant's work and residency rights.

(3) MOFA should amend the ambiguous descriptions concerning visa rejection criteria stipulated in Article 12 of the *Regulations for the Issuance of ROC Visas to Foreign-Passport Holders* as suggested by the Control Yuan.

(4) MOFA should immediately revise existing interview procedures, such as the erroneous announcement information on its official website[79], clarifying to applicants that interviews can be conducted in writing rather than traveling to a specified interview location. Moreover, clear instructions for remedial approaches should be provided and promoted for unsuccessful marriage interviews.

(5) Additional funding should be budgeted to remedy the inadequacies in representative offices, such as appointing additional staff to interviews or providing training to enhance interview professionalism and sensitivity.

Rather than transferring the responsibility to civil organizations, the state shall undertake the obligation to provide resettlement for stateless children and pregnant migrant workers

183. Article 22 of *The Protection of Children and Youth Welfare and Rights Act* stipulates that household registration and immigration authorities shall assist stateless children in household registration,[80] naturalization, residence or settlement. However, on the

78 Article 8 of the Operation Directions for Banning Entry of Aliens (Link: http://ppt.cc/1nLx5)

79 The TASAT organized the Transnational Marriage Interview and Family Unification Rights Dialogue Forum themed "Are Marriage and Neutralization Possible?" on 5 November 2014. A summary of MOFA's presentation can be viewed on Page 3 (Link: http://ppt.cc/IP7gl)

80 "Authorized agencies shall ask for assistance from the authorized agencies in charge of household registration and immigration in the household registration, naturalization, residence, or settlement for children and youth who do not apply for household registration, are stateless, or fail to acquire a residence or settlement permit. Before the completion of household registration or the acquisition of a residence or fixed abode permit mentioned in

frontline, most tasks, including contacting pregnant migrant workers and resettlement, are still undertaken by civil organizations (such as Harmony Home Association Taiwan). As a result, the state's responsibility to stateless children was transferred to private organizations. Because of the high number of cases and the high cost of site operation, The Harmony Home can only provide about 50 beds as legal accommodations for resettlement.[81] Despite having accumulated extensive trust among migrant workers in the form of halfway houses for women and children, resettlement facilities have been stuck in legal ambiguity. Characterized as "resettlement institutions", the sites also face exclusion and discrimination in the communities they have been stationed in.[82]

184. In lieu of being listed as a specific expenditure, at present, the budget for resettlement of stateless children is listed in the annual budget of the Ministry of Labor,[83] under the item "Employment Stability Fund", not to mention that there has never been an exclusive budget for resettlement of undocumented migrant workers who are pregnant.

185. We suggest:

(1) Establish a fixed resettlement process for pregnant migrant workers waiting for delivery: As stated in the preceding paragraph, the rights of mothers and children shall not be separated. Part of the cases served by the Harmony Home were documented migrant workers with a legal residency status, however the burden of care while awaiting delivery and resettlement was still undertaken by the Association, instead of employers who the state ought to regulate.

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the preceding paragraph, the social welfare services, medical care, and schooling rights and interests of the children and youth shall be protected in accordance with the law."

81 Contradicts with the State Report and its accusation that the statutory standard prohibits undocumented migrant workers to live with underage children, Harmony Home Association Taiwan. The establishment of sites and the act of resettlement is fully compliant with article 2 paragraph 3 subparagraph 3 of the Standards for Establishing Children and Youth Welfare Institutes. Article 2 of the Standards for Establishing Children and Youth Welfare Institutes: Children and youth welfare institutes referred to in the Act are defined as follows: 3. Placement and educational institutes mean institutes that offer placement and educational services to the following placement objects (3) Women and babies who encounter hardship due to unmarried pregnancies or deliveries

82 Taiwanese society has deep rooted discriminatory and stereotypical tendencies against people of Southeast Asian nationality. In addition, most of the cases accommodated by the Harmony Home Association Taiwan were regarded as "fled" migrant workers and their children, resulting in the fact that Harmony Homes often have experienced rejection and unacceptance from the communities it is stationed in. https://www.storm.mg/article/1546171?page=1

83 The Employment Stability Fund deals exclusively with labor and labor-related expenditures. From 2018 and onwards, it began to pay attention to the issue of resettlement of stateless children. The name of the expenditure item is "Subsidies to the Ministry of Health and Welfare for the resettlement services of children born to migrant workers whom were introduced to Taiwan on the basis of the Employment Service Act"

The obligation to serve stateless children also belongs to the state. The state should establish detailed procedures for the resettlement of migrant workers awaiting delivery, to prevent pregnant migrant workers from falling into a state of isolation and helplessness, and to ensure that they enjoy the benefits promulgated in the *Act of Gender Equality in Employment*.

(2) Amend article 22 of the *Protection of Children and Youth Welfare and Rights Act*, systematically regulate standard procedures and obligations for the resettlement of stateless children from the legal dimension. At the same time, a fixed budget for the resettlement of stateless children and pregnant migrant workers shall be established. Thus, the current practice of tackling the issue with a non-fixed budget such as the Employment Stability Fund can be changed.

(3) Civil organizations such as the Harmony Home Association Taiwan have long been pressed to assume the government's responsibility for conducting resettlements, the situation must be improved immediately. It is recommended that the Departments of Social Welfare provide expeditive guidance for the Harmony Home Association Taiwan to acquire the status as a legal institution, to equip it with responsibilities and powers on resettlement for stateless children and pregnant migrant workers equivalent with social affairs units. At the same time, allow civil children and youth organizations, such as the Harmony Home Association Taiwan, to join the deliberative processes of resettlement policy in the central level, thus protecting the right to the decision of civil organizations as stakeholders, and to reverse the current situation where civil organizations can only passively participate in local government cases.

Right to work

Indigenous peoples

Employment discrimination faced by urbanized indigenous peoples

186. According to para. 7 of ICERD State Report, currently 48.28% of Taiwan's Indigenous population resides in urban areas, meaning nearly half of the population has left their homelands to dwell in non-traditional locales. Most of them have left due to poor employment prospects in their traditional homelands. Most of the Indigenous areas are lack of sufficient policy guidance for industry, preventing Indigenous Peoples from obtaining beneficial development under the limitations of the law and natural resource access; thereby resulting in a flight to urbanized areas to pursue a livelihood.

187. After migrating to the cities, except for a select few who obtain public sector employment in the military, civil service, teaching, or medical services among others, most, however, remain unable to find stable career-oriented employment

due to ethnic stereo-types and discriminatory job practices that effect this vulnerable population. Para. 17 of the core consensus document for the ICERD State Report points out that the economic situation for Indigenous Peoples remains fragile. Their average yearly income for 2017 was NTD727,600. From this it is evident that even if Indigenous persons choose to move to urban areas, their economic position and employment conditions remain vulnerable.

188. Regarding to anti-discrimination measures regarding employment, the government responded only to those measures regarding unemployment compensation and specialized courses for Indigenous job training, and, even when providing statistics to demonstrate job training effectiveness, only the number of participants was indicated. The report completely failed to answer how effective the measures were in dealing with the employment difficulties of the Indigenous population coping with high unemployment and low-paying jobs.

189. A comprehensive approach that takes into account factors such as insufficient community employment opportunities, difficulties in the promotion of community industries and urban employment discrimination, should be the method of choice when considering proposals on Indigenous job security. As a result, we recommend the following:

(1) The Ministry of Labor should explain its statistical data on current Indigenous job categories and the actual number of employment counseling successes by job category. This would make for a more substantive examination of the effectiveness of the country's currently proposed measures on job security.

(2) The present "Indigenous Peoples Employment Rights Protection Act" has certain stipulations on hiring percentages and employment promotion for public enterprises, public projects and government procurement; however, the current State Report lacks relevant explanations on their effectiveness. As a result, we suggest that the Council of Indigenous Peoples and the Ministry of Labor make a joint inventory of current hirings by the relevant institutions to determine whether low rates of implementation might merit recommendations for improvement.

(3) In addition to lowering the unemployment rate, the Ministry of Labor together with the Council of Indigenous Peoples should jointly confront such issues as Indigenous low-wage and high-risk employment as well as insufficient opportunities for career development. This should be done in the effort to investigate and draft concrete plans for job counseling and career advancement so as to turn around the systemic problems faced by Indigenous Peoples in the labor market.

New immigrants

190. The government policies in subsidies have led to a wage gap between new immigrants and

Taiwanese nationals, causing unequal pay for the same job. According to ruling made in administrative litigation by the Taipei District Court, Summary Procedure No. 14 of 2019, Juridical Association for the Development of Women's Right in Pingtung, JADWRP applied for many years to the Ministry of the Interior for the "New Immigrants Development Fund" to subsidize a new immigrant lecturers training program, the proposed plan in 2018 was consistent with that of the previous year and should in principle be classified as being a general activity in nature, which may enjoy up to NT$1,600 in hourly rates,[84]yet it was forcibly identified as camp activity, such that the previous subsidy of NT$800 for hourly lecturer fees was reduced to NT$260. The ruling held that the claim of the Ministry of the Interior that new immigrant lecturers are of a different nature from other teaching activities under subsidy was not valid, and seriously violated the principle of self-restraint in administration; the reduction in subsidies for the teacher's hourly fees which the association had applied for also constituted differential treatment in violation of the principle of equality as proclaimed in the Constitution.

191. This case of administrative litigation not only exposes the predicament in which organizations of new immigrants have long been relying on short-term subsidies from the "New Immigrants Development Fund" in order to raise funds for empowerment and to hire new immigrant lecturers. It also suggests that government subsidies for social welfare have not provided reasonable and equal protection to new immigrants' right to work, much less fulfilling responsibility in active promotion of empowerment and awareness of new immigrants.

192. We suggest:

(1) Review the effectiveness of successful cases over the years in application of "New Immigrants Development Fund", in terms of meeting the needs of regional migrants.

(2) Actively cooperate with NGOs centered on migrants and undertake long-term empowerment projects for new immigrant women in various regions, not only to bring about relevant vocational skills and reasonable labor conditions, but also to promote an inclusive Taiwan society and education system with diverse cultures.

Migrant workers

193. As of the end of 2019, migrant workers in Taiwan belonging to either industrial labor or social welfare labor have reached 718,000 in number,[85] making them one of

84 According to para. 1 and Item 2 of para. 3 under Point 8 of Basic Principles of Review for New Immigrants Development Fund (law at the time of commission), hourly fees for teaching are thus stipulated: for general learning courses, language learning for daily life, self-cultivation and emotional support and other courses, for total duration of exceeding 36 lessons or hours, an external teacher will be paid maximum NT$1,000 per lesson, and a staff member will be paid maximum NT$800 per lesson; for projects under 36 hours, an external teacher will be paid maximum NT$1,600, a staff member maximum NT$800; for summer or winter camps, or courses lasting less than a week, maximum subsidies would be NT$400 per hour; for courses lasting more than a week, maximum subsidies would be NT$260.

85 Ministry of Labor, 'Number of Workers in Labor Industry and Social Welfare Industry' (2020).

the important communities in Taiwanese society. However, as early as 2013, the Review Committee have stated in Points 38 - 39 of the 2013 CO on Two Covenants that blue-collar migrant workers in Taiwan face problems such as exorbitant broker fees, almost complete dependence on employers, restrictions on transfer between employers, possibly complete loss of rights with status as undocumented workers and so on. The Committee called on the government to closely monitor and control the exploitation of migrant workers by agent companies, to impose penalties in cases of abuse, to extend the rights of migrant workers in switching employers, and to ensure that everyone enjoys the most basic human rights, regardless of one's status as citizen or non-citizen, documented or undocumented. Yet aforementioned circumstances have seen little improvement to date.

High broker fees deepens exploitation of workers

194. High brokerage fees have always been the heaviest burden borne by blue-collar migrant workers in Taiwan, However, the Taiwan government has not taken any concrete action with regard to "high brokerage fees."

195. As the process in hiring blue-collar migrant workers is somewhat complicated,[86] and migrant workers have difficulty in obtaining information, not to mention a lack of infrastructures and services, job seekers and employers usually choose to be matched through private broker agencies. According to Article 6 of *Standards for Fee-charging Items and Amounts of the Private Employment Services Institution*,[87] "profit employment services institution when being entrusted by employer to undertake business activities of employment services may charge employer fees"; this is used as a basis for agencies to exploit migrant workers, making them bear unreasonably high amounts of debt.

196. While the government has set up Direct Hiring Service Centers to assist employers in handling matters of hiring themselves, with an attempt to lower broker fees for migrant workers, publicity has not been adequate and the procedure is more complicated than turning to recruitment agencies. This results in an extremely low rate of usage, with no significant effect.

197. Although the government has established an evaluation of service quality for employment agencies, according to the *Key Points of Service Quality Evaluation for Private Employment Service Institutions Involved in Transnational Recruitment*, serving as the legal basis for evaluation, the Labor Ministry has outsourced the

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https://statdb.mol.gov.tw/evta/JspProxy.aspx?sys=220&ym=10908&ymt=10908&kind=21&type=1&funid=wq1401&cycle=1&outmode=0&compmode=0&outkind=11&fldspc=24,6,&rdm=efmmjjiN

86 Regulations on the Permission and Administration of the Employment of Foreign Workers, art.2 (1), https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090027

87 Standards for Fee-charging Items and Amounts of the Private Employment Services Institution, art.6, https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090028

responsibility in implementing evaluation, and its indicators for evaluation have been established without adopting the opinions of migrant workers or their representatives. Hence there is doubt as to the fairness and representativeness of this evaluation framework.[88]

Unable to switch employers freely, migrant workers compelled to escape

198. According to stipulations of the Employment Service Act, blue-collar foreign workers cannot freely change employers. Moreover, given the ineffectiveness of labour inspections and the MOL's "1955" protection hotline for foreign workers and the manner with which local government officials handle complaints, migrant workers often encounter situations in which they do not really receive assistance after filing complaints. Therefore, "flight" often becomes the only option for self-protection. Even more important is the fact that even if employers themselves believe that "agreement to transfer" is a better choice, the problems in the design of the blue-collar migrant worker system ensure that every carrot will have its own pit. The departure of a blue-collar migrant worker will cause the factory owner to lose one of his quota of foreign workers, while employer of a household care worker will have to wait until the departing migrant worker finds a new employer before being able to hire a replacement.

199. "Flight" leads to other trials. The result of a system that turns migrant workers into virtual slaves is that migrant workers who are "in flight" are commonly subject to discrimination. If an "escaped foreign worker" gets ill or gets involved in a labour - management dispute or other situations that threat his or her health or labour rights, he or she will usually choose not to go to the hospital or to file a complaint since entry into any system or facility which requires identification documents could lead to deportation. Therefore, "informing on an escaped foreign worker" constitutes a kind of institutional abnormal exploitation that allows illegal employers or anyone use the threat of exposure of his or her "illegal" status as a club to threaten an "escaped foreign worker" to do anything that the potential informant wants. Indeed, besides failing to fulfil the requirement of the implementation act for the two covenants to carry out a review and improvement of all laws and regulations within two years after the implementation act's promulgation, the NIA has actually made matters worse! On June 21, 2015, the NIA introduced a new smart phone "Anti-ARC Counterfeiting APP." Thanks to this application, anyone can at any time check the valid dates and other personal data on any "Alien Resident Certificates" issued after 2002 by scanning their barcodes. We believe this system encourages "everyone to arrest escaped foreign workers"

88 Ministry of Labor, Key Points of Service Quality Evaluation for Private Employment Service Institutions Involved in Transnational Recruitment https://laws.mol.gov.tw/FLAW/FLAWDAT0202.aspx?id=FL044060

and constitutes concrete evidence of the hostility toward blue collar migrant workers on the part of State authority and is furthermore an incentive for society at large to view all "foreign workers" and "foreign spouses" as "suspects." We demand that this unrestricted expansion of executive power be revoked immediately.

200. Employers are to consent to any migrant workers switching to another employer, but be it according to regulation or in practice, migrant workers continue to be subject to various restrictions, rendering them often unable to choose employers as they wish:
   (1) According to para. 3 of art. 53 in the *Employment Service Act*,[89] it is stipulated that any foreigner who has been employed for any work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of art. 46 under the same Act, including marine fishing work, household assistant and nursing work, and other forms of work as blue-collared migrant workers, "may not shift to a new employer or new work". Only when one of the 4 circumstances as stipulated in art. 59 of the *Employment Service Ac*t arises, may a blue-collared migrant worker switch to a new employer or a new job upon approval of the central authority.[90]
   (2) Also, concerning migrant workers in household assistant and nursing work, Subparagraph 3 of para. 2 of art. 58 under the same Act stipulates that an employer who agrees for an employed migrant worker to switch to another employer or another job will be able to apply for replacement, only upon the worker shifting to work for a new employer, or the worker moving out of the country.[91] This law creates a "window period" which is quite unfavorable to families with real need for care workers, and has led to employers finding ways to make migrant workers leave the country so as to allow them to apply for a replacement as soon as possible. After the amendment of art. 58 of the *Employment Services Act* in 2023, although employers can still apply for new foreign workers if the previously employed foreign worker remains unemployed for more than one month, the "window period" does not reset completely.

201. Given restrictions that prevent workers from changing employers freely, be it in industrial labor or social welfare labor, workers who are exploited by their original employers, or are unwilling to leave the country and unable to find new employers, may well be caught in a situation of having to "escape". Although the government, in accordance with *Key Points on Temporary Shelter and Placement for Migrant Workers*

89 Employment Service Act, art. 53.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001
90 Employment Service Act, art. 59.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001
91 Employment Service Act, art. 58.
https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

employed under Subparagraphs 8 to 11 of Paragraph 1 of Article 46 in *Employment Service Act*, has assisted in sheltering migrant workers who are forced to terminate employment relationships, the number of missing migrant workers in Taiwan as of June 2023 has reached 82,822 according to statistics of the Immigration Agency.[92] This marks an increase from 52,326 during the same period in 2016, suggesting that current government measures have not helped to ameliorate the situation.

202. Following an act of escaping, a migrant worker would not only lose all rights and easily become discriminated against, his or her work permit may also be revoked in accordance with art. 73 and 74 of the *Employment Service Act*,[93] and the worker will be barred from engaging in any work in Taiwan again.
   (1) A runaway worker of Vietnamese origin by the name of Nguyen Quoc Phi was shot 9 times by a police officer in August 2017, and pronounced dead after being sent to a hospital.[94]In April 2018, another Vietnamese migrant worker named Hoang Van Doan, who chose to escape due to inhumane treatment of the employer and agency, thereafter becoming engaged in illegal work, was injured while being pursued by the police, and died after he escaped arrest.[95]
   (2) Whenever migrant workers run away, if they subsequently encounter situations like illness or labor disputes which may be life-endangering or threatening to their interests as workers, they tend to choose not to go to a hospital and not to file an appeal, as once they enter any system that requires documentation proof, they would face the prospect of being deported. Furthermore, a runaway migrant worker hence becomes an illegal migrant worker who does not qualify for any health insurance, and has to be charged based on rates as an international patient. While charges vary among hospitals for international rates, most charges would be 1.5 to 2.0 times of private health insurance prices.[96]

203. The government when faced with a situation of runaway migrant workers has actually resorted to the measure of offering monetary rewards to the public for "whistleblowing". There is no attempt in raising public awareness and educating

92 Immigration Agency, 'Statistics of Missing Migrant Workers' (2020). https://www.immigration.gov.tw/5385/7344/7350/8943/

93 Employment Service Act, art.73. https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=N0090001

94 Press Release on Police Officer Chen Chung-wen Opening Fire Leading to Unnatural Death of Vietnamese Migrant Worker Nguyen Quoc Phi on August 31st, 2017, Judicial Yuan. http://jirs.judicial.gov.tw/GNNWS/NNWSS002.asp?id=489797&fbclid=IwAR0psTOCOSL5A1PBcyEKyf5JSHwnP6Lnq6A8r3RLfjv91ENqzYiji4P7GDU

95 'Vietnamese Migrant Worker Found Dead in Alishan after Escape from Police', PTS News Network. https://pnn.pts.org.tw/project/inpage/485

96 Upper limit based on 'Principles of Reference for Standards in Medical Charges', Ministry of Health and Welfare, October 3rd, 2017; lower limit based on experience of NGO personnel in Taipei Metropolitan Area.

employers meantime. Such a move not only entrenches misunderstanding and discrimination among the public against runaway migrant workers, but also allows employers and recruitment agencies to intimidate migrant workers using an "illegal" status as their bargaining chip. Furthermore, the Immigration Agency in June 2015 launched an anti-counterfeit verification app to check residence permits against electronic ID cards, to enable anyone to check the validity of a migrant worker's residence permit any time, which raises concerns of rights to privacy.

Occupational accident rate of migrant workers is twice that of local workers

204. According to the 2020 report of the Control Yuan,[97] the disability incidence rate of migrant workers in the last 10 years has been significantly higher than that of workers who are Taiwan nationals, and within the manufacturing industry which sees the highest proportion of migrant workers, the rate of disability incidence due to occupational accidents is almost double that of workers who are Taiwan nationals.[98]In 2018 for example, while the rate per thousand people was 0.31 among Taiwan nationals, that among migrant workers was 0.67.[99]The government, to date, has yet to put forth any specific or effective measure, which results in the rights and interests of migrant workers remaining unprotected.
205. The same report has indicated that safety signs which caution against any hazard at the workplace often miss out on the mother tongues of migrant workers. Employers also often do not provide training in occupational safety, and instead leave it to more senior migrant workers to instruct new migrant workers. Training is thus hastily carried out.
206. We suggest:
    (1) Formulate relevant policies immediately and limit the amount of service fees charged by broker agencies. Coordination with workers' countries of origin should be established for direct hiring, in order to simplify the procedure in direct hiring for employers in Taiwan, and to raise interest in applying for direct hiring. In the meantime, the employment service centers should hire sufficient interpreters, to enable migrant workers to obtain relevant information readily.

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97 Survey Report on Labor Insurance and Occupational Accidents, Control Yuan. https://www.cy.gov.tw/CyBsBoxContent.aspx?n=133&s=17095

98 Occupational Accident Rate per Thousand Persons: the number of injuries or illnesses, disability incidences or deaths due to buildings, machinery, facilities, raw material, chemicals, gases, steam, pollen or processes at the workplace on average among 1,000 workers.

99 'According to Statistics, Disability Incidence Rate of Migrant Workers in Occupational Accidents in Manufacturing Industry has been Double that of Workers of Taiwan', Control Yuan. https://www.cy.gov.tw/News_Content.aspx?n=125&s=14477

(2) Amend the *Employment Service Act* immediately so as to abolish the stipulation in Item 3 of art. 53 that a migrant worker may not switch to a new employer freely, and provide for additional penalties against illegal action taken by employers and recruitment agencies, and for implementation of labor inspection.

(3) Abolish monetary rewards for whistleblowing on runaway migrant workers. Strengthen advocacy and education so as to raise awareness among the public and public servants on the problem of runaway migrant workers, and protect such workers from discrimination.

(4) Concerning the issue of occupational accidents, the government should make it an actual requirement for employers to provide comprehensive vocational training conducted in the mother tongues of migrant workers; vocational training should also be incorporated into labor inspection, so as to ensure protection of migrant workers' occupational safety.

Vulnerabilities and rights of female human trafficking victims are invisible

207. With regard to legislations on the prevention of human trafficking and protection of human trafficking victims, the initial State report mentioned the Executive Yuan Anti-Human Trafficking Coordination Panel as Taiwan's highest anti-human trafficking authority. However, information on the Panel's focus, interagency coordination activities, and mid-term and long-term plans for the prevention of human trafficking are not provided in both the initial and the second report. For this reason, additional information on the Panel's role and achievements are required.

208. According the Ministry of the Interior's report, [100] 47% of human trafficking victims between 2011 and 2014 suffered sexual exploitation, with the composition of 21% foreign female, 8% Taiwanese adult female, and 18% Taiwanese children or teenagers (gender unspecified, although judging from past statistics these are largely females). Meanwhile, the other 53% of human trafficking victims suffered labor exploitation, with the composition of 40% female and 13% male. This shows that women are indeed exposed to a higher risk of becoming victims of human trafficking, regardless of which type. However, the State report contains only the number of cases, number of cases provided sheltered and number of minors, along with the national measures and budgets for the prevention of trafficking (sexual and lobar exploitation) of women, which are exposed to higher risks. The

100 National Immigration Agency, Ministry of the Interior, 2011-2014 Republic of China (Taiwan) Trafficking in Persons Reports (http://www.immigration.gov.tw/lp.asp?ctNode=32578&CtUnit=16539&BaseDSD=7&mp=1)

government should cross analyze the victims' gender, nationality, status upon entry into Taiwan and types of trafficking, in order to identify the specific groups that particularly suffers from human trafficking, and lay out the current and future prevention plan for them.

209. Fieldwork has revealed that female migrant workers who work as domestic helpers and caregivers (hereinafter "domestic workers") are more likely to be subject to multiple forms of exploitation, including forced labor, sexual harassment and assault, high debt and insufficient wages. At the same time, since this group lacks the method/capacity to receive correct information and utilize channels of assistance, they are likely to turn to informal channels, which expose them to a higher risk of becoming victims of human trafficking.

210. The State report does not explain the difference between numbers of cases investigated and prosecuted, or between that prosecuted and indicted. The Garden of Hope Foundation's experience indicates that many cases prosecuted as sexual exploitation under the Human Trafficking Prevention Act were indicted as mere offenses against morality. Such indictments do not effectively punish perpetrators, nor do they provide compensations to the victims. While civil suits are encouraged, the victims are often deterred by the prolonged process, cost and impact on their right to work.

211. Domestic work is not merely an issue of labor rights. It is also a means to prevent human trafficking. This report demands the immediate restart of discussions on domestic labor laws, with the aim to put forth in those laws effective measures of assistance.

212. Rights of migrant workers during lawsuits should be reviewed. Migrant workers should have the rights to remain in Taiwan and continue work when awaiting the results of criminal, labor-management or administrative suits.

Foreign workers in the household

Extremely poor working conditions without significant improvement for years

213. By the end of 2022, there were nearly 728,000 industrial and social welfare migrant workers in Taiwan, of which 246,000 were family caregivers and domestic helpers.[101] According to the Legislative Yuan's 2019 report,[102] there were nearly 80,000 people with disabilities and elders with dementia in Taiwan, of which 30%

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

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

had hired foreign caregivers.

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

(1) Regarding salary, according to the Ministry of Labor,[103] the monthly salary for a foreign caregiver averaged NT$ 17,550 in 2019, significantly lower than the basic wage requirement stipulated in the Labor Standards Act, which was NT$23,800 the same year. Comparatively, the minimum monthly cost for living in 2019 in Taipei and New Taipei City, the two cities with the highest number of foreign social welfare workers, was NT$16,580 and NT$14,666 respectively.[104] Current minimum wage requirements for foreign domestic workers fail to fulfill the right to an adequate standard of living as stated in art. 14 of ICESCR.

(2) Furthermore, the legal minimum wage for domestic migrant workers was increased from NT$17,000 to NT$20,000, while the basic wage for regular laborers under the Labor Standards Act was raised from NT$20,008 to NT$ 26,400 between 2015 and 2023. To make the situation worse, the health insurance premiums for domestic foreign workers have continued to increase along with the minimum insured salary.[105]

(3) Regarding daily hours, according to the aforementioned report, foreign family caregivers work approximately 10.4 hours per day. Though the government claimed in para. 172 in ICERD State Report that sufficient rest time and at least one rest day every seven days are mandated in the written labor contract, which employers must sign when hiring domestic foreign workers, up to 81% respondents of the aforementioned report said that they did not specify daily working hours in their labor contracts.[106]

(4) Regarding rest time, the same report showed that 34.4% of foreign domestic caregivers have no holiday breaks at all, and 54.2% get some days off. This is

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

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

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

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

not in compliance with art. 36 of the Labor Standards Act,[107] which states "(a) worker shall have two regular days off every seven days. One day is a regular leave and the other one is a rest day." For those who do not get days off at all, 86.5% of their employers claim that the reason for this is because "the caregivers want to earn overtime pay." While more than 98% of the employers stated that they do pay for overtime, the amount is less than NT$600 a day.

215. On educating employers, first-time employers of domestic migrant workers must attend a mandatory seminar before hiring as required by art. 2 of the Implementation Regulations of Employers' Orientation Program Before Hiring a Foreign Worker to Render Home Care or Household Assistance.[108] However, the format and content of such seminars are insufficient and incomprehensive, and has failed to effectively enhance employers' understanding of the culture and the rights of the foreign workers.
    (1) In terms of format, the seminar takes merely one hour at minimum, and employers have the option to complete the training online - through watching a short video.
    (2) In terms of content, the seminars touch upon only administrative matters such as relevant laws, of which which the government has failed to provide accurate and detailed clarifications.[109] Furthermore, the courses do not include lectures on the cultures, languages, religions of foreign workers.

216. The government expanded respite care services for families with foreign caregivers. However, only less than 0.26% of the total number of domestic workers enrolled in the respite care services program. It goes to show how limited the results are.

217. Sexual harassment in the workplace: According to statistics compiled by the Ministry of Health and Welfare, between 2007 and 2019, a total of 1,141 sexual assault cases concerning foreign victims were reported, and about 70% of the victims were domestic caregivers.[110] In 2018, a report by the Control Yuan showed that some of the foreign workers who were victims of sexual assaults or harassment had no income and were burdened with huge loans while being placed in a shelter

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

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

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

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

and were waiting for a new job.[111] Moreover, prior to their temporary placement, they still had to confront and deal with their predators -- the employers, who would demand outstanding wages, retrieve their identification documents, and sign conversion documents after applying for official mediations on labor disputes.[112] In 2018, the Control Yuan demanded the Ministry of Labor and the Ministry of Health and Welfare to build an effective monitoring mechanism to accurately compile and integrate the data and analyze the reasons behind the sexual assaults of foreign workers. At the same time, both ministries should develop supportive measures for the conversion of the foreign workers victimized in these cases. Nevertheless, there has been little to no improvement in this aspect.

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

218. The Ministry of Labor has finalized the draft of "Domestic Workers Protection Act" on March 15, 2011 and submitted it to the Executive Yuan for further review on September 13, 2013. The Act has since been pending. The government has made excuses such as "the draft needs to be further reviewed in collaboration with the policy of Long-Term Care System" and "the lack of public consensus" to delay any further actions on the Act. The pending of the legislation means that 246,000 domestic workers' human rights continue to be ignored. It should be the obligation of the State to proactively promote, fulfill and protect human rights through legislation instead of passively waiting for public consensus.
219. Furthermore, the Domestic Workers Protection Task Force failed to engage civil society or foreign domestic workers. It raises the concern of whether the voices of migrant workers are being taken into account. Besides, there are no minutes of said meetings, making it impossible for NGOs to garner a comprehensive understanding of the situation, let alone propose any policy recommendations related to this matter.
220. In addition to the lack of progress on the legislation, the government has failed to provide a detailed account of the progress achieved on this issue or the impact assessment of the legislation on migrant workers' rights. NGOs have no information regarding exactly why the bill is pending or its progress (if any), making it difficult for NGOs to provide policy recommendations.
221. Taiwan's Long-Term Care System administered by the MOHW does not encompass household migrant workers. The MOHW has been responsible for promoting two

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

laws, namely the Long-Term Care Service Act which was enacted in June 2015 and the Long-Term Care Insurance Act submitted to legislative review in June 2016, as the legal framework for the long-term care system. However, migrant household workers are not included in the human resource planning for the long-term care and the promotion of the long-term care system may therefore be unable to improve the "blood and sweat" conditions for migrant household workers.[113]

222. Beginning in 2013, MENT and the Taiwan International Workers' Association (TIWA) have called on MOHW and the MOL to definitely bring migrant household workers into the human resource planning for the new long-term care system and for the elimination of the individual person homecare system and its replacement by institutional employment of "foreign careworkers." Only in this way can the problems of the exploitation of migrant household workers and the shortage of human resources for the long-term care system be resolved in tandem. However, the two ministries have ignored these calls and are instead even considering marketization of long-term care. Marketization would inevitably lead to "bad money driving out the good" and injure both the receivers and givers of care services.

223. We recommend:

(1) The government should enact the Domestic Workers Protection Act without further delay, and apply domestic migrant workers to the Labor Standards Act. The Domestic Workers Protection Act should incorporate personal safety protections to address and prevent the high frequency of sexual harassment in the workplace and the current issue of inadequate protection and safety measures.

(2) Regarding employer education, the option of watching online videos should be taken out. The content should include the comprehensive and precise labor-employment laws and regulations, administrative procedures, and the information about lives and cultures of migrant workers to protect the rights of both parties.

(3) The task force of domestic workers' protection should actively engage foreign workers' organizations. The meeting materials should be made public with detailed meeting minutes so that the public can understand and follow up on the progress of government policies and legislation.

(4) The government should proactively and regularly investigate the working conditions, physical and mental health, and occupational injury status of

113 The Long-Term Care Services Act was promulgated on June 3, 2015. An English translation can be seen at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=L0070040>. The draft Long-Term Care Insurance Act was submitted by the Executive Yuan for legislative review on June 4, 2016. A detailed explanation (in Chinese) is available at <http://goo.gl/ZgE1Tw>.

foreign domestic workers. The results of these investigations should be made public for the public to monitor and follow-up.

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

Foreign workers in the fishing industry

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

225. The channels for recruitment of fishing workers or crew are divided into hiring inside Taiwan and hiring outside of Taiwan's borders. Crew hired in Taiwan are covered by the Employment Service Act, while crew hired outside of Taiwan come under the purview of the "Regulations on Overseas Employment of Foreign Crew Members by Owners of Fishing Vessels" under the authority of the Fisheries Agency of the COA. The types of overseas hiring arrangements are also divided into two categories. One type involves workers directly employed by Taiwan employers but whose work contract is signed outside of Taiwan. The second type concerns temporary workers on assignment in which the worker is first hired by a Taiwan or foreign company or by a labour brokerage and then assigned to Taiwan fishing boats as crew. However, the fishing boat in question may be flying a flag of convenience (FOC) due to fishing in other waters and the involvement of numerous people of different nations may lead to many problems as the labour-management rights and obligations may involve laws and regulations on labour service in multiple countries. For example, whether the labour contract must be in accord with the LSA and whether the conditions for crew on fishing vessels can be worse than allowed by the LSA can be very much open to question. At present, the MOJ, MOL and COA have divergent views on whether to require the protections of the

Labour Standards Act for foreign crew working on Taiwan fishing vessels.

226. The Giant Ocean Trafficking Case: The dismal conditions faced by foreign fishing workers and the loose state of legal frameworks and enforcement has been concretely exposed by the International Labour Organization (ILO) and international NGOs such as Greenpeace as well as being reported by international media such as the British Broadcasting Corporation (BBC). Foreign workers encounter unreasonable conditions as crew on fishing vessels, including infringements on human rights and labour rights. For example, unscrupulous labour brokers may use the cover of recruiting labour to actually engage in human trafficking or forced labour or slavery. In the Giant Ocean case, the Taiwan manager of the Giant Ocean International Fishery Co. Ltd illegally trafficked over 1,000 Cambodian fishing workers who were beaten, starved, tortured and even threatened with death. As a result, Giant Ocean was indicted by the Cambodian government and six Taiwanese were charged by the Cambodian government with human trafficking. However, only one Taiwanese was arrested and is serving a prison term in Cambodia. The other five Taiwanese are fugitives, but the Taiwan government has yet to arrest or indict them.

227. The labour rights of fishermen hired in Taiwan are not protected. Under the protection of the Labour Standards Act, migrant fishing workers should at least receive the basic wage and should have a ceiling on work time and, if work time exceeds the limit, the employer should pay overtime. However, due to the lack of sufficient government labour inspectors and a shortage of labour, almost all fishing crew are unable to receive overtime payments for excessive work. Most labour contracts have provisions for "profit-sharing" from the catch, but it appears that no fishing crew have every received any "dividends." The employer should enlist employees in the national labour insurance program, but many employers substitute commercial insurance. In addition, after deductions of fees for domestic and overseas labour brokers and for room and boarding, just over half of the basic wage is actually the highest wage that foreign crew can expect.

228. On the grounds that "it's difficult to protect documents when working on the seas," foreign fishermen are required to sign "since most foreign fishing boat crews are required to sign "voluntary agreements" of "requests to the employer/broker to take custody" of personal documents. As a result, the foreign worker does not have key identification documents such as his passport, Alien Registration Certificate (ARC) and seafarer's certificate on him when he is at sea. Moreover, wages are often not paid on time every month for reasons of being "at sea," not to mention failure by the employer to provide employees with bilingual wage payment certificate as required by both the LSA or the ESA. In terms of living costs, the employer/broker may use an interpretation of the LSA made by the then Council of Labour to the effect that "wages can be paid in kind." In recent years, cases have been reported in

which up to NT$5000 a month (about one-fourth of the nominal monthly wage or one half of the actually received wage) is deducted for "room and board." Foreign fishing boat crew whose wages are deducted for "room and board" often face actual problems in basic living such as not being able to sleep or to eat full meals. The rights to food, housing and health care are all mentioned in the Concluding Observations and Recommendations as fundamental rights that are frequently unobtainable for foreign fishing workers even if they pay for them. All of these situations are subject to various laws and regulations, but the reality that "laws and regulations cannot be realized" is the prime reason why the labour and basic living rights of foreign fishing workers are being sacrificed.

229. We advocate that all fishing workers, whether hired in Taiwan or abroad, should be covered under the LSA and other related labour laws and regulations. The LSA and other laws and regulations originally did not distinguish the nationality or background of workers or whether they were legal residents but applied to all persons in the territories under Taiwan's legal jurisdiction, including Taiwan - registered fishing vessels. The Fisheries Administration has used two administrative regulations (such as the Regulations on Overseas Employment of Foreign Crew Members by Owners of Fishing Vessels), which have lower status than laws, to exclude foreign fishing workers and Chinese fishing workers from the scope of application in violation of legal principles. We call on the Executive Yuan to convene as soon as possible a cross-ministerial conference and invite the MOJ, the MOL, the COA and other concerned agencies to resolve the disputes over the question of the scope of application of these laws and restore the legal protections of the LSA and other Taiwan laws and regulations.

230. Labour on the high seas has special and unique characteristics compared to other types of work and there are also huge differences among work at sea among the different types of fishing operations. The government should promptly launch consultations with scholars, civic organizations and representatives of fishing workers on whether Taiwan should enact a special chapter in the LSA or even a special law to regulate work at sea. Such consultations can refer to the stipulations of the ILO Work in Fishing Convention (No. 188) regarding the provision of minimum working conditions, housing, food, occupational safety, medical and health care and other social protections.

231. Carrying out labour inspections and monitoring of fishing vessels at sea is a very difficult task that involves not only the applicability of law but how such duties can be feasibly implemented. Besides intensifying education among fishing boat owners, the MOL and COA can also use bilateral agreements and joint cooperation with the mother countries of the fishing workers to raise awareness of fishing workers' rights. Taiwan agencies can also use in tandem regulatory documentation (such as registration and notifications) and the implementation of actual labour

inspections within the scope of their capability. They should also proactively cooperate and coordinate with international and regional government and non-governmental organizations to find the most feasible mechanisms for labour inspection and monitoring.

232. The government has already ratified several core international human rights covenants and conventions and, as early as 1964, ratified ILO Convention No. 118 concerning "Equality of Treatment of Nationals and Non-Nationals in Social Security." The government must abide by its obligations under the convention and protect the basic human rights of all fishing workers.

Overseas employment

233. The government introduced three pieces of legislation related to fishing in 2017 — the Act for Distant Water Fisheries, the Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels, and Amendments to the Fisheries Act, alongside 15 sub-regulations,[114] in an attempt to regulate the overseas employment of foreign workers on fishing vessels operating beyond Taiwan's borders. However, these new laws are still insufficient in providing fishermen adequate protection, making them second-class citizens:
    (1) The Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members form the current basis for the protection of the rights of foreign workers employed on fishing vessels operating beyond Taiwan's borders,[115] as authorized by art. 26.3 of the Act for Distant Water Fisheries.[116] However, if compared to the Labor Standards Act, there is a vast difference in the stipulated labor conditions.
    (2) In terms of salaries, the Article 6.1.2 of the Regulations stipulates that foreign crew members hired by distant water fisheries operators should be paid a minimum of US$550 (about NT$16,500).[117] This is less than 62.5% of the NT$264000 minimum wage stipulated in the Labor Standards Act.
    (3) As for working hours, Article 6.1.7 of the Regulations stipulates that "The minimum rest hours per day for foreign crew members shall be at least ten hours and the rest hours shall consist of a period of at least six uninterrupted

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

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

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

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

hours. Foreign crew members shall have a minimum 77-rest-hour in any seven days. However, in consideration of fishing operation, compensatory leave(s) at seas or after the fishing vessel enters port may be arranged in accordance with the agreement between the employer and the employee.
(8) The distant water fisheries operator shall respect the need of the foreign crew member for religious holidays." Not only is there a huge gap between this and the basic standards as provided by the Labor Standards Act, the provision allowing for compensatory leave also creates a loophole that leaves foreign crew members vulnerable to exploitation.

(4) As for insurance, foreign crew members hired by distant water fishery operators cannot be insured as workers as they are not considered under the Labor Standards Act, which is different from what is stated in para. 210 of the ICERD State Report Although Article 6.1.3 of the Regulations stipulates that the "distant water fisheries operator shall insure for the foreign crew member the accident, medical and life insurance",[118] the government has not specified penalties for the flouting of this rule, but only stated that "in case of failing to insure as required, insufficient insurance coverage, or failing to acquire a sufficient claim from an insurer, the distant water fisheries operator shall bear the loss or indemnity." There is a lack of guidance, investigation, or support for foreign crew members seeking to assert their right to such insurance from their employers.

(5) Although the protections in the regulations are already poor, many operators still fail to respect and protect the rights of foreign crew members. According to investigations by the NGO Taiwan International Workers' Association, many shipowners do not directly pay the salaries of crew members, leaving it up to agencies. After deductions for agency fees and costs for lodging, the remainder is issued to the foreign crew members. Not only are the salaries not issued on a regular basis, bilingual payslips, as stipulated under the law, are not issued.[119]

(6) The Regulations do not specify penalties for those who breach its requirements. Under the Act for Distant Water Fisheries, only Article 42 stipulates penalties for those who violate the rights of foreign crew members, stating that those

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

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

found to be in violation will be fined between NT$50,000 and NT$250,000, with the possibility of their fishing license being suspended up to and not more than one year. This penalty is overly light, and therefore has no deterrent effect.[120] Furthermore, the Act for Distant Water Fisheries does not clearly define what constitutes illegal activities, and therefore cannot really protect the rights of foreign crew members. It does not really protect the rights of foreign crew members.

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

234. The government agency that oversees the employment of foreign crew members by operators is the Fisheries Agency and not the Ministry of Labor. Not only does the Fisheries Agency lack expertise in dealing with labor conditions, it also has vested interests and financial relationships with fisheries associations, intermediary companies, and fishery operators. For example, the vice-chairman of the Council of Agriculture is the chairman of the Overseas Fisheries Development Council of the Republic of China (OFDC). Furthermore, executives from organizations and companies like FCF Co, Ltd., Taiwan Tuna Association, and National Fishermen's Association Taiwan ROC, Taiwan Tuna Longline Association, and Fong Kuo Fishery Group sit on the board of directors of the OFDC. According to the Fisheries Agency's quarterly reports, the Executive Yuan's Council of Agriculture grants the OFDC more than NT$10 million in support every quarter.[121] It is therefore doubtful if the Fisheries Agency can really effectively guard the rights of workers employed on fishing vessels.
235. Under Article 34 of the regulations,[122] if a foreign crew member ends up in a dispute over rights or obligations with the shipowner, the municipal or county (city) government should facilitate and mediate between affected parties to reach a settlement. If a settlement cannot be reached, the matter should be sent on to the relevant authority. However, foreign crew members are often disadvantaged in terms of language proficiency and resources, and find it difficult to clearly represent themselves during mediation. If the case is sent on, the relevant authority is, once again, the Fisheries Agency.
236. Monitoring by maritime inspectors are often ineffective, with concerns about conflicts of interest:

120 Act for Distant Water Fisheries, art.42: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050051
121 Fisheries Agency, Fishery Agency's reports on subsidies paid or received annually and quarterly, https://www.fa.gov.tw/cht/GovAllowance/index.aspx
122 Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members, art.34: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=M0050061

(1) The Executive Yuan has increased the number of maritime inspectors dispatched, thus increasing the number of inspections and coverage capacity so as to reach national targets. However, most of the maritime inspectors are hired, trained, and dispatched by the OFDC. If we take 2019 as an example: according to the final report of accounts from the Fisheries Agency, the agency, in the name of "increasing the coverage of maritime inspectors", paid approximately NT$77.95 million to the OFDC, designated as expenses for services and personnel provided.[123]

(2) According to a 2018 investigative report by a non-profit online publication, a former maritime inspector claimed that the OFDC responsible for recruiting and training officers required officers to serve tea to either the shipowner or the captain and bow to the dock before they board the ship. Reports by these inspectors are either tampered with by the Fisheries Agency, or are locked up. Some inspectors have also claimed that no shipowner has ever been penalized by the government for barring an inspector from boarding the vessel.[124]

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

(4) Over the past few years, at least four maritime inspectors have been recorded as having died on board vessels registered in Taiwan, or Taiwanese ships flying Flags of Convenience.[125] One of these recorded deaths has been classified as a homicide. Most of these cases are still under investigation, but there has so far been no discernible action by the Taiwan government.[126]

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

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

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

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

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

Frequent incidents of human rights violations at sea

238. International reviewers had expressed concerns about the situation of foreign crew members on Taiwanese fishing vessels or Taiwanese vessels flying Flags of Convenience in reports as early as the one issued in 2013. They reiterated their concerns in 2017 as the situation had not improved. However, in the past several years, there have still been frequent incidents of human rights violations at sea, including fatalities, leading to repeated international sanctions on Taiwan's fisheries:
    (1) On 30 September 2020, the United States included Taiwan's distant water fishing catches in their "list of goods produced by child labor or forced labor", mentioning in their report that foreign crew members "face hunger and dehydration, live in degrading and unhygienic conditions, are subjected to physical violence and verbal abuse, are prevented from leaving the vessel or ending their contracts, and are frequently not paid their promised wages or have food and lodging fees illegally deducted from their wages."[127]
    (2) On 5 August 2020, the US Customs and Border Protection agency (CBP) issued Withhold Release Orders to two fishing vessels operated by Taiwanese, on the ground that there were cases of forced labor involving Southeast Asian crew members, including instances of physical violence, deception, salary deductions, overtime, and harsh working and living conditions.[128]
    (3) In May 2018, the South African authorities detained the Taiwanese vessel Fuh Sheng 11 under C188 of the International Labor Organization's Work in Fishing Convention. Inspectors reported that the foreign crew members on board were paid less than the stipulated monthly minimum wage of US$450, did not have sufficient or clean drinking water, were not allowed enough time to sleep, and had breached the Regulations on the Authorization and Management of Overseas Employment of Foreign Crew Members.[129]
    (4) In 2016, the Taiwanese vessel Fuci Qun was implicated in the long-term abuse of an Indonesian fisherman, Supriyanto, who died at sea. According to the

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

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

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

Control Yuan's investigations, [130]prior to his death, Supriyanto was subject to illegal salary deductions and beatings, and that the captain had failed to arrange timely medical treatment for him, resulting in his wounds becoming infected and leading to his death.

(5) In 2014, the Taiwanese operated Giant Ocean International Fisheries (known more commonly as Giant Ocean) illegally trafficked over 1,000 Cambodian fishermen. These fishermen were victims of deception, starvation, torture, and death threats. Giant Ocean was prosecuted by the Cambodian government over this matter. Six Taiwanese were convicted of human trafficking by the Cambodian government in 2014: one was sent to prison, whereas the other five are still at large. The Taiwanese government has yet to prosecute or convict them. Among the five at large, two remain on the list of trusted intermediaries on the Fisheries Agency's list,[131] and continue to engage in the employment of foreign crew members.

Domestic employment

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

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

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

(1) On 1 October 2019, the Nanfang'ao Bridge collapsed, resulting in the deaths of six foreign fishermen, with nine injured. On 5 October 2020, the Nanfang'ao Bridge construction broke ground, and President Tsai Ing-wen announced that it would be completed in two years as scheduled[132], and the bridge contractors

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

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

132 News articles on Tsai Ing-wen personally presided over the ground breaking of the new

was sued in 2022. However, so far, compensation for worksite injuries, labour insurance, funeral allowances, survivor annuities, and accident insurance for migrant workers has no public information to track the handling status.

(2) According to investigative report of Control Yuan, there was a case of 81 foreign fishermen living in the most cramped quarters of 0.49 square meters, far below the minimum standard of 0.7 square meters for prisoners, and 0.968 square meters of foreign fishermen employed within Taiwan. These workers were also subjected to improper wage deductions (receiving only about US$50 every month), excessive working hours, confiscation of their passports and other documents, physical assault while working, and bans on communication. Although the Control Yuan has asked in 2016 that relevant units in the Council of Agriculture and Fisheries Agency make improvements, there has not been any progress till October 2020.[133]

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

241. In response to para. 249 of the ICERD State Report, although the Ministry of Labor has established a free, bilingual 1955 labor consultation hotline, allowing migrant workers to seek legal consultation and lodge complaints in their mother tongue, there is no guarantee of its effectiveness due to a lack of interpreters and a poor quality of service. The data presented in the State Report cannot represent the overall usage ratio.

242. Our recommendations:

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

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

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bridge, a year after the accident, and declared that the construction of the new bridge was slated to be completed in two years. https://www.storm.mg/article/3085280

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

(3) On the issue of Taiwanese operated ships flying Flags of Convenience, the Article 4 of the Act to Govern Investment in the Operation of Foreign Flag Fishing Vessels should be amended to require verification by the MOEAIC or the Ministry of Economic Affairs before Taiwanese citizens are allowed to invest in vessels not registered in Taiwan,[134] as opposed to verification by the Council of Agriculture's Fisheries Agency, which has close relationships with shipowners, intermediaries, and fishery companies.

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

(5) Amend Articles 24, 25, 43, and 47 of the Labor Union Act to strengthen the promotion of the right of fishermen to establish unions,[135] so that they will have more opportunities to stand on an equal footing with fisheries associations, fishery operators, and intermediary companies, and participate in consultations and discussions related to their work.

(6) On the issue of human trafficking: Actively prosecute and convict offenders in accordance with the Human Trafficking Prevention Act,[136] and impose sufficiently severe penalties, including prison sentences, on those convicted. Also, actively investigate Taiwanese vessels flying flags of convenience or Taiwanese registered vessels suspected of engaging in forced labour. If the suspicions prove to be true, high-ranking members of the ship's crew and the ship's owner should be prosecuted.

Right to housing and an Adequate Standard of Living

The community sovereignty of urban indigenous peoples

243. Indigenous peoples' districts have faced chronic unequal distribution of national development resources for a long time. Consequently, large numbers of indigenous people have migrated to urban areas in order to search for employment opportunities or satisfy needs for education, medical care and other vital functions. According to the ICERD State Report, more than 280,000 indigenous persons, or

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

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

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

close to 50% of Taiwan's total indigenous population, were registered as living in urban areas and this figure continues to rise. Nevertheless, most of the indigenous people who have migrated to urban areas during the past few decades are engaged in low-skilled and high-risk manual labour occupations and do not find it easy to obtain adequate residential environments. The residential situations for urban indigenous peoples can be roughly divided into urban indigenous communities which have created their own settlements and indigenous households which are scattered throughout urban areas. Regardless of which type, all face common difficulties of disadvantageous economic conditions, insufficient social expenditure systems and neglect of ethnic subjectivity and identity.

244. Based on economic factors and cultural habits, some urban indigenous people choose to build self-help housing in locations which have environments similar to their original homes and form urban communities with indigenous people as the main body of residents. These communities are informal settlements and most of their members are indigenous labourers who have worked in urban areas for the medium-or-long term. However, since the protection they receive from labour laws is insufficient and they are also detachment from the protections of their original social safety system, these indigenous people can only depend on the culture of mutual help in the community to compensate for the overall lack of social security.[137] However, the government lacks appreciation for the collective character and social functions of this kind of indigenous community and official agencies

137 In Points 47-49 of the Concluding Observations and Recommendations for the first State report on Two Covenants and subsequent follow-up discussions, the Council for Indigenous People had the following response to the question of unlicensed settlements of indigenous people: "Our council has already collated basic data on illegally built indigenous communities and found that there are 20 such communities in six cities and counties with about 2,041 persons in 618 households. The above-mentioned communities all belong to the self-governance responsibility of local governments. However, our council will in principle actively assist local governments administer guidance and resettlement subsidies for indigenous settlements." The reference to these communities as "indigenous unlicensed settlements" indicates and that they are seen as "illegal buildings" and that their demolition is necessary. The formation of these illegal buildings encompasses factors such as "the situation for ownership rights for land upon which they are built," "the building construction violates related laws and regulations on construction methods" and "the construction of these structures was not licensed through the legal application procedures." Once these structures are defined as "illegal," they become matters for "building regulation" and thus come under the authority of local governments.
However, in most cases the land actually belongs to rivers, coasts and protective forests that are public lands. Moreover, what is called a "village" is not simply a group of buildings as the basic essence of the villages is a clustering of indigenous peoples culture. Therefore, the CIP should take further steps to assist in clarification of the special character of the formation of these groups of buildings and help other ministries and agencies understand the cultural factors underlying the formation of indigenous peoples communities and avoid having to relegate itself to only providing "settlement guidance" and "resettlement subsidies" in the wake of the demolition of informal indigenous settlements.

often arbitrarily carry out their own evictions based on a single administrative order.[138]

245. When urban indigenous communities suffer eviction, indigenous peoples administrative agencies in central and local governments alike often only refer the resulting problems to social welfare agencies which provide social welfare services based on individual status.[139] In the wake of resistance by indigenous communities, local governments at most promote social housing policies and thus mistakenly oversimplify the problem into a question of housing.[140] Such methods risk depriving disadvantaged or elderly indigenous persons who depend on the mutual support within the community of their basic guarantees of survival since certification of individual status becomes a question of exclusion and divides the indigenous community.

246. Ultimately, "tribal community residence" is the foundation of "tribal sovereignty" since such settlements are formed based on the character of indigenous peoples' culture differently from other clusters of buildings and are therefore called "villages." Indigenous villages have cultural rights, educational rights, political rights and economic rights which can only be maintained through "group residency." However, existing cultural institutions, educational systems, local political systems and capitalist economic systems are unable to appreciate or support the significance and meaning of village sovereignty and even infringe on indigenous peoples and village rights.[141] The government's use of policy tools such

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138 Central government agencies including the National Property Administration of the Ministry of Finance and the Water Resources Agency of the Ministry of Economic Affairs and water supply departments, construction management departments, tourism bureaus or environmental protection bureaus of local governments can on their own authority mobilize police to carry out evictions of "illegally built" communities.

139 Not all members of indigenous communities have identification status as indigenous persons and some of them may include family members who do not have such identification and residents who are not indigenous persons but are organized into joint organizations. Social welfare systems which provide service based on the type of status of individuals frequently exclude community members who do not have status as indigenous persons and thus neglect the integrated nature of the community and its members and therefore generate divisions within the community.

140 During the past few years in New Taipei City, social housing policies have been promoted focussed on Shijhou Village and Sanying Village. Indigenous communities which did not show strong resistence were often ignored. These housing projects squeezed out the basic human rights of elderly residents who were excluded from the projects because they could not pay the down payment on the housing loans and thus became even more isolated.

141 For example, in the Sa'owac Village of Amis Tribe located in the Dahan River Area in Taoyuan City, the village's community cultural sovereignty has always been ignored by agencies under the Water Resources Administration of the MOEA. Despite the requirement in administrative procedures, WRA construction agencies deliberately neglected to hold any explanatory meetings to the village. Only when the construction budget was allocated and a public tender issued and work on the project was about to begin did they directly issue an

as "resettlement subsidies," "settlement guidance" or "illegal housing demolition" as means to solve the "problem" of urban indigenous villages or settlements again and again manifests the government does not realize that the uniqueness of urban indigenous villages is also the essence of villages as "village sovereignty." Therefore, the government over-simplifies the problems faced by urban indigenous villages in community care, cultural inheritance and resident autonomy as issues of housing.

247. Urban indigenous villages still face severe challenges even if the right to housing is guaranteed. For example, in the summer of 2015, the Shijou Community in New Taipei City suffered damage due to severe floods caused by the onslaught of a typhoon. In the process of reconstruction, the community relied heavily on assistance from private capital, while government agencies did not provide any related assistance measures for indigenous residents who were anxiously waiting for the completion of construction of social housing. In December 2015, there was even an incident in which the New Taipei City government attempted to uproot the village garden that exposed the contempt with which government agencies look upon informal settlements.

248. In addition, urban indigenous villages lack far behind the living standards of ordinary people in terms of the right for water. The Shijou Community in New Taipei City or the Kanjinniyaro and Sa'owac villages in Taoyuan City and over 10 other urban indigenous villages lack facilities for clean running water or even are the recipients of pollution from urban economic development and industrial needs. Neither the central or local governments have provided any assistance to resolve these problems, which are set aside "due to the limitations of existing laws. "[142]

249. To summarize, we recommend:

(1) The CIP should take the initiative to investigate and clearly explain the difference between the collective sovereignty of urban indigenous communities and the right to housing enjoyed by individuals to avoid the oversimplification of the problems of urban indigenous communities into merely issues of the residence of individuals or social welfare subsidies. The CIP should also provide needed policy assistance to urban indigenous communities.

(2) Central and local government agencies should work together to bolster protections for the right to housing and right to access to water of urban indigenous communities. Such agencies must incorporate related policies in

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official notification for the razing of the village. In 2009, without giving the community any advance notification, the Taoyuan County government directly sent excavators to uproot and demolish peas and other vegetable gardens that were just about to be harvested on the pretext of broadening a water conservancy canal.

142 See Sawmah, "Struggling for a drink of water; an urban peripheral village's war for water," The Reporter, February 18, 2016 (in Chinese) <https://www.twreporter.org/a/amis-war-of-water>.

normal legal procedures and allow residents to have substantive participation and actual influence in government policy making and in the recommendation of revisions for related laws in order to realize good living environments for urban indigenous communities.

Right to housing of indigenous peoples in urban areas

250. Indigenous areas have faced uneven distribution of resources, which led to the lack of resources for development. As a consequence, nearly half of the Indigenous population moved to the metropolitan areas in order to seek for better employment, education, healthcare, and other vital functions. The status of urban Indigenous Peoples' housing could be roughly divided into scattered communities and Indigenous households in the urban areas. Both of these categories face the common dilemma because of weak economic conditions, lack of social support system, and ignorance of ethnic subjectivity.
251. According to Article 11 of ICESCR, the government should provide disadvantaged individuals and families basic living guarantee residence. The government's 2016 ICESCR Core Document, paragraph 21 points out that the proportion of Indigenous homestead is 73.2%, which is lower than the 85.32% of households nationwide because Indigenous population continues to move to the urban areas. However, in the 2016 ICESCR Core Document, para. 220 for minority's residency, it takes merely performance of transferring reservations in response without offering measures and instructions of residency improvement for Indigenous Peoples who live scattered in the city such as the Sanyin Community and the Sijhou Community etc. Moreover, in the ICERD State Report, there is no relevant description on the living conditions of the indigenous people in the metropolitan area Therefore, we argue strongly that the State Report should add information referring to plans for rent, homebuyers, and community-type collective housing and statistical date for currently residential overview. Additionally, the report should make a clarification for the current situation and the corresponding process of the 20 urban communities in 6 counties.
252. The issue of urban communities which face difficulties regarding community care, cultural heritage and residents' autonomy are simplified to residency. The composition of urban communities has specific historical causes, elements, a common cultural context and collective norms. However, the government has no idea regarding the particularity of urban communities, the fundamental of community sovereignty, by operating meanings of resettlement subsidies, settlement counseling, and demolition of the illegal building in many cases to solve community problems in urban areas.
253. For instance, the government regards some urban Indigenous communities as illegal construction and thus limit government's obligations to measures such as referral and loan. This is clearly inconsistent with "realization of the rights

"mentioned in Article 11 of ICESCR. The plan and progress of social housing remain stagnation and unknown.

254. In addition, the right to water for urban Indigenous settlements is hard to reach the general standard of living. Whether the Sijhou Community, the KanJin Community, or the Sawaz Community are treated unequally and even discriminated by the past governments initiatives and legal policy. These communities become the dumping site for city's problems from economic development and industrial pollution. These problems have not been coped with by the central and local government, while the solutions are limited by existing laws. There is the need to incorporate these issues into due process of law with substantive participation by residents. and the people should be able to substantially participate in the process to affect the decision-making and make recommendations to amend the law.

Social housing for indigenous peoples

255. In addressing social housing for indigenous peoples, the Ministry of the Interior has vowed to "provide financing and subsidies for the up-front planning fees, loan interest, and non-self-liquidating expenditures that local governments incur as part of public housing projects for indigenous peoples." However, this assistance is available in all current social housing policies, and it is not a measure aimed at benefiting the social housing rights of indigenous peoples, specifically.

256. At present, the Taoyuan City Government is cooperating with the Shihmen Irrigation Association to provide land numbers 13 and 14 of Renwu Section Daxi township with planned expenditures to build social housing units devoted specifically to indigenous people. There are about 45 households in total. According to statistics from the Council of Indigenous Peoples, the number of indigenous peoples residing in Taiwan's metropolitan area is 274,352. Therefore, 45 households is obviously insufficient.[143]

257. Although Article 39 of the *Social Housing Act* states that, "Municipal and county (city) competent authorities or related industrial competent authorities may provide subsidies or incentives for the construction, addition, reconstruction or renovation of houses with local, ethnic or historic features for the purpose of developing housing landscapes and features." But up to now, there has not been one case in which this has taken place. This clause has not been implemented.

258. We suggest: Indigenous social housing rights should be incorporated into social housing policies. Tackling such issues should begin at the overall development of the original village (such as employment, infrastructure) and community construction.

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

Right to health

Social determinants of health

259. Regarding health inequality, the government responded only to the health status of indigenous peoples, and there is a slight lack of information on the health status of other ethnic groups.
260. The government's response shows that the Ministry of Health and Welfare views the issue of health inequality solely from a "medical service" perspective, while ignoring the internationally recognized "social determinants of health". As far as the health of indigenous communities is concerned, the scope is far wider than just TB prevention or medical resources. The government has long neglected the rights of indigenous peoples: their living environment was invaded, the community organizations were destroyed, and their economic activities were drastically changed, forcing many indigenous families to disperse for work or school. Relatively low achievement in employment, education, and income all adversely affected health. The government also failed to provide assistance in situations where both chronic diseases and long-term care are in dire need of self-care and community support capacities. The lack of a social perspective in the Ministry of Health and Welfare and the medicalization of health policy is disconcerting.
261. In addition to indigenous peoples, other communities with relative deprivation of resources face similar difficulties, but the Government's response is completely lacking in these keywords: income, poverty, community organization, and community service.
262. Violations of the right to health are not simply associated with the lack or improper allocation of medical and healthcare resources. Rather, these violations are extensions of numerous structural problems, such as improper social policy planning, unfair economic arrangement, and other factors, including material resources (e.g., finance and medical and healthcare equipment), power, opportunity, and other social determinants. According to the information presented in the second draft of the Second State Report on Two Covenants, the difference between the life expectancy at birth of people in the regions with the weakest and strongest socioeconomic conditions is over 20 years. Based on the 2016 State Report in Two Covenants, the government remains focused on the allocation of medical/material resources to maintain the right to health. In addition, public health policies remain centered on medical subsidization, establishment of medical facilities, and medical services, neglecting crucial social determinants of health.
263. Although citizens receive adequate medical protection under the National Health Insurance Framework and medical resources, and fees are consistent in urban and rural regions, Taiwan still exhibits significant health inequalities, particularly concerning the disaggregation of people with disabilities, Indigenous people,

income class, degree of urbanization, senior citizens, and nationality, where different groups receive different resources and medical care. The State Report fails to present data concerning the disaggregation of health data based on the suggested human rights indicators. Thus, the State Report does not accurately reflect the severity of health inequality in Taiwan.

264. We suggest:
   (1) The government should understand health inequalities from the perspective of social determinants and propose solutions that respond adequately to the lack of community resources.
   (2) The Ministry of Health and Welfare should revise their narrow view on health, particularly the medicalization of health problems and individualization of social problems.
   (3) The government should conduct surveys and research on the problem of health inequality. In addition to physical health, attention should be paid to mental health and disabilities.
   (4) The government should invest in cultivating a professional healthcare workforce and vigorously promote the concept of cultural safety to prevent racial discrimination in professional services and respect the voices of indigenous peoples and their right to make decisions about their own health.

On nuclear waste on the Orchid Island

265. While art. 31 of the Indigenous Peoples Basic Law clearly stipulates that "the government may not store toxic materials in indigenous peoples' regions contrary to the will of indigenous peoples," and the Review Committee has clearly suggested that "the Ministry of Economic Affairs formulate specific plans and timetables for the final disposal of radioactive waste", the government's actions on dealing with nuclear waste is unbelievably delayed and inappropriate.

266. The Daren Township in Taitung County is set by the government as the candidate site to relocate the nuclear waste removed from Orchid Island. Although there have been voices and protests against this decision, the Ministry of Economic Affairs is "still working on communication" to obtain more than 50% support from the indigenous peoples. This action not only violates the provisions of the Indigenous Peoples Basic Law, but also seriously conflicts with the FPIC principle set up by the United Nations Declaration on the Rights of Indigenous Peoples.

267. Regarding the strong demand of removing the nuclear waste from Orchid Island, the "Investigation Report on the Facts in the Establishment of the Nuclear Waste Storage Facilities on Orchid Island" published by the government clearly proposed four recommendations: damage compensation, acceleration on the relocation of the storage facilities, replenishment of medical resources and facilities on Orchid Island, and planning for the island's future development. However, the

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

Aboriginal right to medical treatment

268. Taiwan's Indigenous live in the lack of public resources allocated field, seriously affecting the communities’ fundamental right to life. Due to employment opportunities, the young population moves to urban areas, the main residence in Indigenous areas is the old people, children and disable people. People with chronic illness, disability live under the inconvenient living conditions, lack of the necessary assistance, and it is not easy for them to see the doctors. Differences between each Indigenous language and culture lead to differences in health awareness, self-care and professional medical team. It is also not good to the healthy restore and chronic disease control after hospital discharge. Repeated migrations and changes due to policy or natural disaster, plus inappropriate project plan and public construction, directly lead to the place of residence facing various risk and also threaten the safety of local residents.

269. Significant disparity exists in the distribution of medical institutions. Besides the severity of difference existing between the townships and villages of counties and cities[144], each county (city) itself exhibits clear disparity of distribution with the residential areas of Indigenous Peoples being always the most deficient in medical institutions.[145] Although each township has at least one health clinic, however despite the distances in service areas[146], most are concentrated along main arterials such that for some clinics in remote townships the distance to clinics of neighboring

144 According to year 2014 statistics compiled by the Taiwan Medical Association, the medical institutions in Taiwan's six direct administered metropolitan areas (Taipei, New Taipei City, Taoyuan, Taichung, Tainan, and Kaohsiung) account for 71.9% of the country's total (table 10, p.7). Yearly additions of new medical institutions are also mostly concentrated in these areas (table 9, p.14). The Indigenous Peoples population is comparatively concentrated in the Hualien area of Taitung County and makes up a mere 2.2% of the total national population. Change to medical institutions is also experiencing negative growth. Additionally, according to the same data higher level hospitals for the whole of Taiwan district-level and above hospitals (district, regional, medical teaching centers) are more than 90% concentrated in the 6 direct administrative metropolitan areas; the two cities of Hualien and Taitung account for a mere 3.4% (p.36).

145 According to not 144's similar statistical data, within Hualien County 65% of medical institutions are concentrated in the administrative districts of Hualien City and Jian Township. In Taitung County only 53% are concentrated in Taitung City.

146 For Hualien County's Hsiulin Township, Taiwan's most vast in administrative area with 1,641.8 square kilometers, there are only 12 clinics within its borders. Nantou County, Xinyi Township with an area of 1,422.4 square kilometers has 9 clinics.

townships with more abundant medical resources is actually comparatively closer than the township's own clinic. Thus, the issue of proximity to medical services for residences has yet to be actually improved.

270. In addition, the transportation in Indigenous living areas is often poor, especially the road condition and lighting system. The lack of convenience public transportation makes it difficult for the ill or disable residents to access doctor by themselves, or would have to waste an amount of time and money. If the residents have to go to hospital, the constant commute between hospitals and home will cause more burdens on the patients and their families. When disaster occurs, Indigenous living areas will easily become isolated by damage, the residents thus can't get immediate help.

271. The above identified phenomenon demonstrates that during the planning of the medical services network by authorized health authorities' due consideration was not given to the geographic distances in areas inhabited by Indigenous Peoples for the specialized distribution of medical facilities. Pursuing distribution only on the basis of cost accounting has resulted in a situation of false equality in medical services between townships.

272. The distribution of health workers is concentrated around hospitals which are mostly located in high-density population centers.[147] [148]This is especially true for medical professionals engaged in specialized treatment of relevant acute diseases which are to an even greater extent over-represented in urban centers. In comparison to Taiwan's urban areas, medical professionals living in or travelling to Indigenous areas are mostly living off a civil service salary. They earn less than their peers with frequent reassignments, long working hours, more responsibilities, and significant discrepancies in functional living conveniences compared to cities. Medical equipment and support staff insufficiencies, to which can be added the tendency for most patients to present more severe symptoms of disease and medical emergencies, contributes to a less than adequate sense of accomplishment as well as high levels of turn-over amongst these medical practitioners.[149] This has

147 According to similar statistical data in not 144, in 2014 Hualien and Taitung Counties together had 1,096 physicians, a total population of 557,863 and total land area of 7,783.82 square kilometers, making the number of people per physician 500 and the number of physicians per square kilometer 0.14. The nation's capital, Taipei has a total of 9,213 physicians in an area of 271.80 square kilometers, making 293.32 per physician and 33.90 physicians per square kilometer.

148 Within Hualien County and Hualien City there are 552 physicians representing 70.1% of the county's total 787 physicians. Not considering Hualien City's physician and the population to area calculation, a simple calculation indicates that Hualien County's physicians need to service 966.05 persons in an area where each square kilometer has only 0.5 physicians.

149 The Ministry of Health and Welfare Taitung Hospital between the years 2012 to 2106: physicians went from 30+ to 10+ with staff turnover in the range of 500 to 600. Refer to: http://www.cna.com.tw/news/firstnews/201601200345-1.aspx(last browsed: 2016/06/26)

resulted in a constant state of staffing deficiencies for medical institutions operating in Indigenous areas, which has led to a self-perpetuating vicious cycle. While larger medical facilities in the areas do dispatch support physicians, however, due to time required for one-day round-trip travel and continued obligations at the dispatched physicians' home facilities, the amount of time available for their support services on site is limited.

273. The Ministry of Health and Welfare, in an effort to cope with the current deficiency in medical resources for Indigenous areas, has put in place two contingency plans. The first of these is an Integrated Health Care Delivery System (IDS) that relies upon intra-county large medical facilities for the provision of general and/or specialized clinic visits twice a week to the various settlements in mountainous or off-island townships.[150] The other of these is an improvement plan for those areas having insufficient western medicine treatment resources, whereby hospitals or clinics in the more populated townships of the central plain[151] are incentivized to open facilities or provide circuit clinic visits to settlements lacking sufficient medical resources. Both plans are covered by the National Health Plan and have an additional fixed budget for the payment of incentives.

274. In practice, however, both of these plans have merely transferred a model of urban medical treatment to the Indigenous regions. Time restraints and lack of incentives have resulted in the preference of physicians to maintain the fixed locale clinic system over one that utilizes house calls. One of the problems in the physician dispatch system is that patients with a diagnosis suspecting a more serious condition have to wait diagnostic results on the next visit or make a personal trip to the city hospital for tests due to the lack of adequate labs and testing equipment nearby or the problem of local equipment that cannot communicate with that of the designated facility. Efforts to integrate local resident needs between designated facilities and local Health Clinics have also been unsuccessful and many specialized clinical visits due to the lack of a referral mechanism or requisite equipment resemble little more than a visit to a general clinical such that they can be called specialized clinics in name only.

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150 New Taipei City, Wulai District; Taoyuan City, Fuxing District; Hsinchu County, Wufeng and Jianshi Township; Yilan County, Datung and Nanao Townships; Miaoli County, Taian Township; Taichung City, Heping District; Nantou County, Renaiand Xinyi Townships; Jiayi County, Alishan Township; Kaohsiung City, Nanmasia, Maolin and Taoyuan Districts; Pingtung County, Sandimen, Mudan, Laiyi, Chunri, Taiwu, Shizi, Majia and Wutai Townships; Hualien County, Hsiulin, Zhuoxi and Wanrong Townships; Taitung County, Yanping, Jinfeng, Hairui, Daren and Lanyu Townships.

151 Hsinchu County, Guanxi Township; Miaoli County, Nanzhuang and Shitan Townships; Nantou County, Yuchih Township; Pingtung County, Manjhou Township; Taitung County, Chihshang, Guanshan, Luye, Beinan, Changbin, Chenggong, Tungho, Taimah, and Dawu Townships, and Taitung City; Hualien City, and Hualien County, Hsincheng, Jihan, Shoufeng, Fenglin, Guangfu,Fengbin, Ruisui, Yuli and Fuli Townships.

275. Additionally, there is wide discrepancy in language, life-style, and health knowledge between physicians and local residents. Communications between doctors and patients about a diagnosis and its later follow-up procedures presents such difficulties that the physician generally opts to merely prescribe medicine to treat health problems in these local communities as opposed to educating patients on their health care. Cost considerations of the designated provider facility also lead to frequent changes in the attending physician or the designated facility. These frequent personnel changes adversely affect the sense of control or level of confidence in the patient. Continued inability to integrate local residents' health information between regions and between institutions as well as the manner by which residents might be able to set health policy in light of their ineffectual participation rights all demonstrate that despite the shifting of resources, they have yet to truly be in the benefit of Indigenous Peoples.

Right to health of indigenous peoples

276. The average life expectancy of Taiwan's indigenous peoples across all age groups is lower than that of non-indigenous populations, indicating that there is still a need to improve indigenous health rights. In 2023, the Legislative Yuan passed the "Indigenous Health Act" to address the health disparities faced by Taiwan's indigenous peoples. This phenomenon reflects the prejudice and ethnocentrism in the country's indigenous politics, economy, and institutions.According to the current official statistics in Taiwan, indigenous peoples have a lower average life expectancy at all age groups compared to non-indigenous populations. The loss of average life expectancy among indigenous peoples is closely related to the structural violence resulting from the failure to implement indigenous rights. Serious health issues faced by indigenous peoples today include the health of indigenous women, high neonatal mortality rate, high accident and injury death rate, alcohol abuse, suicide, tuberculosis, chronic liver disease, cirrhosis, and metabolic syndrome.However, when formulating policies for indigenous health, the government tends to "medicalize," "generalize," and "individualize" them. Additionally, the "2025 Health and Welfare Policy White Paper" eliminated the dedicated chapter for indigenous peoples previously included in the "2020 National Health White Paper," leading to violations of their health rights. To address the health disparities faced by indigenous peoples, the government should follow the World Health Organization's concept of health rights and plan and establish a healthcare system and living conditions improvement measures that cater to the needs of indigenous peoples and provide cultural safety, thereby safeguarding their health and well-being.

The impact of man-made environments on the mental and physical health of indigenous children

277. In Taiwan, there are physical and mental challenges to Indigenous children imposed by man-made environment and measures. For example, the government in response to the financial and declining birthrate phenomenon, has cut down and merge Indigenous schools in some rural areas (or some areas simply do not have junior or senior school).[152] This situation results in more children forced to leave their families or communities, and moved to boarding schools, or long commutes between school and home every day. This situation affects Indigenous children not only on personal safety and physical health, but also in the absence of appropriate support systems and cultural care, more often causing their mental and physical inadaptation, and confusion regarding identity, cultural exclusion, and psychological trauma phenomenon.
278. The migration policies for the relocation of communities do not meet the principle of proportionality in the area and land category. The plan and demand of facilities for relocation do not allow Indigenous Peoples to participate fully that not only compress life and survival, deprive the right to farming, hunting, gathering, but also expropriate the right for children in cultural learning and the growth of healthy humanistic environment.
279. The government has placed nuclear waste on Lanyu Island for more than 30 years. Even though the government claimed that the storage of the nuclear waste is safe, the worries about and stress of nuclear waste pollution have seriously affected the local Indigenous persons, including the physical and spiritual health of children. Also, the chimney of the fired power plant located near the kindergarten directly harms the health of children over the years.
280. The cases described above shows man-made measures and facilities change could impose negative impacts on Indigenous children's physical, mental, and cultural health.

Encroachment on the social and cultural rights of indigenous peoples

281. Article 10 of the Amendment to the Constitution clearly sets out the principle of "respect for the issues of Indigenous Peoples" as do the provisions on "conformance to the unique characteristics of Indigenous Peoples" in Articles 24, 26, and 28 of the Indigenous Peoples Basic Law. However, their emphasis on the spirit of

152 In the case of Sandimen Township, Majia Township, and Wutai Township in the northern part of Pingtung County, there is only one junior high school and no senior high school at all in these three townships. Most of the children in these three townships attend elementary school in the tribes (and many of the children commute to elementary school or migrate to elementary schools in the flatlands), and then go to the urban areas after junior high school, and those who stay in their native townships to attend junior high school are those who have a relative lack of family factors and resources. However, it is not necessarily the case that indigenous children studying in the Pingdi National and Senior High Schools will receive more educational resources as expected and have a better and appropriate development. However, we are unable to obtain the exact data and relevant reports at this moment.

multiculturalism and their statutory assurances for the basic rights of Indigenous Peoples have yet to be realized in their execution, nor do they appear to ever be attainable. Because the country lacks a system of participatory parity for Indigenous Peoples as well as reliable investigatory data for long-term care of Indigenous Peoples (presently only the national census has been used to estimate the conditions in Indigenous areas), the particularities and differences between Indigenous Peoples has not been readily observable. This situation has resulted in a failure by current welfare policy planners to incorporate Indigenous perspectives that has then led to the inability of the service provision system to meet the needs of Indigenous populations.

282. Articles 14[153], 18[154] and 24[155] of the Long-Term Care Act passed in 2015 will have a lasting impact on the development of a system of long-term care for Indigenous Peoples. The content of these three articles, however, lacks a system of direct participation by representatives of Indigenous Peoples and, moreover, clearly limits counterparts in participatory counseling to only those institutions at the level of central government (e.g., the Ministry of Health and Welfare or the Council of

153 Article 14" Central government authorities should carry out on fixed dates surveys the resources and needs of long-term care that consider the special needs of diverse cultures and unique difficulties of outer island remote areas. Based on this set forth development plans for long term care and adopt necessary grant policies. Central authorities in order to even out the development of resources for long term care shall partition long term care service network areas, allocate area resources, and establish service networks along with development plans for transport systems and staffing. Moreover, limits on the establishment of long term care organizations or subsidies shall be imposed on areas with a surplus of resources. Those areas deficient in resources should be provided grants in order to carry out fully all the items of a robust long-term care service system. In Indigenous areas the planning and mobilization of long term care services, long-term care service networks, and staff development should be carried out by central authorities in consultations with the Council of Indigenous Peoples. Central authorities to provide grants for relevant research to develop new services in long term care. Central authorities shall decide primary and secondary grant items, the methods to set-up or limit the expansion of long-term care organizations, the planning of second stage long term care networks, the means for human resources development, and other such relevant matters."

154 Article 18 "The provision of long-term care, per the special items of long term care announced by central authorities, shall be administered by long term care personnel. Long-term care personnel training, continuing education, and on the job course content should consider the differences in areas, ethnicities, genders, specific diseases, and care giving experience. Long-term care personnel should receive set performance marks for continuing education and on the job training. Long-term care personnel training, certification, continuing education course content, grade certification, effective periods for accreditations, and the management other newer relevant issues shall be determined by central authorities."

155 Article 24 "Long-term care organization application requirements, establishment standards, liability qualifications; the application process for their set up, expansion or transfer; audit benchmarks and the content to be recorded on establishment licenses; and other relevant management items shall be determined by central authorities. The establishment of long-term care organizations and staffing in Indigenous areas to be determined by central authorities in consultations with the Council of Indigenous Peoples."

Indigenous Peoples). This deficiency results in an encroachment on the social and cultural rights of Indigenous Peoples at the site of care. For example, Taiwan's long-term health care service designates a professional care manager responsible for evaluations and allocated hours. Since the long-term care system lacks equitable participation by Taiwan's Indigenous Peoples, the ability to speak Indigenous languages and cultural familiarity is usually overlooked in the selection of a professional care manager. Moreover, the stressful activity of initiating a case for localized long-term care many Indigenous takes place in homeland regions at the country's margins and progresses slowly.

283. The proportionate rate of elderly in the Indigenous areas exceeds that of the general population: for 2015, the Indigenous areas with the highest percentage of persons 55 years and older was 39% (Taidong County, Changbin Cheng Township) and the lowest 14% (Kaohsiung City, Namasia District); both of these exceed Taiwan's 12.51% average elderly population statistic. From this data it is evident that the social security needs for these Indigenous areas is pressing; however, according to data from the Ministry of Health and Welfare analyzing the use of long-term care services for 55 Indigenous rural areas in 2013, only 42 disabled elderly Indigenous utilized long-term care resources, well below the national average for allocations. Among these Indigenous areas nearly 30% did not reach half of the national average for disabled elderly care expenses. These numbers indicate that the long-standing position of Indigenous areas at the country's margins when it comes to the allocation of long-term health care resources.

284. This marginalized situation indicates neglect for the unique historical and cultural circumstances of Taiwan's Indigenous Peoples; a situation that can be extended to include the individual's social right to long-term care and the recognition of the Peoples' cultural rights. Under the premise of the nation's obligation to recognize an individual's social right to care and the Peoples' cultural rights, a reliable investigation of the data on the situation of long-term care broken-down into statistical categories of ethnicity and content of long-term care should be carried out that will lead to the establishment of a system of long-term care for Indigenous Peoples.

285. Summary and Recommendations:

(1) The government should undertake a survey based on the specific service content needs of the Indigenous Peoples. Recommendation is for the establishment of a system for investigation of the data derived from Indigenous areas (not just inferential estimations), and a developmental plan that respects the wishes of Indigenous Peoples for long-term care.

(2) Based on the premise of comprehensive consultation with Indigenous Peoples, the process of amending the following articles of the Long-term Care Act should go forward: Article 5, section 1; Article 6, section 5; Article 7, section 2;

Article 9, item 2, section 2; Article 14, section 5; Article 18; Article 19; Article 22; and, Article 24.

(3) An independent system of long-term care for Indigenous Peoples at the community level should be promoted and provided with sufficient funding. A mechanism of collaborative management should be set up that provides for Indigenous Peoples participation in aspects of coordination, deliberation, and consultation on relevant items of long-term care[156].

Mental health

286. Migrant workers: Currently, Taiwan accommodates more 700,000 industrial and social welfare migrant workers. They are uprooted, isolated, and lack support. Although they are covered by the NHI, they are challenged with numerous limitations when seeking medical attention. The number of cases of migrant worker suicides has increased in recent years. However, they are unable to acquire immediate mental health assistance. The Ministry of Labor should aim to provide mental health services promptly to migrant workers via different management systems.

287. Indigenous people: The standardized mortality rate (SMR) of Indigenous people is far higher than non-Indigenous people (Figure 1). Among Indigenous people, male suicides far exceed female suicides (Figure 2). The suicide SMR of non-Indigenous people shows a gradual declining trend in recent years. By comparison, no such trend can be confirmed for Indigenous people because health statistics for Indigenous people have only been updated to 2012. Notably, a sudden spike in suicide rate can be observed in 2012 due to an increased number of Indigenous women suicides in that year. Suicide rates of Indigenous people across the world continue to rise. This trend is attributed to the degradation of their cultures, social structures, and socioeconomic situations. A similar problem is exhibited in Taiwan. The government is obligated to provide relevant information for confirmation. In addition, the mental health initiatives promoted by the Mental Health Department also lack special consideration for the needs of indigenous populations. For example, the counseling program for young ethnic groups aged 15-30, which began in August 2023, is only available in 300 clinics nationwide. However, there are not as many clinics in indigenous areas, and young people in indigenous communities spend more on counseling resources compared to the general youth population. This is a typical example of the unequal distribution of healthcare resources among indigenous populations.

156 Consensus management is a pattern type in the spectrum of Indigenous autonomy and not a set mechanism. Due to unique histories and cultures, each tribe has different strengths. Because of this, the equitable participation of tribes in discussions and policy decisions as well as joint management and autonomy is paramount

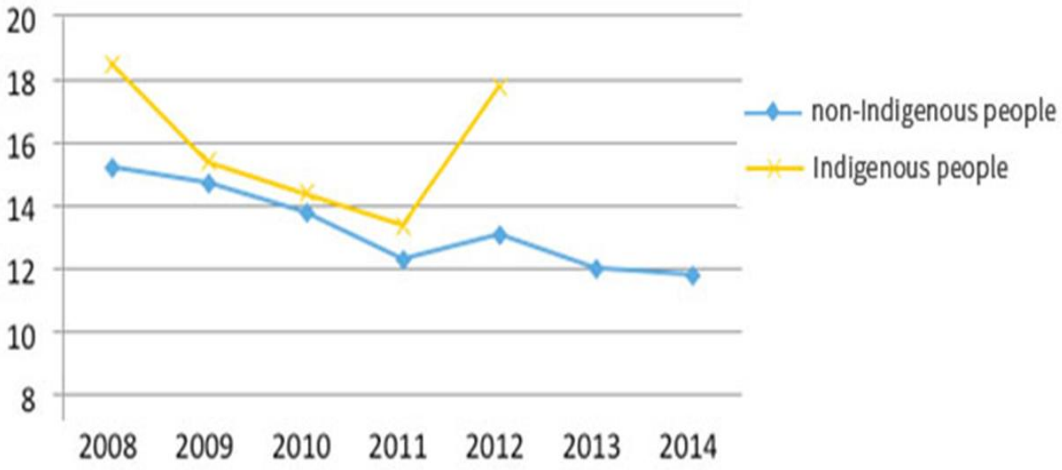

Figure 1 Suicide SMR of Indigenous and Non-Indigenous People in Taiwan

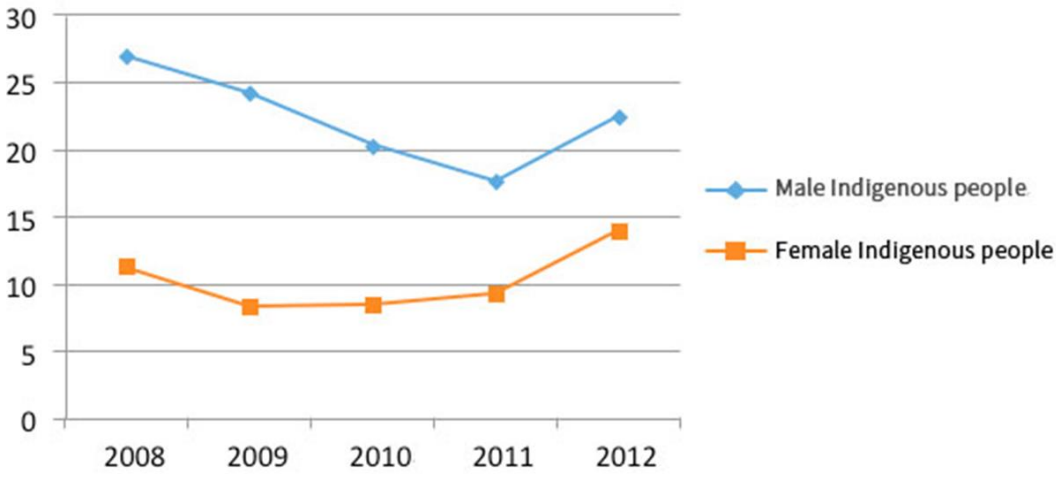

Figure 2 Suicide SMR of Indigenous Men and Women

Table 1 Comparison table of 2019 crude mortality rate (male/female) and standardized mortality rate between the national average and indigenous ethnic groups/urban-rural classification

2019	crude death rate	standardized mortality ratio	male crude death rate	female crude death rate
national average	16.4	12.6	21.8	11.0
Indigenous Population Data				
Overall of indigenous population	14.2	13.0	18.1	10.6
Ethnic Groups				
Atayal Tribe	14.2	13.8	13.9	14.5
Bunun Tribe	27.1	25.0	31.7	22.9
Pinuyumayan Tribe	20.8	20.2	43.2	0
Tsou Tribe	30.0	31.5	31.7	28.4
Saisiyat Tribe	29.9	26.7	31.1	28.7
Taroko Tribe	15.6	14.0	25.9	6
Yami/Thao/Kavalan/Sakizaya/Seediq/Truku/Tao Tribe	0	0	0	0
Others	16.3	9	30.2	0.0
Urban/Rural Classification				
metropolitan areas	13.4	12.8	13.9	12.9
plain indigenous areas	14.3	12.2	19.4	9.1
mountain indigenous areas	15.6	12.7	23.2	7.5

The right to emergency medical care for childbirths of migrant workers who have overstayed their residency period

288. According to Article 14 of the Protection of Children and Youths Welfare and Rights Act, persons who deliver babies must report relevant birth information to the local health authority within seven days after the delivery of the baby. In 2004, the reporting system for new births was fully put on the internet. Household registration and immigration agencies and other different agencies can link to the notification system and obtain information on childbirths and the parents of the new infant.

289. The original intent of the above-mentioned regulation was to gain an accurate understanding of population trends and to provide a factual basis for the provision of subsequent health and sanitation services for women and children. However, given the occurrence of pregnant women who were migrant workers who were

overstaying their residence periods, the actual operation of this regulation turned hospitals, which should have protected the health of mothers and newly born infants, into informers against missing migrant workers and forced the latter to worry that going to the hospital could result in deportation instead of proper pre-partum and childbirth care. This state of affairs is not healthy for the expecting mother and may well threaten the health or even life of the fetus or newly born infant.

290. To avoid causing children of overstaying migrant workers to become unregistered persons, we believe the government definitely must adopt effective preventative and intervening measures. However, using health care systems or immigration databases to find migrant workers who have lost contact could make it impossible for such workers to feel safe to approach hospitals or clinics when they need medical assistance. Such a situation will neither represent a solution nor protect the best interests of the children in question.

Right to health of stateless children

291. According to Article 9 of the *National Health Insurance Act*,[157] among stateless children, only those who obtained an Alien Resident Certificate can enjoy NHI benefits. However, as stated in Article 4, paragraph c, a certain amount of time must be spent for the obtainment of the Alien Resident Certificate. Children who are in the process of obtaining the certificate are also unable to enjoy NHI benefits. In addition to the NHI, since their prolific information was non-existent, children who have not been reported as a case might be rejected by universal routine vaccinations and cannot enjoy the most basic protective measures for their right to health.[158]

292. We suggest: Children in reported cases should immediately enjoy NHI benefits: the stagnant process for stateless children to be resettled and obtain a residency status has collaterally impacted their access to the NHI, which violates article 24 of the CRC and 15th General Comment of the CRC restricting the inalienable and non-discriminatory right to health of children. Therefore, we urge the state to enable reported stateless children to enjoy the NHI whilst expediting the issuance of residence identification documents for the said cases. At the same time, the

157 Article 9 of National Health Insurance Act: With the exception of individuals mentioned in the previous article, any person who has an alien resident certificate in the Taiwan area must meet one of the following requirements in order to become the beneficiaries of this Insurance: Those who have established a registered domicile in Taiwan for at least six months. Those with a regular employer. Newborns in the Taiwan area. Text of the Act: https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0060001

158 See CDC website: the CDC stated that special non-national children are also applicable to accept regular universal vaccinations https://www.cdc.gov.tw/Category/ListContent/4T8vDeSxOpmz0ILvF_D8Yw?uaid=j2C0YYhi3H2yjfmZxo1ccw

vaccination policy should comply with the principle of universality. Regardless of the consent of the unascertainable parent, vaccination might be the most basic form of medical resource for unreported, unregistered children. To exhaust all measures to lower the hurdle for the children of undocumented migrant workers to access medical resources, vaccine administration shall be as swift as possible, and an anonymous administration policy shall also be provided.

Right to education

On the cultural relevance of indigenous health care and education

293. Not mentioned in ICERD initial State Report, but the government has stated in other convention State Reports that they have drafted the Indigenous Peoples Health Act, set up Indigenous Community Health Promotion Centers, and pushed for a special chapter on long-term care for indigenous peoples, however, in practice, the measures mentioned above are far from what was recommended by the Review Committee.
294. Practical problems occurred include: (1) Difficulty in integrating resources (the long-term care fund for indigenous areas is divided by the Council of Indigenous Peoples and the Ministry of Health and Welfare); (2) the lack of professional training to improve the competency of caregivers; (3) the regulations and restrictions on constructions and buildings on indigenous regions continues to pose as an obstacle for the establishment of long-term care institutions; (4) lack of self-determination mechanisms for indigenous peoples and locals to take measures according to their culture and tradition of caretaking; (5) the needs of indigenous people with disabilities should be further addressed and the relevant measures should be improved. After the Long-Term Care Plan 2.0 hit the road, the Ministry of Health and Welfare, though having already set up community care support spots, long-term care support spots in the alleys, were unable to coordinate with the Council of Indigenous Peoples. What's worse, the plan occupied some of the spare spaces in the indigenous communities.
295. It is recommended that the Ministry of Health and Welfare must first start with surveying and compiling data on fundamental information regarding indigenous regions and communities, take stock of the existing official and private care resources, and then study the needs of different ethnic groups and regions, in order to make comprehensive considerations. The second step is to respect communities' autonomy, and invite local organizations and indigenous people to participate in relevant projects.
296. Despite having enacted the Education Act for Indigenous Peoples, established the Indigenous Curriculum Development Collaboration Center and the indigenous education policy meetings, the government still fails to establish an indigenous

peoples-centered educational system with the core concept of indigenous peoples as subjectivity.

297. According to art. 15 of the Education Act for Indigenous Peoples, governments at all levels can set up schools for indigenous peoples as needed. However, the most important sub-law, the Indigenous School Act, has yet been passed. Some educators can only set up "experimental schools" centered on the culture and knowledge of the indigenous peoples, trying to break through the restrictions through "experimental education".

Indigenous Peoples Education Act

298. According to Article 13, Item 2, Section 3 of the ICESCR, the Implementation Bylaws of the Indigenous Peoples Education Act was not completed until 2005, despite the 1998 promulgation of the Indigenous Peoples Education Act. In 2011, the Council of Indigenous Peoples set out planning for a "Third Semester System Experimental School" with schools for each group of Indigenous Peoples estimated to be completed by 2016. Progress toward completion has already fallen behind schedule, creating in the process further classism.[159] Additionally, government advocacy of "Primary School Closures and Mergers" in response to trending low birth rates has raised concerns of a worsening situation for Indigenous primary education.[160] As for qualified teaching staff, the year 2013 amendment to Article 25 of the Indigenous Peoples Education Act set the teacher ratio for Indigenous students which should continue to be observed. Per the section on higher education in Paragraph 5 under Item 2 of the same Article, Indigenous students who advance to higher education are over-represented in technical vocational schools.[161] This situation limits the full development of critical thinking capacities as well as the cultivation of talent for diverse fields, affecting adversely the overall progress for said Peoples.

The right to education

299. The Council of Indigenous Peoples and Ministry of Education simultaneously promote Indigenous student educational assistance policies to augment the acceptance rate basis the percentage of students participating in college placement testing. They also provide a variety of programs to relieve the economic burden of educational expenses. However, year 2021 statistical data on Indigenous education

159 Refer to Lin Wen-lan: 2014，"Make Culture based on the "Tribe": The Practice of Educating and Cultural Revitalization in Indigenous Tribal Schools."

160 Refer to: "The position of Taiwan's Indigenous Peoples Teachers Association on the Closing Down and Merging of Remotely Located Primary Schools." http://indiginousteachers.blogspot.tw/2013/01/blog-post_15.html

161 Refer to Pao Cheng-hao: "Taiwan Needs a Small and Beautiful Indigenous Peoples Integrated University." http://goo.gl/CzwOha

released by the Ministry of Education, revealed deferred-studies rates 5.52% and dropout rates 16.73% for high school level students. For colleges and universities, Indigenous deferred-studies rate was 12.70%, respectively; higher than the rates of the general student population. Are these comparatively higher rates for deferred studies and dropouts amongst Indigenous students related to oppressive stress brought on by racial discrimination or prejudice from their peers? Additionally, within the organizational structures of high schools and universities are there not units tasked with the specific responsibility of offering multicultural counseling or designated bodies/teachers who can provide guidance to Indigenous students coping with issues of cultural differences at school?

300. In connection to the above issues, anti-discrimination policies related to Indigenous educational rights should not be limited only to the elevation of education participation rates but at the same time need to also closely examine the current educational environment. Is long-term planning needed to nurture a sense of the subjective self and cultivate Indigenous talent through methods such as the safeguarding of ethnic pride, extension of ethnic networks and augmentation of ethnic welfare?

301. Additionally, each teacher-training college in its training of qualified teachers might include such relevant course curriculum credits as multicultural education, Indigenous culture and history, and Indigenous student psychology so as to raise the standard of teacher training as well as cultural sensitivity. This would nurture respect and understanding for other cultures so as to prevent such issues as racist language and subjective bias being brought into the classroom by new teachers. These are all important elements of anti-discrimination policy.

302. The Council of Indigenous Peoples has pointed out that current curriculum outlines already include competency indexes related to ethnic harmony and respect for diverse cultures. These subjects serve to assist students in acquiring respect and knowledge for the culture of diverse ethnic groups while also promoting ethnic harmony and preventing discrimination. However in the classroom, besides just textbooks that have shallow, selective and fragmentary narratives, material dealing with Indigenous cultures and histories contains many errors, stereotypes and historical anachronisms. For example, in the period starting from Dutch rule of Taiwan to mid-Qing governance the Indigenous Peoples of the plains endured unequal treatment and oppressive policies imposed by outside governing forces: a period of historical suffering seldom depicted in current textbooks.

303. Overall, while there may be a legislated foundation in the educational system, however at the level of actual implementation of Indigenous education is still relegated to a supplementary status for overall education. First of all, take the Indigenous language classes in elementary school as an example, there is only one class per week and by junior and senior high school the course is optional. The

importance of the Indigenous language course in the school curriculum remains well behind that of English and Chinese. Qualified minority language instructors have yet to receive status on par with the job guarantees of full-time English instructions, instead having only the status of teaching assistant in the classroom. Secondly, although a number of elementary schools have applied for grants from the Council of Indigenous Peoples to promote Indigenous education as a core curriculum, however the arduous efforts of primary school teachers to nurture Indigenous educational content are underappreciated at the junior and senior high school levels where materials promoting progressive advancement through grade-levels are instead prioritized. The neglect for courses related to Indigenous cultures in secondary schools represents a major gap in the passing along of Indigenous education. These instances demonstrate that the government's establishment of a coherent educational system to promote Indigenous subjective identity remains in its infancy and that Indigenous education in the overall educational environment still holds the status of being a supplemental product.

Indigenous peoples' language education

304. After going through a long period of suppression, Indigenous languages began a period of revitalization following the lifting of martial law in 1987. Since the 1990s, individuals, people, churches and schools have begun to produce a number of Indigenous related books and teaching materials. In 2001, through the hard work of people from all walks of life, a 9-year program for Indigenous languages became an official part of the teaching curriculum with a once a week class in which the teaching of speaking and listening comprehension took precedence over reading and writing.
305. The 9-year curriculum "Elective Course" implementation syllabus explained: "3. Primary students from grade 1 to 6 must take one of three native languages: Minnan, Hakka, or Indigenous. Study of the language in Junior High is optional. Schools may, according to local conditions and resources, offer other native language courses in addition to Minnan, Hakka, and Indigenous." Whether looking at the amount of learning content or time allocated for teaching, the portion of class hours and level of importance attached to minority language teaching remains far behind that for Chinese.
306. The upcoming “12 years of compulsory education curriculum outline” in 2018 is going to shift the methods of Indigenous language learning courses, which is going to focus more on reading and writing, and less on the listening and speaking. However, in the discussion of curriculum design, the Indigenous representatives urged the Ministry of Education to categorize the Indigenous languages in the obligatory courses. Upon receiving the rejection from the Ministry of Education, the Indigenous representatives instantly required the Ministry of Education at least to

make Indigenous language as obligatory course in the Indigenous focus schools. And the Indigenous students' right to learning in secondary education was then slightly secured. Nevertheless, in the regular high schools, the Indigenous language is still categorized in optional courses, which means it depends on schools to decide whether or not to give the course of Indigenous languages for students. Under this condition, Indigenous students' right to learning Indigenous languages is compromised for school's convenience.

307. Since implementation of the 12-year national basic curriculum syllabus, there has been a simultaneous shortage of qualified teachers. The current average age of qualified instructors for Indigenous languages is around 50 years old. In the 15 years since implementation of the 9-year curriculum relevant institutions have yet to actively cultivate young Indigenous language teachers or to assist in changing the employment status of current Indigenous language instructors into that of an official teaching position. Without urgent attention to planning and empowerment, Indigenous languages will quickly vanish as the shortage in qualified teachers accelerates.

308. The Indigenous languages have been an official part of the curriculum for 15 years. In comparison to Chinese their status has not noticeably improved; moreover, under the influence of Taiwan's teaching-for-the-entrance-exam, Indigenous languages have been consistently considered to be languages lacking competitive value. Even the magistrate of Taidong County, where the greatest numbers of Taiwan's Indigenous reside, has publicly expressed the misconception that Indigenous languages squeeze out English instruction. Neglect for the legacy rights of Indigenous languages will ultimately bring to an end of Indigenous language learning while still in its formative stage, not to mention the effects of Indigenous language revitalization.

309. Presently Taiwan's local language courses are viewed like "art classes", that is to say not as a critical part of primary school education. Moreover, in practice not all schools are able to cope with students' language learning needs and provide the relevant teaching staff and class resources. Many children not in their homeland regions are not able to freely choose their own Indigenous language to study at school and, instead, are compelled to elect a different local language, having a serious adverse impact on the development of Indigenous languages. Faced with exam-based pressure at the junior high school level, local language courses have been designated electives, lacking active encouragement for their selection and a fixed schedule of course offerings. By high school there are not even any relevant course options. At the university level such course offerings are dependent on whether a school has relevant resources (relevant departments or programs as well as qualified teachers) and whether or not a school's administrators are determined to offer a course. From this it can be surmised that government efforts to compile

teaching materials and set up a system for the production of texts might be said to be satisfactory, however in practice at the site of instruction the results have been less than lackluster.

310. A return to equality in language status is of particular importance with respect to Taiwan. Over the past 60 years many speakers of local languages have been gradually departing while younger generations, facing the structural and educational constraints of the emerging environment, have not been able to fully utilize the languages in everyday life. As a result it has become the solemn duty of the government to actively promote the revitalization of local, especially Indigenous languages.

311. The report points out that the country actively maintains indigenous languages and cultures. Additionally, Point 39 of the report states: "Due to historical factors that influenced the natural development of various ethnic group languages, many indigenous languages are facing the crisis of extinction. To ensure the sustainable inheritance and development of languages and cultures facing this crisis in our country, the natural languages used by Taiwan's indigenous peoples should be legallyprotected."However, in the past, Taiwan's indigenous peoples were impacted by Japanese colonization, including forced relocation and the promotion of Japanese assimilation education. As a result, in the four Tayal tribal villages in Yilan County, a creole mix of Tayal and Japanese has developed, and this language has been in common use for at least 100 years in these four villages. However, the government does not recognize this language as an indigenous language, nor is it included in the indigenous language certification exam. As a consequence, in schools, the people of these four villages can only learn unfamiliar Tayal dialects, which affects their ability to pass the indigenous language certification exam and, in turn, impacts other related rights, including educational privileges. Any rights belonging to indigenous peoples should not have any barriers to access. Therefore, it is recommended that the government immediately eliminate any welfare measures for indigenous peoples that are tied to the indigenous language certification exam. Therefore the following proposals are recommended:

312. Draft a National Language Development Act that confirms the status of the country's local languages and, based on this foundation, promote the right to language equality.

313. In respect to local Indigenous languages, efforts should be stepped up to promote their return and heritage. When necessary, methods, such as required language courses, should be incorporated into the mainstream curriculum and systematically put into effect. For example, methods such as taking a second local language in addition to one's own can be used to expand the user environment, allowing local languages to actually be used and circulate.

314. The government should do a full accounting of the educational resources and

qualified teachers available for Indigenous languages instruction. An online teaching program should also be developed so as to preempt, via online access to courses, the opting out of those schools that are not in Indigenous homelands or that have extremely low demand for language learning.

315. Respecting the rights of different regions and tribes to use their respective dialects is essential. Any rights belonging to indigenous peoples should not be subject to any barriers for access. It is recommended that the government immediately abolish any welfare measures for indigenous peoples that are contingent on passing the indigenous language certification exam.

Right to education of stateless children

316. The education system lacks protective measures for stateless children: Taiwanese laws and regulations have specifically promulgated the right to education for refugees, asylum-seekers and other special citizenship holders. However, the said protection measures stated in *Senior High School Education Act* and *Junior College Act* were limited to higher education. Primary school education, which is most needed by stateless children, was neglected. According to Article 6 of the Primary and Junior High School Act, national compulsory education was available exclusively to school-age children registered by the household registration agencies, children of foreign personnel, expatriates, and overseas Chinese students. In other words, only those with a defined nationality can enter the Taiwanese education system. Even if a stateless child obtains an "Alien Resident Certificate", diplomas would not be awarded as he/she can only enroll in the form of “auditing”. This has blocked the path to higher education for stateless children, which greatly hinders their future employment opportunities and career development.

317. We suggest: Amend Article 6 of *Primary and Junior High School Act* to protect stateless children’s right to an education: As mentioned, the compulsory education policy of Taiwan has yet to take the initiative to include stateless children, causing major obstacles to their education and career development, which contradicts article 28 of the CRC that asserts that state parties shall guarantee that every child has the right to receive a compulsory education, higher education and equal opportunities. It is recommended to amend Article 6 of *Primary and Junior High School Act* regarding the household registration and nationality qualifications of children in school or, the Ministry of Education shall formulate schooling and advancement measures for stateless children upon evaluation.

Right to culture

Urban indigenous affirmative culture

318. Most of the Indigenous area and some urban areas with abundant resource do have

the power to revitalize and maintain their culture because of central policy support. However, there still has some Indigenous persons who live in the urban areas with less resource or inside territory depopulation; they are hardly to find the way to learn their maternal culture. Secondly, even set the related resource units inside of urban area, normally it's a small amount or single spot. Urban Indigenous Peoples usually live scattered and culture development work is hard to spread and inefficiently under this circumstances.

319. According to Article 13 of ICESCR regarding the right to education, Article 15 regarding affirmative culture, the country should actively maintain the vulnerable groups' rights to education and rights to participate in the development of cultural life. In the State Report, although listed Indigenous culture and maintenance of affirmative action policies, but which refers to the use of language in an unfriendly environment, the strong influence of language, lack of field and other issues, are still the actual situation in the Indigenous area. However, in the State Reports, they do not have any specific policies and solutions for this case.

320. Regarding the situation and problem faced by urban Indigenous, we advise:

(1) The things like Indigenous language, traditional cultural knowledge or even Indigenous rituals of practice, not only host in the fixed space (such as the Indigenous Peoples Committee Hall, tribal universities), but also should develop culture promotion class by walking around or organize some theme activities. Make urban Indigenous Peoples enjoy the equal culture learning opportunities without any limitation.

(2) In addition to handling affirmative cultural activities in the metropolitan area, also should focus on strengthening the establishment of links between the traditional land and metropolitan area. So that urban Indigenous are not required because of the commuting distance, economic costs and other obstacles forced to alienate their maternal culture. For example, although each Indigenous person can choose the one optional day off for the Indigenous ritual by their wish and tradition, the clansman who lives in the urban area may flinch because of the distance between urban and rural area, transportation cost or may subject to the employers and peers complaint. Therefore, they would rather keep their job instead of going back to their communities and participate in the ritual activity. In this regard, the Government should consider the difference between reality and ethnic, cultural differences, in order to implement affirmative culture, rather than the seeming performance.

Indigenous peoples' day off for traditional ceremonies

321. From the perspective of the equality of each ethnic culture, Indigenous Peoples' rituals should be subjected to the same attention and respect with Han's festival custom. Start from 2011, the implementation of the "Indigenous rituals should have

a day off" is a well-intentioned initiative, but it is hard to achieve due to the system design. This measure is not like State Report declared "will help the community to respect multiculturalism ", and it is also not conducive to the implementation of the requirements of Article 15 of ICESCR, paragraph 1, the individual has the right to participate in cultural life. Please see the following paragraphs for the explanations.

322. Make no contribution to the community to respect cultural diversity: Although the Indigenous ritual only belongs to Indigenous Peoples, the vacation is made by state regulation. Indigenous employees always face to a deliberate dilemma when they ask for leave. Employers cannot understand the situation and treat it as a privilege. Even Indigenous employees have the right to leave; they will not advocate leaving. It is more likely to say that widen the gap between each ethic groups than respect for the multicultural society.

323. It does not help to implement the required ICESCR Article 15, paragraph 1 of the right of everyone to participate in cultural life. For example, each year between July and August, each of the Amis/Pangcah communities will begin to stage the biggest ritual activity in the year called ilisin or kilumaan (different community has various name). The period during the festival about five to seven days and there is a month-long preparation time. This ritual is equivalent to New Year in Han Chinese culture. However, in Taiwan, Han Chinese New Year is a five-day national holiday, might be seven to nine days plus a weekend. Relatively speaking, one day off to Indigenous ritual seems like a ridiculous charity. Moreover, the majority of Indigenous employees work in the city. There is no enough time to take part in the cultural activity if count on the commuting time. Let alone with the full participation.

324. Here are the suggestions we advised: the government should customize a new policy of national holiday and abolish the national holidays which are untimely and symbolized the old authority. Some diversification respectful holiday like International Migrants Day, and International Indigenous Peoples Day. Moreover, the government should plan in the policy to make all ethnic groups can participate fully in their respective cultural rituals, even like the "cultural learning" vacation, let each ethnic group may take part and learn from other's cultures in order to truly promote the respect of a diverse society in Taiwan.

Art. 6: Remedies for Victims of Racial Discrimination

Historical justice for indigenous peoples and transitional justice

325. Most discussion of transitional justice in Taiwan society is limited to the February 28th Incident of 1947 and the White Terror, both of which were created by KMT

authoritarian rule. Nevertheless, indigenous peoples suffered even more severe infringements on rights during the long history of colonialism. Some of these tragedies were the product of errors committed by the KMT authoritarian regime and others were the responsibility of even earlier exogenous regimes or immigrants.

326. First, even if the KMT authoritarian regime caused the February 28th Incident, the White Terror and the problem of illicit KMT party assets, indigenous people also experienced particular injuries with the confiscation of traditional lands, the murder of political elites, the improper policy of "turning the mountain land into flat land" by forcing indigenous people to adopt Han Chinese names and thus lose their own names, language and culture. Second, from a longer-term perspective, the issue of historical justice for the indigenous peoples on Taiwan must be faced jointly by all of the Taiwan people. From the Dutch and Spanish, the clan of Cheng Cheng-kung, the Qing Dynasty's "Opening Up the Mountains and Pacifying Aboriginal Peoples" policy through Japanese colonial rule, the indigenous peoples on Taiwan have suffered massive injury and suffering. What is the historical truth? How can reparations and reconciliation take place?

327. The State and Taiwan society as a whole should not pretend that the injustice suffered by the indigenous peoples on Taiwan never happened and this issue should not be seen as "only the affair of indigenous peoples." However, in the wake of the January 2016 national elections, the historical justice and transitional justice for the indigenous peoples were neglected while the new Legislative Yuan and the new government actively promoted a draft "Act for the Promotion of Transitional Justice." The new governing Democratic Progressive Party (DPP) refused to include the infringements on rights suffered by indigenous peoples together in the above-mentioned act and only agreed to include the issue in the work of the planned truth and reconciliation commission to be set up under the Office of the Presidency and which will be of a consultative nature with limited investigatory and administrative powers. As of June 30, 2016, indigenous peoples organizations have strongly protested this plan.[162]

328. With the dismissal of the Transitional Justice Commission in May 2022, the Legislative Yuan amended the *Act on Promotion Transitional Justice*, specifying that various transitional justice matters should be transferred to the central competent authorities, and set up a "Transitional Justice Board" in the Executive Yuan to be responsible for transitional justice-related work integration, coordination, and supervision. The Premier of the Executive Yuan serves as the convener of the board, and the Office of Human Rights and Transitional Justice of the Executive Yuan

162 See the campaign sponsored by the Indigenous Youth Front on the theme of "What significance does Tsai Ing-wen's apology have if transitional justice does not include indigenous peoples?" <https://www.facebook.com/events/608797485950585/>.

serves as the staff member.

329. In accordance with the "Executive Yuan's Promoting the Medium- and Long-term Planning and Monitoring Indicator Establishment Plan for Transformational Justice" announced by the Executive Yuan in 2023,[163] the transformational justice of indigenous people is only shown as a draft or tentatively discussed and promoted project. It is difficult to see the government's remedies for the injustices suffered by the indigenous peoples.

330. We recommend:

(1) the Executive Yuan to incorporate the goal of "handling the improper infringement on the rights of indigenous peoples," investigation and disclosure of the historical truth of the infringement of rights suffered by indigenous peoples on Taiwan and undertake the restoration of rights, reparations or compensation.

(2) In the relevant policy formulation process, a mechanism should also be established to ensure the effective participation of indigenous peoples

Art. 7: Eliminate Bias and Promote Understanding

Human rights education and training

331. Taiwan's national education has listed human rights education as one of seven "disciplines" in elementary school education since the gradual introduction of an uniform Grade 1-9 curriculum since the 2001 school year, which has formed the basis for the integration of human rights education into all areas of learning.[164] In 2014, the "Twelve-Year Basic Education Program" was introduced. In the new Twelve - Year Basic Education Curriculum to take effect in the 2018 school year, Human rights education will be integrated with all fields, subjects and flexible learning teaching methods and will no longer be an official course and will not have a clearly delineated section number. Human rights education curriculum guidelines will also be cancelled.[165]

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163 Executive Yuan Transitional Justice Board (in Chinese): https://www.ey.gov.tw/tjb/C99430CF99B9555E

164 The Grade 1-9 Curriculum has three separate versions, namely the 2001 Provisional Curriculum Guidelines, the 2003 Curriculum Guidelines and the 2008 Curriculum Guidelines. The 2008 Curriculum Guidelines added "marine education" and also revised "gender education" to "gender equity education." The seven disciplines are now gender equity education, environmental education, information technology education, home economics education, human rights education, career development education and marine education. A comprehensive guide to G1-9 curricula (in Chinese) is at: <http://ppt.cc/13tJ>.

165 The 12-year basic education program will no longer issue curriculum guidelines for each separate discipline. Instead, a research and revision task force for the curriculum guidelines for each field of study will arrange topic working circles to provide concepts and key points

332. Enhancement of human rights awareness and understanding as well as respect for human rights concepts is an extremely critical step in the process of democratization. Considering the fact that currently serving teachers never received abundant training in human rights education courses and that their own understanding and acceptance of human rights values and principles are insufficient, the Ministry of Education (MOE) from 2009 established a "Curriculum and Instruction Consulting Committee" for national human rights education and curriculum and instruction consulting teams in local governments to assist teachers to transform human rights education into course instruction. The performance of the curriculum and instruction consulting system has been widely praised.[166] However, the Twelve Year Basic Education Program does not plan to continue the central government human rights education team and city and county government human rights counselling networks are expected to shrivel in turn.

333. We recommend that the government should draft a national human rights education action plan and arrange necessary resources to ensure that educational workers, government officials, judges, prosecutors, law enforcement personnel and military personnel receive appropriate human rights education and become familiar with human rights knowledge and information and work in common to promote and guarantee the realization of all human rights. With regard to the training of teachers, the government can adopt suitable measures such as continuing to invest resources into human rights education curriculum and instruction consulting systems, maintaining space for dialogue among human rights professional groups, cultivating the human rights teaching quality and teaching ability and cultivate the capability of human rights instructors to provide individualized education as well as use human rights education indicators to monitor whether curricula and course work are implemented, track the learning progress of students and ensure the realization of human rights education and learning. With regard to course content, teaching methods and teaching materials, care should be taken to avoid formalistic article by article interpretation as in lectures. Instead, the government can encourage schools and institutions to choose systematic human rights teaching materials and make good use of the related resources of civil society organizations and bolster cooperation with NGOs in human rights education work.

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for learning. Human rights and gender equality education, environmental education and marine education will be listed together as four "major issues" with 15 other "ordinary issues." The Twelve Year Basic Education Guidelines (2014) can be seen (in Chinese) at the following website: <http://ppt.cc/87IDV>.

166 See Research, Development and Evaluation Commission (RDEC), "Evaluating the Current Situation in Implementation of the Grade 1-9 Curriculum," 2010. The website for the MOE Gender Equity Education curriculum and instruction committee (in Chinese) can be accessed here: <http://genderedu.moe.edu.tw/intro/super_pages.php?ID=intro1>.

Taiwan indigenous television

334. The government announced the commencement of the era of high definition television in 2012. Despite considerable advancements in digital television, Taiwan Indigenous Television still cannot be viewed on digital TV channel. It can only be viewed through cable or through designated set top boxes. Ironically, digital television channels include numerous public broadcasting channels, such as the Public Television Channel and Hakka TV. Only Taiwan Indigenous Television is unavailable. This situation not only deprives the viewing rights of the public but also obstructs the development of multiculturalism and public media.

Appendix 1: Introduction of participating NGOs (in alphabetical order)

1. Association for Taiwan Indigenous Peoples' Policies

Association for Taiwan Indigenous Peoples' Policies is a nonprofit and non-governmental organization that seeks cooperation between intellectuals, scholars, experts, social workers, and students from political, social, economic, legal, cultural and educational segments who are concerned about the future of Taiwan's indigenous peoples, aiming to understand the special problems faced by the Taiwanese indigenous peoples, safeguard their special interests, and preserve their special cultures and languages, in order to enhance the indigenous self-esteem, self-confidence and self-identity, to promote the autonomy and self-awareness of indigenous peoples, and to the ideal of ethnic justice. As a civil society organization, the Association for Taiwan Indigenous Peoples' Policies examines the merits and demerits of indigenous peoples' policies, proposes and advocates policies that meet the needs of the indigenous peoples, and promotes the self-determination and autonomy of Taiwan's indigenous peoples. The Association also develops pragmatic programs and organizational trainings to participate in policy promotions; seminars, panels, camps were also held every now and then, to indigenous elites, cultivate indigenous talents, and introduce relevant sources on indigenous peoples from abroad, for the reference of Taiwanese indigenous peoples, and for engaging in dialogue with indigenous peoples of other nations, and establish an international network of aboriginal peoples for experience exchange. We look forward to forming a mutual aid alliance with members of international aboriginal peoples' movements and international human rights communities.

Contact E-mail: atipp.tw@gmail.com

Contact person and personal E-mail: Yapasuyongu Akuyana，Yapasuyongu@gmail.com

2. LIMA Taiwan Indigenous Youth Working Group

With the notion of international participation and local solidarity being the core, the Association for Taiwan Indigenous Peoples' Policies is an advocacy group for the participation of the United Nations Permanent Forum on Indigenous Issues (UNPFII), and the advocacy for indigenous incidents and issues, at home and abroad. "LIMA" is a common vocabulary of the Austronesian family, meaning "number 5" or "hand". A group of like-minded indigenous youths from different backgrounds took the meaning of "hands", and founded the Association for Taiwan Indigenous Peoples' Policies in 2013, to empower indigenous youths for international participation, and enriched their knowledge of international participation through reading clubs. Since establishment, the Association had continuously formed delegations to the UNPFII, and held series of experience sharing sessions and workshops on international participation. The Association also participated in the international reviews of ICCPR, ICESCR, and CEDAW; and undertook many works relevant to the promotion of the rights of indigenous

peoples. The Association also founded a website for platforming information on Taiwanese indigenous peoples, to facilitate the circulation of relevant information on international human rights. The Association for Taiwan Indigenous Peoples' Policies was comprised of indigenous youths from varying ethnic groups and tribes in Taiwan, with different backgrounds and fields, and an expansive scope of interest; we are present at all events, issues and scenes on education, land, law, industry, media, etc., that relates to the indigenous peoples. We believe, hold each other's hands (LIMA) and draw each other closer together, feel each other's temperature and heartbeat, and know each other's needs, a bigger circle and community can be formed. Indigenous issues of Taiwan are also indigenous issues of the world, facing the challenges of modern society and the changes in the natural environment, it is necessary to connect each other, make information flow freely across borders.

Contact E-mail: limataiwanyouth@gmail.com

Contact person and personal E-mail: HUNG CHIEN, Ting-Hui, jinumu@gmail.com

3. Covenants Watch

Established on December 10, 2009 and convened by democracy forerunner Mr. Peter Huang (Huang Wen-shiung), Covenants Watch is comprised of more than 40 human rights organizations, lawyers and scholars, and was officially registered in 2016.

Through human rights advocacy, monitoring, research and education, we are committed to the promotion of the ratification of the 9 core human rights instruments designated by the UN. We notably utilized Taiwan's "self-made" international review mechanism to oversee the government's proactive measures for the consummation of human rights through domestic legal and policy reforms; we also coordinated, empowered, facilitated civil society organizations to participate in the quadrennial international review of human rights instruments, and jointly provide critical observations and reform suggestions independent of the government; from 2013 to 2020, we regularly coordinated civil society organizations to submit a parallel/shadow report, of which covered diverse dimensions, include: places of detention, judicial justice, death penalty, labor, migrant workers, persons with disabilities, transitional justice, children, women, LGBTI, and business and human rights.

Covenants Watch also participated in rescue actions; including the case of Li Ming-Che, which Covenants Watch, alongside with all members of the Li Ming-Che Rescue Committee, filed a complaint to the United Nations which was successfully received, and later reported on this case to the UN and the European Parliament. Covenants Watch also jointly drafted the bill of the Refugee Act with other NGOs, and requested the government to incorporate the intent of the Refugee Act in its laws and regulations regarding China, Hong Kong, and Macau. Human Rights Wednesdays, our monthly event which aims to expand society's concern and imagination for human rights, was also held monthly for five consecutive years. Meanwhile, we also joined international human rights networks, to discuss with

international human rights organizations and their human rights workers on the practical experience of advocating, implementing and monitoring human rights conventions in various countries.

Since our establishment, Covenants Watch has continued to promote the implementation and deepening of Taiwan's local human rights mechanisms through domestic and international human rights initiatives.

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

Contact person and personal E-mail: HUANG, Yibee, yibee.huang@cwtaiwan.org.tw

4. Environmental Jurists Association (EJA)

Environmental Jurists Association (EJA) was founded by a group of lawyers who care about the environment on January 30, 2010. With consolidated power within the organization, over the past decade, EJA has worked hard to close legal loopholes related to environmental litigations. The association provides legal advisories and aids for cases related to environmental public interest, supports residents' participation in the process of environmental impact assessment and litigations, and closely monitors the development of cases. Bringing lawyers into the communities, we learn the deep connection between the litigants and environment, and help bring the cases into the court. We connect citizens, scholars, and partner organizations to conduct research on and participate in the discussions of environmental issues. Through examining the loopholes and inadequacies of current regulations, EJA takes action on advocacy and legislative changes. We also organize training sessions for environmental lawyers and work in tandem with universities to provide internship opportunities and encourage young lawyers to join the force of environmental public interest. We look forward to seeing environmental law become an important field of focus in the legal world, to ensure the intergenerational fairness and sustainable development of natural, economic, and cultural environments.

Contact E-mail: eja@eja.org.tw

Contact person and personal E-mail: KUO, Hung-Yi, mahler0413@eja.org.tw

5. Human Rights Network for Tibet and Taiwan

Human Rights Network for Tibet and Taiwan is a coalition comprising Taiwan-based NGOs. Individual members include Tibetan and Taiwanese social activists, college professors, writers, students and legislators, amongst people of many other professions. Although the members work on different issues, the common concern is human rights. Members of the HRNTT realize that the value of human rights is universal, and that the suffering of one person in any part of the world is a burden on

the whole world. On the other hand, improving the rights of one person anywhere in the world is an inspiration for people everywhere. We also recognize that Taiwan and Tibet share many common grounds, for historical reasons. Both of us need to struggle to protect and improve our rights. There is a lot to be learnt from each other.

Contact E-mail: info@hrntt.org

Contact person and personal E-mail: LIN, Hsinyi, info@hrntt.org

6. Judicial Reform Foundation

The Judicial Reform Foundation is committed to advancing legal reform by uniting the power of the people in order to establish a fair, just, and trustworthy judiciary for the people.

In realizing its mission, the Judicial Reform Foundation embraces the following core values:

- Fairness and Justice.
- Diversity and Accessibility.
- Professionalism. Innovation. Criticism.

The vision of the Judicial Reform Foundation is to ensure a society in which all people benefit from a fair, just and trustworthy judiciary. The principal objectives of the Judicial Reform foundation are:

- To harness the power of civil society to advance judicial reform
- To improve the justice, transparency, and democracy of the judicial system
- To end unfair and negligent treatment of the people by the judiciary

Contact E-mail: contact@jrf.org.tw

Contact person and personal E-mail: LEE, Ming Ju, mj@jrf.org.tw

7. Rerum Novarum Center

Rerum Novarum Center is a social service organization dedicated to caring for the disadvantaged in the workplace. We strive to build a resource-sharing society for all workers in Taiwan, regardless of nationality, race, gender, or religious beliefs, especially the most vulnerable groups in the workplace. We provide direct and indirect services, including early capacity building of indigenous talents and tribal family care and training, to protect the basic life and work rights of the disadvantaged of the society. Through individual service cases, research, education, activism, legal grassroots or communities, the Center trains leaders, participates in social movements, and promotes service work. We also actively advocate for rights and interests, prompts the society to care about the issues of the disadvantaged in the workplace, and participate in related legislation, amendment of laws, and

reform of infringed rights.

Contact E-mail: new.job@msa.hinet.net

Contact person and personal E-mail: CHUNG, Chia-Ling, jialingjong7@gmail.com

8. Taiwan Alliance to End the Death Penalty

The Taiwan Alliance to End the Death Penalty (TAEDP) was founded in 2003 by local NGOs and academics. The Alliance was formed to stress and promote the absolute value of life and human dignity as core to the protection and promotion of human rights. Profoundly understanding that the society has yet to be exposed to the debate concerning death penalty abolition, and that the general public seems to support capital punishment as a form of revenge against perpetrators of major crimes, the alliance aims to create an open discussion forum for society on various abolition issues. Furthermore, it advocates shaping a better penal system that both respects the value of life while truly compensating the victims so as to really uphold justice and safeguard human rights for all.

Our work includes:

- Death Watch: The TAEDP works on individual death penalty cases with pro bono lawyers. Meanwhile, we provide criminal defense training for lawyers to ensure defense quality, and monitor the trial procedure to ensure that every defendant receives a fair trial.
- Research: The TAEDP conducts interviews, writes articles and makes video clips for specific issues and cases. In 2014, for instance, we conducted a face-to-face public opinion survey, interviewing more than 2,000 citizens around Taiwan.
- Public Dialogue and Education: In order to better communicate with the public, the TAEDP regularly holds seminars and discussions. The TAEDP also holds triennial film festivals, and the TAEDP Thursday Forum.
- The TAEDP mobilizes school teachers and has formed an Education Team to develop abolition education materials which can be used in the classroom. We also publish TAEDP online newsletters on a regular basis.
- Promotion for Social Security: The TAEDP takes part in advocating prison reform and promoting crime victims' rights and support. A working group consisting of victims' families, NGO workers, social workers, and counselling experts was formed in 2012, to understand the needs of the victims' families and to promote the rights of victims and their families.
- International Networking: The TAEDP promotes regional and international networking as a way introducing Taiwan to the latest information on the abolition movement. The TAEDP has been participating in the World Congress against the Death Penalty since 2004, and is one of the founding members of the Anti-Death Penalty Asia Network (ADPAN) and an active member of the World Coalition against the Death Penalty (WCADP), where it has served as a Steering Committee member since 2009.

Contact E-mail: info@taedp.org.tw

Contact person and personal E-mail: LIN, TzuWei, linadi1208@taedp.org.tw

9. Taiwan Association of Indigenous Social Work

The Taiwan Association of Indigenous Social Work aims to develop and promote the social work of indigenous peoples, and actively cultivate social workers with cultural views and cultural sensitivity of indigenous peoples. The members of the Society are located all over Taiwan, and they are all practical and academic workers who are devoted to the social work of indigenous peoples.
Contact E-mail: taisw2016@gmail.com
Contact person and personal E-mail: CHEN, Yi-Lin, taisw2016@gmail.com

10. Taiwan Association for Human Rights

Taiwan Association for Human Rights (TAHR) is an independent non-governmental organization founded on 10th December 1984 (International Human Rights Day). It is a member-based NGO and run by full time activists and volunteers. The Taiwan Association for Human Rights is committed to:

1. Remaining independent from the government, all political parties, corporations, and other interest groups;
2. Promoting the spirit of human rights and enhancing human rights standards and protections;
3. Fighting for all people without regard for class, race, gender, religion, or nationality; and
4. Cooperating with NGOs worldwide to improve domestic and global human rights.

Contact E-mail: info@tahr.org.tw

Contact person and personal E-mail: LAI, Yen Rong, yen1224@tahr.org.tw

11. Taiwan Association for Truth and Reconciliation

Taiwan Association for Truth and Reconciliation, founded in 2007, is dedicated to promoting transitional justice, popularizing knowledge of transitional justice and delivering domestic and foreign transitional justice information. So far, we have implemented the oral history of victims and families in political cases through interviews, held the Constitutional Court Simulation, planned the collection of memory of the martial law period, and published “The Letter Never Delivered”, “The Struggle of Memory and Forgetting: Interim Report of Taiwan Transitional Justice”.

Contact E-mail: contact@taiwantrc.org

Contact person and personal E-mail: CHEN, Hsuan-An, contact@taiwantrc.org

12. Taiwan International Medical Alliance (TIMA)

Founded in January 2001, the Taiwan International Medical Alliance (TIMA) is dedicated to promoting the right to health and alleviating the health inequalities among different social strata and classes, both domestically and regionally. TIMA has been working with Cambodian partners on the development and enforcement of health-related policies, including tobacco control. As a member organization of Covenants Watch, TIMA takes up the responsibility of developing human rights policies and quantitative human rights methods, such as human rights indicators and impact assessment.

Contact person and personal E-mail: HUANG, Songlih, songlih@gmail.com

13. Taiwan International Workers Alliance (TIWA)

Recognizing that the struggles of different worker groups are interrelated, a group of labor organizers with long experience in the Taiwan labor movement established the Taiwan International Workers Association (TIWA) in October 1999. TIWA is the first NGO in Taiwan dedicated to serving migrant workers. Aside from actively campaigning for labor rights, TIWA helps empower migrant workers to establish their own organizations. Over the past years, we have supported the establishment of the KApulungan ng SAmahang PIlipino (KASAPI) and the Ikatan Pekerja Indonesia Taiwan (IPIT). Furthermore, due to the prevalence of nationalism and cultural prejudice in Taiwanese society, we also organize cultural activities with the goal of transforming Taiwanese society's image of international laborers and promoting mutual respect, social justice and equality.

Contact E-mail: tiwa.home@gmail.com

Contact person and personal E-mail: WU, Jing Ru, tiwa.home@gmail.com

14. Vietnamese Migrant and Immigrant Office

The Vietnamese Migrant and Immigrant Office has entered the 17th year since its establishment in the spirit of Catholic fraternity, and has served countless migrant workers in Taiwan.

After many years of service experience, we see that migrant workers in Taiwan are deprived of basic rights, and have been excluded from fairness and justice, and opportunities for accessing education. Motivated by the ideal of providing a better living standard for their families, migrant workers chose to leave their hometown and travel thousands of miles to Taiwan, only to find themselves in an unfamiliar

environment, facing exploitation from brokers.

We hope that in our future services, with the spirit of the Christ, we can continue to serve people who are in need, especially for migrant workers and their migrant families. In addition, we will strive to empower these groups of people to obtain knowledge of relevant rights and laws, to enable them to speak for their rights and participate in social movements for the benefit of society. We will also advocate for social fairness and justice, and advocate for the improvement of the judicial system of Taiwan, to ensure the welfare and rights of disadvantaged migrant workers can be assured.

Contact person and personal E-mail: Father HUNG ,
nguyenvanhung2025@gmail.com

15. Yilan Migrant fishermen's Union

The Yilan Migrant Fishermen's Union was established on February 20, 2013, as Taiwan's first labor union with a focus on migrant fishermen. The officers of the union are all migrant fishermen, who are divided into a Filipino group and an Indonesian group per their nationality. The members of the two groups are each equipped with treasurers, secretaries, and coordinators, who are responsible for related affairs within each group.

The tasks of the union are as follows:

- The conclusion, modification, or annulment of the group agreement.
- Handling of labor disputes.
- Promotion of labor conditions, labor safety and health, and member welfare matters.
- Promotion of the formulation (fixing) and amendment of labor policies and laws.
- Organization of labor education.
- Assistance in the employment of members.
- Organization of member recreational matters.
- Mediation of a trade union or member disputes.
- The organization of undertakings according to law.
- Survey of the livelihood of laborers and families and compilation of labor statistics.
- Establishment of the shelters for resettlement and provision of accommodation space for temporary needs.
- Other matters that conform to the purpose of Article 3 and legal provisions.

Contact E-mail: fisherman121227@gmail.com

Contact person and personal E-mail: LEE, Allison, fisherman121227@gmail.com