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Review Meeting of the ROC's Second Report under the ICCPR and ICESCR
公民與政治權利國際公約
經濟社會文化權利國際公約

中華民國第二次國家報告國際審查會議

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  Evergreen International Convention Center
  法務部
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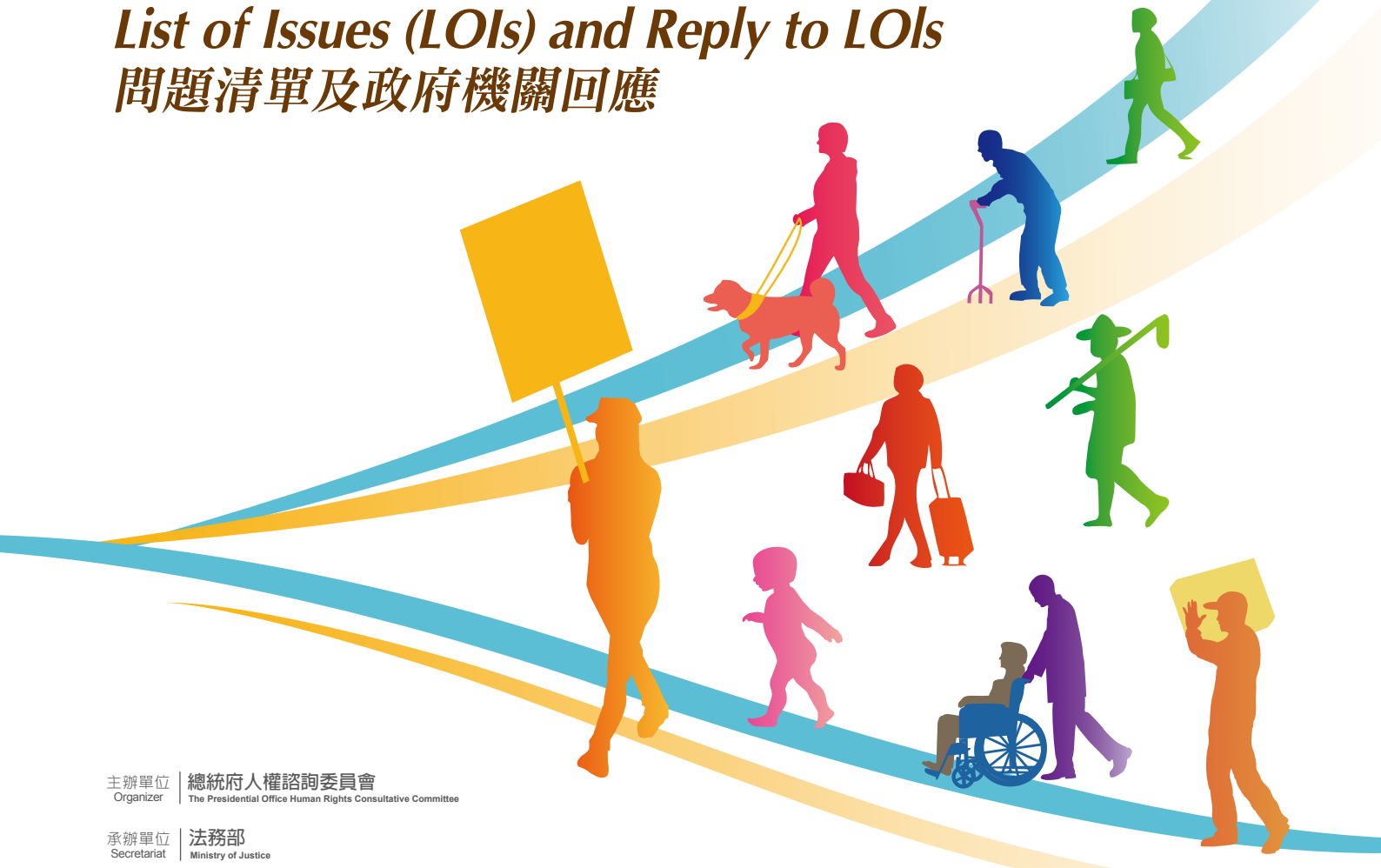
ICCPR 公民與政治權利國際公約

List of Issues (LOIs) and Reply to LOIs
問題清單及政府機關回應



主辦單位 Organizer | 總統府人權諮詢委員會 The Presidential Office Human Rights Consultative Committee

承辦單位 Secretariat | 法務部 Ministry of Justice

目　錄

Table of Contents

公政公約問題清單及政府機關回應
List of Issues and Reply to LOIs

共通議題

General Issues

點次	問題內容(原文)	中文參考翻譯
1	In its Response to the Concluding Observations and Recommendations Adopted by the International Group of Independent Experts of April 2016 (hereinafter referred to as "Response"), the Government of Taiwan described its efforts towards establishing a National Human Rights Institution in accordance with the Paris Principles (§§ 1-3). On 10 December 2015, the Control Yuan introduced the draft Organic Law of Control Yuan National Human Rights Commission (ibid, § 3). In its Shadow Report on Government's Response to the 2013 Concluding Observations and Recommendations of 16 August 2016, Covenant Watch (hereinafter referred to as "CW"), reported that during her election campaign, current President Tsai Ing-wen had publicly announced on 9 December 2015 "that she would promote the establishment of a national human rights commission if elected on the January 16, 2016 national polls". Did the Government adopt the draft Organic Law or take any other further step aimed at establishing a National Human Rights Institution in Taiwan?	在 2016 年 4 月發布的《回應結論性意見與建議》報告中，臺灣政府說明為成立符合巴黎原則之國家人權機構所做的努力(第 1 點至第 3 點）。2015 年 12 月 10 日，監察院提出於該院設置國家人權委員會組織法的草案。人權公約施行監督聯盟在 2016 年 8 月 16 日提出對《政府回應結論性意見與建議之回覆》報告中指出，「現任總統蔡英文在競選期間，於 2015 年 12 月 9 日公開宣布如果贏得 2016 年 1 月 16 日舉行的總統大選，她將推動成立國家人權委員會。」請問政府是否已通過組織法草案？或採取其他進一步的作法以成立國家人權機構？

中文回應

1. 為研議成立符合巴黎原則之國家人權機構，總統府人權諮詢委員會(以下簡稱委員會)下設之國家人權機構研究規劃小組業於 2014 年 12 月 5 日第 16 次委員會議，分別就國家人權委員會之設置，提出(一)完全獨立(二)設置於總統府下及(三)設置於行政院下 3 項方案，各方案均有組織法及職權行使法等完善法制規劃。2016 年 1 月 8 日第 20 次委員會議就監察院提出之於該院下設置國家人權委員會之可行性方案及法制規劃進行討論。另因立法院尤美女委員及顧立雄前委員亦分別就於總統府及監察院設置國家人權委員會提出相關草案，故前揭 2 位立法委員之提案與上述 4 方案於 2016 年 7 月 22 日第 22 次委員會議併案討論。該次會議決議我國應儘早成立符合巴黎原則之國家人權委員會；委員並就其中 3 方案進行表決，支持程度由高至低為：設置於總統府下、設置於監察院下及完全獨立之機構。因設置於行政院下之方案較不符合巴黎原則，故此方案經討論後刪除，未列入表決。委員表決結果已呈請總統參酌，俟總統做成政策決定後始得定出何時設立之具體時程。
2. 有關設置於總統府下、設置於監察院下及完全獨立之機構等 3 方案之國家人權委員會組織法相關草案之主要內容略述如下：
   (1) 設置於總統府下及完全獨立之機構 2 方案，均包括國家人權委會組織法及職權行使法，明定國家人權委員會之組成及權限範圍，該 2 方案除機關層級及委員選任方式不同外，其餘之法制規劃均相同，大致符合巴黎原則之要求：
      ①職責：國家人權委員會之職責包括：一、研究及檢討有關促進及保障人權之政策與法令，並提出建議、報告或草案。二、推動政府機關批准或加入國際人權文書並國內法化，促進並確保國內法令及行政措施與國際人權文書相符。三、得協助政府機關依聯合國各人權公約規定定期提出國家人權報告，並辦理國際審查。四、得對國家人權報告撰提獨立之人權報告。五、推動人權教育，宣導人權理念。六、瞭解政府機關推動人權業務之成效，建立人權評鑑機制。七、落實國際人權規範，促進國內外人權之交流與合作。八、受理侵犯人權之重大事件，必要時得進行調查、協助救濟及處理。九、其他促進及保障人權之相關事項。
      ②組成：委員會置專任委員 13 人，任期 4 年，有關委員之任命，完全獨立之方案係由總統召集 5 院院長及民間團體代表推選，經立法院同意後任命之；設置於總統府下之方案，則由總統府選任 7 人及立法院選任 6 人。

2 方案均要求至少三分之一的委員為公民代表。

③權力：國家人權委員會依法獨立行使職權，定期舉行會議或召開臨時會議，不受總統及各機關之指揮監督，且委員會之年度概算，行政院不得刪除，係為確保其獨立性。委員會於行使法定職權時，得要求有關機關提供必要之協助，或就職掌內容有無侵害人權或相關改進方案提出說明。委員會並得依職權就法規、制度或行政措施是否侵害人權進行調查，人權受重大侵害之個人或團體亦得申請委員會就個案進行調查，委員會完成調查後，除將調查結果公布外，亦得進行和解、調解或仲裁。

(2) 設置於監察院之方案

①監察院是我國五權憲法體制下的監察機關。監察機關(ombudsman)被聯合國認定為「國家人權機構」之一種態樣，且我國監察院在現有功能及實務運作上已符合巴黎原則要求之大部分條件。2015 年監察院曾研議充實職權以完全符合巴黎原則之方案與法制規劃，重點係在相關法律中明定監察院掌理人權保障相關事項，並賦予監察院得針對私部門侵害人權案件進行調查及相關救濟處理。監察院並已於 2015 年 12 月 10 日將研提方案與法制規劃－「監察院國家人權委員會組織法草案」，送請總統府人權諮詢委員會併案討論。未來監察院將以此為基礎，持續與外界溝通，強化說明監察院作為國家人權機構之優點，並積極參與本項議題之推動及討論。

②依前揭草案，監察院設立國家人權委員會具備促進及保障人權之功能。其職掌包括處理與調查侵害人權案件、對於政府機關提出建議、報告或草案、推動重要國際人權文書國內法化、撰提年度國家人權狀況報告、協助政府機關提出國家人權報告、推動人權教育、促進國內外人權之交流與合作等。國家人權委員會委員由全體監察委員擔任，並設諮詢委員會，置諮詢委員 11 人至 15 人，以廣納不同性別、族裔、專業領域之學者、專家及民間團體之經驗與意見。

英文回應

1. Within the context of the deliberations regarding the establishment of a National Human Rights Commission in accordance with the Paris Principles, The National Human Rights Institution Research and Planning Task Force which is subordinate to the Presidential Office Human Rights Consultative Committee put forth the following three proposals

pertaining to the establishment of a National Human Rights Commission at the 16th committee meeting on December 5, 2014: (1) a fully independent institution,(2) a commission subordinate to the presidential office and (3) a commission subordinate to the Executive Yuan. Sound statutory planning including organic laws and power exercise acts has been carried out for all proposals. The feasibility and statutory planning with regard to the proposal to establish a National Human Rights Commission subordinate to the Control Yuan submitted by the Yuan itself was discussed in the 20th committee meeting on January 8, 2016. Due to the fact that the legislator Ms. Mei-nu Yu and former legislator Mr. Li-Hsiung Koo submitted drafts to establish a National Human Rights Commission affiliated to the presidential office and the Control Yuan, respectively, said drafts and the aforementioned four proposals were jointly discussed at the 22nd committee meeting on July 22, 2016. Based on the resolutions adopted in said meeting, a National Human Rights Commission in accordance with the Paris Principles should be established at the earliest date possible. The committee members also voted on three of the proposals. The proposal to establish a commission subordinate to the presidential office received the highest level of support followed by a commission subordinate to the Control Yuan and a fully independent institution. Due to the fact that the proposal to establish a commission subordinate to the Executive Yuan does not conform to Paris Principles, this proposal was rejected upon discussion and not put to vote. The president was petitioned to take the results of this vote into consideration. A specific time frame for the establishment of the commission will be determined upon the adoption of a policy resolution by the president.

2. The main contents of the drafts of the organic laws for the three proposals (establishment of a commission subordinate to the presidential office or the Control Yuan and a completely independent institution) can be briefly summarized as follows:
   (1) The two proposals to establish a commission subordinate to the presidential office and a completely independent institution include an organic law and power execution act for the National Human Rights Commission. These laws clearly stipulate the composition and authority range of the commission. The statutory planning for the two proposals is identical except for the agency level and commission member election methods. Both proposals meet the main requirements of the Paris Principles.

①Responsibilities: The responsibilities of the National Human Rights Commission include the following: (1) Research and review of policies and laws related to the promotion and safeguarding of human rights and submission of relevant suggestions, reports and drafts. (2) Urging of government agencies to ratify or accede to international human rights documents and incorporate into domestic laws and guarantee that domestic laws and administrative measures conform to international human rights documents. (3) Provision of assistance for government agencies in the compilation of National Human Rights Reports on a regular basis and the carrying out of international reviews pursuant to the regulations set forth in the human rights conventions adopted by the United Nations. (4) Submission of an independent human rights report as a counterpart to the National Human Rights Report. (5) Promotion of human rights education and dissemination of human rights concepts. (6) Clear understanding of the effects of government efforts in the promotion of human rights concepts and establishment of a human rights evaluation mechanism. (7) Implementation of international human rights norms and promotion of national and international exchanges and cooperation in the field of human rights. (8) Handling of major human rights infractions as well as carrying out of investigations and provision of assistance in relief and processing. (9) Other relevant matters pertaining to the promotion and safeguarding of human rights.

②Composition: The commission is comprised of 13 dedicated members who will serve for a term of 4 years. As for the appointment of commission members, the proposal for the establishment of a fully independent institution stipulates that the president shall convene the presidents of the five Yuans and NGO representatives to nominate suitable candidates who shall be appointed upon approval by the Legislative Yuan. The proposal for the establishment of a commission subordinate to the presidential office stipulates that the presidential office and Legislative Yuan shall select and appoint 7 and 6 members, respectively. Both proposals prescribe that one third of the commission members shall be civic representatives.

③ Powers: The National Human Rights Commission exercises its powers independently in accordance with relevant laws. It convenes regularly and on an

ad-hoc basis and is not under the supervision of the president or a government agency. The Legislative Yuan is not authorized to delete the allocated annual budget of the commission to ensure its independence. The commission may request assistance from relevant authorities in the exercise of its statutory powers if deemed necessary. It may also clearly state its opinions regarding human rights infractions caused by relevant duties and responsibilities or related improvement plans. The commission may also conduct investigations regarding human rights infractions caused by laws and regulations, legal systems or administrative measures in accordance with its vested powers. Individuals or groups who suffered serious human rights violations may petition the commission to carry out case investigations. Upon completion of relevant investigations, the commission must publicize the investigation results and act as a mediator or arbitrator.

(2) Proposal for the establishment of a commission subordinate to the Control Yuan

①Under the five-power constitutional system, the Control Yuan is the national ombudsman office in ROC. An ombudsman office is recognized by the United Nations as a form of National Human Rights Institution. In terms of its functions and operation, the Control Yuan is highly compliant with requirements set forth by the Paris Principles. In order to fully comply with the said Principles, in 2015, the Control Yuan deliberated on reinforcing its statutory duties to better protect and promote human rights and expanding its power to investigate the private sectors implicated with human rights violation and to provide remedial measures for victims. The Control Yuan drafted the Organic Law of Control Yuan National Human Rights Commission on December 10, 2015, which was brought forth for discussion at the Presidential Office Human Rights Consultative Committee. The Control Yuan shall continue communicating with the public by explaining the advantages of having the Control Yuan as the National Human Rights Institution and actively participating in the discussion and promotion of this issue.

②According to the draft law proposed by Control Yuan, the National Human Rights Commission is thus established under the Control Yuan to strengthen the responsibilities of the Control Yuan in enhancing and protecting human rights. This

law specifies the mandates of National Human Rights Commission to handle and investigate human rights violation, make recommendations to public agencies, push forward the ratification of the international conventions, issue annual status report on human rights, assist public agencies in compiling country reports, and promote international exchange. The members of this commission shall compose of all the Control Yuan Members. In addition, an advisory committee composed of 11 to 15 advisors will be set up to invite representatives from scholars, experts and civil organizations to ensure pluralism in gender, race and expertise.

共通議題

General Issues

點次	問題內容(原文)	中文參考翻譯
2	In Table 56 of the Common Core Document Forming Part of the Reports of April 2016 (hereinafter referred to as "Core Document"), the Government of Taiwan indicates that it has accepted as legally binding by means of ratification/acceptance or accession the International Convention on the Elimination of all Forms of Racial Discrimination (CERD 1970), the two United Nations Covenants (2009) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 2009). The other UN core human rights treaties were neither signed nor ratified by Taiwan. On the other hand, in §§ 5 to 13 of its Response, the Government refers to the "Implementation Act" for the Convention on the Rights of the Child (CRC) of 4 June 2014 which was "implemented" on 20 November 2014 (§ 5).	依 2016 年 4 月 16 日發布的共同核心文件表 56，臺灣政府指出它透過批准/接受或加入的方式，受到幾項國際人權公約的法律拘束，包括：《消除一切形式種族歧視國際公約》(CERD，國內法效力始自 1970)，聯合國兩公約(國內法效力始自 2009)，以及《消除對婦女一切形式歧視公約》(CEDAW，國內法效力始自 2009)。其他的聯合國核心人權公約則既未簽署也未批准。另一方面，臺灣政府在其《回應結論性意見與建議》第 5 至第 13 點，提及《兒童權利公約施行法》於 2014 年 6 月 4 日通過，於同年 11 月 20 日生效施行(第 5 點）。類似情況還有《身心障礙者權利公約施

	Similarly, the "Act to Implement" the Convention on the Rights of Persons with Disabilities (CRPD) was announced on 20 August 2014 and "enforced" on 3 December 2014 (§ 9). With respect to other core treaties, implementation acts are being discussed. In § 34, CW reports that "the CRC and the CRPD were only ratified by the Legislative Yuan on April 22, 2016". Could the Government of Taiwan please provide updated information which of the core human rights treaties have so far been accepted as legally binding? What is the legal effect of treaties that have been ratified by Taiwan in the domestic legal system without a specific implementation act, such as CERD? What is the legal effect of treaties in respect of which a domestic implementation act has been adopted and "enforced"? How far are the preparations for the ratification and implementation of the Convention against Torture (CAT) and its Optional Protocol (OPCAT), including the establishment of a National Preventive Mechanism? How far are the preparations for the ratification and implementation of the Convention on Migrant Workers (CMW) and the Convention for the Protection of All Persons from Enforced Disappearance (CED)? Why are further deliberations required to see "whether it is necessary to incorporate" the CED into domestic law, as stated in § 12 of the Response?	行法》，在 2014 年 8 月 20 日通過，於同年 12 月 3 日生效施行。其他核心公約之施行法亦被提及。人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》第 34 點提到，《兒童權利公約》與《身心障礙者權利公約》於 2016 年 4 月 22 日才由立法院批准通過。請臺灣政府提供最新資料，說明目前有哪些聯合國核心人權公約對臺灣具有法律拘束力？以《消除對種族一切形式歧視公約》此一臺灣曾經批准、但卻沒有訂定施行法的核心人權公約為例，它在國內法體系中的法律效力為何？相對於此，訂有施行法的人權公約在國內法體系中的法律效力為何？請問政府對於批准與實施《禁止酷刑公約》(CAT)及其任擇議定書，包括建制國家防範機制的進展為何？請問政府就《保護移工公約》(CMW)，以及《保護所有人免於被強迫失蹤公約》(CED)的批准與實施工作有何進展？關於將《被強迫失蹤公約》的規定整合進國內法律的必要性，為何還需要更多的審議(國家《回應結論性意見與建議》第 12 點）？

中文回應

1. 目前聯合國核心人權公約中，我國於 1971 年以前批准並對我生效之人權公約有《消除對種族一切形式歧視公約》；1971 年後，我國批准加入並訂有施行法之人權公約有《公民與政治權利國際公約》、《經濟社會文化權利國際公約》、《消除對婦女一切形式歧視公約》、《兒童權利公約》及《身心障礙者權利公約》。以上公約，均對我國具國內法效力，其餘人權公約之國內法化過程，我國仍在努力推動中。
2. 查我國於 1966 年 3 月 31 日簽署《消除對種族一切形式歧視公約》，1970 年 11 月 14 日批准該公約並於同（1970）年 12 月 10 日向聯合國秘書處存放批准書，該公約自 1971 年 1 月 9 日起對我國生效，因此對我具國內法效力。雖依目前聯合國網站所載，自 1981 年 12 月 29 日中國大陸加入該公約後，聯合國已不視我為該公約締約國。雖然如此，就我政府立場而言，該公約仍對我具有國際法及國內法之效力。
3. 在條約締結法於 2015 年 7 月 3 日施行前，為落實《公民與政治權利國際公約》、《經濟社會文化權利國際公約》、《消除對婦女一切形式歧視公約》、《兒童權利公約》及《身心障礙者權利公約》等我國已批准或加入之人權公約，各該公約之施行法第 2 條均規定，各該公約所揭示保障人權之規定，具有國內法律之效力。是以，此等訂有施行法之人權公約已納入中華民國國內法律體系。
4. 禁止酷刑公約：
   (1) 為推動《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》(簡稱禁止酷刑公約，CAT)及其任擇議定書(OPCAT)內國法化，內政部目前正研擬《禁止酷刑公約施行法》草案，並擬將我國防範酷刑之國家防範機制(NPM)設置於監察院，以執行議定書第 4 章所載之國家防範機制相關工作。在研議推動禁止酷刑公約法制作業期間，監察院並配合內政部之規劃時程，與該部持續進行協商，以利儘早將公約內國法化。
   (2) 內政部警政署已完成制定「禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約施行法草案」，其內容已將任擇議定書要求設立「禁止酷刑防制委員會」之規劃一併納入，並獲監察院同意於該院設置，依照公約之要求辦理相關事宜。目前持續整合各機關意見，以及研擬成立公約推動小組，儘速依法制作業程序推動立法工作。
5. 保護移工公約
   (1) 為符合公約精神由客工制轉為移工制，現階段勞動部將研議規劃建立「留用資深

外籍技術人員評點制度」，針對優秀且資深外籍勞工核發資深外籍技術人員聘僱許可，後續符合特定條件後並可申請永久居留；中長期勞動部則將配合國家發展委員會及內政部之移民政策辦理。

(2) 就業服務法第 52 條業於 2016 年 11 月 3 日經總統公布修正，取消外籍勞工聘僱期滿須出國 1 日之規定。勞動部並將配合修正相關法規，未來外籍勞工於聘僱期滿前 2 至 4 個月期間可與原雇主協議續聘，倘原雇主或外籍勞工一方無意續聘，外籍勞工可於聘僱期滿前尋找新雇主，並於聘僱期滿後轉由新雇主聘僱，以符合公約有選擇工作自由之精神。

6. 被強迫失蹤公約：鑒於人權保障不應因我國是否為聯合國會員國而有落差，依我國現行相關法律，並無任何政府機關可以非法方式限制他人之人身自由，我國現行規定實質上已遵守《保護所有人免於被強迫失蹤公約》之重要核心義務，並已積極研議如何將核心國際人權公約中之《保護所有人免於被強迫失蹤公約》納入我國法體系，以建構我國完整之人權圖像。該公約之國內法化方式，現正參考兩公約、CEDAW、兒權公約及身權公約等 5 項核心人權公約，以制定施行法之方式國內法化，或依 2015 年 7 月 1 日施行之條約締結法第 7 條、第 8 條及第 11 條，因情況特殊致無法互換或存放者，由主辦機關報請行政院轉呈總統逕行公布，並自總統公布之生效日期起具國內法效力。

英文回應

1. Several core human rights conventions of the United Nations have legal effect in Taiwan. Prior to 1971, the Convention on the Elimination of All Forms of Racial Discrimination was ratified by the ROC government and put into effect. After 1971, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities were ratified and related implementation acts introduced. The ROC is currently working to incorporate other UN human rights treaties into domestic law.
2. The ROC signed the Convention on the Elimination of All Forms of Racial Discrimination on March 31, 1966; ratified it on November 14, 1970; and deposited its instrument of

ratification with the UN secretariat on December 10 of the same year. This convention entered into force in Taiwan on January 9, 1971, making it legally binding on our country. Although the UN website states that the UN no longer considers the ROC a signatory of the convention following mainland China's accession to the convention on December 29, 1981, the ROC government's position is that the convention is legally binding on our country in terms of both international and domestic law.

3. Prior to the promulgation of Conclusion of Treaties Act on July 3, 2015, the ROC, in order to implement the various human rights conventions it had ratified or joined (i.e., the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities), stipulated in Article 2 of the implementation act for each of these conventions that the human rights protection provisions in the related convention have legal effect domestically. Therefore, the human rights conventions for which we have introduced implementation acts have indeed been incorporated into the ROC's domestic legal system.
4. Convention against Torture:
   (1) To adopt the Convention against Torture (CAT) and its Optional Protocol (OPCAT), the Ministry of Interior (MOI) is drafting an enforcement act, and intends to establish the National Preventive Mechanism (NPM) under the Control Yuan to fulfil the mandates as stipulated in Part IV of the OPCAT. During this period, the Control Yuan shall work in tandem with the MOI to ratify this convention as part of domestic laws as soon as possible.
   (2) The National Police Agency has completed the formulation CAT draft and according OPCAT to establish a National Preventive Mechanism in the Control Yuan.The Agency will continue to integrate comments from various agencies, as well as set up a promote group, as soon as possible in accordance with operating procedures for legislation.
5. Regarding the implementation of the Migrant Workers Protection Convention:
   (1) In order to comply with the spirit of the Convention, the guest workers system was

changed to the migrant worker system. At the current stage, the Ministry of Labor plans to establish a "Retaining of Senior Foreign Technical Personnel Evaluation System" for senior and experienced foreign workers to be issued senior foreign technical staff employment permits. They may apply for permanent residence upon meeting further specific conditions; in the long-term, the Ministry of Labor will work in conjunction with the National Development Council and the Ministry of the Interior regarding the immigration policy.

(2) Article 52 of the Employment Service Act was amended and promulgated by the President on November 3, 2016 to abolish the provision that foreign workers have to go abroad one day upon the expiration of employment. The Ministry of Labor will work in conjunction to amend relevant laws and regulations. In the future, a foreign worker may renew his/her employment with the former employer during the period of two to four months before the expiration of employment. If either the original employer or the foreign worker has no intention of renewing his/her employment, the foreign worker may seek a new employer before the expiration of his/her employment and, after the expiration of his/her employment, transfer to the new employer. These changes are done in order to conform to the Convention's spirit of having the freedom to choose work.

6. Convention for the Protection of All Persons from Enforced Disappearance：Based on the fact that there should be no differences with UN member nations in the field of human rights safeguards, current relevant laws in Taiwan clearly stipulate that no government agency can illegally restrict the personal freedom of others. Current regulations in Taiwan essentially conform to the core obligations set forth in the Convention for the Protection of All Persons from Enforced Disappearance and it is actively deliberated how to incorporate this core international human rights convention into the legal system of Taiwan in order to generate a complete human rights portfolio. The turning into law of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, CEDAW, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities through enforcement acts serves as a main reference for the turning into law of said convention. Alternatively, in special cases in

which an exchange or deposit of an instrument of ratification is not possible, the competent authorities shall send the treaties to the Executive Yuan, which shall submit them to the President for promulgation pursuant to Articles 7, 8, and 11 of the Law of Conclusion of Treaties enforced on July 1, 2015. Treaties acquire full legal validity in Taiwan upon the effective date of promulgation.

共通議題 **General Issues**		
點次	**問題內容(原文)**	**中文參考翻譯**
3	CW reports that "Numerous cases of disappearances occurred in Taiwan during the nearly four decades of martial law rule" (§ 46). What has been done to establish the fate and whereabouts of these disappeared persons?	人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》第 46 點提到「於將近 40 年的戒嚴期間曾發生許多失蹤案件」。為了確定這些失蹤者的命運及下落，國家做了些什麼？

中文回應

1. 戒嚴時期不當叛亂暨匪諜審判案件之受裁判者，於解嚴後不能獲得補償或救濟，故制定戒嚴時期不當叛亂暨匪諜審判案件補償條例。該條例適用對象及要件：
   (1) 本條例所稱受裁判者，係指人民在戒嚴解除前，因觸犯內亂罪、外患罪或戡亂時期檢肅匪諜條例，經判決有罪確定或裁判交付感化教育者。另本條例所稱戒嚴時期，臺灣地區係指自 1949 年 5 月 20 日起至 1987 年 7 月 14 日止宣告戒嚴之時期；金門、馬祖、東沙、南沙地區係指 1948 年 12 月 10 日起至 1992 年 11 月 6 日止宣告戒嚴之時期。（參戒嚴時期不當叛亂暨匪諜審判案件補償條例第 2 條第 1、2 項）
   (2) 依戒嚴時期不當叛亂暨匪諜審判案件補償條例第 6 條，補償範圍如下：
   ①執行死刑者。
   ②執行徒刑者。

③交付感化 (訓) 教育者。

④財產被沒收者。

2. 政府於 1999 年 3 月 8 日成立財團法人戒嚴時期不當叛亂暨匪諜審判案件補償基金會，受理補償案件及回復名譽證書案件，截至 2014 年 3 月 8 日，共計補償 7,965 案，頒發回復名譽證書共 4,055 件。2014 年基金會解散後，內政部承繼後續訴願及行政訴訟案件、申請或補發回復名譽證書及陳情案件，2014 年 12 月 10 日委託財團法人二二八事件紀念基金會辦理。截至 2016 年 11 月，財團法人二二八事件紀念基金會共受理訴願及行政訴訟 5 案，申請或補發回復名譽證書 16 件，陳情 28 件。

3. 鑑於戒嚴時期內亂、外患等罪嫌係由軍事審判機關行使審判權，其適用之程序與一般刑事案件有別，救濟功能亦有所不足，為回復戒嚴時期人民受損之權利，謝前立法委員聰敏等 24 人提案制定「戒嚴時期人民受損權利回復條例」，經於 1995 年 1 月 28 日總統令公布施行，期間並曾於 1999 年 2 月 2 日修正。該條例主要內容如下：

(1) 回復因犯內亂罪或外患罪，喪失或被撤銷之資格(本條例第 3 條)。

(2) 因內亂罪或外患罪被沒收財產者，於受無罪判決確定後，得請求發還財產或給予適當金錢補償(本條例第 4 條)。

(3) 因犯內亂、外患、懲治叛亂條例或檢肅匪諜條例之罪，其人身自由受拘束或未依法釋放者，得依法請求國家賠償(本條例第 6 條)。

英文回應

1. Legislative purpose: The act herein is enacted to compensate the convicts, who were wrongfully tried on charges of sedition and espionage during the martial law period, but could not receive compensation or relief after the martial law period.（Article 1 of the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period）Applicable objects and requirements:

(1) The term “convict” as used in this act refers to the person convicted of sedition, treason, or breach of Espionage Act in the Period of Mobilization for the Suppression of Communist Rebellion, or sent to the reformatory education in the martial law period. The term “martial law period” as used in this act refers to the period of time from May 20, 1949 to July 14, 1987, if the case took place in the main island of Taiwan. But if the case took place in Kinmen, Matsu, Dongsha and Nansha, the term “martial law

period" refers to the period of time from December 10, 1948 to November 6, 1992.（Article 2, Section 1 and Section 2 of the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period）

(2) The candidates of compensation are as follows（Article 6 of the Compensation Act for Wrongful Trials on Charges of Sedition and Espionage during the Martial Law Period）:

①Convicts who were executed;

②Convicts who were imprisoned;

③Convicts who were sent to the reformatory education;

④Convicts whose properties were confiscated.

2. On March 8th, 1999, the government founded the Improper Martial Law Period Insurgency and Espionage Convictions Compensation Foundation to take the responsibility for accepting compensation claims and applications for reputation rehabilitation certificate. As of March 8th, 2014, the foundation had approved 7,965 compensation claims and issued 4,055 certificates. After the foundation was dissolved in 2014, Ministry of the Interiors was assigned to success the ongoing administrative appeals and litigation cases, and continuously accept the applications of reputation rehabilitation certificate, petitions. The ministry thereafter entrusted the duties to the National Memorial Foundation of 228 on December 10th, 2014. Up until November 2016, the National Memorial Foundation of 228 has handled 5 administrative appeals and litigation cases, newly issued or reissued 16 reputation rehabilitation certificates, and accepted 28 petitions.

3. In view of the fact that trials of criminal suspects of sedition and treason during the period of martial law were led by military tribunals and the applicable procedure was different from the conventional criminal cases, the function of remedy was insufficient at that time. To recover the damages of individual rights that occurred during the period of military law, former legislator Tsung-Min Hsieh and other 24 legislators proposed the stipulation of the "Act Governing the Recovery of Damage of Individual Rights during the Period of Martial Law" (hereafter referred to as "this Act", which was announced by the President on January 28, 1995 and followed by implementation thereof. This Act was also once amended on February 2, 1999.The main content of this Act includes the following:

(1) Response to individuals who have lost or have been revoked of qualifications due to conviction of the offenses of sedition or treason. (Article 3 of this Act).

(2) Any individual whose properties have been seized during the period of martial law due to violations of the offenses of sedition or treason, may file an application for return of properties after being affirmatively found innocent or may be entitled to monetary compensation (Article 4 of this Act).

(3) For any individual whose personal freedom is restricted or is not released in accordance with the law due to conviction of the offenses sedition or treason, or the crimes under the Statute for the Punishment of Treason or Statute for the Eradication of Communist Espionage may petition for national tort claims in accordance with the law (Article 6 of this Act).

共通議題

General Issues

點次	問題內容(原文)	中文參考翻譯
4	With respect to human rights education, the Government reports in § 22 of its Response that "The syllabus for the 12-year basic education program was expected to be announced in February 2016". CW recommends that the government should draft a comprehensive national human rights education action plan (§ 65). Does the Government plan to adopt and implement such a comprehensive human rights education plan?	關於人權教育，政府《回應結論性意見與建議》報告第 22 點提到「12 年國民教育課程大綱預計於 2016 年 2 月公布」。人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 40 點建議政府應起草全面性的國家人權教育行動計劃。政府是否要採用並落實這樣的全面人權教育計劃？

中文回應

1. 有關人權教育部分，總統府人權諮詢委員會 2015 年 7 月 1 日第 18 次委員會議決議「請

行政院審酌各人權公約主政機關，分別針對權責業務特性，規劃教育訓練計畫，並由行政院統合各機關配合督導。」行政院即函請行政院人權保障推動小組、行政院身心障礙者權益推動小組、行政院兒童及少年福利與權益推動小組及行政院性別平等會之幕僚機關規劃相關人權公約之教育訓練計畫及督導各機關辦理情形。

2. 法務部為行政院人權保障推動小組之幕僚，為加強推動兩公約，辦理人權教育情形如下：

(1) 依「人權大步走計畫」於 2009 年舉辦 6 梯次之「兩公約種子培訓營」，於 2010 年至 2013 年辦理「兩公約學習地圖」，以深化各級公務人員之人權理念，及建構其行政作為需遵守人權保障規定理念，避免侵害人權。

(2) 架設「人權大步走專區」網站，將歷年種子培訓營之相關講義、資料及其他與兩公約相關之資料上傳至「人權大步走專區」供各機關及外界下載參考。

(3) 於 2011 年 3 月及 2012 年 12 月出版「人權萬花筒－兩公約人權故事」及「人權 APP－兩公約人權故事集Ⅱ」，又於 2013 年 12 月出版人權秘笈叢書「人權大步走－檢察篇、矯正篇、行政執行篇、調查篇及廉政篇」等 5 本人權教材，上開故事集及人權教材均已上傳「人權大步走」專區，供各機關及外界下載參考。

(4) 自 2013 年至 2015 年委託地方行政研習中心開設「人權業務人員研習班」，以強化地方公務人員對兩公約之深入認知，並使其了解當前國家人權議題。

(5) 於 2014 年 4 月辦理「法務部及所屬機關人權教育種子師資培訓課程」。培訓完竣後，彙製相關人權教育師資名冊，提供各機關辦理人權教育研習活動時延聘講師之參考。

(6) 於 2015 年 5 月辦理「人權教育推動觀摩會」，邀請立法院、司法院、考試院、監察院、行政院所屬各機關及直轄市、（縣）市政府辦理人權教育承辦人與會，由法務部同仁分享法務部推動人權教育之經驗及請人權種子師資示範教學，供各部會日後辦理人權教育之參考。

(7) 總統府人權諮詢委員會(法務部為議事組幕僚)決議於其下成立「教育訓練小組」，迄今已召開 7 次教育訓練小組會議，就權責機關所提回應內容，進行審查，並提出評論報告初稿，該初稿業經總統府諮詢委員會第 17 次委員會會議通過，教育訓練小組已完成評論報告定稿，業於 2015 年 5 月 25 日函請相關部會據以修正初步回應表內容，及提供各機關辦理人權教育訓練時之參考。

3. 為落實性別平等，行政院於 2015 年 11 月函頒「『消除對婦女一切形式歧視公約

(CEDAW)』教育訓練及成效評核實施計畫」(2016 年至 2019 年)，規劃內容包含瞭解直接、間接歧視與暫行特別措施，訓練對象包含中央部會及各直轄市、縣市政府一般及高階公務人員，並設定 2017-2019 年之受訓涵蓋率至少達 50%（含實體及數位課程），促進公務人員瞭解 CEDAW 及性別平等內涵，並將性別平等觀念融入相關業務規劃。

4. 衛福部社會及家庭署為推廣兒童權利公約（下稱 CRC），設有兒童權利公約資訊網(http://crc.sfaa.gov.tw)，藉此平臺不定期更新兒童權利公約相關教育訓練教材且及時提供最新活動訊息。另於 2015 年度至 2016 年度間，為各部會及所屬機構、各縣市政府法規單位、民間團體、學校、司法人員等業務需求群體，於全國分區辦理 19 場次教育課程，並針對社會大眾需求，編製「兒童權利公約逐條要義」、「小於 18：聯合國兒童權利公約兒童版」與數位學習教材等提供民眾索取，且補助各地方政府與民間團體辦理兒童及少年權益宣導活動。2017 年度除規劃為業務需求群體賡續辦理分區教育訓練活動外，為加強兒童群體對兒童權利公約之認識，擬提供兒童權利公約宣導動畫予全國中小學製作教案配合宣導，並藉助多元媒體通路擴大宣導效益。
5. 衛福部另依「落實身心障礙者權利公約（CRPD）推動計畫」，為培養未來講解 CRPD 之師資人才，以其順利於各領域推廣 CRPD，衛福部社會及家庭署業於 2015 年 7 月 6 日至 2016 年 3 月 24 日間於北、中、南及東部，針對各級政府機關共舉辦 13 場次「CRPD 簡介」、「國家報告撰寫原則與方式」及「身心障礙者權利公約一般原則與義務」主題培訓工作坊，並建立師資名單，供各級政府機關辦理相關訓練參考。另製作 CRPD 數位學習課程 4 門，以利公務人員線上學習。並於該計畫擬定各部會講習宣導計畫，定期統計各級政府機關相關辦理情形。

英文回應

1. With regard to the education of human rights, the Presidential Office Human Rights Consultative Committee has reached the resolution in the 18th Committee Meeting on July 1, 2015 that “The Executive Yuan is requested to review all competent authorities for covenants on human rights in the stipulation of educational training programs based on the characteristics of the responsibilities of such authorities respectively; in addition, the Executive Yuan shall collaboratively coordinate all agencies in cooperation and providing guidance accordingly”. Based on such resolution, the Executive Yuan has requested the

leading staff organizations including the Human Rights Promotion Task Force, Persons with Disabilities Rights Promotion Task Force, Children and Youth Welfare and Rights Promotion Task Force and Gender Equality Committee of the Executive Yuan to plan educational training programs in relation to the human rights covenants as well as to provide guidance on the implementations handled by each agency.

2. The Ministry of Justice acts as the staff of the Human Rights Promotion Task Force of Executive Yuan. To enhance the promotion of the ICCPR/ICESCR, the status on the education on human rights handled by the Ministry of Justice is as follows:
   (1) According to the “Giant Leap for Human Rights Program”, 6 sessions of “ICCPR/ICESCR Seed Training Camp” were held in 2009, and “ICCPR/ICESCR Learning Map” was implemented during the years from 2010 to 2013 in order to strength the concept of the public servants at all levels on human rights and to establish the perception that administrative actions shall follow the human rights regulations for preventing infringements on human rights.
   (2) Establishing the website of “Giant Leap for Human Rights Section”, and uploading relevant training materials of previous seed training camps, materials and other information related to ICCPR/ICESCR onto the “Giant Leap for Human Rights Section” for downloads and references by all agencies and the public.
   (3) “Human Rights Collection –ICCPR/ICESCR Human Rights Case Studies” and “Human Rights APP - ICCPR/ICESCR Human Rights Case Studies Collection II” was published on March 2011 and December 2012. In addition, five human rights teaching materials of “Giant Leap for Human Rights – Prosecution Section, Correction Section, Administrative Implementation Section, Investigation Section and Anti-corruption Section” of Human Rights Guide Book Series were published in December 2013. All of the aforementioned case study collections and human rights training materials have been uploaded onto the section of “Giant Leap for Human Rights” for download and reference by all agencies and the public.
   (4) Throughout the years of 2013 to 2015, the local administrative learning centers have been appointed to open “Human Rights Affairs Personnel Workshops” in order to strength the knowledge of local public servants on ICCPR/ICESCR in depth and to

allow them to understand the current topics on human rights in the nation.

(5) “Human Rights Education for Facilitators of Ministry of Justice and Agencies thereof” was held in April 2014. After the completion of the training, relevant human rights education teacher name list has been organized and provided as a reference for all agencies in employing instructors for human rights education seminars and events.

(6) “Human Rights Promotion Observation Tour Event” was held in May 2015, in which the responsible personnel in conducting human rights education from the Legislative Yuan, Judicial Yuan, Examination Yuan, Control Yuan, all agencies of Executive Yuan and Governments of Municipalities, Cities (Counties) were invited to participate the event, and in the event, the colleagues of this Department shared the experience on promotion of human rights education conducted by this Ministry, and the human rights facilitators of this Ministry provided demonstrative teaching in order to be used as a reference for all ministries and departments in handling human rights education.

(7) The Presidential Office Human Rights Consultative Committee (Conference Service Section headed by this Ministry) has reached the resolution to establish the “Educational Training Task Force” under the committee, and 7 Educational Training Task Force meetings have been held to the present day. During the meetings, the contents of responses submitted by the responsible agencies were reviewed and the preliminary draft of the comment report was submitted. The preliminary draft has been passed in the 17th Committee Meeting of the Presidential Office Human Rights Consultative Committee, and the Educational Training Task Force has already completed the final version of the comment report. On May 25, 2015, letters were sent out to relevant ministries and departments to provide revisions on the preliminary response form content. In addition, it is provided as a reference for all agencies conducting human rights educational trainings.

3. To enforce gender equality, in November 2015 the Executive Yuan promulgated the “Education and Training Effectiveness Assessment and Implementation Plan for ‘The Convention on the Elimination of all Forms of Discrimination against Women, CEDAW’ 2016-2019”. The content of the plan covers the understanding of direct and indirect discrimination and temporary special measures. Training targets include general and

high-ranking public servants of central government departments, municipality departments, and local government departments. The plan also sets a minimum training (including both physical and e-learning courses) coverage rate during 2017-2019 at 50% for public servants to understand the contents of CEDAW and gender equality and thereby include gender equality when planning relevant business.

4. In 2015-2016, for overall promoting the Convention on the Rights of the Child (hereinafter referred to as the CRC), the Social and Family Affairs Administration Ministry of Health and Welfare (hereinafter referred to as the SFAA) not only built the CRC website (http://crc.sfaa.gov.tw) to publicize relative news, latest activities and teaching material timely, but also officially published “A Commentary on the United Nations Convention on the Rights of the Child” and “Convention on the Rights of the Child, Chinese-Graphical version” in response to the need of the public. Besides, to foster greater the implement of CRC, the SFAA hosted 19 education and training tours for practitioners who engage in affairs concerning with children and youths, and offered assistance to local governments and NGOs to formulate diverse promotional activities. In 2017, in addition to education and training tours for practitioners, the SFAA plans to complete the CRC promotional animation, and then provides as a teaching material used in primary and secondary schools courses, and makes use of diverse media and promotion strategy to expand benefits.
5. In accordance with “The Convention on the Rights of Persons with Disabilities (CRPD) Implementation Plan” to develop the seeded teachers to introduce and explain CRPD in different areas. SFAA hold 13 workshops for government agents during July 6th, 2015 to March 24th, 2016 in North, Middle, South, and East Taiwan. The topics of the workshops include: “CRPD Introduction,” “Reporting Guidelines,” and “The Principals and The Obligations of CPRD.” In addition, SFAA create a list of qualified teachers for government agencies’ reference. Besides, SFAA made 4 CRPD digital courses for government agents. Moreover, government agencies were required to make advocacy plans and report benefits regularly.

共通議題 **General Issues**		
點次	**問題內容(原文)**	**中文參考翻譯**
5	Have there been any derogation measures or restrictions of rights in accordance with Articles 4 or 5 of the Covenant since its ratification in 2009?	自從 2009 年批准《公民與政治權利國際公約》後，有無任何依據公約第 4 條或第 5 條而採取的權利減免或限制措施？

中文回應

1. 我國完全接受《公民與政治權利國際公約》所確認之權利及自由，並要求國內各機關應參照《公約》之立法意旨及人權事務委員會對《公約》所做的解釋，憲法第 22 條亦規定，凡人民之其他自由及權利，不妨害社會秩序公共利益者，均受憲法之保障。憲法第 23 條規定，以上各條列舉之自由權利，除為防止妨礙他人自由、避免緊急危難、維持社會秩序，或增進公共利益所必要者外，不得以法律限制之。
2. 我國自批准《公民與政治權利國際公約》後，未曾依公約第 4 條或第 5 條採取相關權利減免或限制措施。

英文回應

1. The Republic of China completely accepts rights and freedoms defined in the Covenant and asks individual domestic agencies to refer to the legislative purpose of the Covenant and the Human Rights Committee's interpretation of the Covenant. Article 22 of the Constitution also stipulates that other freedoms and rights of the people, as long as they are not obstructing social order and public interest, shall be protected by the Constitution. Article 23 of the Constitution says that "All the freedoms and rights enumerated in the preceding Articles shall not be restricted by law except such as may be necessary to prevent infringement upon the freedoms of other persons, to avert an imminent crisis, to maintain social order or to advance public welfare."
2. There is no any derogation measures or restrictions of rights in accordance with Articles 4 or 5 of the Covenant has been taken since 2009.

第 1 條 (請參見第 27 條)

Article 1: please refer to the section on Article 27

第 2 條

Article 2

點次	問題內容(原文)	中文參考翻譯
6	In para 8 of the report it is stated that pursuant to the Implementation Act Relating to the International Covenants, the review of current regulations that do not comply with the principles of ICCPR and ICESCR is on- going. Among others, significant laws that have been identified as not completely in compliance are the Nationality Act, Detention Act, and the Code of Criminal Procedure. It is also stated that the acts concerned have been submitted in 2012 to the Legislature Yuan to be amended. Please indicate obstacles faced in completing the amendments and whether a time frame has been set for completion of the amendments.	政府《公政公約第二次國家報告》第 8 點提到依據兩公約施行法，不符兩公約的法規檢討仍持續進行中。其中被認為不完全符合的重要法律為國籍法、羈押法及刑事訴訟法。並指出上開法律修正案已於 2012 年送交立法院。請指出在完成法律修正時所面臨的障礙以及是否有設定應於一定期間內通過修正案。

中文回應

有關不符「兩公約」法令檢討之 263 案，截至 2016 年 11 月 15 日止，未能如期完成檢討之案例計 38 案，進度如下：

1. 法律案計 30 案(計 10 項法律)：業有 20 案(計 5 項法律: 集會遊行法、國籍法、刑事訴訟法、工業團體法、消防法)送請立法院審議。其餘 10 案(計 5 項法律:少年事件處理法、羈押法、勞工保險條例、勞資爭議處理法、工會法)，現由主管機關研議中，將儘速送行政院轉立法院審議。

2. 命令案計 7 案(計 2 項命令)：俟其授權依據之母法經立法院修正通過後，即儘速能配合修正。
3. 行政措施案計 1 案：本案為法務部主管之改善監獄及看守所超額收容情形，惟其非屬修法作業，須中長期之規劃與調整，以改善超額收容的問題。
4. 法務部已函請各主管機關將未通過之法案提列為行政院亟需立法院在第 9 屆優先審議通過之急迫性法案；並請各權責機關積極與立法院溝通，加速推動尚未如期完成修正之法律案能於立法院儘速審查通過。

英文回應

With regard to the review on the 263 cases not complying with the "ICCPR/ICESCR" regulations, as of the date of November 15, 2016, there are 38 cases that have not been amended according to the schedule, and the progress is as follows:

1. 30 Law cases (10 Acts in total): 20 cases (5 Acts in total: Assembly and Parade Act, Nationality Act, Code of Criminal Procedure, Industrial Group Act, Fire Services Act) have been submitted to the Legislative Yuan for review. The remaining 10 cases (5 Acts in total: Juvenile Delinquency Act, Detention Act, Labor Insurance Act, Act for Settlement of Labor–Management Disputes, Labor Union Act) are currently under stipulation by the competent authorities and will be submitted to the Executive Yuan for forwarding to the Legislative Yuan for review.
2. 7 Order cases (2 Orders in total): Upon the parent laws under which the orders are authorized revised and approved by the Legislative Yuan, such orders will be amended accordingly and promptly.
3. 1 Administrative Measure case: This case refers to the improvement of prisons and the condition of excessive prison inmates led by the Ministry of Justice; however, this is not a law revision operation, and it requires a long-term planning and adjustment in order to improve the issue of excessive prison inmate population.
4. Ministry of Justice has sent letters to all competent authorities to list the acts not yet passed as the urgent acts requested by the Executive Yuan for the Legislative Yuan to review in priority in the 9th session. In addition, all responsible agencies are requested to actively communicate with the Legislative Yuan in order to expedite and promote the law cases not

yet amended completely as scheduled and to allow such cases to be reviewed and passed by the Legislative Yuan promptly.

第 3 條

Article 3

點次	問題內容(原文)	中文參考翻譯
7	The Report provides information on pages 6-8 that between 2012 and 2014, the percentage of women as senior civil servants, (including political appointees) while increasing, still lags behind that of men (27.87% to 31.10%). Please provide information on whether there are policy measures such as the use of temporary special measures to accelerate the pace of women's participation in senior managerial positions not only on the basis of gender but also on the basis of indigenous status and disability. If not whether such policy measures will be considered.	根據政府《公政公約第二次國家報告》中文版第 4 至 6 頁，就 2012 至 2014 年間女性佔高階公務員（包括政治任命者在內）之比例雖然逐漸增加，但仍然落後於男性（從 27.87%增加至 31.10%）。請就是否有諸如採用暫時特別措施之政策措施以便加速女性擔任高階管理職位，除性別外也納入原住民族身份與障礙考量。若無，則請說明是否會考慮採用這類政策措施。

中文回應

銓敘部前於 2013 年 4 月 26 日函致中央暨地方各主管機關，各機關職務出缺遞補人員時，在不違反績效陞遷原則，以及候選人員資歷相當情形下，於考量機關性別比例現況後，建議優先晉升表現優異且具發展潛能之少數性別(女性或男性)，以促進性別平等。

英文回應

On April 26, 2013, the Ministry of Civil Service issued an official document to the central and regional agencies. If there are vacancies, it is recommended to promote the minority in gender

(female or male) with excellent performance and potential for development when the candidates have similar performance and qualifications in order to promote gender balance.

第 3 條

Article 3

點次	問題內容(原文)	中文參考翻譯
8	In response to para 26 of the previous Concluding Observations which recommended the creation of knowledge of rights of women under CEDAW among society, government officials and the judiciary, so that all branches of Government have the capacity to apply CEDAW as a framework for all laws, court verdicts and policies on gender equality, the Responses to the Concluding Observations refers (page 19), to the 2 nd periodic report of CEDAW para 2.18 which lists several promotional activities on gender equality via TV, radio and the theater. The CEDAW report also states that the government has provided a digital learning course about CEDAW on its website. Besides such promotional activities, please provide information on whether all officials, judicial officers, law enforcement personnel and legislators in concerned government agencies received training continuously on the nature and content of the obligation to implement CEDAW. Please also provide information on how such training is evaluated for effectiveness and results.	國際審查專家在《2013 年結論性意見與建議》第 26 點，建議政府應使社會整體和政府各部門與各層級的司法體系皆能深知《消除對婦女一切形式歧視公約》所規定的女性權利，使《消除對婦女一切形式歧視公約》作為所有法律、法院判決及政策的架構。政府在其《回應結論性意見與建議》報告（中文版第 11 頁）引用《消除對婦女一切形式歧視公約第 2 次國家報告》第 2.18 點，列出數個透過電視、廣播及電影院播出的性別平權推廣活動。除此之外，請就相關政府機構內是否所有官員、司法官員、執法機關人員及立法者在落實《消除對婦女一切形式歧視公約》之義務的本質與內容方面均持續獲得訓練，提供資訊。

中文回應

1. 為落實性別平等，行政院於 2015 年 11 月函頒「『消除對婦女一切形式歧視公約(CEDAW)』教育訓練及成效評核實施計畫」(2016 年至 2019 年)，訓練對象包含中央部會及各直轄市、縣市政府公務人員，促進公務人員瞭解 CEDAW 及性別平等內涵，並將性別平等觀念融入相關業務規劃。
2. 法官學院每年均辦理庭長、法官及相關司法人員之 CEDAW 及性別平權等教育訓練課程，充分落實性別平權於司法權之行使。

英文回應

1. To enforce gender equality, in November 2015 the Executive Yuan promulgated the "Education and Training Effectiveness Assessment and Implementation Plan for 'The Convention on the Elimination of all Forms of Discrimination Against Women, CEDAW' 2016-2019". Training targets include general and high-ranking public servants of central government departments, municipality departments, and local government departments for public servants to understand the contents of CEDAW and gender equality and thereby include gender equality when planning relevant business.
2. The Judges Academy conducts CEDAW and gender equality education courses for judges and relevant judicial personnel every year to fully implement gender equality in the exercise of judicial power.

第 6 條

Article 6

點次	問題內容(原文)	中文參考翻譯
9	In Table 45 of the Core Document (page 44), the Government reports a significant increase in the number of deaths in custody in 2015. Did the Government carry out a thorough investigation into the causes of these 13 deaths in custody? If so, what were the results of these investigations?	政府於共同核心文件之表 45（中文版第 33 頁）提到 2015 年收容人在監死亡人數有顯著增加。政府對這 13 名收容人的死亡原因是否做過徹底調查？如果是，調查的結果為何？

中文回應

2015 年 1 月至 10 月在監死亡共計 13 人，經查 6 人為因病死亡，7 人則為非病死。6 名因病死亡收容人之病因分別為:1.心因性休克2.代謝性休克及酒精性肝病變3.低血容性休克及食道靜脈爆裂 4.心因性休克 5.冠狀動脈阻塞及腦膜炎 6.喉癌。另 7 人非病死(自殺)資料如下：

1. 高雄監獄鄭○○、鄭○○、秦○○、黃○○、黃○○、魏○○等 6 名受刑人於 2015 年 2 月 11 日持槍挾持人質，因脫逃不成而僵持困於該監車檢站，該 6 名受刑人於翌日凌晨陸續持槍自戕，遺體業經高雄地方法院檢察署檢察官及法務部法醫研究所相驗後結案。
2. 臺北女子看守所受刑人江○○於 2015 年 4 月 16 日凌晨以垃圾袋套入頭部，並以棉被覆蓋於頭部，是日起床早點名時，經所方發現生命徵象微弱，緊急戒送醫院經急救後宣告不治。全案業經調查並保存相關監視影像紀錄，相關資料報請新北地方法院檢察署檢察官相驗，檢察官為求慎重起見，擇於 2015 年 4 月 24 日會同法醫、收容人家屬及所方人員完成遺體解剖，相驗結束後即由家屬領回遺體結案。

英文回應

From January to October of 2015, a total of 13 inmates died while in the custody. Six of these deaths were due to illness-related cause as seven others were unnatural deaths. The causes of the ill-related deaths of in-custody inmates are: 1) cardiogenic shock, 2) metabolic shock and alcohol-related liver disease, 3) hypovolemic shock and esophageal vein bleeding, 4) cardiogenic shock, 5) coronary artery blockage and meningitis, 6) laryngeal cancer. The information relating to the 7 unnatural deaths (suicide) is provided below:

1. On February 11, 2015, gunmen Cheng, Cheng, Chin, Huang, Huang and Wei, all convicts serving their sentences in Kaohsiung Prison, took hostages in an attempt to escape from the prison. The inmates' attempt came to a deadlock as they were besieged at the vehicle check point of that prison. The six inmates, one after another, committed suicide with guns on the next day at the dawn hours. The bodies were sent for post-mortem examination by the Prosecutors Office of Kaohsiung District Court and the Forensic Medicine Institute of Ministry of Justice. The case was closed after the examination.
2. On April 16, 2015, during the hours before dawn, Jiang, an inmate serving her sentence at Taipei Women's Detention Centre, placed a garbage bag over her head and further covered

her head with a blanket. The Detention Centre found her with extremely weak vital signs during the morning roll call and immediately sent her to a hospital for emergency care. She was declared dead in the hospital. An investigation was opened on the incident as the related video records and information were preserved as evidence. The incident was reported to the Prosecutors Office of New Taipei City District Court for post-mortem examination. The prosecutor decided to take a cautious approach and ordered an autopsy performed in the presence of a forensic doctor, the inmate's family and the representative of the detention centre on April 24, 2015. The deceased's body was released to the family after the post-mortem examination. The case was then closed.

第 6 條

Article 6

點次	問題內容(原文)	中文參考翻譯
10	In 2013, six persons were executed, in 2014, five persons, and in 2015 again six persons. This shows that the number of executions has not declined despite the strong recommendations of the international experts during their examination of the First Report of Taiwan. In § 177 of its Response, the Government alleges that the periodic resolutions of the UN General Assembly calling upon all States to suspend the carrying out of death sentences "cannot, for the time being, serve as the legal basis for our country to suspend the death penalty". Is the new Government of Taiwan willing to take decisive action to abolish the death penalty in accordance with Article 6 paras 2 and 6 and Article 7 of the Covenant or at least to adopt a moratorium in	在 2013 年有 6 人被處決，2014 年有 5 人被處決，在 2015 年又有 6 人被處決。這表示，即便國際專家於審查臺灣第一次國家報告時曾就此議題做過強烈建議，處決人數並未減少。在《回應結論性意見與建議》第 177 點，政府聲稱聯合國大會諭請各國暫停執行死刑的周期性決議「暫時不能作為我國暫停執行死刑的法律依據」。臺灣的新政府是否願意採取決定性的行動以便廢除死刑而符合《公政公約》第 6 條第 2、6 項及第 7 條之規定，或至少採取暫時不執行死刑而符合聯合國大會的相關決議？

	accordance with the relevant resolutions of the General Assembly?	

中文回應

1. 依歷年民調，反對廢除死刑者始終約有七成至八成，惟不論贊成或反對廢除死刑者，均認同應審慎使用死刑。因此，我國歷年來之死刑政策均致力於審慎使用死刑，同時廣納各界意見，研擬相關配套措施，以逐步減少死刑使用之方式，現階段我國死刑政策是「維持死刑，但審慎(減少)使用」。
2. 死刑存廢政策與應否執行死刑係不同層面之議題，應分開討論。就死刑應否廢除，可以透過理性討論、召開研討會、座談會公開辯論，使不同立場者透過持續對話而尋求最大之共識。惟就已經定讞之死刑判決，除有法律規定停止執行之事由外，在取得臺灣大多數民眾共識及立法院修法廢除死刑以前，法務部自有依法執行之責任，但會採取審慎執行之作法。法務部對於死刑之執行至為慎重，對於死刑審核程序至為嚴謹，必窮盡一切法律途徑，求其生而不可得之情況下，始令准執行。法務部為妥慎審核死刑案件之執行，以保障人權，訂有「審核死刑案件執行實施要點」。就最高法院三審判決死刑定讞之案件，須經過最高法院檢察署及法務部反覆審核確認案件已無再審、非常上訴、聲請司法院大法官解釋、受刑人在心神喪失中等停止執行事由，及未經總統赦免後，法務部長始能令准執行。
3. 我國就三審定讞尚未執行之死刑犯，因相關人犯之判決定讞時間已有一定時日，為求程序更為周延完整、僅可能消除一切爭議，本部現正請最高法院檢察署參考國際間如美國人權聯盟（Civil Liberty Union）「無辜計畫」（Innocence Project）對於死刑存廢意見及美國司法部對於死刑救濟之做法，進一步檢視目前待執行死刑犯之案件是否有（一）指認錯誤、（二）鑑定不可靠、不完善、（三）鑑識科學欠缺一致標準、（四）檢警偵訊不當行為、（五）辯護不力或不適任、（六）秘密證人不可靠等情形，以求慎重。
4. 另最高法院檢察署亦已報部核定「最高法院檢察署辦理爭議性死刑確定案件審查作業要點」，將以具體行動廣徵社會對爭議性死刑確定案件之多元專業意見，消除公眾對死刑確定案件之重大爭議。

英文回應

1. According to past opinions polls, around 70-80% of the general public is opposed to abolishing the death penalty. However, citizens who are in favor of the death penalty or oppose abolishment thereof advocate prudent use of this penalty. Death penalty related policies in the past therefore always prescribed prudent use of the penalty and widely incorporated different opinions. Supporting measures have been devised to gradually reduce the use of the death penalty. The current death penalty related policies of Taiwan can be summarized as “maintenance of the death penalty and prudent (reduced) use of it.”
2. Maintenance/abolishment of the death penalty and execution thereof are different issues and should be discussed separately. The issue of abolishment of the death penalty can be discussed in a rational manner and openly debated in seminars and forums to reach the widest consensus of various positions through continued dialog. If a final verdict upholding the death penalty has already been reached, the Ministry of Justice is legally obliged to execute the sentence prior to abolishment of the death penalty by consensus of a wide majority of Taiwanese citizens and amendment of relevant laws by the Executive Yuan unless execution is suspended for legal reasons. However, the sentence must be executed in a prudent manner. The Ministry of Justice executes death sentences in a cautious manner after a rigorous review process. All legal channels must be exhausted before the death penalty is carried out when no other alternatives exist. The Ministry of Justice has formulated the Implementation Guidelines Governing the Review of the Execution of Death Penalty Cases to ensure a thorough review of such cases and safeguard human rights. Third-instance verdicts on death sentence cases by the supreme court must be constantly reexamined by the Supreme Prosecutors Office and the Ministry of Justice to confirm that no reasons exist for suspension of execution of the sentence such as retrial, extraordinary appeal, request of interpretation by the Grand Justices, state of insanity of the convict, or amnesty by the president before execution may be authorized by the Minister of Justice.
3. Taiwan also seeks to improve and perfect its procedures for convicts on death row after three-instance verdicts with long imprisonment times in order to eliminate all controversies as far as possible. The Ministry of Justice has therefore requested the Supreme Prosecutors

Office to further investigate current death penalty cases to determine with reference to international methods such as the stance of the Innocence Project of the US Civil Liberty Union on maintenance/abolition of the death penalty as well as judicial relief of death sentences advocated by the US Department of Justice whether (a) identified errors (b) unreliable or incomplete analysis (c) lack of consistent forensic standards (d) inappropriate behavior during interrogations by law enforcement agencies (e) inefficient or unqualified defense (f) unreliable secret witnesses exists.

4. The Supreme Prosecutors Office has also notified this Ministry to approve the "Operational Guidelines Governing the Review of Controversial Concluded Death Penalty Cases by the Supreme Prosecutors Office". The goal is to widely solicit diverse professional opinions on controversial death penalty cases through concrete action to eliminate major public controversies on such cases.

第 6 條

Article 6

點次	問題內容(原文)	中文參考翻譯
11	In § 68 of its Second Report Submitted under Article 40 of the Covenant (hereinafter referred to as "Report"), the Government submits that the Ministry of Justice has assembled in 2010 a task force that specializes in the gradual elimination of the death penalty. "Following an order issued by the Ministry of Justice to execute six death row convicts on December 21, 2012, some members openly expressed their decisions to leave the task force, which left the task force short of the minimum size to continue its functions". Does the current Government intend	在《公政公約第二次國家報告》第 68 點，政府提到法務部於 2010 年召開逐步廢除死刑研究推動小組。「2012 年 12 月 21 日法務部執行槍決 6 名死刑犯後，部分委員對外公開表示退出該小組，故該小組均因出席委員法定人數不足而未能持續進行」。目前的政府是否願意重新設立工作小組以便達成其逐步廢除死刑之目標？

	to re-establish this task force in order to achieve its aim of gradually eliminating the death penalty?	

中文回應

未來我國將持續朝向「逐步減少死刑使用」之方向努力，且將以更為多元之方式強化死刑議題之教育與宣導，並研擬相關配套方案，以兼顧被害人權益維護及人權保障，不會限定特定形式或名稱之工作小組，務求在凝聚民意共識、消弭民眾疑慮，且有合理、合宜之替代方案下，檢討死刑存廢政策。

英文回應

In the future, Taiwan will continue to make determined efforts to “gradually reduce the use of the death penalty” and strengthen education on death penalty related issues through more diversified methods. Relevant supporting programs will be devised to ensure that the rights and interests of victims are protected and human rights are safeguarded. Task forces in different forms and with different designations will strive to achieve public consensus, dispel worries of the general public, and review policies on the maintenance/abolition of the death penalty under the premise that reasonable and viable alternatives exist.

第 6 條

Article 6

點次	問題內容(原文)	中文參考翻譯
12	Have there been any executions carried out in 2016, and in particular since the new Government took office?	2016 年是否曾執行死刑，特別是新政府就任以後？

中文回應

2016 年截至 12 月 26 日執行死刑者為 1 人（鄭 O，隨機殺人犯罪，造成 4 人死亡），且係 520 蔡總統就職前所執行。

英文回應

This year (2016), one person has been executed so far (Zheng XX, random killer, responsible for the death of four victims). This death penalty was carried out prior to the inauguration of President Tsai.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
13	In § 83 of its Report, the Government states that it "already has laws that prohibit crimes similarly to what is described as torture" in Article 7 of the Covenant and Article 1 CAT. These crimes are further specified in §§ 191 to 193 of the Response. Does the Government intend to enact a crime of torture in full line with the definition of torture under international law with appropriate penalties?	《公政公約第二次國家報告》第 83 點提到現有法律對於類似於《公政公約》第 7 條與《禁止酷刑公約》第 1 條所稱之酷刑犯罪已予禁止。這些犯罪在《政府回應結論性意見及建議之影子報告》第 191 至 193 點有進一步說明。政府是否願意制定完全符合國際法酷刑定義的酷刑犯罪並施以適當刑度？

中文回應

我國禁止酷刑之法律：(1) 刑法第 125 條、第 126 條、第 134 條、第 277 條、第 286 條、第 296 條、第 296 條之 1、第 302 條、第 304 條、第 305 條、第 231 條之 1；(2) 殘害人群治罪條例第 2 條至第 5 條；(3) 陸海空軍刑法第 44 條；(4) 人口販運防制法第 36 條；(5) 兒童及少年性剝削防制條例第 41 條。符合國際法酷刑定義的酷刑犯罪並施以適當刑度。

英文回應

Laws prohibiting torture in Taiwan: (1) Criminal Code Article 125, 126, 134, 277, 286, 296, 296-1, 302, 304, 305, 231-1; (2) Statute on the Crime of Genocide Article 2- Article 5; (3) Armed Forces Criminal Act Article 44 (4) Human Trafficking Prevention Act Article 36; (5) Child and Youth Sexual Exploitation Prevention Act Article 41. Torture is defined and punished in a proper manner pursuant to international laws.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
14	In § 250, CW criticizes the draft "Act for the Prevention of Crimes against Humanity and Torture" and recommends to prevent its "rushed enactment in a third reading". Has this draft bill been reintroduced into the current Ninth Legislative Yuan?	人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 222 點批評「防治反人類罪及酷刑罪條例」草案並建議不要「倉促完成三讀」。該草案是否已於第九屆立法院重新提出？

中文回應

就推行「禁止酷刑公約」部分，內政部警政署已完成制定公約施行法草案，目前將持續整合各機關意見，以及研擬成立公約推動小組，儘速依法制作業程序進行立法。

英文回應

The National Police Agency has completed the formulation CAT draft. The Agency will continue to integrate comments from various agencies, as well as set up a promote group, as soon as possible in accordance with operating procedures for legislation.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
15	Does the Government intend to establish an independent body to effectively investigate and prosecute every allegation and suspicion of torture in accordance with Articles 12 and 13 of CAT?	政府是否願意設立符合《禁止酷刑公約第 12、13 條之獨立機構而有效地調查與起訴每一項酷刑之指控及嫌疑？

中文回應

1. 為推動《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》(簡稱禁止酷刑公約，CAT)及其任擇議定書(OPCAT)內國法化，內政部目前正研擬《禁止酷刑公約施行法》草案，並擬將我國之國家防範機制(NPM)設置於監察院。
2. 監察院為我國五權憲法體制下的監察機關(ombudsman)，依據法律獨立行使職權。監察院得依據國際人權規範檢視政府機關之作為，就侵害人權事件(包括酷刑案件)進行調查後，函請政府機關改善，對於法制面或通案性缺失，監察院亦可函請政府機關研議修法或研訂相關政策，並得針對重大違法失職案件進而提出彈劾或糾舉；並持續追蹤政府機關改善成效。

英文回應

1. To adopt the Convention against Torture (CAT) and its Optional Protocol (OPCAT), the Ministry of Interior (MOI) is drafting an enforcement act, and intends to establish the National Preventive Mechanism (NPM) under the Control Yuan.
2. The Control Yuan is the national ombudsman office under the five-power constitution of the ROC. It independently exercises its functions. The Control Yuan is able to supervise government agencies at all levels to implement their duties in accordance with international human rights instruments. Once the investigation into a major human rights violation (including torture) case is completed, the Control Yuan can, in the lights of

findings, make recommendations and propose corrective measures to the relevant public agencies for improvement, as well as request the competent authorities to amend any inappropriate policy or law so as to rectify the institutional and systemic problem. The Control Yuan can also impeach and censure officials who severely violated the laws. To confirm progress of improvements, the Control Yuan follows up with the government agency on any case until the major correction is made.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
16	Does the Government intend to establish an independent and effective national preventive mechanism in accordance with OPCAT with the power to carry out unannounced preventive visits to all places where persons may be deprived of personal liberty?	政府是否願意設立符合《禁止酷刑公約任擇議定書之獨立與有效的國家預防機制而有權突襲訪查所有拘禁人身自由之處所。

中文回應

1. 為推動《禁止酷刑和其他殘忍、不人道或有辱人格的待遇或處罰公約》及其任擇議定書內國法化，內政部目前正研擬《禁止酷刑公約施行法》草案，並擬將我國防範酷刑之國家防範機制(NPM)設置於監察院，以執行議定書第 4 章所載之國家防範機制相關工作。
2. 監察院為我國五權憲法體制下的監察機關(ombudsman)，依據法律獨立行使職權，除受理人民陳情、調查、糾正、彈劾、糾舉外，並得依《監察法》第 3 條及《監察院巡迴監察辦法》規定，定期巡察中央與地方機關及其工作設施，以調查各級政府機關及其公務人員有無違法失職情形。依現行法定編制，監察院除人權保障委員會外，並設有司法及獄政委員會等 7 個常設委員會，得就警察、國安系統、軍隊、監獄及其他收容中心等最容易迫害人權的場域進行定期巡察，以為預防性的監督；一旦發動調查，

監察委員並得就上開地點進行履勘，以發掘事實真相，發揮國家防制酷刑機制。未來禁止酷刑公約經內國法化後，監察院更能透過施行法之授權，強化巡察拘留或監禁處所等功能，承擔外控、獨立及具公信力之國家防範機制，以預防被剝奪自由者遭受酷刑和其他殘忍、不人道或侮辱之處遇，善盡人權保護職責。

英文回應

1. To adopt the Convention against Torture (CAT) and its Optional Protocol (OPCAT), the Ministry of Interior is drafting an enforcement act, and intends to establish the National Preventive Mechanism (NPM) under the Control Yuan to fulfil the mandates as stipulated in Part IV of the OPCAT.
2. Under the five-power constitutional system, the Control Yuan is the national ombudsman office in ROC. It independently exercises its functions, which include receiving and handling of people's complaints, conducting investigations, proposing corrective measures, and exercising impeachment and censure powers. Article 3 of the Control Act also provides that the Members of the Control Yuan shall conduct circuit supervision at both the central and local levels to investigate any neglect of duty or violation of law by public agencies and their staff. Besides the Human Rights Protection Committee, there are seven other standing committees under the Control Yuan, which also include the Judicial and Prison Administration Affairs Committee. CY Members of this committee conduct regular preventive supervision of police and national security systems, military, prisons, and other detention centers where human rights violations are most likely to occur. Should an investigation be initiated, CY Members may conduct truth-finding inspection at the aforementioned sites to bring NPM into force. Once the CAT is ratified as part of domestic laws, under the enforcement act, the Control Yuan would be able to strengthen its circuit supervision of detention centers and prisons. The Control Yuan shall become an independent NPM with credibility and fulfill our responsibility in human rights protection so that no people who are deprived of their liberty are subjected to torture or to cruel, inhuman or degrading treatment or punishment.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
17	In § 90 of its Report, the Government states that amendments were made to Article 8 of the Educational Fundamental Act with the aim to "prohibit students being subjected to any form of corporal punishment that would damage their physical or mental health". Does this mean that corporal punishment which is not proven to damage the physical or mental health of students is still permitted under this act?	《公政公約第二次國家報告》第 90 點提到教育基本法第 8 條修正草案目的係為了「防止學生受到損害其身體或心理健康之任何形式的體罰」。這是否表示不會損及學生身體或心理健康的體罰仍為該法所允許？

中文回應

1. 依教育基本法第 8 條「學生之學習權、受教育權、身體自主權及人格發展權，國家應予保障，並使學生不受任何體罰及霸凌行為，造成身心之侵害。」
2. 依教育部所訂「學校訂定教師輔導與管教學生辦法注意事項」第 5 點，體罰係指教師於教育過程中，基於處罰之目的，親自、責令學生自己或第三者對學生身體施加強制力，或責令學生採取特定身體動作，使學生身體客觀上受到痛苦或身心受到侵害之行為。
3. 禁止體罰為教育部既定政策，因此只要是符合上述定義之體罰，都是不被允許的。

英文回應

1. According to Article 8 of the Educational Fundamental Act, "Students' rights to learning and education, the right to develop mentally and physically shall be protected by the country, and students shall be safeguarded against any mental or corporal punishment and bullying."
2. Point 5 of the "Procedures of School Regulations on Counseling and Disciplining

Students" formulated by the MOE defines corporal punishment as conduct by the teacher during the teaching process and for the purpose of punishing a student, in which the teacher personally exerts physical force on the student's body, or orders the student in question or another individual to do so, or orders the student to undertake a particular physical action which from an objective perspective can be considered to result in physical pain or physical and mental or emotional duress for the student.

3. Prohibiting corporal punishment is the established policy of the Ministry of Education. Therefore, any punishment which meets the definition given above is not permitted.

第 7 條

Article 7

點次	問題內容(原文)	中文參考翻譯
18	Is corporal punishment still permitted in any institution, including the military, schools, special educational institutions or the family?	體罰在任何機構中是否仍被允許，包括軍隊、學校、特殊教育機構或家庭之中？

中文回應

1. 依教育基本法第 8 條「學生之學習權、受教育權、身體自主權及人格發展權，國家應予保障，並使學生不受任何體罰及霸凌行為，造成身心之侵害。」因此，體罰學生是不被允許的。
2. 以臺灣警察專科學校為例，該校職司基層員警教育訓練，教育目標是以「理論與實務結合、學識與技能並重」為原則，培養具備專業知能、強健體魄、優異技能、人文素養、高尚品操與遵守團隊紀律之基層警察人員。其願景在「型塑優良的警察、建立絕佳品牌」，故養成教育及訓練過程中絕不允許以任何體罰方式教育學員生。
3. 依監獄行刑法施行細則規定，監獄管理人員執行職務應注意受刑人之利益，故對於監禁處所的管教人員教育訓練中，皆包含管理人員應依法管教並嚴禁體罰之課程。又對於收容人運動活動之實施，除以有益其身心健康及行為適應之目的為限外，並將溫度、溫度等天候狀況納入考量，嚴禁有體罰之活動。另對於違規收容人，嚴禁以體罰

之方式作為管教措施，並不得以施用戒具或收容鎮靜室作為懲罰收容人之方法。

至於收容人如有遭受體罰或不當管教時，除依法得向監所或監督機關提出申訴外，按法務部矯正署分區視察所屬各矯正機關實施要點第 8 點第 2 款：「視察人員於執行視察業務時，得進行下列作為：（二）接見或約談收容人，或訪問其他當事人、關係人。」規定，是以法務部矯正署視察人員前往矯正機關時，得依規定接見或約談收容人，提供收容人意見反映之管道。惟經瞭解近年來並無收容人提及遭受體罰或不當管教之申訴案件。

4. 我國國防部嚴禁任何形式的體罰行為，對所屬官士兵之過犯行為，均依陸海空軍懲罰法之相關規定予以行政懲罰，如有施以陸海空軍懲罰法以外之懲罰，將屬觸犯陸海空軍刑法之刑事犯罪。
5. 依兒童及少年福利與權益保障法第 49 條及第 56 條規定，包括父母、監護人及其他家庭成員在內之人，皆不得對兒童及少年有身心虐待或有損害兒少利益之不正當之行為。家庭中發生之虐待或體罰，可能影響兒少人身安全及身心發展，政府以接受通報、緊急處理、調查及處遇方式進行防治，並對父母、監護人等家庭成員施以親職教育，避免兒少再次遭到身心虐待或體罰。

英文回應

1. According to Article 8 of the Educational Fundamental Act, “Students’ rights to learning and education, the right to develop mentally and physically shall be protected by the country, and students shall be safeguarded against any mental or corporal punishment and bullying.” Administering corporal punishment for students is therefore not permitted.
2. Taiwan Police College takes charges of the police education and training. The educational goal of this school is based on the principles of "integration of theory and practice" and "equal emphasis on knowledge and skills", to cultivate grassroots law enforcers who are equipped with professional knowledge and capability, strong physique, humanistic cultivation, integrity and morality, organizational discipline. The ultimate perspective lies in cultivating excellent police officers and building the distinguished brand. So, in the training and educational process, corporal punishment is not permitted.
3. According to the Enforcement Rules of the Prison Execution Law, the prison management personnel should pay attention to the interests of the inmates. Therefore, the education and

training of the management personnel include courses concerning the requirements that the management personnel should carry out disciplinary actions in accordance with law, and corporal punishment is strictly prohibited. On the inmate's physical exercise and activities, other than having them limited to those which are beneficial to physical and mental health and behavioral adaptation, the weather and temperature are taken into account, and activities with corporal punishment is strictly forbidden. For inmates who violate the regulations, it is strictly forbidden to use corporal punishment as a form of correctional measures, or use punishment devices or sedation rooms as a way of punishing the inmates. In the event of corporal punishment or improper corrections, the inmate may file a complaint with the superintendent or the supervisory authority in accordance with the law. Furthermore, in accordance with paragraph 2 of Point 8 of the Implementation Guidelines for the Inspection of the Agency of Corrections of the Ministry of Justice on Regional Correction Agencies: "in the course of an inspection, the following activities may be carried out: (2) to meet or interview the inmate, or to visit other parties or related persons". Therefore, the inspector of the Agency of Corrections of the Ministry of Justice may meet or interview the inmate, and act as a conduit of the views of the inmate. It is understood that in recent years there has been no inmate complaints concerning corporal punishment or improper corrections.

4. Any form of corporal punishment is prohibited in our troops. If an active soldier violates the administrative regulation of any kind or commits the wrongful act(s), he/she might be punished by the Armed Forces Punishment Act. Once a commander who does not punish the subordinate by the Armed Forces Punishment Act, he/she might violate the Criminal Code of the Armed Forces.
5. All people including parents, guardians and other family members can neither abuse children physically or mentally nor do any improper behaviors against children's interest pursuant to Article 49 and 56 of the Protection of Children and Youths Welfare and Rights Act. Corporal punishment or abuse in the family would endanger children's safety and development, and the authority would prevent and intervene in those maltreatments by receiving report, emergent response, investigation, and treatment services. The parents, guardians and other family members who violate the Act would also be ordered to accept

parental education by the authority to prevent the children from being abused or punished corporally again.

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
19	In § 109 of its Report, the Government submits that victims of human trafficking have been mostly from China and Southeast Asian countries, such as Indonesia, Vietnam, Thailand and the Philippines. In recent years, victims of sexual exploitation have been mostly Indonesians, and victims of labour exploitation mostly involved Indonesians, followed by Vietnamese. According to the Taiwan 2015 Human Rights Report published by the US Department of State, "Principal human rights problems reported during the year were labor exploitation of migrant workers by fishing companies, exploitation of domestic workers by brokerage agencies, and official corruption". Does the Government ensure that foreign victims of human trafficking are granted permanent residence and are protected against being returned to their countries of origin?	在《公政公約第二次國家報告》第 109 點，人口販運的被害人大部分來自中國及東南亞國家，諸如印尼、越南、泰國及菲律賓。近年來，性剝削的被害人大部分是印尼人，勞力剝削的被害人大部分是印尼人、其次是越南人。依美國國務院發布的 2015 年臺灣人權報告，「本年度被報告的主要人權問題是移工被船公司勞力剝削、仲介公司對家庭看護者之剝削，以及政府貪污」。政府是否確保人口販運的外籍被害人能取得永久居留許可且保護其不被遣返本國或本籍？

中文回應

1. 人口販運防制法第 28 條第 3 項規定，人口販運被害人因協助偵查或審判而於送返原

籍國(地)後人身安全有危險之虞者，中央主管機關得專案許可人口販運被害人停留、居留。其在我國合法連續居留五年，每年居住超過二百七十日者，得申請永久居留。根據該規定，被害人得在臺居留及申請永久居留，可有效確保被害人免被遣送回國。

2. 為避免外籍勞工於來臺前遭受不當剝削，外籍勞工來臺工作前所借貸之費用，應記載於「外國人入國工作費用及工資切結書」(以下簡稱工資切結書)上，金額須經外籍勞工簽署切結同意，並經雇主、外籍勞工、我國人力仲介公司及外國人力仲介公司簽署切結，再交由外籍勞工來源國政府查驗，並不得為不利外籍勞工之變更。
3. 國內人力仲介公司不得接受國外債權人委託在臺收取外籍勞工在國外之借款。國內人力仲介公司如有收取國外借款，或有收取標準以外費用情事，則依我國就業服務法相關規定處以罰鍰、停業、廢止許可或不予重新設立許可等處分。
4. 為確保外籍勞工能實領薪資，我國規定雇主除外籍勞工應負擔之勞工保險費、全民健康保險費、所得稅、膳宿費與職工福利金等項目及金額得自薪資中扣除外，應全額直接給付外籍勞工薪資，若未全額給付者，主管機關得限期令其給付或依法裁處以罰鍰，並將廢止雇主之招募許可及聘僱許可之一部或全部。
5. 如外籍勞工遇有雇主未全額給付薪資，或遭仲介公司超收服務費以外費用情事，均可向勞動部所設置 1955 勞工專線進行申訴。

英文回應

1. According to Paragraph 3, Article 28 of the Human Trafficking Prevention Act, if the human trafficking victim’s personal safety may be threatened after his/her repatriation back to his/her country (area) of origin because of his/her assistance in the investigation or trial, the central competent authority may grant stay or residency to him/her on a special case-by-case basis. After continuous legal residency in the ROC for a period of five years and over 270 days per year, the victim may apply for permanent residency. The victim can effectively avoid be deported back to his/her home country by procuring stay, residency, or permanent residency status
2. In order to prevent foreign workers from being subjected to improper exploitation before coming to Taiwan, expenses for foreign workers’ borrowed expenses before they come to work in Taiwan must be recorded in the “Affidavit for Wage/Salary and Expenses Incurred before Entering the Republic of China for Employment” (hereinafter referred to as

"Affidavit for Wage"). The amount must be agreed by the foreign worker and signed in an affidavit by the employers, foreign workers, Taiwan's brokerage agencies and foreign brokerage agencies, must be examined by the government of source country of the foreign workers, and must not be changed unfavorably for foreign workers.

3. Domestic brokerage agencies must not accept entrustments from foreign creditors to collect foreign workers' borrowings abroad in Taiwan. If domestic brokerage agencies collect the foreign borrowings, or if there are any charges other than the standard charge, they will be fined, have their businesses suspended, have their licenses revoked, or be refused approval of their reestablishment licenses in accordance with the relevant provisions of Taiwan's Employment Services Act.
4. In order to ensure that foreign workers can actually receive their salaries, the government of Taiwan stipulates that only the labor insurance premium, the national health insurance premium, the income tax, the boarding expenses and the employee benefits, etc. may be deducted from the salary. If the employer fails to pay the full amount of the foreign worker's wages, the competent authority may order it to pay or impose a fine in accordance with the law, will abolish the employer's recruitment permit and a portion of or the entire employment permit.
5. If foreign workers are not paid in full by the employer or are overcharged by brokerage agencies for fees other than service fees, the foreign workers can appeal through the 1995 Labor Dedicated Telephone Hotline set up by the Ministry of Labor.

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
20	Does the Government intend to ratify and/or implement the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention	政府是否願意批准及/或落實《聯合國打擊跨國組織犯罪公約》之《預防、壓制及懲治販運人口特別是婦女及兒童的補充議定書》（巴勒摩議定書）？

	against Transnational Organized Crime of 2000 (Palermo Protocol)?	

中文回應

我國已將公約內容制定成專法，於 2009 年 1 月 23 日公布「人口販運防制法」，該法並於 2009 年 6 月 1 日施行，具體落實「聯合國打擊跨國組織犯罪公約」之「預防、壓制及懲治販運人口特別是婦女及兒童的補充議定書」(巴勒摩議定書)。

英文回應

Taiwan has converted the content of various conventions into special laws. The Human Trafficking Prevention Act was promulgated on January 23, 2009. Said law was enacted on June 1, 2009 and represents a concrete implementation of the “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” of the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
21	Does the Government intend to ratify and/or implement the ILO Convention No. 189 on Domestic Workers?	政府是否願意批准及/或落實國際勞工組織第 189 號關於家務勞工公約？

中文回應

檢視國際勞工組織第 189 號關於家務勞工所訂事項牽涉整體社經層面甚廣，又考量目前外籍家事勞工之工資、工時及休假，係依家事勞工「來源國」所提契約範本，由勞雇雙方合意並明訂於勞動契約內，以為依循，已提供相當之權益保障。另勞動部亦刻正參照該公約精神，研擬相關法制作業，以進一步保障該等人員勞動權益。

英文回應

The matters relating to domestic workers set forth in International Labor Organization (ILO) No. 189 involve a broad socio-economic dimension. Moreover, the current foreign domestic labor wages, working hours and leave are based on the sample contract provided by the "source country" of the domestic worker, which is agreed upon by employers and employees and expressly stipulated in that labor contract; it already provides a considerable level of protection of their rights. In addition, the Ministry of Labor is currently, in reference to the spirit of the Convention, formulating relevant legal operations to further protect the labor rights and interests of such persons.

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
22	In paragraph 108 of the Second Report, it is stated that the country has signed MoUs with 14 countries up to the period October 2015 with regard to human trafficking prevention. Please provide information on whether these MoUs contain a broad definition of trafficking according to international standards, whether it take a human rights approach to victims of trafficking with provisions that enable them to seek asylum in the countries of destination rather than identifying victims as offenders of immigration laws. Also please provide information on whether the MoUs cater for the specific contexts of women victims in both sending and destination countries as laid out in CEDAW's General Recommendation 26.	《公政公約第二次國家報告》第 108 點提到至 2015 年 10 月間，臺灣已與 14 個國家就防制人口販運簽訂備忘錄。就這些備忘錄是否有著國際標準對人口販運的廣泛定義、是否採用人權取向來對待人口販運被害人，使其能夠在目的地國尋求庇護而不被當作違反移民法的罪犯，請提供資訊。就這些備忘錄是否注意到《消除對婦女一切形式歧視公約》第 26 號一般性建議所提及性被害人在出發國與目的地國的特定情況，亦請提供資訊。

中文回應

經查我國目前與 16 個國家簽署之「移民事務與防治人口販運合作瞭解備忘錄(協定)，旨在共同預防及查處人口販運案件，均未就《消除對婦女一切形式歧視公約》第 26 號一般性建議所提及性被害人在出發國與目的地國的特定情況予以定義或論述。

英文回應

We have signed MoUs with 14 countries up to the period October 2015 with regard to human trafficking prevention. Those MoUs are focus on prevent and investigate human trafficking. As for women victims in both sending and destination countries as laid out in CEDAW's General Recommendation 26 are not involved.

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
23	Paragraph 110 of the Report provides data on a number of cases of labour and sexual exploitation between the years 2012 and 2015. Please provide data on number of cases investigated, indicted and convicted with regard to offenders/traffickers/agents etc.	《公政公約第二次國家報告》第 110 點提供了 2012 至 2015 年之間一些勞動及性剝削的案件。關於行為人/人口販運者/仲介者等等之調查、起訴及定罪的案件數量，請提供數據資料。

中文回應

1. 有關我國 2012 年至 2015 年間查緝人口販運案件統計表如下：

年別	查緝類型		合計	起訴		判刑（人）
	勞力剝削（件）	性剝削（件）		件	人	
2012	86	62	148	169	458	300
2013	84	82	166	118	307	270
2014	51	87	138	102	184	175
2015	44	97	141	63	148	163

2. 有關 2012 年至 2016 年 10 月地方法院檢察署辦理人口販運案件之偵查新收人數、偵查起訴人數及裁判確定有罪人數統計如下表：

地方法院檢察署辦理人口販運案件統計表

單位：人

項目 年別	偵查新收人數			偵查起訴人數			裁判確定有罪人數		
	合計	性剝削	勞力剝削	合計	性剝削	勞力剝削	合計	性剝削	勞力剝削
2012	1,134	506	638	455	408	57	298	233	65
2013	995	496	499	334	246	102	270	209	61
2014	590	342	253	184	153	52	175	146	32
2015	669	457	245	148	128	25	163	135	33
2016.1-10	536	351	186	151	112	43	150	141	22

資料提供：法務部

說明：1.起訴包含通常程序提起公訴及聲請簡易判決處刑。

2.人口販運類別包含性剝削、勞力剝削及器官剝削，自 2009 年 6 月起以「複選註記」方式統計。

3.表列「性剝削」、「勞力剝削」類別統計資料，係依複選註記之統計結果。

英文回應

1. The statistic chart of uncovering, indicting, and sentencing human trafficking cases from 2012 to 2015:

Year	Uncovered type		Total	Indictments		Sentences
	Labor(cases)	Sex (cases)		Cases	Persons	(Persons)
2012	86	62	148	169	458	300
2013	84	82	166	118	307	270
2014	51	87	138	102	184	175
2015	44	97	141	63	148	163

2. Statistics on newly investigated persons, plaintiffs, and convicted criminals involved in human trafficking cases tried by District Prosecutors Offices between 2012 and October 2016:

The statistic chart of Human Trafficking Cases by the District Prosecutors Office

Unit: person

Item	The Number of People of New Cases			The Number of People being Accused			The Number of People Found Guilty		
	Total	sexual exploitation	labour exploitation	Total	sexual exploitation	labour exploitation	Total	sexual exploitation	labour exploitation
2012	1,134	506	638	455	408	57	298	233	65
2013	995	496	499	334	246	102	270	209	61
2014	590	342	253	184	153	52	175	146	32
2015	669	457	245	148	128	25	163	135	33
2016.1-10	536	351	186	151	112	43	150	141	22

Source: Census and Statistics Department of The Ministry of Justice

Note：1.To bring a lawsuit includes bringing an indictment through regular proceeding and apply for summary judgment.

2.The type of human trafficking includes sexual exploitation ,labour exploitation and organ exploitation which are added up with multiple marks since June,2009.

3.The statistics in "sexual exploitation" and "labour exploitation" listed above are added up with multiple marks .

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
24	With regard to the prevalence of child labour between the ages of 16-18, discussed in paragraph 120 of the Report, please provide data on the number of employers penalized for assigning hazardous work to children below the age of 18.	《公政公約第二次國家報告》第 120 點關於 16 至 18 歲童工盛行的討論，請就僱主因指派未滿 18 歲童工從事危險工作而被處罰的案件數量提供數據資料。

中文回應

1. 勞動基準法第 44 條於 2015 年 12 月 16 日修正，童工及 16 歲以上未滿 18 歲之人，不得從事危險性或有害性之工作。
2. 另職業安全衛生法第 29 條亦訂有相關規定。2012 年迄今，計 3 家事業單位雇主指派未滿 18 歲童工從事危險工作，違反職業(勞工)安全衛生法規定，均已移送當地法院地檢署參辦。

英文回應

1. Article 44 of the Labor Standards Act was amended on December 16, 2016 in which no child worker and no worker under eighteen years old are permitted to do work that is potentially dangerous or hazardous in nature.
2. In addition, there are relevant regulations set forth in Article 29 of the Occupational Safety and Health Act. From 2012 to now, employers of three business units have assigned child workers under eighteen years old to work in hazardous jobs; they have been transferred to local courts for prosecution for violating the Occupational (Workers) Safety and Health Act.

第 8 條

Article 8

點次	問題內容(原文)	中文參考翻譯
25	Paragraph 121 of the Report indicates a justification for the prevalence of child labour (16-18 years) in the interest of meeting the financial needs of the children concerned. Please provide information on the number of children between the ages of 16-18 who are working. Further please provide information on how the developmental needs of the children for education, recreation and health are met under those circumstances.	《公政公約第二次國家報告》第 121 點指出 16 至 18 歲童工盛行的原因在於滿足其財務上需求。請就 16 至 18 歲童工的數量提供資訊。請進一步就兒童在上開工作情況下，關於其等在教育、休閒及健康的發展需求方面，提供資料。

中文回應

1. 依行政院主計總處人力資源調查，最近一年(2015 年)16 歲以上未滿 18 歲受僱工作者人數為 5.5 萬。勞動基準法及職業安全衛生法業已規範 16 歲以上未滿 18 歲工作者不得從事危險性或有害性之工作，又勞動基準法亦規範未滿 18 歲之人受僱從事工作者，雇主應置備其法定代理人同意書及其年齡證明文件，以維護前開人員之勞動權益。
2. 依據我國 2013 年 1 月 30 日修正發布之「補習及進修教育法」第 3 條規定，補習及進修教育區分為國民補習教育、進修教育及短期補習教育三種；凡已逾學齡未受九年國民教育之國民，予以國民補習教育；已受九年國民教育之國民，得受進修教育；志願增進生活知能之國民，得受短期補習教育。又依據前開法規第 5 及第 6 條規定略以，進修教育由高級中等以上學校依需要附設進修學校實施之；短期補習教育由學校、機關、團體或私人辦理。爰對於有工作需求之青少年，許多學校會辦理進修教育或短期補習教育，以提供其賡續接受教育之機會。
3. 衛福部國民健康署結合全臺 78 家醫療院所提供青少年親善門診「Teens’ 幸福 9 號」，並架設青少年網站「性福 e 學園」（https://young.hpa.gov.tw），提供青少年多元的性健康資訊查詢。

英文回應

1. According to the manpower survey of the Directorate-General of Budget, Accounting and Statistics, Executive Yuan, the number of employed persons aged 16 or above and under the age of 18 was 55,000 in 2015. Both the Labor Standards Act and the Occupational Safety and Health Act have stipulated that no child worker and no worker under eighteen years old are permitted to do work that is potentially dangerous or hazardous in nature. In addition, the Labor Standards Act also stipulates that employers of workers who are under eighteen years old must keep the letters of consent from the legal guardians and the age certificates of such workers on file to protect the workers' labor rights and interests.
2. The provisions of Article 3 of the Supplementary Education Act, amendments to which were promulgated on January 30, 2013, stipulate that supplementary education can be divided into three types: supplementary compulsory education, supplementary advanced education, and short-term tutorial education. Citizens past school age who have not yet received nine years of compulsory education shall receive supplementary compulsory education. Citizens who have already received nine years of compulsory education may receive supplementary advanced education. Citizens seeking to acquire general knowledge and skills may receive short-term tutorial education. And Article 5 and Article 6 of the Supplementary Education Act state that when necessary educational institutions at senior secondary school level or higher shall establish an affiliated continuing education school or college to offer supplementary advanced education, while short-term tutorial education may be provided by educational institutions, government bodies, organizations, or private parties. Many educational institutions offer supplementary advanced education and short-term tutorial education to provide young people who need to work with the opportunity to continue their education.
3. The Health Promotion Administration, Ministry of Health and Welfare in Taiwan has teamed up with 78 medical institutions though out 22 counties, to provide the "No. 9 Outpatient Services for Teens' Happiness." The HPA also set up a website for teenager (https://young.hpa.gov.tw) and provide all the information they need related to sexual health.

第 9 條－提審法

Article 9－Habeas Corpus Act

點次	問題內容(原文)	中文參考翻譯
26	General Comment No. 35 of the Human Rights Committee provides that, “The notion of ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.” Please elaborate on the extent to which the court practice under the amended Habeas Corpus Act is in accordance with General Comment No. 35. Is it the view of the Government and the courts that the judge in a habeas corpus case can review not only the legal formality of the detention decision but also its reasonableness, necessity and proportionality?	人權事務委員會第 35 號一般性意見提到「恣意」的概念不應只等於「違反法律」，而是必須更廣泛的解釋以便包括「不適當、不正義、欠缺可預測性及正當法律程序之要素，以及合理性、必要性與比例性之要素」。請說明在新修正提審法之下，法院實務上符合第 35 號一般性意見之程度。政府及法院是否認為法官於審理人身保護令案件時不僅應審查逮捕拘禁之形式合法性，也應審查其合理性、必要性及比例性？

中文回應

1. 提審本屬「救急」制度，旨在補充正當法律程序之不足，屬於貫徹正當法律程序的最後手段，且提審法之適用對象及於被法院以外之任何機關逮捕、拘禁之人，其所涉及之原因事實自包括司法權以外之權力機關所為剝奪或限制人民身體自由之處置，基於權力分立原則，司法權與其他權力機關有其功能上的差異，在特定領域事務，其他權力機關有優先判斷權，除有違法情事外，法院自應予以尊重。是提審法第 8 條第 1 項明定法院審查逮捕、拘禁之合法性，應就其法律依據、原因及程序為之，尚屬適當，惟仍將持續視人權理念的發展，適時予以檢討修正。

2. 地方法院受理提審聲請之事件中，由民事庭（含簡易庭及民事執行處）受理之事件類型如「法院受理提審聲請之事務分配辦法」附表一所示，包含證人、債務人、破產人或義務人遭拘提、管收，由其本人或他人依提審法第 1 條前段規定向地方法院聲請提審之事件。按法院審查逮捕、拘禁之合法性，應就逮捕、拘禁之法律依據、原因及程序為之。法院關於提審聲請之處理，除本法規定外，準用其他相關法律規定之程序，提審法第 8 條第 1 項、第 3 項分別定有明文。是法院受理提審聲請，固僅在審查逮捕、拘禁之合法性，非在認定被逮捕、拘禁人有無被逮捕、拘禁之本案實體原因及有無被逮捕、拘禁之必要性(該條立法理由二參照)。惟依民事訴訟法第 303 條第 2 項、強制執行法第 21 條第 1 項、第 22 條第 4 項、第 5 項「得拘提之」、「得… 管收…」、「得…拘提或管收…」之規定（非訟事件法第 31 條、消費者債務清理條例第 93 條、行政執行法第 17 條第 12 項準用之）即知法院是否核發拘票或管收票有裁量之權，除應審查其合法性之外，尚須依個案具體情形審查是否符合合理性、必要性及比例性後，為准駁之裁定。故我國法院審理涉及拘束人身自由之案件，除形式合法性外，併審查其合法性、必要性及比例性。

英文回應

1. Arraignment is not only a kind of urgent relief aim at completing due process of law, but also the last resort of fulfilling due process of law. According the amended Habeas Corpus Act, where a person is arrested or detained by an organ other than by a decision of the court, the said person, or any other person, may petition the district court that has jurisdiction ratione loci for the place of the arrest or detention for habeas corpus. However, due to Separation of Powers, the function of judicial power is different from the functions of other powers. In certain fields, the authority of other powers preempts judicial power, and thus the court should respect the decisions made by the authority of other powers. As a result, Article 8 Paragraph 1 of the amended Habeas Corpus Act stipulates that the court shall base its review of the legality of the arrest or detention on the following: the alleged legal basis of the arrest or detention; the alleged factual circumstances that have given rise to the arrest or detention; and the procedural regularity of the arrest or detention. In other words, the court may not consider the reasonableness, necessity and proportionality of arrest and detention. However, the government will keep monitoring the progress of human

right concepts and made adequate adjustment of necessity.

2. In the petition for habeas corpus received by district courts, the types of cases received by civil court (including summary courts and civil execution department) are listed in Table 1 of "Regulations Governing Allocation of Petition for Habeas Corpus Received by Courts," including the case petitioned to district courts for habeas corpus by the witness, debtor, bankrupt, or obligor, who is arrested or taken into custody, or any other person in accordance with the first part of Article 1 of Habeas Corpus Act. The court shall base its review of the legality of the arrest or detention on the following: the alleged legal basis of the arrest or detention; the alleged factual circumstances that have given rise to the arrest or detention; and the procedural regularity of the arrest or detention. With respect to the handling of the petition for habeas corpus, in addition to the provisions of this Act, the court shall apply, mutatis mutandis, other related procedural provisions in the statutory law. These provisions are provided in Paragraph 1 and 3, Article 8 of Habeas Corpus Act. Therefore, when receiving the petition for habeas corpus, the court only reviews the legality of arrest or detention, instead of arguing the factual circumstances and necessity of arrest or detention (please refer to reason 2 of the legislation reasons). From the provisions of "may be apprehended to appear," "may be detained" and "may be apprehended to appear or detained" stipulated respectively in Paragraph 2, Article 303 of Code of Civil Procedure, Paragraph 1, Article 21, Paragraph 4 and 5, Article 22 of Compulsory Enforcement Act (Article 31 of Non-Litigation Act, Article 93 of Consumer Debt Clearance Act and Paragraph 12, Article 17 of The Administrative Execution Act shall, mutatis mutandis, apply), we know that the issuance of warrants is the discretion of the court. Apart from reviewing the legality, the court shall also review the rationality, necessity, and proportionality of individual cases before granting or denying the petition. Thus, when trying the cases that put restriction on personal freedom, the court, apart from the legality of formation, shall also review the legality, necessity and proportionality.

第 9 條－強制住院

Article 9－Mandatory Hospitalization

點次	問題內容(原文)	中文參考翻譯
27	According to the Covenants Watch Shadow Report (paragraphs 185-189), mentally ill patients subject to compulsory hospitalization under the Mental Health Act have received little professional legal assistance if they wished to challenge the decision of hospitalization, and, in practice, there have thus far been few cases filed in courts and no successful cases ordering release. Is this observation correct? What are the measures of the Government to ensure that adequate resources and legal assistance are provided to enable patients in custody to resort to judicial remedy? Please provide statistics for the number of patients subject to compulsory hospitalization, the number of cases in which patients have petitioned courts for release and the results.	依人權公約施行監督聯盟《公政公約影子報告》第 185 至 189 點，被依精神衛生法強制住院的精神病患者甚少獲得專業的法律扶助，如果他們想要對強制住院的決定表示不服，且實務上僅有少數案件向法院尋求救濟但均遭駁回而未能成功的停止強制住院。這個觀察是否正確？為確保將適足資源及法律扶助提供給受拘束中的病人使其有能力尋求司法救濟，政府有何措施？請就強制住院之病患人數、向法院聲請裁定停止強制住院之案件數及其結果，提供統計數據。

中文回應

1. 為保障嚴重病人救濟及兼顧病人陳述意見權益，衛生福利部於 2013 年 4 月起提供病人以視訊或電話會議方式，向審查會陳述意見之管道，強制住院案件並由 2013 年 835 件，下降至 2015 年 747 件。
2. 依家事事件法第 185 條第 2 項準用同法第 165 條之規定，就停止強制住院事件，法院應依職權為無意思能力之精神病患者選任程序監理人，但有事實足認無選任之必要者，不在此限。惟此一規定僅在當事人向法院提出停止強制住院之聲請，始有其適用；

至當事人是否提出聲請，非屬司法院職掌所得影響。

3. 強制住院之精神病患，若不願接受強制住院治療，並依提審法向法院聲請提審，經法院核發提審票者，得憑提審票向財團法人法律扶助基金會(下稱基金會)申請提審專案扶助，由扶助律師於提審案件開庭時到場陪同。惟迄今尚無相關申請案件。

英文回應

1. In order to protect the rights and interests of severe patients and to take into consideration, the Ministry of Health and Welfare has provided the channels for patients to express their opinions (by video or teleconference) to the Review Committee since April 2002. The number of mandatory hospitalization cases decreased from 835 in 2013 to 747 in 2015.
2. Art. 165 of the Family Act shall apply mutatis mutandis to Par. 2 of Art. 185. In accordance with Art. 165, the court shall choose a guardian ad litem of a mental patient who is incapable of exercising his or her powers according to his functions and powers, but shall have the facts necessary for his election, not in this limit. Provided that such a provision shall only apply if the parties have made an application to the court for the cessation of compulsory hospitalization. However, whether a party filing a petition is beyond the official duty of the Judicial Yuan.
3. For mentally ill patients subject to compulsory hospitalization, who are unwilling to receive compulsory hospitalization and apply for habeas corpus to the court that grants writ of habeas corpus, the patients may apply for legal aid for habeas corpus with the writ of habeas corpus to Legal Aid Foundation (hereinafter “LAF”), and the legal aid attorneys will accompany the patients to the court. However, LAF has not yet received such application.

第 9 條－審前羈押

Article 9－Pre-trial Detention

點次	問題內容(原文)	中文參考翻譯
28	For serious crimes defined under Taiwan’s	就臺灣刑事訴訟法所定義的嚴重

	Criminal Procedure Law, what is the detention rate? What is the average length of the accused person's detention awaiting trial in cases of serious crimes?	犯罪而言，其羈押比率為多少？在嚴重犯罪案件，在押被告的候審羈押期間平均為多長？

中文回應

1.依檢察機關辦理重大刑事案件注意事項第 2 點規定，下列案件，為重大刑事案件：

(1) 犯刑法第 226 條第 1 項前段強制性交、猥褻等而致被害人於死罪。

(2) 犯刑法第 226 條之 1 強制性交、猥褻等而故意殺人或重傷害罪。

(3) 犯刑法第 271 條第 1 項殺人罪及第 272 條第 1 項殺害直系血親尊親屬罪。

(4) 犯刑法第 332 條第 1 項之強盜而故意殺人罪。

(5) 犯刑法第 332 條第 2 項所列各罪。

(6) 犯刑法第 347 條第 1 項意圖勒贖而擄人罪及第 348 條之 1 準擄人勒贖罪。

(7) 犯刑法第 348 條第 1 項之擄人勒贖而故意殺人罪。

(8) 犯刑法第 348 條第 2 項擄人勒贖而強制性交或使人受重傷罪。

(9) 犯毒品危害防制條例第 4 條第 1 項之製造、運輸、販賣第 1 級毒品罪而數量達 1000 公克以上者。

(10) 犯毒品危害防制條例第 4 條第 2 項之製造、運輸、販賣第 2 級毒品罪而數量達 1000 公克以上者。

(11) 犯毒品危害防制條例第 5 條第 1 項之意圖販賣而持有第 1 級毒品罪而數量達 1000 公克以上者。

(12) 犯毒品危害防制條例第 6 條第 1 項之以強暴等非法之方法，使人施用第 1 級毒品罪。

(13) 犯毒品危害防制條例第 6 條第 2 項之以強暴等非法之方法，使人施用第 2 級毒品罪。

(14) 犯槍砲彈藥刀械管制條例第 7 條第 1 項之未經許可，製造、販賣或運輸槍砲、彈藥罪。

(15) 犯槍砲彈藥刀械管制條例第 7 條第 3 項之意圖供自己或他人犯罪之用，而犯第 7 條第 1 項、第 2 項罪。

(16) 犯兒童及少年性交易防制條例第 24 條第 1 項、第 2 項或第 25 條第 2 項之罪，而故意殺害被害人或因而致人於死或致重傷罪。

(17) 其他認為嚴重侵害國家或社會法益或於社會治安、經濟秩序有重大危害之刑事案件。

2.前揭重大刑事案件裁定核准羈押比率及羈押天數如下：

地方法院檢察署辦理偵查案件聲請羈押經法院裁定准許比率

單位：%

項目 / 年別	全般刑案	妨害性自主罪	殺人罪(含過失致死)	搶奪強盜及海盜罪	恐嚇及擄人勒贖罪	槍砲彈藥刀械管制條例	毒品危害防制條例	兒童及少年性交易防制條例
2012	83.22	91.17	90.91	89.48	75.00	78.16	89.54	79.31
2013	80.30	86.12	85.71	89.22	79.23	76.77	86.26	81.82
2014	79.50	88.60	83.74	88.57	66.92	68.38	85.99	88.24
2015	77.23	81.76	85.42	81.40	61.94	72.24	84.41	53.85
2016.1-9	81.12	83.48	83.67	90.06	73.53	77.83	84.46	91.67

地方法院檢察署辦理偵查案件聲請羈押經法院裁定平均天數

單位：天

項目 / 年別	妨害性自主罪	殺人罪(含過失致死)	搶奪強盜及海盜罪	恐嚇及擄人勒贖罪	槍砲彈藥刀械管制條例	毒品危害防制條例	兒童及少年性交易防制條例
2012	104.95	275.86	158.57	289.96	122.54	109.99	145.39
2013	176.09	250.28	147.92	202.31	102.92	116.09	166.88
2014	142.14	267.44	122.04	205.00	108.14	110.05	180.00
2015	172.25	254.54	140.91	186.16	103.02	100.17	186.53
2016.1-9	255.20	309.57	123.23	246.54	74.16	94.92	111.27

英文回應

1. According to the “Matters Requiring Attention by Procuratorial Agencies in Handling Major Criminal Cases” of the Ministry of Justice, serious criminal crimes include：
   (1) A person who commits the crimes of forcible sexual intercourse or compulsory indecency specified in Criminal Code Article 226 paragraphs 1 forepart and results in the death of the victim.
   (2) A person who commits the crimes of forcible sexual intercourse or compulsory indecency specified in Criminal Code Article 226-1and intentionally kills or causes aggravated injury to the victim.
   (3) A person who commits the crimes of homicide specified in Criminal Code Article 271 paragraphs 1 and a person who takes the life of his lineal blood ascendant specified in Criminal Code Article 272 paragraphs 1.
   (4) A person who commits robbery and intentionally kills another specified in Criminal Code Article 332 paragraphs 1.
   (5) A person who commits the crimes specified in Criminal Code Article 332 paragraphs 2.
   (6) A person who commits the crimes of kidnaps another for purpose to extort ransom specified in Criminal Code Article 347 paragraphs 1 and a person who commits the crimes of holding another and then has the purpose to extort a ransom which is considered to have committed the offense of kidnapping for ransom specified in Criminal Code Article 348-1.
   (7) A person who commits the crimes of kidnaps another for purpose to extort ransom specified in Criminal Code Article 348 paragraphs 1 and intentionally kills his victim.
   (8) A person who commits the crimes of kidnaps another for purpose to extort ransom specified in Criminal Code Article 348 paragraphs 2 and forcing the victim to commit sexual intercourse or resulting in aggravated injury.
   (9) Offenders of manufacturing, transporting, or selling Category one narcotics specified in Narcotics Hazard Prevention Act Article 4 paragraphs 1 and reach the amount of quantity of more than 1000 grams.
   (10) Offenders of manufacturing, transporting, or selling Category two narcotics specified

in Narcotics Hazard Prevention Act Article 4 paragraphs 2 and reach the amount of quantity of more than 1000 grams.

(11) Persons guilty of possession with intention to sell Category one narcotics specified in Narcotics Hazard Prevention Act Article 5 paragraphs 1 and reach the amount of quantity of more than 1000 grams.

(12) Persons guilty of compelling others to use Category one narcotics by means of violence, coercion, deception or other illegal methods specified in Narcotics Hazard Prevention Act Article 6 paragraphs 1.

(13) Persons guilty of compelling others to use Category two narcotics by means of violence, coercion, deception or other illegal methods specified in Narcotics Hazard Prevention Act Article 6 paragraphs 2.

(14) Any person who manufactures, sells, or transports cannons, shoulder arms, machine guns, submachine guns, carbines, automatic rifles, rifles, traditional carbines, pistols, or various types of artillery shells, bombs and explosives without approval specified in Controlling Guns, Ammunition and Knives Act Article 7 paragraphs 1.

(15) An offender with intent to commit a crime by himself/herself or assist others to commit a crime prescribed in the two preceding paragraphs specified in Controlling Guns, Ammunition and Knives Act Article 7 paragraphs 3.

(16) Any person who commits the offense specified in Child and Youth Sexual Transaction Prevention Act Article 24 paragraphs 1、2 or Article 25 paragraphs 2 and intentionally kills the victim, or consequently results in the death of the victim or causes serious injury to the victim .

(17) Other criminal cases which are considered to seriously endanger the interest of nation or society, or seriously post danger to social security or economic order.

2. The statistics of approved detention rate and number of custody days of serious criminal crimes as follow:

District Court Procuratorate for investigation of cases of detention by the court ruled that the permitted ratio

unit: %

Item / Year	All criminal cases	Crime of prejudice	"Murder" (Including negligence to death)	Robbery and piracy	Intimidation and kidnapping	Regulations on the Control of Guns, Ammunition and Knives	Drug Control Regulations	Children and juvenile sex trade control regulations
2012	83.22	91.17	90.91	89.48	75.00	78.16	89.54	79.31
2013	80.30	86.12	85.71	89.22	79.23	76.77	86.26	81.82
2014	79.50	88.60	83.74	88.57	66.92	68.38	85.99	88.24
2015	77.23	81.76	85.42	81.40	61.94	72.24	84.41	53.85
2016.1-9	81.12	83.48	83.67	90.06	73.53	77.83	84.46	91.67

District Court Procuratorate to investigate the case for custody of the average number of days ruled by the court

Unit: days

Item / Year	Crime of prejudice	"Murder" (Including negligence to death)	Robbery and piracy	Intimidation and kidnapping	Regulations on the Control of Guns, Ammunition and Knives	Drug Control Regulations	Children and juvenile sex trade control regulations
2012	104.95	275.86	158.57	289.96	122.54	109.99	145.39
2013	176.09	250.28	147.92	202.31	102.92	116.09	166.88
2014	142.14	267.44	122.04	205.00	108.14	110.05	180.00
2015	172.25	254.54	140.91	186.16	103.02	100.17	186.53
2016.1-9	255.20	309.57	123.23	246.54	74.16	94.92	111.27

第 9 條－審前羈押

Article 9－Pre-trial Detention

點次	問題內容(原文)	中文參考翻譯
29	The 2013 Concluding Observations and Recommendations pointed out that the maximum period of eight years of pre-trial detention stipulated by the Criminal Speedy Trial Act violates the "reasonable time" limit of Article 9(3) ICCPR. According to paragraph 221 of the Government's Response to the 2013 Concluding Observations and Recommendations, since December 2013 there has not been a case of defendants who have been in detention for more than five years. Given the current practice, has the Government re-assessed the reasonableness of the eight-year maximum under the Criminal Speedy Trial Act and considered reducing it?	《2013 年結論性意見與建議》指出刑事妥速審判法審前羈押最長 8 年的規定違反了《公政公約》第 9 條第 3 項合理期間的規定。依政府《回應結論性意見與建議》第 221 點，自 2013 年 12 月起，沒有任何一個案件的被告羈押超過 5 年。有鑒於目前實務，政府是否已重新評估刑事妥速審判法最長 8 年羈押期間之合理性並考慮降低？

中文回應

目前我國刑事訴訟制度第二審仍採覆審制（即一、二審均係事實審），上訴理由並未設有合理之限制，仍須重複審理並調查證據與認定事實，與英美法制採一個事實審相較，訴訟制度已屬有別；又第三審單純採限制上訴制，舉凡具有法律規定之上訴理由者，皆得上訴第三審，法院無裁量餘地，因而法院審理所需期間較英美法制更長。為通案考量所有刑事案件第一、二、三審之審理所需時程及保障刑事被告有受迅速審判之權利，刑事妥速審判法第 5 條第 3 項乃規定「審判中之羈押期間，累計不得逾八年。」惟刑事上訴制度為日後司法改革重點項目，上開羈押期間之規定，當配合上訴制度之修正，予以適時檢討修正。

英文回應

In the second instance of the current criminal procedure system, the judge would order a retrial, and in both the first and second instances, the judge or judges act as triers of both fact and law. There is no restriction on grounds of appeal, and thus the court of appeal also has to investigate the evidence to determine the fact. The criminal procedure system in Taiwan is different from that in some common law countries where a judge or judges act as triers of both fact and law only in the first instance. Besides, a person who disagrees with a judgment of the second instance and claims that he judgment is in contravention of the laws and regulations could file an appeal to the Supreme Court. In other words, the Supreme Court cannot has no discretion of choosing the cases. Therefore, the period of trial in Taiwan is longer than that in other countries. In light of ensuring criminal trials so as to protect human rights and considering time need for three instances, Article 5, Paragraph 3 of the Criminal Speedy Trial Act stipulates that the accumulated period of detention during the trial shall not exceed eight years. However, the reform of the appellate system is one of the main themes for judicial reform in days to come and the government will make adequate adjustment of necessity.

第 10 條

Article 10

點次	問題內容(原文)	中文參考翻譯
30	In § 154 of its Report, the Government admits that as of 22 December 2015, “nation-wide correction institutions had a total capacity of 55,676 and were being used to hold 63,045 inmates; this represented an excess of 7,369 inmates or 13.23 %.” In § 155, the Government continues: “Correction institutions mostly consist of old buildings characterized by small	政府在《公政公約第二次國家報告》第 154 點承認到 2015 年 12 月 22 日止，「全國矯正機關總核定容額為 55,676 人，實際收容人數為 63045 人，超收 7,369 人，超收比率為 13.23%」。報告第 155 點有提到：「矯正機關房舍多屬老舊，監禁空間確屬狹小，

	confinement spaces, and there will be no immediate improvement to the over-crowdedness due to lack of human resource, budget, and protest from local residents wherever prisons are relocated." In § 197, the Government openly admits that "Correction institutions are unlikely to respond effectively to emergencies such as illness and riot because of the shortage of manpower." The Taiwan 2015 Human Rights Report issued by the US Department of State also emphasized that prison overcrowding remains a major problem in Taiwan. In § 251 of its Shadow Report, CW refers to a 2015 riot at the Kaohsiung Prison, where six convicts had taken the warden hostage and demanded respect for the human dignity of inmates. All six prisoners ultimately committed suicide. According to CW, "The Kaohsiung Prison Incident stands as a warning which showed that neither the Ministry of Justice or the Ministry of Health and Welfare had taken positive actions to implement the Conclusions and Recommendations made by the international human rights experts during the review of the first State report on the ICCPR in January 2013." On 23 September 2016, the Scottish High Court of Justiciary ruled in the case of Zain Taj Dean v. the Lord Advocate and the Scottish Ministers (2016 HCJAC 83) that the extradition of the applicant to Taiwan would violate Article 3 of	上述超額收容情形固囿於管教人力，政府整體預算，易地遷建遭鄰近居民反對等，尚無法立即改善」。政府在第 197 點公開承認「矯正機關……若遇到收容人疾病、暴動等緊急事故，難以有效因應」。美國國務院發布的 2015 年臺灣人權報告也強調監獄過度擁擠仍是臺灣的一大問題。人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 223 點提及高雄監獄 2015 年的暴動，6 名人犯挾持獄卒要求尊重人犯的尊嚴。6 名人犯最後自殺身亡。人權公約施行監督聯盟指出「高雄監獄事件是個警告，顯示法務部或衛福部均未採取積極行動以落實 2013 年的結論性意見與建議。2016 年 9 月 23 日，蘇格蘭高等法院在林克穎引渡案認定臺灣的引渡違反歐洲人權公約第 3 條，因為臺灣的監獄情況構成不人道及有辱人格的待遇。政府已採取了哪些行動來解決臺灣監獄過度擁擠及糟糕的情況並落實國際專家的建議？目前的政府是否願意以更為有效的方式處理這嚴重的人權問題？為何一直沒有分配較多預算及人力資源使臺灣的監獄體制符合《公政

	the European Convention on Human Rights (ECHR) on the grounds that the prison conditions in Taiwan constitute inhuman and degrading treatment. Which actions has the Government taken to address the serious overcrowding and the deplorable conditions in Taiwanese prisons and to implement the recommendations of the international experts? Does the current Government intend to address this serious human rights problem in a more effective manner? Why have there not been more budgetary and human resources allocated to bring the Taiwanese prison system in line with the requirements of Article 10 of the Covenant? Which measures have been taken to reduce the total number of prisoners?	公約》第 10 條之要求？已採取了哪些措施以便降低人犯數目？

中文回應

1. 為紓解矯正機關過度擁擠問題，法務部除加強實行檢察及司法系統「前門政策」之轉向處遇（如緩起訴、易服社會勞動、緩刑、罰金刑、易科罰金等措施），及矯正系統「後門政策」之假釋制度以為因應，矯正署近期研提「矯正機關擴、遷、改建評估方案」之政策亮點，目前辦理臺北監獄新（擴）建工程、宜蘭監獄擴建工程、臺南第二監獄及八德外役監獄設置計畫等，本階段完成後，預估至 2018 年 12 月底，總核定容額約達 59,400 人，超額收容比率將降至 5.74%左右；另盤點矯正機關現有經管用地，評估尚可推動辦理雲林第二監獄新（擴）建計畫、彰化看守所遷建計畫、八德外役監獄擴建計畫及臺北第二監獄興建計畫等，預計至 2022 年約增加核定容額 6,448 名，超收比例可降至 0%，達成無超額收容之最終目標。
2. 為確認各矯正機關提供醫事人員執行收容人醫療業務之場所，是否符合醫療機構設置標準，衛福部前於 2014 年 6 月 30 日函請矯正署及衛生局聯合查核矯正機構內之診療空間，矯正署於 2014 年 7 月 11 日函復衛福部結果略以，該署早於 2012 年 9 月即曾

通函各矯正機關，在收容人納入健保政策施行前，依醫療機構設置標準改善診療空間；2014 年 7 月 4 日亦已再次與衛生局完成查核，49 家專設矯正機關(含培德醫院)，均符合醫療機構設置標準；其中，培德醫院亦經衛福部醫院評鑑結果，評定為醫院評鑑合格。

英文回應

1. In alleviation of the overcrowding problem of correction institutions, the Ministry of Justice enhanced implementation of transfer of treatment (such as, deferred prosecution, commutation of sentence to community service, ruling probation or penalty sentences, commutation of imprisonment term to penalty fine, etc.) of the Front Door Policy of the prosecution and justice system and the parole system of the Back Door Policy of the correctional system to cope with the problem. Besides, the Agency of Corrections have proposed a highlight recently, “Extention, Remove or Reconstruction Project for the Correction Institutions”, currently underway include the building extention projects of the Taipei Prison and Yilan Prison, the establishment projects for the Tainan Second Prison and Bade Minimum-Security Prison. Completion of these projects shall have a total capacity of 59,400 and will reduce the overall overcapacity ratio to around 5.74% by December 2018. Moreover, to appraise the existing base of Correctional Facilities, proposed projects are initiated, such as the building extension project for the Yunlin Second Prison and Bade Minimum-Security Prison, new construction project for the Changhua Detention Center and Taipei Second Prison, which will increase 6,448 additional capacity and the overall overcapacity ratio will down to 0% in 2022.
2. MOHW lettered to Agency of Corrections(AOC) and Bureau of Public Heath on June 30, 2014, to confirm the places of correctional facilities provides medical services to inmates, whether meet to “Establishment Standards for Medical Institutions” or not. AOC answered on July 11, 2014：AOC had lettered to correctional facilities in September 2012, correctional facilities should improve the clinic space according to “Establishment Standards for Medical Institutions" before inmates included in National Health Insurance. AOC had completed check out again with the Bureau of Public Heath on July 4, 2014, all the clinic space of 49 correctional facilities (including Peide hospital), met to

"Establishment Standards for Medical Institutions". Peide hospital was certified complied with the Hospital Accreditation Standards developed by Taiwan Joint Commission on Hospital Accreditation of Ministry of Health and Welfare.

第 10 條

Article 10

點次	問題內容(原文)	中文參考翻譯
31	In § 165(1) of its Report, the Government states that "According to Paragraph 1, Article 36 of the nation's Enforcement Rules of the Prison Serving Act, imprisonment is intended to help inmates develop survival skills, diligence, and strong will. It is not intended as a means of torture or slavery". What does this mean? How does the Government reconcile such legal provisions and their interpretation with Article 10(3) of the Covenant, according to which the penitentiary system "shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation"?	在《公政公約第二次國家報告》第 165(1)點，政府提到「依據監獄行刑法施行細則第 36 條第 1 項之規定，監獄作業以協助受刑人謀生技能、養成勤勞習慣及陶冶身心為目的。並無作為酷刑或奴隸之目的」。這代表什麼意思？政府如何使這種法規與《公政公約》第 10 條第 3 項協調一致，監獄體制囚犯待遇的基本目的應包含囚犯的改過自新與社會復原？

中文回應

監獄行刑法施行細則第 36 條第 1 項規定，應翻譯為「Institution labour at prison shall be designed with a purpose of training prisoners to learn skills in order to make a living, to attain a diligent working habit, and to enlighten one's won spiritual mind.」較為妥適。該法規精神與「公政公約」第 10 條第 3 項及「聯合國在監人處遇最低標準規則」第 71 條意旨相符。

英文回應

The Article 36(1) of the Enforcement Rules of the Prison Serving Act, should translate to "Institution labour at prison shall be designed with a purpose of training prisoners to learn skills in order to make a living, to attain a diligent working habit, and to enlighten one's won spiritual mind." The legal provisions is reconciled with Article 10(3) of the Covenant and Article 71 of United Nations Standard Minimum Rules for the Treatment of Prisoners.

第 10 條

Article 10

點次	問題內容(原文)	中文參考翻譯
32	In § 208 of its Response, the Government provides information on the situation, health conditions and medical parole of former President Chen Shui-bian. What is the present situation of former President Chen?	在《回應結論性意見與建議》第 208 點，政府提供了前總統陳水扁的狀況、健康情況及醫療照顧的資訊。請說明陳前總統現在的狀況如何？

中文回應

有關陳前總統保外醫治， 經擴大醫療鑑定小組鑑定，綜合比較陳前總統前後病情差異，認其病況確有惡化，符合監獄行刑法第 58 條「在監不能為適當醫治」事由，於 2015 年 1 月 5 日核准陳前總統保外醫治一個月，以利其接受更妥適治療照顧。同年 2 月 5 日第 1 次展延保外醫治至 5 月 4 日，並依臺中監獄訪視結果及高雄長庚紀念醫院醫療診斷、病情評估及計畫書等，綜合評斷後核准陳前總統第 2 次展延至 8 月 4 日止，展延期間臺中監獄按月持續派員查看並陳報；第 7 次展延於 2016 年 11 月 4 日到期，該監於 2016 年 8 月至 10 月按月派護理師、衛生科長、政風室主任保外察看，並檢附診斷證明書、病情評估表等陳報展延，法務部矯正署綜合前述訪視結果及高雄長庚紀念醫院診斷證明書、病情評估表等，同時依其長庚醫療財團法人高雄長庚紀念醫院診斷證明書之醫囑所載略以：「綜合病情雖略有改善，但因其身心多重障礙無法自理生活及身心仍存在高度風險，在監難獲適當照顧治療…」等，均認該監受刑人陳水扁目前病況仍符合保外醫治

審核參考基準第 5 點：「病情複雜，難以控制，隨時有致死之危險」情形，核准陳前總統第 8 次展延至 2017 年 2 月 4 日止。

英文回應

Regarding the bail of former President Chen for outbound medical treatment, after the assessment of the expanded medical assessment group and a comprehensive comparison of former President Chen’s illness before and afterwards, the condition does have deteriorated, and the situation is in line with "no appropriate medical treatment is available in prison" of Article 58 of the Prison Execution Law. On January 5, 2015 a bail for one month was approved to enable the former President Chen to receive more appropriate treatment and care. On February 5 of the same year, the first bail extension was granted for medical treatment until May 4, and then in accordance with the comprehensive evaluation of the Taichung Prison’s visit results and Kaohsiung Chang Gung Memorial Hospital’s medical diagnosis, disease assessment and plan, the second bail extension was granted to former President Chen until August 4. During the extended period the Taichung Prison continues to send staff for view and report, and the seventh extension will expire on November 4, 2016. On a monthly basis from August to October, 2016 the Prison sent its nurses, Health Section chief and director of Office of Discipline to review the condition, and attach the diagnosis certificate and condition assessment form for the extension. The Department of Correctional Services then comprehensively reviewed the aforementioned visit results and Kaohsiung Chang Gung Memorial Hospital’s diagnosis certificate and condition assessment form. In addition, according to the doctor's advice contained in the diagnosis certificate of Kaohsiung Chang Gung Memorial Hospital, “although the overall condition has improved slightly, because of multiple physical and mental obstacles the patient is unable to take care of himself, and high physical and mental risks still exist. No appropriate medical treatment is available in prison ….”. It is therefore considered that the prisoner Chen Shui-bian's current condition is still in line with point 5 of the reference for outbound medical treatment review: “the condition is complex and difficult to control, and there is a risk of death at any time”. Therefore the eighth bail extension was granted to former President Chen until February 4, 2017.

第 12 條

Article 12

點次	問題內容(原文)	中文參考翻譯
33	In the previous Concluding Observations the experts recommended legislative and policy amendments in order to bring the administrative decisions of tax authorities, preventing nationals from leaving the country for reasons of financial and taxation control, in line with the requirements of freedom of movement. The second Report of the country states that measures have been taken to reduce the restriction on citizens' right to go abroad for purposes of tax control and any such order restricting movement will follow the rule of fairness and proportionality (§ 234 of the Response to the Concluding Observations) and will be supervised by the Enforcement Agency. Hence no legislative or policy amendments are needed. Please provide information on the complaints mechanism by which dissatisfied individuals can seek redress in case of unfair application of the rules and on the number of complaints that may have been made and with what results.	前次審查之結論性意見中，專家建議修正法律和政策，以使稅捐稽徵機關因財務與課稅理由而禁止國人出國的行政處分，能夠與遷徙自由的要求相符。政府於《回應結論性意見與建議》234 點指出，已經採取措施減少因納稅理由而限制公民出境，而且此類限制行動之命令將遵守公平規則與比例原則，且受法務部行政執行署之監督。因此並無修改法律或政策之必要。 請提供資訊說明若有公民不滿於上述規則之不公平適用，欲尋求補救，則其提出申訴之機制為何，以及此類申訴之案件數和其處理結果。

中文回應

1. 自 2015 年 1 月 1 日起，稅捐稽徵機關及海關辦理限制出境（國）案件，納稅義務人欠繳金額須達稅捐稽徵法第 24 條第 3 項及關稅法第 48 條第 5 項所定標準，尚應按個

人、營利事業（法人、合夥組織、獨資商號或非法人團體）已確定、未確定之欠繳金額，區分 3 級距分級適用不同限制出境（國）條件。欠稅人或欠稅營利事業負責人不服限制出境（國）處分，得依訴願法第 1 條及行政訴訟法第 4 條規定提起行政救濟，其程序如下：依訴願法第 4 條及第 14 條規定，於限制出境處分送達之次日起 30 日內，向行政院提起訴願請求撤銷原處分；倘不服訴願決定，得依行政訴訟法第 106 條規定，於訴願決定書送達後 2 個月內，向高等行政法院提起撤銷訴訟；如仍不服，再向最高行政法院提起上訴。

2. 近 5 年人民因欠繳內地稅及關稅遭限制出境（國）案件，由 2012 年 2,096 件（內地稅案件 2,020 件及關稅案件 76 件）減少至 2016 年 9 月 30 日 272 件（內地稅案件 264 件及關稅案件 8 件）。內地稅之訴願案件、提起行政訴訟第一審案件及提起行政訴訟上訴審案件，分別由 2012 年 165 件、30 件及 16 件減少至 2016 年 9 月 30 日 16 件、4 件及 0 件，且不服訴願決定而向行政法院提起行政訴訟案件，均經行政法院判決限制出境（國）處分並無違法，稅捐稽徵機關及海關辦理限制出境（國）案件，已採取措施並切實遵守法定要件及比例原則，減少因納稅理由而限制人民出境（國）。2012 年至 2016 年 9 月 30 日行政救濟案件數及其處理結果統計如下表：

單位：件

年別	限制出境(國)案件		訴願案件之決定				行政訴訟案件之判決結果							
			維持		撤銷原處分		第一審				上訴審			
							維持		撤銷訴願決定及原處分		維持		原判決廢棄	
	內地稅	關稅	內地稅	關稅	內地稅	關稅	內地稅	關稅	內地稅	關稅	內地稅	關稅	內地稅	關稅
2012	2,020	76	160	3	5	0	30	0	0	0	16	1	0	0
2013	1,644	93	107	1	1	0	18	1	0	0	22	0	0	0
2014	1,599	52	68	1	1	0	20	0	0	0	3	0	0	0
2015	283	14	33	1	0	0	9	0	0	0	1	0	0	0
2016.9.30	264	8	15	0	1	0	4	0	0	0	0	0	0	0
小計	5,810	243	383	6	8	0	81	1	0	0	42	1	0	0
總件數	6,053		389		8		82		0		43		0	

說明：總件數為 2012 年至 2016 年 9 月 30 日內地稅及關稅案件之總計。

英文回應

1. From January 1, 2015 onward, exit restriction cases handled by the taxation authority and Customs, shall be classified into three brackets according to the confirmed and yet-to-be-confirmed outstanding balance for individuals or profit-seeking enterprises (corporations, partnership, sole proprietorship, or non-corporation groups); in addition, besides that the outstanding balance must meet the criteria prescribed in Article 24, Paragraph 3 of the Tax Collection Act or Article 48, Paragraph 5 of the Customs Act. An individual or representative of profit-seeking enterprise defaulting on tax payments may file administrative remedies against the administrative actions of restriction from exiting the Republic of China according to Article 1 of the Administrative Appeal Act and Article 4 of the Administrative Litigation Act. The procedures for administrative remedies are as follows: According to Articles 4 and 14 of the Administrative Appeal Act, the said taxpayer may file an administrative appeal to the Executive Yuan against an administrative action within 30 days from the day after the administrative action is served. If the taxpayer contests the decision of the appeal, the said taxpayer may file an administrative action according to Article 106 of the Administration Litigation Act for revocation to the high administrative court within 2 months from the next day which the administrative appeal decision is served. In the case of contestation with judgement entered, the said taxpayer may file an appeal to the Supreme Administrative Court.
2. According to the above statistics, the number of cases of individuals or representatives of profit-seeking enterprises defaulting on tax payments and restricted by the administrative actions in the past 5 years decreased from 2,096 (including 2,020 domestic tax cases and 76 customs duties cases) in 2012 to 272 (including 264 domestic tax cases and 8 customs duties cases) to September 30, 2016. The number of the domestic tax cases of administrative appeal cases and administrative litigation cases in the first instance and second instance decreased respectively from 165, 30, and 16 in 2012 to 16, 4, and 0 to September 30, 2016. All the contested administrative litigation cases were adjudicated by the administrative court as there was no violation of law in the restriction process. Therefore, in order to reduce the restriction on citizens' right to go abroad for purposes of tax control, when the taxation authority and Customs handled the exit restriction cases,

they took measures which took effect from January 1, 2015, and they were in conformity with the legal regulation as well as observed the principle of proportionality.The number and result of administrative remedy cases from 2012 to September 30, 2016 are as follows:

Unit: case

Year	Cases of administrative actions of restriction from exiting the Republic of China		Decision of administrative appeal cases				Judgment of administrative litigation cases							
			Uphold		Revoke		First instance				Second instance			
							Uphold		Revoke		Uphold		Revoke	
	Domestic tax	Customs duties	Domestic tax	Customs duties	Domestic tax	Customs duties	Domestic tax	Customs duties	Domestic tax	Customs duties	Domestic tax	Customs duties	Domestic tax	Customs duties
2012	2,020	76	160	3	5	0	30	0	0	0	16	1	0	0
2013	1,644	93	107	1	1	0	18	1	0	0	22	0	0	0
2014	1,599	52	68	1	1	0	20	0	0	0	3	0	0	0
2015	283	14	33	1	0	0	9	0	0	0	1	0	0	0
2016.9.30	264	8	15	0	1	0	4	0	0	0	0	0	0	0
Subtotal	5,810	243	383	6	8	0	81	1	0	0	42	1	0	0
Total	6,053		389		8		82		0		43		0	

Note: “Total” indicates the sum of domestic tax and customs duties cases from 2012 to September 30, 2016.

第 12 條

Article 12

點次	問題內容(原文)	中文參考翻譯
34	The Report in para 209 provides information on legislative and policy measures to address disaster prevention and protection. Please provide information on the effective	《公政公約第二次國家報告》第209點對災害預防與保護的立法與政策措施提供了資訊。請就2016年二月南臺灣地震之後，對

	implementation of specific measures taken to rehabilitate vulnerable populations such as the elderly, the disabled, women and children in the aftermath of the February 2016 earthquake which struck Southern Taiwan.	老年人、身心障礙者、婦女與兒童等易受傷害群體，採取那些重建之特別措施及其執行情形提供資料。

中文回應

1. 查震災災害防救業務計畫，針對老人、外國人、嬰幼兒、孕婦、產婦及身心障礙者等災害避難弱勢族群，業律定地方政府於避難場所應有避難所需設備之整備，並主動關心及協助避難場所與臨時收容所中災害避難弱勢族群之生活環境及健康照護，辦理臨時收容所內之優先遷入及設置老年或身心障礙者臨時收容所，對無助老人或幼童應安置於安養或育幼等社會福利機構等特定族群照護。
2. 對於 2016 年 2 月南臺灣大地震之受災戶，政府依其需求提供安置、相關補助或訓練課程。一、在兒童方面，給予弱勢家庭兒童及少年緊急生活扶助、弱勢兒童及少年生活扶助、中低收入戶兒童及少年健保費補助、弱勢兒童及少年醫療費用補助及 3 歲以下兒童醫療費用補助等各式補助。二、在長者方面，給予中低收入老人生活津貼、家庭照顧者特別照顧津貼、中低收入老人健保費補助等各式補助。三、在身心障礙者方面，其生活重建服務包含：日常生活能力之培養、社交活動及人際關係之訓練、生活自理訓練、盲用電腦訓練、點字訓練、功能性視覺評估及視光學評估、輔具評估訓練及社會暨心理評估與處置，規劃辦理主題性、連續性、支持性之成長團體課程，技藝、體能及休閒服務活動，積極協助災民的生活與社會重建。而經濟方面，給予生活補助費、房租租金、醫療費用補助、輔具費用補助等。四、就婦女方面，針對震後遭遇特殊境遇之婦女及其家庭，提供緊急生活扶助、子女生活津貼、兒童托育津貼、傷病醫療補助、法律訴訟補助、子女教育補助及創業貸款補助等扶助措施，以有效協助其改善生活。
3. 另針對 0206 震災受災戶住宅補貼，提供重建（購）住宅貸款利息補貼、修繕住宅貸款利息補貼或租金補貼措施。截至 2016 年 9 月已提供 25 戶利息補貼及 122 戶租金補貼。

英文回應

1. According to the Earthquake Disaster Prevention and Response Plan, for the disadvantaged groups of evacuation, such as the elderly, the foreigner, the disabled, babies, and pregnant women, local governments shall prepare equipment which is needed at evacuation sites; concern and help the people who live in emergency dwelling and temporary shelters voluntarily, and take care of their health and surroundings ; set up temporary shelters for elderly and disabled people, and help them to live in preferentially; arrange for the helpless elderly and children to social welfare organizations.
2. About the people in the aftermath of the February 2016 earthquake which struck Southern Taiwan, according to their needs, the government provides proper placement, various subsidies or training. 1. For child victims, the government provides “Emergency Living Assistance for Children and Youths from Disadvantaged Families”, “Living Assistance for Disadvantaged Children and Youths”, “NHI Subsidies for Children and Youths of Low-to-Middle Income Families”, “Medical Care Subsidies for Children and Youths of Low-Income and Disadvantaged Households” and “Medical Care Subsidies for Children Under 3 Years Old”. 2. For senior victims, the government provides “Regulations on Living Allowance for Mid or Low-income Senior Citizens”, “Regulations on Special Care Allowance For Middle or Low-income Senior Citizens”, “NHI Subsidies for Senior of Low-to-Middle Income”. 3. For victims with disabilities, the government provides rehabilitation services for people which include: daily living skills training, social skills and interpersonal skills training, self-care, blind computer using training, braille training, functional visual assessment and optometry assessment, and assistive device assessment training and social and psychological assessment and treatment. Moreover, plan thematic, continual, and supportive growth groups and skills improvement, fitness and leisure activities. In addition, proactively improve the quality of life and social reconstruction for people with disabilities. On the economic side, the government provides “living allowances”, “rental rent, medical expenses”, “subsidies, aids”. 4. In the victims of the women, the government provides emergency living assistance, living allowances for children, nursery allowances, medical subsidies, litigation subsidies, education allowances for children, and career development loans. These measures are available to help families

in hardship.

3. Besides, Housing Subsidy Program for Earthquake Victims was provided. This program includes reconstruction (purchase) housing loan interest subsidies, 2: repairs of housing loans interest subsidies and 3: housing subsidies for rent. As of September 2016, 25 housing loan interest subsidies and 122 housing subsidies for rent had been granted.

第 14 條－遵守《公政公約》之義務

Article 14－Obligations to comply with the ICCPR

點次	問題內容(原文)	中文參考翻譯
35	The Government reportedly will hold a national conference on judicial reform in October 2016. Please comment on whether the Government, when considering judicial reform, will make a priority its commitment to protect the defendant's right to a fair trial under Article 14 of the ICCPR, including but not limited to speeding up the passage of necessary legislative amendments that have been proposed to comply with Article 14.	政府據稱會於 2016 年 10 月舉行全國司法改革會議。請就政府於考慮司法改革時，是否會優先處理所允諾的保障被告之《公政公約》第 14 條公平審判權，包括但不限於加速通過為符合第 14 條所提出之法律修正案。

中文回應

1. 我國司法改革國是會議之召開時間預定為 2017 年 6 月，目前正在進行向全民徵求改革意見階段，只要是民眾關心的議題均有可能列為會議討論的對象，在會議中達成共識的議題，將會優先推動處理。總統一向對於維護人民公平受審權十分重視，且社會各界對此亦有高度共識，相信此議題在國是會議上應可順利通過。
2. 為符合公政公約保障被告受公平審判之意旨，司法院已擬具「刑事訴訟法部分條文修正草案」，其中草案第 99 條明定被告為聾或啞或語言不通者，應由通譯傳譯之。該修正草案於 2012 年 4 月 27 日會銜行政院函送立法院審議，嗣經立法院司法及法制委員

會審查完竣，已達成一致之共識，惟仍未能完成二讀程序。然本屆立法委員已提出與協商共識結論相同內容修正草案，由立法院審議中。

3. 又為因應司法院釋字第 737 號解釋揭示偵查中之羈押審查程序應以適當方式使犯罪嫌疑人及其辯護人獲知聲請羈押理由及有關證據之意旨，業已擬具刑事訴訟法部份條文修正意見，並就該修正意見內容與審、檢、辯、學等各界進行溝通、交流，俾集思廣益，供司法院進一步研議刑事訴訟法相關規定之參考。

英文回應

1. The Justice Reform National Affairs Conference is scheduled to be convened in June 2017. The current stage focuses on the solicitation of public opinions on reform. All issues of interest to the general public may be earmarked for discussion in the conference. Issues on which a consensus has been reached in the conference will be given priority in promotion and implementation. The president has always placed great emphasis on the protection of the right of citizens to a fair trial. There is also a strong consensus on this issue in all circles of society. We firmly believe that this issue will be passed without problems in the conference.
2. To serve the purpose of protecting the defendant’s right to a fair trial under Article 14 of the ICCPR, Judicial Yuan had drafted Amendments of the Code of Criminal Procedure. Article 99 of the Amendments of the Code of Criminal Procedure specifies that if the defendant is deaf, dumb or cannot understand or speak the language used in the court, an interpreter should be appointed by the court to assist the defendant. The Amendments of the Code of Criminal Procedure are jointly signed by Judicial Yuan and Executive Yuan and submitted to Legislative Yuan for deliberation on April 27, 2012. Although the Amendments of the Code of Criminal Procedure had been examined by Judiciary and Organic Laws and Statutes Committee in Legislative Yuan and were sent to the Second Reading, the aforementioned Amendments had not passed the second reading. However, the legislators of this session proposed another Amendments of the Code of Criminal Procedure which is similar to the aforementioned Amendments, and the new Amendments is now listed on the agenda for deliberation.
3. Besides, No. 737 of J.Y. Interpretation proclaims that in the detention review, an accused

and his defender shall be informed of the reasons for applying for a detention order and of relevant evidences in a proper way. In order to conform with the foregoing interpretation, Judicial Yuan has made the proposal for the drafting of Amendments of the Code of Criminal Procedure. On purpose of pooling the wisdom of the masses and preparing for drafting the Amendments, Judicial Yuan has invited judges, public prosecutors, defenders and jurists to discuss this issue and consult them about the proposal.

第 14 條－辯護之準備及與律師接見通信權

Article 14－The right to prepare defense and to communicate with counsel

點次	問題內容(原文)	中文參考翻譯
36	What are the restrictions in practice on the detained defendant's access to counsel, including in cases where the defendant is prohibited from meeting people other than counsel? How often and for how long can the detained defendant meet with counsel in the detention center? Can the defendant have access to case documents and evidence in such meetings?	實務上對於羈押被告的律師接見通信權有何限制，包括羈押被告遭禁止與律師以外之人接見通信之案件在內？羈押被告於看守所中與律師接見之次數與時間限制？被告於看守所內與律師接見時可否閱覽案件資料及證物？

中文回應

依羈押法第 23 條之 1 規定，羈押被告與其辯護人接見時，除法律另有規定外，看守所管理人員僅得監看而不與聞。為維護看守所秩序及安全，除法律另有規定外，看守所得對被告與其辯護人往來文書及其他相關資料檢查有無夾藏違禁物品。是以，實務上各監所辦理羈押被告(含禁止接見、通信之羈押被告)與其辯護人之接見，均以「監看而不與聞」方式為之，並無實施監聽且未有戒護人員在場聽聞，自無限制收容人與辯護人充分溝通之權利。至於其往來文書及其他相關資料，亦僅以「開拆而不閱覽」方式查察有無夾藏違禁物品，即可交付被告或辯護人進行案情討論。另依羈押法第 26 條及同法施行細則第 81 條規定，各監所對於辯護人接見之次數與時間未有限制，俾保障羈押被告訴訟權益之行使。

英文回應

According to Article 23-1 of the Detention Law, when the defendant in custody meets his/her counsel, unless otherwise provided by law, the management personnel of the detention center may only monitor but not listen. In order to maintain the order and security of the detention center, unless otherwise provided by law, the detention center may check the correspondence between the defendant and his counsel and other relevant documents for the presence of prohibited items. Therefore, in practice the form of "monitoring without listening" is adopted for the meeting between the defendant in custody (including defendants in custody with their access and correspondence prohibited) and his/her counsel. There has been no audio monitoring or the presence of guardians, nor restrictions on the communication between the defendant and the counsel. As for their correspondence and other relevant documents, they may be checked in the form of "opening without inspection" for the presence of prohibited items, and may then be handed over to the defendant or the counsel for further discussion of the case. In addition, Article 26 of the Custody Law and Article 81 of its Enforcement Rules provide that detention centers do not have restrictions on the number and the length of time of visits by the counsel, so as to protect defendants in custody in the exercise of their litigation rights.

第 14 條－不受不當遲延之受審權

Article 14－The right to be tried without undue delay

點次	問題內容(原文)	中文參考翻譯
37	In response to paragraph 64 of the 2013 Concluding Observations and Recommendations, the Government states that “The European Court of Human Rights holds that violation of the requirement to have a hearing within a reasonable time occurs only if all the court proceedings take more than ten	政府於回應《2013 年結論性意見與建議》第 64 點時(見《回應結論性意見與建議》第 223 點)，稱「歐洲人權法院認為只有在法院全部程序超過 10 年者始違反合理聽審期間之要求（ECtHR, Judgment of 15 July 1982, Eckle v.

	years (ECtHR, Judgment of 15 July 1982, Eckle v. Germany, § 80), making the eight-year limit in Article 7 of the Criminal Speedy Trial Act rather "reasonable" (Response to the 2013 Concluding Observations, § 223). This interpretation seems inaccurate. The decision in the case cited by the government was apparently not meant to establish 10 years as a benchmark for determining "undue delays." It went only as far as stating that delays of 17 years or even of 10 years are "undoubtedly inordinate," without foreclosing the possibility that a trial process that lasts less than 10 years may still be considered an undue delay. Has the Government considered reducing the eight-year limit in the Criminal Speedy Trial Act?	Germany, § 80），使刑事妥速審判法第 7 條的 8 年限制更為「合理」(見政府《回應結論性意見與建議》第 223 點）。上開解釋似乎並不正確。政府所引用的上開判決顯然並非將 10 年作為決定是否為「不當遲延」之基準。它最多只是認為 17 年或甚至 10 年的遲延是「毫無疑問的過度遲延」，卻並未預先排除將少於 10 年的訴訟程序被視為不當遲延的可能性。政府是否有考慮將刑事妥速審判法的 8 年限制再予降低？

中文回應

保障刑事被告有受公正、合法、迅速審判之權利，固屬我國刑事被告的基本權之一，然關於刑事審判之合理期間，仍須考量案件對於當事人的重要性、在法律上及事實上的複雜程度，暨當事人、司法機關在訴訟程序是否有可歸責事由等諸多因素，刑事妥速審判法第 7 條關於侵犯被告速審權之期間要件（8 年），尚稱合理，惟司法院仍將持續視人權理念之發展，適時予以檢討修正。

英文回應

The accused in Taiwan has the basic right to fair, legitimate and speedy criminal trials, but as to determining the reasonable time of criminal trials, the government needs to take the importance of the cases to the parties and the complexity of the fact and law into account. Besides, the government also need to consider whether the delay of the trial is imputed to the parties or judicial authority. Thus, the government is of the opinion that it is reasonable to

stipulate that the accumulated period of detention during the trial shall not exceed eight years. However, the government will keep monitoring the progress of human right concepts and made adequate adjustment of necessity.

第 14 條－不受不當遲延之受審權

Article 14－The right to be tried without undue delay

點次	問題內容(原文)	中文參考翻譯
38	Please provide statistics since ratification of the ICCPR for the average length of trial process in criminal cases (serious crimes and non-serious crimes separately), civil cases and administrative cases including tax cases. Please also elaborate on the measures taken by the Government to prevent undue delay in these cases.	請提供自批准《公政公約》以後刑事案件（重大案件與非重大案件請分列）、民事事件與包括稅法事件在內之行政訴訟事件，審判程序之平均期間。亦請說明政府為避免這些案（事）件發生不當遲延所採取的方法。

中文回應

1. 有關刑事案件審判程序之平均期間部分，謹提供公民與政治權利國際公約批准後，刑事案件審判程序之平均期間統計資料如下表：

各級法院刑事案件終結件數與平均結案日數

年別	高等法院暨分院				地方法院			
	刑事案件		重大案件		刑事案件		重大案件	
	終結件數	平均結案日數	終結件數	平均結案日數	終結件數	平均結案日數	終結件數	平均結案日數
2009.5-12	21,513	60.96	254	228.24	149,259	61.71	474	278.04
2010	30,078	66.22	298	257.73	214,712	57.86	602	277.42
2011	28,369	67.08	251	277.39	211,467	59.61	543	272.11
2012	26,387	71.51	206	339.17	207,037	62.42	477	292.93
2013	23,691	76.02	194	385.06	209,204	64.11	420	251.60

年別	高等法院暨分院				地方法院			
	刑事案件		重大案件		刑事案件		重大案件	
	終結件數	平均結案日數	終結件數	平均結案日數	終結件數	平均結案日數	終結件數	平均結案日數
2014	22,085	80.35	170	327.51	228,496	62.56	491	252.43
2015	21,250	72.63	141	309.04	234,036	66.52	495	267.28
2016.1-9	15,299	73.16	104	418.57	172,658	69.91	354	249.68
總計	188,672	70.66	1,618	303.93	1,626,869	63.01	3,856	268.83

2. (1)為避免各級法院辦理民事事件，發生不當遲延，司法院除以「各級法院辦案期限實施要點」進行管考外，並依「司法院視導所屬機關業務實施要點」及「司法院檢查各級法院民刑事及行政訴訟業務實施要點」檢查各法院辦理民事事件是否有不當遲延之情形 。

(2)自公政公約批准至今(2009年5月至2016年9月不含非訟與強制執行之保全、其他事件）民事事件平均結案日數：

①最高法院：33.20日

②高等法院暨分院：172.20日

③地方法院：33.24日

3. (1)自公政公約批准起迄今（2009/05至2016/09)，行政訴訟稅務訴訟平均終結日數為168.28日。

(2)智慧財產法院自批准公政公約後至今(2009/05至2016/11/08，不含程序事件及再審案件)各類訴訟案件之平均結案日數：

民事一審平均結案日數：150.38日、民事二審平均結案日數：182.44日、刑事訴訟案件平均結案日：107.33日、行政訴訟事件平均結案日：87.33日。

(3)避免智慧財產案件不當遲延：

定期檢視智慧財產法院及普通法院辦理智慧財產案件之遲延及視為不遲延情形，注意列報原因及其增減變動，並藉視導督促法院妥適審理民、刑事及行政訴訟智慧財產案件。

4. 有關為避免以上案（事）件發生不當遲延所採取的方法部分：

司法院每年度會訂定各級法院案件結案速度等列管標準，作為具體目標，並按月將執行情形函送各法院參考改進，以提高執行績效。

英文回應

1. The statistics since ratification of the ICCPR for the average length of trial process in criminal cases are as follows:

Numbers of Criminal Cases Closed and Average Numbers of Days to Close a Criminal Case in High Courts and District Courts

Period	High Court and its branches				District Courts			
	All Criminal Cases		Serious Crimes		All Criminal Cases		Serious Crimes	
	Numbers of Criminal Cases Closed	Average Numbers of Days to Close a Criminal Case	Numbers of Criminal Cases Closed	Average Numbers of Days to Close a Criminal Case	Numbers of Criminal Cases Closed	Average Numbers of Days to Close a Criminal Case	Numbers of Criminal Cases Closed	Average Numbers of Days to Close a Criminal Case
2009.5-12	21,513	60.96	254	228.24	149,259	61.71	474	278.04
2010	30,078	66.22	298	257.73	214,712	57.86	602	277.42
2011	28,369	67.08	251	277.39	211,467	59.61	543	272.11
2012	26,387	71.51	206	339.17	207,037	62.42	477	292.93
2013	23,691	76.02	194	385.06	209,204	64.11	420	251.60
2014	22,085	80.35	170	327.51	228,496	62.56	491	252.43
2015	21,250	72.63	141	309.04	234,036	66.52	495	267.28
2016.1-9	15,299	73.16	104	418.57	172,658	69.91	354	249.68
Total	**188,672**	**70.66**	**1,618**	**303.93**	**1,626,869**	**63.01**	**3,856**	**268.83**

2. (1) In order to prevent improper delays in civil cases in courts of all levels, Judicial Yuan, apart from conducting oversight in accordance with “Implementation Directions for Time Limits of Cases in Courts of All Levels,” inspects whether there are improper delays in civil cases in all courts in accordance with “Implementation Directions for Judicial Yuan Supervising Businesses of Subordinate Units” and “Implementation Directions for Judicial Yuan Inspecting Civil, Criminal and Administrative

Litigations in Courts of All Levels."

(2) Since the ratification of ICCPR (from May 2009 until September 2016, excluding non-litigation cases and preservation and other cases of compulsory enforcement), the average days for closing a civil case are as follows:

①Supreme Court：33.20 days

②High Court and its branch courts：172.20 days

③District Courts：33.24 days

3. (1) The average length of trial process in tax cases is 168.28 days. （2009/05-2016/09）

(2) The average length of trial process in the IPC since ratification of the ICCPR: (2009/05-2016/11/08)

The First instance of civil lawsuits: 150.38 days.

The Second instance of civil lawsuits: 182.44 days.

The Second instance of criminal lawsuits: 107.33 days.

The First instance of administrative lawsuits: 87.33 days

(3) To prevent undue delay in Intellectual Property (IP) cases, we review the "delayed" and "regarded as undelayed" cases in the IPC and the ordinary courts periodically, and pay attention to their causes and variations. Besides, we look to the proper handling of civil, criminal and administrative IP cases by regular inspection.

4. As for the measures taken by the Government to prevent undue delay in these cases:

Judicial Yuan will stipulate the standards for case closing speed for courts of all levels each year as the specific goal. Judicial Yuan will also inform courts of the implementation process for the reference to improvement in order to improve the performance.

第 14 條－法律扶助權

Article 14－The right to legal assistance

點次	問題內容(原文)	中文參考翻譯
39	According to the Covenants Watch Shadow	依人權公約施行監督聯盟之《公

	Report, no asylum-seekers in Taiwan have received any legal aid when detained in the alien detention centers for the crimes of illegal entry or overstay (§ 195). Is this observation accurate? Please elaborate on the measures taken by the Government to allow legal aid to be provided to illegal entrants or overstayed aliens and Mainland Chinese.	政公約影子報告》(中文版第 195 點），在臺灣尋求政治庇護者在外國人收容中心收容期間就其涉犯非法入境或逾期停留之相關犯罪未能獲得法律扶助。這個觀察是否正確？請說明政府為了提供法律扶助給非法入境或逾期停留之外國人及中國人而採取的措施有哪些？

中文回應

1. 依據入出國及移民法，外國人受有強制驅逐出國處分者，內政部移民署得暫予收容，最長不得逾十五日，並於暫予收容處分作成前，賦予陳述意見機會。再者，受收容人或其配偶、直系親屬、法定代理人、兄弟姊妹，對暫予收容處分不服者，得於受收容人收受收容處分書後暫予收容期間內，以言詞或書面敘明理由，向內政部移民署提出收容異議，並於二十四小時內移送相關卷證至法院裁定，完善即時司法救濟與正當法律程序。
2. 再者，受收容人就收容期間期滿前，如內政部移民署認有繼續收容之必要，附具理由移送法院裁定，落實法官保留原則。除司法救濟程序與扶助外，移民署收容所設有申訴管道，提供受收容人反應生活管理措施與各項需求，兼顧受收容人人權保障。
3. 又，受收容人若涉其他刑事案件，偵辦單位亦主動告知其所享偵訊權益，包含(一)得保持沈默、無須違背自己意思而為陳述。(二)得選認辯護人。(三)得請求調查有利之證據。(四)如為低收入戶、中低收入戶、原住民、智能障礙為無法完全之陳述者或其他依法令得請求法律扶助。
4. 2015 年 7 月 6 日修正施行之法律扶助法第 14 條第 1 項第 3 款，已將人口販運案件之被害人及疑似被害人列為扶助對象；同條第 1 項第 2 款亦將因不可歸責於己之事由喪失居留權之人列為扶助對象。
5. 法律扶助基金會自 2008 年至 2016 年 8 月 31 日，扶助人口販運被害人之申請案件數如下：

年別	准予扶助人次/案件
2008	76
2009	417
2010	367
2011	238
2012	299
2013	318
2014	281
2015	102
2016.1-8	122
總計	2,220

6. 法律扶助基金會目前並無建置通譯人才資料庫。惟曾於 2012 年 8 月 31 日至 12 月 31 日試辦通譯服務計畫，試辦效果如下：

(1) 臺北、士林、板橋（現改名為新北）、基隆、宜蘭、桃園、新竹、苗栗、南投分會申請中案件、駐點法律諮詢共 475 人次之外籍人士：申請服務 0 次。

(2) 所有分會扶助中案件之通譯服務：申請服務 13 次。

(3) 分析使用率低落之原因如下：

①多有朋友、親人陪同，或由轉介團體之陪同翻譯人員協助。

②具備雙語能力之諮詢律師、審查委員可協助，即無需再申請。

7. 為增進法律扶助基金會扶助律師及審查委員對於人口販運案件司法實務、法令之了解，基金會陸續辦理多場律師教育訓練課程，每堂課程均有法官、社工代表及推動人口販運防制法之律師分享其經驗，2016 年度辦理情形如下：

分會	日期	題目
基隆	6 月 25 日	人口販運防制講座–漁工
總會	9 月 13 日	與臺北市政府警察局合作人口販運教育訓練課程
宜蘭	9 月 24 日	刑事沒收新制研析及外籍勞工、漁工議題討論
桃園	10 月 15 日	人口販運防制講座–外籍移工之勞動權益

英文回應

1. According to the Immigration Act, aliens under forcible deportation order, may be temporarily detained by the National Immigration Agency. The duration of temporary detention may not exceed 15 days. However, before the temporary detention is made, aliens are endowed to submit claims. Furthermore, after the temporary detention is made, the detainees, others such as his or her spouses, the specific relatives, may submit claims for the temporary detention order instead. While receiving the claims or objection, the National Immigration Agency shall conduct a review based on its mandate and decide whether the claim is reasonable or not. If the foregoing objection is positive, the original temporary detention sanction may be revoked or repealed, the detainees will release from the detention center. If not, the detainees shall be presented in court within twenty four (24) hours along with the objection documentation. These are the judicial remedies and reviews for the aliens under temporary detention, which fulfill the due process of law and protect the aliens' human right in Taiwan.
2. What's more, if the detainees under temporary detention are necessary to detain for more days, the National Immigration Agency shall apply for an extension of the detention period by submitting the reasons to the court. The court will conduct the application from the National immigration Agency and balance the necessity of detaining the aliens in the detention center. In addition, the detention centers have ways for the detainees to file complaints or ask for further assistances.
3. As for the detainees who involve in criminal cases, he/she will be informed of the following: (1) That he may remain silent and does not have to make a statement against his own will; (2) That he may retain defense attorney; (3) That he may request the investigation of evidence favorable to him (4) if he meets certain criteria, he may ask for legal aid.
4. The amended Subparagraph 3, Paragraph 1, Article 14 of Legal Aid Act promulgated on July 6th, 2015 includes the victims and possible victims of human trafficking case in the range of legal aid; Subparagraph 2, Paragraph 1 of the same Article also includes people who lost their residency due to incidents not imputed to themselves in the range of legal aid.

5. The numbers of legal aid applications made by victims of human trafficking cases to LAF between 2008 and August 31st, 2016 are as follows:

Historical Statistics of Legal Aid Provided to Victims of Human Trafficking Cases

Year	Number of Granted People/Cases
2008	76
2009	417
2010	367
2011	238
2012	299
2013	318
2014	281
2015	102
2016.1-8	122
Total	2,220

6. LAF does not have interpreter data base so far. However, LAF ran an pilot interpretation scheme between August 31st and December 31st of 2012, and the result is as follows:
   (1) There were 475 foreigners in total making the applications and seeking legal advices in Taipei, Shilin, Banqiao (now New Taipei), Keelung, Yilan, Taoyuan, Hsinchu, Miaoli, and Nantou Branch：The number of applications for interpretation service is 0.
   (2) The number of application for interpretation service in legal aid cases in all branches: 13.
   (3) The analysis of the low usage rate is as follows:
      ①Many of foreigners were accompanied by friends or family members or assisted by interpreters from referral groups.
      ②Many foreigners are assisted by bilingual attorneys or members of review committee, so they do not need to apply for the service.
7. For the purpose of enhancing the understandings of judicial practice and laws of human trafficking case for attorneys and members of review committee of LAF, LAF holds multiple educational training courses for attorneys. Judges, social workers and attorneys

who strive for promoting anti-human trafficking share their experiences in each course. The implementation in 2016 is as follows:

Branch	Date	Topic
Keelung	June 25th	Seminar on Anti-Human Trafficking ─ Fishermen
Head Office	September 13th	Human Trafficking Educational Training Course Joint by Taipei City Police Department
Yilan	September 24th	Analysis of New Criminal Confiscation System and Discussion on Foreign Workers and Fishermen
Taoyuan	October 15th	Seminar on Anti-Human Trafficking ─ Labor Rights of Foreign Workers

第 14 條－法律扶助權

Article 14－The right to legal assistance

點次	問題內容(原文)	中文參考翻譯
40	According to the Covenants Watch Shadow Report, rural and remote areas may have fewer defense lawyers available than more developed areas as a result of unnecessarily onerous geographic restrictions on the lawyer's right to practice relating to registration (paragraphs 308-310). Please provide information on whether access to counsel and legal aid in rural and remote areas is adequate in practice.	依人權公約施行監督聯盟之《公政公約影子報告》（中文版第 308 至 310 點），鄉村與偏遠地區之律師人數比較為開發之地區少，這是因為律師須先加入該地區律師公會始能執業的不必要而繁重的地區限制。請就鄉村與偏遠地區之律師與法律扶助於實際上是否充足一事提供資訊。

中文回應

1. 鄉村與偏遠地區之律師人數相較都會地區律師人數為少，並非全然係因我國律師須先

加入該地區律師公會始能執業所致，觀諸外國律師於其原資格國執業之城鄉分布人數亦與我國分布情形相同，例如，過去日本各個法院管轄區域內的市町村中，沒有律師或是只有 1 位律師的所謂 0-1 地區並不少見，因此，日弁連在 1996 年後，即與各地地方律師公會、地方政府合作，在律師過少的地區設立法律諮詢中心。因此，此現象並非我國獨有，亦非我國律師執業入會制度使然。

2. 至鄉村與偏遠地區之律師是否充足一事，依律師法第 16 條第 9 款規定:「律師公會章程應規定平民法律扶助之實施辦法」由此可知，平民法律扶助係屬各律師公會之任務，且據瞭解實務上各律師公會對於鄉村與偏遠地區之平民法律服務，皆係將平民法律服務列為律師公會重點工作，除了配合院檢機關、地方自治團體辦理各類司法宣導活動外，亦有定期派員為法律宣導及提供免費法律諮詢服務。
3. 法律扶助基金會擬針對原住民人數較多，且較偏遠之花東地區成立原住民法律服務中心，並加強召募專職律師。

英文回應

1. The problem of a relative lack of lawyers in rural and remote areas compared to developed areas requires clarification. This phenomenon cannot be completely attributed to the fact that lawyers in Taiwan must join the bar association of said area to be able to practice their profession. An analysis of the distribution of foreign lawyers in urban and rural areas of countries where they acquired their qualifications reveals that conditions are very similar to Taiwan. For instance, areas with no lawyers or only one lawyer were not uncommon among the municipalities under the jurisdiction of different courts in Japan in the past. Since 1996, the Japanese Federation of Bar Associations has therefore established legal counseling centers in areas with a lack of lawyers in cooperation with local bar associations and governments This phenomenon is therefore not confined to Taiwan and is not entirely caused by the requirement to join a local bar association prior to legal practice.
2. As for the sufficiency of lawyers in rural and remote areas Article 16, Paragraph 9 of the Lawyer Act clearly stipulates that “Bar Association charters shall prescribe implementation guidelines for legal aid to ordinary citizens”. This clearly indicates that legal aid to ordinary citizens is the responsibility individual bar associations. We also understand that in actual practice bar associations view legal services for ordinary citizens in urban and

remote areas as a key task. In addition to the organization of legal education activities in coordination with juristic and investigative authorities and local self-governing bodies, these associations also regularly dispatch personnel to provide legal education and free legal counseling services.

3. Legal Aid Foundation plans to establish legal service center for indigenous people in remote areas in Hualien and Taitung, where many indigenous people reside, and enhances the recruitment of full-time attorneys.

第 14 條－傳喚與詰問證人權

Article 14－The right to call and examine witnesses

點次	問題內容(原文)	中文參考翻譯
41	In the case of the Tu brothers, who were executed by the Government in 2014, the court admitted into evidence written statements that the PRC police took from a crucial witness in Mainland China, but the statements were never subject to defense cross-examination in the Taiwan court, as the court claimed to have "practical difficulty" in finding the relevant Mainland witness. Please comment on whether the defendants' right to cross-examination had been violated in this case and how written statements that are not subject to cross-examination should be dealt with in similar cases that involve witness statements taken and provided by Mainland Chinese authorities.	杜氏兄弟遭政府於 2014 年執行死刑一案，法院認為中華人民共和國公安在中國大陸對重要證人所做的筆錄有證據能力，但該筆錄在臺灣法院從未受到交互詰問，因為法院認為在中國找到相關證人有「實際上的困難」。請說明被告的交互詰問權在本件是否有所違反，以及未受交互詰問之筆錄在涉及中國當局製作提供之證人筆錄的類似案件中應如何處理。

中文回應

1. 就被告的交互詰問權在上揭案件是否有所違反一節，按刑事訴訟法就確定判決設有再審及非常上訴等救濟程序，由管轄法院判斷案件是否有新事實、新證據或判決違背法令等情形，司法院為司法行政機關，無審酌具體個案判決是否合法妥適之權限。
2. 另關於中國法院製作之未經交互詰問的證人筆錄，是否得為證據方法或具有證據能力，事屬審判核心事項，應由法官本於法律確信，獨立判斷，司法院自不宜干涉。

英文回應

1. Since Judicial Yuan is only responsible for judicial administration affairs and has no jurisdiction of the case, Judicial Yuan could not comment on whether the defendants' right to cross- examination had been violated in this case. Nevertheless, after a guilty judgment has become final, a motion for retrial may be filed for interests of the convicted where material testimony, expert opinion, or interpretation on which the original judgment is based has been proven false, or where the discovery of new evidence is sufficient to show that the convicted shall be acquitted, exempt from prosecution, remitted the punishment, or sentenced an offense less serious than the one in the original judgment. Besides, if the trial of a case is found to in contravention of laws, the chief-procurator of the Supreme Prosecutors Office may file an extraordinary appeal to the Supreme Court.
2. It is the power of the court to determine how to deal with written statements that are not subject to cross-examination in similar cases that involve witness statements taken and provided by Mainland Chinese authority. Judicial Yuan can only exercise the power of judicial administration, but has no jurisdiction of the case.

第 14 條－證物完整性

Article 14－Integrity of evidence

點次	問題內容(原文)	中文參考翻譯
42	According to the Covenants Watch Shadow Report Taiwan's Control Yuan has	依人權公約施行監督聯盟《公政公約影子報告》（中文版第 330

	investigated and identified the flaws in the handling and preservation of evidence in judicial proceedings (§ 330). Please summarize the Control Yuan's findings and elaborate on the measures that the Government has taken in response to protect the integrity of evidence.	點），臺灣監察院對於司法程序證物之經管與保存已進行調查並發現缺失。請概述監察院報告並說明政府為保護證物完整性所採取的回應措施。

中文回應

1. 關於人權公約施行監督聯盟公政公約影子報告提及案例，監察院曾分別針對蘇建和案、邱和順案及鄭性澤案進行調查(註：呂金鎧案當事人未上訴也未曾向監察院陳請調查)。綜合監察院調查該 3 案所發現之主要缺失包括：違法羈押、非法刑求取證、未據實呈送證物、鑑驗通知未存卷、未依職權調查關係被告之重大利益事項、被告或共同被告之自白互為矛盾或瑕疵、自白欠缺真實性與證據力等。監察院調查後已將各案發現之缺失或疑點，函請法務部轉請最高法院檢察署研提非常上訴或再審。
2. 監察院近年也曾針對司法程序有關證據保全之規定及措施進行調查。相關案例如下：
   (1) 2012 年至 2013 年間監察院曾調查司法院贓證物品管理系統功能未有效發揮，贓證物品久置庫房未妥適處理，及檢察機關未落實執行扣押物及沒收物控管作業等問題，並函請司法院及法務部改善缺失(案號：102 司調 0050)。
   (2) 監察院 2014 年 7 月 29 日院台司字第 1032630379 號函檢附調查意見略以：「一、針對小型贓證物包裝袋部分，業已提供各地方法院檢察署之改善照片供參，均採用透明袋進行包裝，惟是否與新北地方法院檢察署採用相同防調包之特殊材質，以及有無進行統一採購必要，仍請法務部續行討論查復。二、一審檢察官辦案系統已建置警示及控管贓證物功能；建置扣押物拍、變賣整合平臺及對扣押物及早拍、變賣之承辦人列為年度考評獎勵，均與調查意見意旨相符。三、至有關大型贓證物庫管理方面，為落實贓證物庫之管理，提昇效率，爰請臺灣高等法院檢察署提供 2014 年及 2015 年度北中南大型贓證物庫之稽核情形與管理成效，並與 2012 年及 2013 年度進行比較分析。」
   (3) 法務部回應：法務部 2015 年 12 月 25 日法檢字第 10400211780 號函，略以：「關於審議意見一：就小型贓證物包裝袋部分，臺灣高等法院檢察署於 2015 年 4 月 22 日，依政府採購法辦理贓證物透明包裝袋採購案，公開招標採購與臺灣新北地

方法院檢察署相同具有防調包功能特殊材質之透明包裝袋，得標廠商已依約於2015 年 7 月 2 日前，將該透明包裝袋送達所屬各級檢察機關收受。關於審議意見二：無補充。關於審議意見三：經臺灣高等法院檢察署稽核抽查，發現北、中、南區大型贓證物庫贓證物之存量有逐年遞減趨勢，對庫區保管環境之維護良好，並均已設置滅火及監視設備以防護扣押物。由於強化稽核及督導，就所存扣押物品抽查或逐一檢視，促使受檢單位更加積極處分。作業流程差異：為使贓證物之處理更為順暢，近二年來南區大型贓證物庫就贓證物之收受、銷毀、拍賣等作業，均建立標準作業流程，期能以制度化、標準化之要求，降低人為因素可能造成之缺失。重視贓證物庫之管理：為強化贓證物之管理，各機關加派優秀人員辦理贓證物庫管理業務，對建置檔案、處分扣押物，更能以積極之態度及創新之方式辦理，並藉由清查舊案之機會，有效管控扣押物品處理之進度。」監察院針對本件調查案，已以 2016 年 1 月 4 日院台司字第 1052630005 號函：「請自行列管，持續督促各級檢察機關落實扣押贓證物管理及其拍、變賣與清理，並適時給予相關承辦人員獎勵」。

(4) 司法院改善措施如下：

①為期妥適管理贓證物品，臺灣高等法院已訂定「臺灣高等法院暨所屬各級法院贓證物品管理要點」，該院所屬分院應每年定期稽核轄區內地方法院及其分院贓證物品庫管理業務，該院則應每年不定期稽核督導及抽查所屬各級法院贓證物品庫管理業務。

②為強化贓證物品之管理與監督，司法院於 2015 年 3 月 17 日以院台廳刑一字第 1040007404 號函請各法院督促所屬確實依照上開要點妥適管理贓證物品。

③司法院與法務部於 2013 年 9 月 4 日「建立院檢收受扣押物移交標準流程」會議中，曾就「偵查中依刑事訴訟法第 140 條第 2 項命所有人或其他適當之人保管之扣押物應如何移送」議題達成共識，並於 2013 年 11 月 26 日檢送前開會議紀錄予各法院參考辦理。

④司法院近期將配合法務部、內政部警政署會同研議是否就刑事案件確定後贓證物品存放管理訂定相關規定。

(5) 2012 年監察院曾調查 1997 年臺中地區東海之狼性侵未遂案。監察院調查發現，該案承辦員警遺失所查獲之眼鏡、絲襪、色情錄影帶等可疑證物及被害人報案筆錄，承辦檢察官未再行提訊被告或傳訊被害人、證人，且未待刑事鑑驗結果即草

率起訴。監察院除函請行政院改善外，並提案糾正臺中市政府警察局等機關。對此，內政部已訂定督導考核規定，要求警察機關落實受理報案紀律，並應確實依《刑事訴訟法》、《刑事鑑識規範》及《警察機關刑案證物室證物管理作業規定》等規定，強化刑案現場保全及勘察採證品質，並推動數位化偵訊全程連續錄音及製作筆錄，以確保筆錄真實性並完善刑案證物之監督管理機制(案號：101 司調 0002、101 司正 0001）。

英文回應

1. Regarding the cases mentioned in the Covenants Watch's ICCPR Shadow Report, the Control Yuan had investigated the three cases separately about Mr. Su Chien-ho, Mr. Chiou Ho-shun, and Mr. Cheng Hsing-tse (in the case of Lu Chin-kai, Lu did not appeal nor lodge a complaint to the Control Yuan.) The following shortcomings were found: unlawful detention, confession extracted by torture, failure to deliver evidence as it is, result of forensic examination not filed, omission of investigating evidence to discover facts that are critical to the interest of the accused, contradictory/flawed confessions of the defendant or between the co-defendants, confession lacking factual and evidential support. These findings were officially forwarded to the Supreme Prosecutors Office under the Ministry of Justice to reconsider extraordinary appeal or re-trial.
2. In recent years, the Control Yuan had also investigated the perpetuation of evidence in the judicial process. The selected cases are as follows:
   (1) Between 2012-2013, the Control Yuan investigated the management system of the Judicial Yuan's loot and evidence storage and found that it was not properly managed. The same was found in the prosecutorial system where the seizures were also not properly managed. The Control Yuan officially requested improvements to be made. (102 si-diao 0050)
   (2) The investigation report attached to Ordinance No. 1032630379 issued by the Control Yuan on July 29, 2014：With regard to the bags used for packaging of small-sized loot, District Court Prosecutors Offices have already been provided with photos for improvement. Transparent bags should be adopted for packaging. The Ministry of Justice has been requested to conduct follow-up discussions and reviews on whether

the same special anti-swap packaging materials that the New Taipei District Prosecutors Office employs should be adopted and whether unified procurement is necessary. 2. An alert and control function for loot has been integrated into the legal proceedings system of first-instance prosecutors. An integrated platform for the auctioning off and sale of confiscated items has been established and persons responsible for early auctioning off and sale are listed for annual appraisal rewards in accordance with the main points of the investigation report. 3. As for the storage management of large-sized loot, the Taiwan High Prosecutors Office has been requested to provide the audit results and management effectiveness of its storage facilities for large-sized loot in Northern, Central, and Southern Taiwan in 2014 and 2015 in order to implement effective management and ensure enhanced efficiency. Results in 2014 and 2015 have been compared with those for the previous two years.

(3) Response of the ministry: Ordinance No. 10400211780 issued by the Ministry of Justice on December 25, 2015 can be summarized as follows: “As for the bags used for packaging of small-sized loot referred to in point 1 of the investigation report, the Taiwan High Prosecutors Office initiated a public tender process for the transparent bags made of special material with anti-swap functions utilized by the New Taipei District Prosecutors Office on April 22, 2015. The bid-winning manufacturer delivered the transparent packaging bags to the prosecuting authorities of all levels by July 2, 2015. Point 2 of the investigation report: No additional remarks. Point 3 of the investigation report: Audits and spot checks by the Taiwan High Prosecutors Office have revealed gradually decreasing inventories of large-sized loot in storage facilities in Northern, Central, and Southern Taiwan and the maintenance of the storage environment is excellent. In addition, fire extinguishing and monitoring equipment and facilities have been installed to protect confiscated objects. Due to the strengthening of audits and supervision, spot checks or detailed inspections of stored confiscated objects have prompted inspected units to increase their efforts in the field of disposition. Different operating procedures: SOPs have been established for the acceptance, auctioning off, and destruction of large-sized loot stored in the Southern area to ensure smooth handling and reduce potential losses caused by human factors

through clearly formulated systematic and standardized requirements. Emphasis on loot management: Different authorities have dispatched additional highly qualified personnel to strengthen the storage management of loot and ensure that archiving and disposition of confiscated objects is carried out in a more active and creative manner. This also generates an opportunity for the inspection of old cases to ensure effective management and control of the processing of confiscated objects.The Control Yuan issued Ordinance No. 1052630005 on January 4, 2016 with regard to this investigation case stating the following: “Please implement independently and continue to monitor and supervise the implementation of management, auctioning off, sale, and disposition of confiscated loot by prosecuting authorities of all levels and reward persons responsible for such operations in a timely manner.”

(4) In response, the Judicial Yuan made the following improvements:

①”Evidence Administration Directions for Taiwan High Courts and District Courts” was promulgated by Taiwan High Court for the purpose of handling and preserving the evidence properly. Based on the aforementioned directions, Taiwan High Court's branches should inspect the administration and preservation of evidence of all district courts within their jurisdiction regularly each year and Taiwan High Court should inspect and supervise the administration and preservation of evidence of all district courts within its jurisdiction irregularly each year.

②To reinforce the administration and preservation of evidence, the Judicial Yuan notified its branches and all district courts to comply with “Evidence Administration Directions for Taiwan High Courts and District Courts” to manage and preserve evidence properly with an official letter (No.1040007404) on March 17th, 2015.

③On September 4th, 2013, the Judicial Yuan and the Ministry of Justice held a conference to establish a standard operating procedure governing transmission of evidence from Prosecutors’ Offices to the Court. At the conference, the Judicial Yuan and the Ministry of Justice reached a consensus on transferring evidence while the evidence is preserved by its owner or other proper person according to Article 140, Paragraph 2 of the Code of Criminal Procedure. The Judicial Yuan then

forwarded the conference resolution to all district courts.

④In the near future the Judicial Yuan will discuss with the Ministry of Justice and the National Police Agency under the Ministry of Interior to decide whether to promulgate a rule governing administration and preservation of evidence after the judgment has become finalized.

(5) In 2012, the Control Yuan investigated a case regarding a man attempting sexual assaults in Taichung in 1997. Investigations revealed that the policeman handling the case lost both the evidence and the victims' statements. The prosecutor-in-charge also hastily indicted the defendant before summoning the defendant, victims and witnesses, and without waiting for the results of forensic tests to be out. The Control Yuan not only officially requested the Executive Yuan for improvement but also corrected Taichung City Government Police Department. In response, the Ministry of Interior formulated rules on supervision and evaluation, making sure that both the integrity and quality of evidence collected at the crime scene meet the requirements set forth in the Code of Criminal Procedure, Guidelines to Criminal Forensic Examination, and Operation Directions to Criminal Evidence Room Management. The investigating (interrogating) and statement making processes were also digitalized to secure the authenticity and integrity of both the statement and the evidence. (101 si-diao 0002, 101 si-zheng 0001)

第 14 條－受免費通譯協助之權利

Article 14－The right to the free assistance of an interpreter

點次	問題內容(原文)	中文參考翻譯
43	The Covenants Watch Shadow Report claims that there is a gap between the supply and demand for interpretation services in judicial proceedings (paragraph 318). Has the Government assessed the demands based on statistics for the number of cases involving	人權公約施行監督聯盟之《公政公約影子報告》（中文版第 318 點）主張司法程序中的通譯服務之供給與需求有落差。政府在估計目前供給量之適足性前，是否已依不同外國國籍被告之案件數

	defendants from different countries before evaluating the adequacy of the current supply? Please provide available statistics and comment on whether the courts, prosecutor's offices and police stations have adequate interpretation services for the accused person, especially in rural and remote areas. In addition, has the Government considered enacting legislation to ensure adequate training, certification and staffing of interpreters, as suggested by civil society groups?	量作為統計依據而進行評估？請提供適合的統計數據並說明法院、檢察署、相關司法警察單位是否對於被告提供適足的翻譯服務，特別是在鄉村與偏遠地區。此外，政府是否有考慮依民間團體之建議，以立法方式確保通譯之適足訓練、認證與編制？

中文回應

1. 為因應法院審理案件開庭傳譯之需求，司法院自 2006 年起即採行特約通譯制度。截至 2016 年 10 月止，法院已建置包含手語、客語、原住民語、廣東話、雲南話、英語、日語、韓語、越南語、印尼語、泰語、菲律賓語、馬來西亞語、緬甸語、西班牙語、葡萄牙語、法語、德語等 18 種語言類別，共 236 名特約通譯備選人。2016 年 1 月至 9 月，各語言類之傳譯平均次數為 3581 次，目前實務運作現況尚無通譯不足使用之情形。
2. 檢察機關目前已建置之特約通譯有手語、客語、原住民語、越南語、泰語、印尼語、菲律賓語、緬甸語、日語、英語德語、西班牙語、柬埔寨語、法語、土耳其語、阿拉伯語等語別，並將依司法實務需求持續辦理擴充建置。申請成為檢察機關特約通譯須提出語言能力、教授特定語文或其他資格證明文件，為確保特約通譯之專業素養與水準，於聘任期間，檢察機關得視需要辦理講習，以增進特約通譯法律常識，提升傳譯品質。至於是否於刑事訴訟法或另制定專法建立通譯制度，法務部尊重刑事訴訟法主管機關司法院之意見，並配合辦理。
3. 警察機關所聘通譯人員非屬司法通譯，與司法及檢察機關所聘之司法通譯不同。內政部警政署業於 2016 年 11 月 9 日函請警察機關依有通譯需求之外國籍被告案件數量及通譯人員分佈等事項進行統計。
4. 依地方制度法及財政收支劃分法等規定，各地方政府應自行編列預算支應所需之通譯相關費用，諸如：訓練、認證及通譯費等。

英文回應

1. In order to respond to the demand for interpretation service in judicial proceedings, Judicial Yuan has implemented contracted interpreter system since 2006. As of October 2016, the courts has established 236 interpreters in 18 different languages, including sign language, Hakka, Indigenous languages, Cantonese, Yunnan dialect, English, Japanese, Korean, Vietnamese, Indonesian, Thai, Filipino, Malaysian, Burmese, Spanish, Portuguese, French and German. Between January and September 2016, the total usage of interpreters in all languages is 3,581. The number of interpreters is sufficient in the practice.
2. Prosecuting authorities have hired freelance interpreters for various languages including sign language, Hakka, indigenous languages, Vietnamese, Thai, Indonesian, Tagalog, Burmese, Japanese, English, German, Spanish, Cambodian, French, Turkish, and Arabic. Other languages may be added in the future based on actual legal requirements. Interpreters who wish to apply for a freelance position at a prosecuting authority are required to provide certificates indicating their language ability, teaching or other qualifications pertaining to specific languages to guarantee that hired interpreters are professional and meet the required standards. During the period of employment, prosecuting authorities may organize workshops to enhance the legal knowledge of interpreters and improve the quality of translations if deemed necessary. Whether or not it is necessary to establish an interpreter system in the Code of Criminal Procedure or other special laws should be determined independently by the Judicial Yuan and Competent Criminal Procedure Authorities. The Ministry of Justice will respect such decisions and act accordingly.
3. Interpreters employed by the police authorities are different from the judicial interpreters conducted by the judicial organs and the procuratorial authorities. On Nov. 9, 2016, the National Police Agency, Ministry of the Interior, sent an official letter to the police authorities to conduct statistics on such matters as the number of cases involving foreign defendants who need interpreters and the distribution of interpreters and so on.
4. In accordance with the Local Government Act and the Act Governing the Allocation of Government Revenues and Expenditures, local governments shall, on their own, budget the translation-related expenditures, such as training, certification and interpretation.

第 14 條－上訴權

Article 14－The right to appeal

點次	問題內容(原文)	中文參考翻譯
44	Please explain why Articles 376 and 377 of the Criminal Procedure Law have not yet been amended to allow all defendants the opportunity of appellate relief in accordance with the requirement of Article 14 (5) of the ICCPR. What has the Government done since the 2013 review to facilitate the passage of the proposed amendments? Please comment on whether the right to appeal should be implemented nevertheless, even before Articles 376 and 377 are revised, given that the ICCPR has been incorporated into domestic law.	請解釋為何刑事訴訟法第 376、377 條仍未修正至與《公政公約》第 14 條第 5 項相符以便讓所有被告均得有尋求上訴救濟之機會。自 2013 年審查以後迄今，政府對於修正案的通過做了什麼？有鑒於《公政公約》已成為國內法，請說明即便在第 376、377 條修正之前，上訴權是否應被落實。

中文回應

為貫徹憲法保障人民訴訟權之意旨，司法院刑事訴訟法研究修正委員會已研擬刑事訴訟法修正條文，建議刪除刑事訴訟法第 376 條規定，並修正第 377 條規定，使第三審上訴之要件悉依上訴理由為規範，而不受案件類型及刑罰輕重之限制。該修正建議業由司法院審慎評估中，未來將配合司法國是會議結論辦理。

英文回應

In light of carrying out the right of instituting legal proceedings safeguarded by the Constitution of the Republic of China, Judicial Yuan established a Committee for drafting the Amendments of the Code of Criminal Procedure. The committee suggested that Article 376 should be repealed and Article 377 should be revised. Cases which could be appealed to the Supreme Court should not be confined to some category and based on their range of

punishment, but only subject to grounds of appeal. Judicial Yuan will refer to this suggestion for judicial reform in days to come.

第 14 條－上訴權

Article 14－The right to appeal

點次	問題內容(原文)	中文參考翻譯
45	Please also explain why Article 388 of the Criminal Procedure Law has not been amended to afford the defendant compulsory defense in the third instance. What has the Government done since the 2013 review to facilitate the passage of the proposed amendment?	也請解釋為何刑事訴訟法第 388 條尚未修正以便被告於第三審享有強制律師辯護的權利。自 2013 年審查以後迄今，政府對於修正案的通過做了什麼？

中文回應

司法院為符合兩公約規定，前已擬具「刑事訴訟法部分條文修正草案」，於該草案第 388 條明定最輕本刑三年以上有期徒刑案件、高等法院管轄第一審案件、被告因精神障礙無法為完全之陳述者、被告具原住民身分者、被告為中低收入戶者及其他審判長認有必要之案件，非經辯護人提出上訴理由書或答辯書，法院不得判決，使法律審之第三審程序亦適用強制辯護之規定。該修正草案於 2012 年 4 月 27 日會銜行政院函送立法院審議，嗣經立法院司法及法制委員會審查完竣，已達成一致之共識，惟仍未能完成二讀程序。然本屆立法委員已提出與協商共識結論相同內容修正草案，由立法院審議中。

英文回應

To comply with the ICCPR, Judicial Yuan had drafted Amendments of the Code of Criminal Procedure. Article 388 of the aforementioned Amendments stipulated that in cases where the minimum punishment is no less than three years imprisonment, where a high court has jurisdiction over the first instance, where the accused are unable to make a complete statement due to unsound mind, where the accused are indigenous people, where the accused are in a

middle-to-low-income household or where the presiding judge considers it necessary, the Supreme Court shall not make a judgment, if the accused have not retained an attorney to file a petition of appeal. Article 388 of the aforementioned Amendment announced compulsory defense in the third instance. The Amendments of the Code of Criminal Procedure are jointly signed by Judicial Yuan and Executive Yuan and submitted to Legislative Yuan for deliberation on April 27, 2012. Although the Amendments of the Code of Criminal Procedure had been examined by Judiciary and Organic Laws and Statutes Committee in Legislative Yuan and were sent to the Second Reading, the aforementioned Amendments had not passed the Second reading. However, the legislators of this session proposed another Amendments of the Code of Criminal Procedure which is similar to the aforementioned Amendments, and the new Amendments is now listed on the agenda for deliberation.

第 14 條－誤判之補償請求權

Article 14－The right to compensation for wrongful conviction

點次	問題內容(原文)	中文參考翻譯
46	What are the current mechanisms for investigating, identifying and correcting wrongful convictions? Have the Government and the judiciary been in communication with civil society groups, lawyers and academics in establishing such mechanisms? What are the measures that are currently under consideration by the Government? What are the Government's statistics for the number of wrongful conviction cases?	調查、確認及糾正誤判之現行機制為何？政府及司法單位有無就建立此項機制與民間團體、律師及學術界溝通？政府目前考慮中的措施為何？政府就誤判案件之統計數據為何？

中文回應

1. 刑事判決如已無法依通常程序提起上訴，即已告確定。判決一經確定，原則上即不得

再予爭執而任意變更。惟刑事確定判決如有違背法令、事實誤認等瑕疵，刑事訴訟法例外許其得以提起救濟。

2. 按判決之瑕疵包括違背法令與事實誤認兩者，就判決違背法令之情形，得依刑事訴訟法第 441 條以下規定提起非常上訴程序；就判決事實誤認之情形，得依刑事訴訟法第 420 條以下規定提起再審程序。故依前揭刑事訴訟法之規定，現行法已有糾正錯誤判決之機制，說明如下：

   (1) 非常上訴：依刑事訴訟法第 441 條規定，提起非常上訴之要件有三：1、須對於已確定之刑事判決。2、須案件之審判違背法令。3 須由最高法院檢察署檢察總長提起。提起非常上訴之權利係專屬於檢察總長，但檢察官發現案件之審判有違背法令情事，應具意見書將該案卷宗及證物送交檢察總長，聲請提起非常上訴（同法第 442 條）。

   (2) 再審：依刑事訴訟法第 420 條規定：有罪之判決確定後，為受判決人之利益，得聲請再審之要件如下：1、原判決所憑之證物已證明其為偽造或變造者。2、原判決所憑之證言、鑑定或通譯已證明其為虛偽者。3、受有罪判決之人，已證明其係被誣告者。4、原判決所憑之通常法院或特別法院之裁判已經確定裁判變更者。5、參與原判決或前審判決或判決前所行調查之法官，或參與偵查或起訴之檢察官，因該案件犯職務上之罪已經證明者，或因該案件違法失職已受懲戒處分，足以影響原判決者。6、因發現新事實或新證據，單獨或與先前之證據綜合判斷，足認受有罪判決之人應受無罪、免訴、免刑或輕於原判決所認罪名之判決者。

3. 又為維護刑事審判之正確，避免無辜之人受有冤抑，以保障人權，維護正義，「刑事案件確定後去氧核醣核酸鑑定條例」業經公布施行，使有罪判決確定後，於具備一定要件，而合理相信就本案相關聯之證物或檢體進行去氧核醣核酸鑑定之結果，可作為刑事訴訟法第 420 條第 1 項第 6 款之新事實或新證據者，得聲請就該證物或檢體進行去氧核醣核酸之鑑定。本法之制定建立有罪判決確定後之去氧核醣核酸鑑定制度，透過新提出之鑑定技術、方法釐清真相，使遭受錯誤定罪之無辜被告獲得改判，於此同時，法務部亦參考美國完善定罪小組經驗，積極研議爭議性案件之再審查機制，以發現真實、避免冤抑。

4. 近 5 年上訴至高等法院之地方法院刑事訴訟案件，有罪改判無罪或無罪改判有罪之被告人數所占比率如下：

地院刑事案件上訴高院改判情形

單位：人；%

年別	高院終結人數	地院有罪高院改判無罪		地院無罪高院改判有罪	
		人數	比例	人數	比例
2011	28,824	972	3.37	1,160	4.02
2012	26,879	946	3.52	854	3.18
2013	25,146	922	3.67	801	3.19
2014	23,132	619	2.68	759	3.28
2015	21,914	713	3.25	676	3.08
2016.1-9	15,382	441	2.87	548	3.56

說明：高院改判情形係以被告二審最重罪對應之一審罪名宣判結果判斷。

英文回應

1. If a criminal case can't not appeal through common procedure, it would be considered final. After a judgment has become final, it is indisputable and unchangeable in principle. However, if a final judgment is found with such flaws as in contravention of laws or the fact is misidentified, The Code of Criminal Procedure stipulates the relief that one can seek exceptionally.
2. Wrongful convictions include both contravention of laws and error in fact. Based on Article 441 of the Code of Criminal Procedure, after a judgment is final, if the trial of a case is found to in contravention of laws, the chief-procurator of the Supreme Prosecutors Office may file an extraordinary appeal to the Supreme Court. Besides, according to Article 420 of the Code of Criminal Procedure, after a guilty judgment has become final and there is error in fact, a motion for retrial may be filed for interests of the convicted. Therefore, the judiciary has established mechanisms for investigating, identifying and correcting wrongful conviction:

   (1) Extraordinary Appeal: In accordance with the provisions of The Code of Criminal

Procedure Article 441, there are three elements for filing an extraordinary appeal: 1、it must be a final judgment 2、the trial of a case is found to in contravention of laws 3、the chief-procurator of the Supreme Prosecutors Office is the person who file the extraordinary appeal. The right of filing extraordinary appeal belongs to the chief-procurator of the Supreme Prosecutors Office, however, where a prosecutor discovers a case is found to in contravention of laws, he/she shall submit an opinion in writing along with the case dossier and exhibits to the chief-procurator of the Supreme Prosecutors Office and file a motion for extraordinary appeal.(The Code of Criminal Procedure Article 442)

(2) Retrial: In accordance with the provisions of The Code of Criminal Procedure Article 420, after a guilty judgment has become final, a motion for retrial may be filed for interests of the convicted under the following circumstances: 1. Where exhibits on which the original judgment is based have been proven fabricated, or altered; 2. Where material testimony, expert opinion, or interpretation on which the original judgment is based has been proven false;3. Where the convicted has been proven maliciously accused.4. Where judgment by a common court or special court on which the original judgment is based on has been changed in a final judgment; 5. If a judge participating in the original judgment, judgment before the trial or investigations before the judgment, or prosecutor participating in the investigation or the prosecution commits offenses in his/her post out of the case and the offenses have been proved; or he/she neglect the duties out of the case and has been “administrative punished” but the behaviors are sufficient to affect the original judgment.6. Where the discovery of new fact or new evidence is sufficient to show that the convicted shall be acquitted, exempt from prosecution, remitted the punishment, or sentenced an offense less serious than the one in the original judgment.

3. In light of maintaining justice, avoiding wrongful convictions and protecting human rights, Act of DNA analysis after a guilty judgment” was promulgated and came into force. According “Act of DNA analysis after a guilty judgment”, after a guilty judgment, a sentenced person, his or her statutory agent, spouse and family may petition the court for appraisal of DNA remained on the evidence or specimens relating to the case, if he or she

reasonably believed that the result of DNA analysis is sufficient to show that the convicted shall be acquitted, exempt from prosecution, remitted the punishment, or sentenced an offense less serious than the one in the original judgment. “Law of The appraisal of Deoxyribonucleic Acid after a criminal case is final” which was passed by the Legislative Yuan, has built up the system for DNA appraisal after a criminal case is final, finding out the truth with newly brought-up appraisal technique and method, and amending a judgement which has convicted wrongly to the innocent defendant. Meanwhile, in order to discover truth and avoid unjust cases, the Ministry of Justice has consulted the experience of Conviction Integrity Unit in US, deliberating actively the retrial mechanism of controversial cases.

4. The numbers of the accused convicted by District Courts but acquitted by High Courts, and the numbers of the accused acquitted by the District Court but convicted by High Court in the last 5 years are as follows:

Unit: person; %

Year	Total numbers of the accused	the accused convicted by District Courts but acquitted by High Courts		the accused acquitted by the District Court but convicted by High Court	
		Numbers	Ratio (%)	Numbers	Ratio(%)
2011	28,824	972	3.37	1,160	4.02
2012	26,879	946	3.52	854	3.18
2013	25,146	922	3.67	801	3.19
2014	23,132	619	2.68	759	3.28
2015	21,914	713	3.25	676	3.08
2016.1-9	15,382	441	2.87	548	3.56

第 14 條－誤判之補償請求權

Article 14－The right to compensation for wrongful conviction

點次	問題內容(原文)	中文參考翻譯
47	According to the Covenants Watch Shadow Report (§ 183), in the case of the "Hsichih Trio" who sued for compensation, the court noted that the wrongful conviction of the defendants was caused by their own confessions and therefore it was "attributable" to the defendants. Yet, as is well-known, in practice confessions of the accused may be illegally coerced or unduly influenced by interrogators. Please explain the court's practice in determining whether the illegality is "attributable" to the defendant in cases of compensation for wrongful conviction and whether an illegally extracted confession is considered as "attributable" to the defendant.	依人權公約施行監督聯盟《公政公約影子報告》（第 183 點），在「蘇建和等三人」請求賠償事件，法院提到是因為自白而導致誤判故係「可歸責於」刑案被告之事由。然而眾所週知，實務上刑案被告之自白或許是遭到訊（詢）問者之違法強迫或不當影響所致。請解釋法院實務上在補償請求事件是如何決定誤判之違法性是否可歸責於刑案被告，以及違法取得的自白是否可被認為係「可歸責於」刑案被告。

中文回應

1. 法院實務上在補償請求事件是如何決定誤判之違法性是否可歸責於刑案被告部分：按刑事補償事件中關於公務員行為違法或不當之情節、受害人所受損失及可歸責事由之程度，均與補償金額是否充足、限制補償金額是否合理之判斷，密切攸關，為避免補償失當或浮濫，審酌金額多寡時自應併與衡酌。是其中「受害人可歸責之事由」存否，攸關補償金額之決定，影響補償請求人之權益至鉅，故刑事補償法第 7 條第 2 項規定，上開可歸責之事由，應經有證據能力且經合法調查之證據證明之，以昭慎重。
2. 違法取得的自白是否可被認為係「可歸責於」刑案被告部分：按法官審理具體個案，認定事實與適用法律，乃審判核心事項，基於尊重審判獨立原則，允由法官本於法律確信，綜合全案卷證資料，斟酌具體案情，妥適判斷。

英文回應

1. The Criteria of determining whether the illegality is attributable to the defendant in cases of compensation for wrongful conviction: Since the amount of the compensation is determined by factors, such as the circumstances of civil servants' illegal or improper conduct, the loss of the defendant and the extent to which the illegality is attributable to the defendant, it is vital to determine whether the illegality is attributable to the defendant in cases of compensation for wrongful conviction. Article 7, Paragraph 2 of Law of Compensation for Wrongful Detentions and Executions stipulated that attribution of illegality should be proven by the evidence, and evidence inadmissible, having not been lawfully investigated, shall not form the basis of a decision.
2. It is the court that determine on whether an illegally extracted confession is considered as attributable to the defendant. Judicial Yuan can only exercise the power of judicial administration, but has no jurisdiction of the case.

第 14 條－一事不再理

Article 14－The right to be protected against a second trial for the same offense

點次	問題內容(原文)	中文參考翻譯
48	Please explain why the Criminal Procedure Law has not been amended to prohibit a retrial from being filed against a defendant who has been finally acquitted. Before the Criminal Procedure Law is amended, what are the measures taken by the Government to implement its obligations to protect the defendant's right against a second trial for the same offense?	請解釋為何刑事訴訟法為何尚未修正以便禁止對無罪確定之被告聲請再審。在刑事訴訟法修正之前，為落實禁止對被告因同一罪名而為再審之義務，政府已採取哪些措施？

中文回應

上屆立法院於審議本院、行政院會銜所提「刑事訴訟法部分條文修正草案」時，曾於黨

團協商會議就修正刑事訴訟法第 422 條第 1 款規定達成協商共識，限於可歸責於受判決人時，始可為受判決人之不利益聲請再審，以兼顧真實發現之目的與人權保障之要求，並與公政公約第 14 條第 7 項保障被告就同一行為不受重複審判之精神相契合。上開修正草案雖未進入二讀程序，且因新任立委已於 2016 年 2 月 1 日宣誓就職，立法院議案受屆期不連續原則之限制，而未能付審，然本屆立法委員已提出與協商內容相同之修正草案，刻正於立法院審議中。

英文回應

During the last session, The Amendments of the Code of Criminal Procedure are jointly signed by Judicial Yuan and Executive Yuan and submitted to Legislative Yuan for deliberation. On the stage of consultative discussion among political parties, in light of discovering the truth and protecting the human rights, the Judicial Yuan, Executive Yuan and all political parties got the conclusion that a motion for retrial may be filed contrary to the interest of the convicted only if the reasons of a retrial imputes to the convicted. The aforementioned Amendments also complied with Article 14, Paragraph 7 of the ICCPR that no one shall be liable to be tried or punished again for an offence for which he has already been acquitted. Although the Amendments of the Code of Criminal Procedure had not been sent to the Second Reading before the end of the appointed dates, the legislators of this session, who were sworn in as legislators on February 10th, proposed the same Amendments of the Code of Criminal Procedure, and it is now listed on the agenda for deliberation.

第 17 條

Article 17

點次	問題內容(原文)	中文參考翻譯
49	In the previous Concluding Observations, the Experts recommended that the Government should take steps to abolish provisions in the Criminal Code that criminalises adultery as this	在 2013 結論性意見(第 70 點)中，專家建議政府應採取步驟，廢除刑法中將通姦罪行化的條文，因為這是對隱私的任意干涉。請提

	would constitute an arbitrary interference with privacy. Please provide information on whether this has been done or whether there is an intention to do so.	供資訊說明是否已經廢除，或政府是否有意願採取行動。

中文回應

婚姻關係存續中，配偶之一方與第三人間之性行為應為如何之限制，以及違反此項限制，應否以罪刑相加，各國國情不同，應由立法機關衡酌定之。刑法第 239 條規定固對人民之性行為自由有所限制，惟此為維護婚姻、家庭制度及社會生活秩序所必要，為免此項限制過嚴，同法第 245 條對於通姦罪附加訴追條件，此乃立法者就婚姻、家庭制度之維護與性行為自由間所為價值判斷，並未逾越立法形成自由之空間，與憲法比例原則之規定無違。目前我國社會對廢除通姦罪並未形成共識，且大多數民眾反對修法情形下，若立即修法廢除通姦罪，恐難為國人接受。對於此廣大民眾所關切之自身權益存廢問題，本部抱持謹慎態度，持續密切關注民意之變化，再適時提出符合民意需求之修正法案。

英文回應

Countries have different ways of restricting extramarital sexual relations in existing marriages and disagree on how to punish violations of this restriction. The legislative authorities should weigh the different alternatives and determine appropriate methods. Article 239 of the Criminal Code stipulates that the freedom of citizens to engage in sexual relations is restricted. The purpose of this restriction is to protect marriages, the family system, and the order of social life and it should not be interpreted too harshly. Article 245 of the same law prescribes indictment conditions for the crime of adultery. This is the basis for value judgments between the protection of marriages and the family system and freedom to engage in sexual relations set by legislators. Freedom of legislation is not exceeded and the principles of constitutional proportionality are not violated. There is currently no consensus on the abolition of the crime of adultery in our society and a large majority is opposed to the amendment of relevant laws. It seems that the general public will not accept the immediate abolition of the crime of adultery. With regard to the impairment of personal rights and interests which is a matter of

great concern for many citizens, the ministry maintains a cautious attitude and continues to closely monitor changes of public opinion. Amendments are proposed in a timely manner in accordance with public needs.

第 17 條

Article 17

點次	問題內容(原文)	中文參考翻譯
50	The Report also indicates that any illegal surveillance with regard to communication monitoring would be subject to civil and criminal liabilities (§ 271). Please provide information of cases where legal action has been taken against illegal surveillance, if any.	《公政公約第二次國家報告》第 271 點指出對通訊之違法監察將負有民事及刑事責任。若有此類案件，請提供對違法監察採取法律行動之資訊。

中文回應

1. 任何違法監察案件依通訊保障及監察法第 19 條至第 25 條規定需負擔民事及刑事責任。內政部(警政署)並無任何通訊違法監察案件。
2. 臺灣高等法院檢察署於 2009 年 2 月 12 日成立「打擊坊間非法竊聽督導小組」，該小組 2009 年 1 月至 2016 年 6 月執行成效如以下說明及表格：
   (1) 2009 年 1 月至 2016 年 6 月，各地檢署受理打擊坊間非法竊聽案件共計 2702 件(含偵、他案件)，被告 3604 人。
   (2) 各地檢署所受理案件中，依案件來源統計，以警察機關移送最多，為 1602 件，佔受理件數比率 59.3%。
   (3) 所受理案件中，依被告屬性統計，最多為一般私人，計 3152 人，佔全部被告人數 87.5%；查緝重點之徵信業者計 162 人，佔全部被告人數 4.5%。

2009年1月-2016年6月各地方法院檢察署偵辦「打擊坊間非法竊聽」案件績效彙整表

統計期間	案件來源（件數）				被告之屬性（人數）					分案件數／被告人數				被竊聽電話線數	傳喚人次	拘提人次	搜索次數	羈押人數	備註
	檢察官主動發覺	警察機關移送	調查機關移送	其他	徵信業者	通訊器材業者	電信從業人員	一般私人	其他	他字		偵字							
										件	人	件	人						
合計	124	1602	28	948	162	105	18	3152	166	436	707	2266	2897	804	3364	128	184	29	
2009	5	211	4	32	26	55	1	207	18	25	34	227	273	121	268	59	41	7	
2010	5	127	5	50	9	10	3	179	13	19	23	168	191	591	154	15	14	2	
2011	5	114	0	24	16	5	1	149	1	6	6	137	166	15	206	2	66	2	
2012	12	152	0	79	31	9	2	297	27	15	25	228	341	28	369	11	6	1	
2013	9	205	4	125	27	3	5	382	34	50	65	293	387	11	460	4	11	10	
2014	31	256	3	223	40	8	2	625	29	106	182	407	522	10	544	13	7	3	
2015	35	361	4	250	7	9	2	847	19	127	220	523	664	22	920	8	21	2	
2016.1-6	22	176	8	165	6	6	2	466	25	88	152	283	353	6	443	16	18	2	
備　註	一、打擊坊間非法竊聽案件包括：違反刑法第315條之1、第315條之2、通訊保障及監察法第24條、25條、電信法第56條、第56條之1、個人資料保護法第41條之案件。 二、本表「偵他案被告」合計人數3604人，較「被告之屬性(人數)」合計人數3603人多1人，乃因雲林地檢署陳報102年1月份偵辦案件5件，「被告之屬性(人數)」一般私人5人，「偵他案被告人數」6人，經向該署查證，係因其中1名被告涉犯2案所致。																		

3. 謹提供通訊保障及監察法公布施行後，各級法院刑事件被告觸犯通訊保障及監察法第24條之裁判結果如下：

各級法院刑事訴訟案件被告涉犯通訊保障及監察法第24條裁判結果

單位：件；人；罪次

法院別	涉犯項次	終結件數	被告人數	被告罪次																		
				被告罪次合計	科刑情形									免除其刑	無罪	撤回	免訴	不受理	管轄錯誤	回發原審法院	通緝	其他
					計	有期徒刑																
						計	未滿六月	六月以上至未滿一年	一年以上至未滿二年	二年以上至未滿三年	三年以上至未滿五年	五年以上至未滿七年	七年以上									
最高法院	合計	11	13	62	51	51	2	12	37						3					8		
	第1項	5	6	6	3	3	2		1						3							
	第2項	1	1	1																1		
	第3項	5	6	55	48	48		12	36											7		
高等法院	合計	24	48	120	98	98	4	38	56						16	4				2		
	第1項	6	9	9	4	4	4								3					2		
	第2項	2	7	7											6	1						
	第3項	16	32	104	94	94		38	56						7	3						
地方法院	合計	32	70	118	81	81	5	43	32		1				19			12			2	4
	第1項	20	33	33	5	5	5								11			12			1	4
	第2項	2	9	9	2	2		2							7							
	第3項	10	28	76	74	74		41	32		1				1						1	

說明：最高法院裁判結果僅限宣告不合法、無理由及自為判決案件之被告資料。

英文回應

1. Any illegal surveillance with regard to communication monitoring would be subject to civil and criminal liabilities under “Communication Security and Surveillance Act” §19-25. Ministry of the Interior (National Police Agency) have no illegal communication surveillance case.
2. Achievements of the Taiwan High Prosecutors Office “Task Force in Charge of

Supervision of Combatting of Illegal Wiretapping" in the supervision of combatting of illegal wiretapping rom January 2009 to July 2016:

(1) From January 2009 to July 2016, all Prosecutors Offices processed a total of 2702 illegal wiretapping cases (including involved/accused individuals) with a total of 3604 defendants. (For more details refer to attached Chart 1)

(2) 59.3% (a total of 1602 cases as shown in Chart 1 in the appendix) of all cases processed by Prosecutors Offices were referred by police authorities.

(3) 87.5% (a total of 3152 individuals) of all defendants in the processed cases were private citizens, while private investigators which represented the main focus of investigation accounted for only 4.5% (a total of 162 individuals).

Compiled chart showing the performance in the investigation of illegal wiretapping cases by District Court Prosecutors Office from January 2009 to June 2016

Statistical period	Case origin (Number of cases)				Defendant attributes (number of individuals)					Number of cases/defendants by category				Number of tapped phone lines	Number of subpoenaed individuals	Number of arrested individuals	Number of searches	Number of detained individuals	Note
	Independently detected by prosecutors	Referred by police authorities	Referred by investigative authorities	Other	Private investigation businesses	Communication equipment businesses	Telecommunication operators	Private citizens	Other	Involved		Accused							
										Cases	Persons	Cases	Persons						
2009.1-2016.6	**124**	**1602**	**28**	**948**	**162**	**105**	**18**	**3152**	**166**	**436**	**707**	**2266**	**2897**	**804**	**3364**	**128**	**184**	**29**	
2009	5	211	4	32	26	55	1	207	18	25	34	227	273	121	268	59	41	7	
2010	5	127	5	50	9	10	3	179	13	19	23	168	191	591	154	15	14	2	
2011	5	114	0	24	16	5	1	149	1	6	6	137	166	15	206	2	66	2	
2012	12	152	0	79	31	9	2	297	27	15	25	228	341	28	369	11	6	1	
2013	9	205	4	125	27	3	5	382	34	50	65	293	387	11	460	4	11	10	
2014	31	256	3	223	40	8	2	625	29	106	182	407	522	10	544	13	7	3	
2015	35	361	4	250	7	9	2	847	19	127	220	523	664	22	920	8	21	2	
2016.1-6	22	176	8	165	6	6	2	466	25	88	152	283	353	6	443	16	18	2	

Note

1. Illegal wiretapping cases include cases involving violations of Criminal Code Article 315-1 and 315-2, Communication Security and Surveillance Act Article 24 and 25, Telecommunications Act 56 and 56-1, and Personal Information Protection Act Article 41 (For more details please refer to the legal articles appended on the next page.)
2. This chart shows a total of 3604 accused individuals in the accused/involved column, while the total indicated number of individuals in the defendant attribute column is 3603. This discrepancy is explained by the fact that the Yunlin District Prosecutors Office reported a total of 5 investigated cases with 5 private citizens as defendants and 6 accused persons. Inquiries with said Prosecutors Office revealed that the discrepancy was caused by the fact that one defendant was involved in two cases.

3. As to violation of Article 24 of Communication Security and Surveillance Act, the statistics of judgments rendered by the Supreme Court, High Courts and Districts Courts since promulgation and implementation of Communication Security and Surveillance Act are as follows:

Statistics of Judgments Regarding Promulgation and Implementation of Communication Security and Surveillance Act

Court	Violation of Article 24	Number of final cases	Number of defendants	Counts of defendants																	
				Total counts of defend-ants	Sentencing									Exemption of the punishme-nt	Acquit-tal	Withdr-aws	Judgm-ent of "Exem-pt from Prosec-ution"	Judgment of "Case Not Entertained"	Judgment of "Mistake in Jurisdiction"	Cases remanded to the original trial court	Order for arrest	Other
					Total	Imprisonment																
						Total	Less than six months	More than six months less than one year	More than one year less than two years	More than two years less than three years	More than three years less than five years	More than five years less than seven years	More than seven years									
Supreme Court	Total	11	13	62	51	51	2	12	37						3					8		
	Par.1	5	6	6	3	3	2		1						3							
	Par.2	1	1	1																1		
	Par.3	5	6	55	48	48		12	36											7		
High courts	Total	24	48	120	98	98	4	38	56						16	4				2		
	Par.1	6	9	9	4	4	4								3					2		
	Par.2	2	7	7											6	1						
	Par.3	16	32	104	94	94		38	56						7	3						
District courts	Total	32	70	118	81	81	5	43	32		1				19			12			2	4
	Par.1	20	33	33	5	5	5								11			12			1	4
	Par.2	2	9	9	2	2		2							7							
	Par.3	10	28	76	74	74		41	32		1				1						1	

第 18 條

Article 18

點次	問題內容(原文)	中文參考翻譯
51	Please give more detailed information on the draft version of the Religious Group Act submitted to the Legislative Yuan on 22 June 2015 and the reasons for the amendments (cf. the Second State Report on ICCPR, § 283).	請提供於 2015 年 6 月 22 日送立法院審議之宗教團體法草案更詳細的資料，以及修法理由。（參照 ICCPR 第二次國家報告第 283 點）

中文回應

1. 2015 年 6 月 22 日送立法院審議之宗教團體法草案之相關資訊：
   (1) 宗教團體法草案一共有 10 章 60 條。本草案主要規劃於現行以財產為集合之宗教財團法人，及以人為集合之宗教社會團體外，另創設兼具人與財產之宗教法人，規範其組織運作得依其教制或傳統於章程自定，並可取得法人資格，將財產登記於法人名下。另對於目前 1 萬 2,000 餘座登記有案寺廟，為維護其既有權益，在不違反公益原則下，就未轉換為宗教法人者，於廢止其寺廟登記及註銷寺廟登記證後，改發給寺院、宮廟證而得繼續運作。
   (2) 為落實蔡總統政見及行政院政策，立法院經行政院請求於 2015 年 7 月 12 日同意退回本草案，目前刻正由內政部重新檢視並修正「宗教團體法」草案中。
2. 宗教團體法之立法理由：
   (1) 現行專屬規範宗教團體之法律，僅有行憲前，由國民政府於 1929 年 12 月 7 日公布施行之監督寺廟條例，而該條例僅以佛、道等我國傳統宗教為適用對象，且制定之時代背景與當今社會現況已有不同，無法因應需要。
   (2) 近年來，臺灣地區各宗教蓬勃發展，為回應社會各界要求推動立法規範宗教團體之建議，同時兼顧宗教界希望政府尊重宗教組織自主、自律原則之意見，爰擬具宗教團體法。

英文回應

1. The information on the draft version of the Religious Group Act submitted to the Legislative Yuan on 22 June 2015：
   (1) The draft version of the Religious Group Act has 10 chapters and 60 articles. A new form of “religious legal entities” combining people with property is created under this Act (in addition to existing forms like religious foundation (congregation of property) and religious social groups (congregation of people)). This new “religious legal entity” may be organized and operated according to its constitution stipulated based on its religious orders or customs. It could obtain the status of a juridical person with the ability to receive and own all contributions and endowment under its name. For over 12,000 currently registered temples which fail to convert to a religious legal entity under This Act, a new monastery or temple certificate will be issued upon the mandatory cancellation of the old temple registration and certificate in order to maintain their existing rights and interests.
   (2) To implement President Tsai’s campaign manifesto and the Executive Yuan’s policy, the Legislative Yuan agreed the Executive Yuan’s request to return the draft of Religious Group Act on 12 July 2016. The draft is currently revised and modified by Ministry of the Interior.
2. The legislative reasons of the Religious Group Act：
   (1) Currently, the only piece of legislation governing religious groups is the “Act of Supervising Temples” adopted on 7 December 1929, which was intended back then to apply only to Buddhism and Taoism and no longer meets the needs of our modern society.
   (2) In recently years, Taiwan has seen tremendous growth and expansion of various religions. In response to the pleadings from various communities of our society to move forward with the religious group legislation, and to accommodate the request from religious community to respect the autonomy and self-discipline of religious groups.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
52	Film and TV programs of Mainland origin can according to Regulations governing Distribution, Display and Exhibition of Mainland Films and TV programs be distributed or shown in Taiwan once reviewed and approved by the Government (cf. the Second State Report, § 291). What are the criteria under these rules for approving such films and programs and what authority has the power to make the approval? What did the rejected case in 2014 concern?	依發行播映展覽許可辦法規定，中國大陸地區電影片、廣播電視節目，經政府審查許可後，得以發行或播送。（參照《公政公約第二次國家報告》第 291 點）該審查之許可標準為何，哪一個政府機關有權許可？2014 年有一件不予許可其理由為何？

中文回應

1. 大陸地區電影片電視節目在臺灣地區播送前，均須依「大陸地區出版品電影片錄影節目廣播電視節目進入臺灣地區或在臺灣地區發行銷售製作播映展覽觀摩許可辦法」向文化部申請許可，且其內容不得有違反該許可辦法第 4 條規定並改為正體字後，始得播送。
2. 按該許可辦法第 4 條規定：大陸地區出版品有下列情形之一者，不予許可進入臺灣地區：(一)宣揚共產主義或從事統戰者、(二)妨害公共秩序或善良風俗者、(三)違反法律強制或禁止規定者、(四)凸顯中共標誌者。但因內容需要，不在此限。
3. 中天電視股份有限公司於 2014 年 11 月 24 日向文化部申請大陸地區電視節目「原鄉」在臺灣地區播送。經審查，內容涉宣揚共產主義，統戰意圖濃厚，應不予許可在臺灣地區播放。

英文回應

1. Governing by “Regulations on the Import, Distribution, Sale, Reproduction, Broadcasting,

Screening, and Exhibition of Publications, Films, Video, and Radio and Television Programs from Mainland China", mainland China Films and TV programs broadcast in Taiwan shall apply to Ministry of Culture for permits and its contents shall not be in violation of the Regulations provisions Article 4, and change the subtitles into traditional Chinese characters.

2. The contents of mainland China publications will not be permitted to enter Taiwan in either of the following circumstances: First, promote communism or engage in united front. Second, obstruct public order or good habits. Third, violation of the law to force or prohibit provisions. Fourth, highlight communist symbol is limited, except when the necessaries of contents according to TV program.
3. On November 24, 2014, CTI Television Inc. applied mainland China TV program "The Original Rural" to be broadcasted in Taiwan. After review, the contents of program contain the promotion of communism, united front intention, which violates the Regulations.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
53	Can more detailed information be given about the use of Article 140 of the Criminal Code concerning insult against civil servants and government agencies and the deliberations to amend it (cf. the Second State Report, § 294)? Who are the judicial officers that on a case-by-case basis determine "the boundary between freedom of speech and insult" and based on what criteria are their decisions made? Are there remedies against their decisions?	關於刑法 140 條侮辱公務員、公署罪修法之相關討論，能否提供更詳細之資訊？（參照《公政公約第二次國家報告》第 294 點）在具體案件中，是由哪些司法官員決定自由言論和侮辱之間的界線；其判斷標準為何？不服判決者有無救濟可能？

中文回應

1. 刑法第 140 條侮辱公務員、公署罪，其所保護之法益為國家法益，立法目的在於使公務員得同受平等基本人權保障下，勇於執行及維護國家安全、公共秩序及全體人民利益等公共利益。法務部刑法研究修正小組討論，刑法第 140 條侮辱公務員、公署罪認仍有規範之必要性，但建議將第 140 條第 1 項依法執行職務修正為依法執行基於公權力之職務，以限縮適用範圍；就第 140 條第 2 項部分，研修小組共識認為維護國家公權力正當行使，仍有規範之必要性，且公署一詞在實務之認定上並未發生爭議，因此予以保留。至於言論自由與侮辱之界線，則由司法裁判者於具體個案中判斷之。
2. 按法院審理具體的訴訟案件，其證據之調查、取捨及事實有無之認定，屬事實審法院依職權裁量的範圍，是由承辦法官根據調查所得的卷證資料，依據法律並遵循論理法則和經驗法則，本於確信，獨立判斷，如有不服，當事人亦得循上訴、抗告、再審及非常上訴等程序予以救濟。

英文回應

1. Article 140 of the Criminal Code on humiliation of civil servants and government offices protects the legal interest of the nation. The purpose of legislation is to provide equal basic human right safeguards for civil servants and the implementation and protection of public interests such as national safety, public order, and the interests of all citizens. The task force of the Ministry of Justice in charge of research of amendments of the criminal code has determined upon discussion that Article 140 of the Criminal Code on humiliation of civil servants and public offices still has its necessity, but it is suggested that the phrase “performance of duties pursuant to the law” in Article 140, Paragraph 1 should be revised and changed to “performance of duties pursuant to the law based on public authority” to narrow the scope of application. As for Article 140, Paragraph 2, the task force believes that this paragraph is still necessary to ensure the proper execution of public authority and the term “public office” should be retained since it is relatively uncontroversial in practice. The boundary between freedom of speech and humiliation must be determined in concrete cases by judicial adjudicators.
2. Since Judicial Yuan is only responsible for judicial administration affairs and has no jurisdiction of the case, Judicial Yuan could not deliberate and comment on the boundary

between freedom of speech and insult. It is the court that can determine the boundary between freedom of speech and insult, provided that it cannot be contrary to the rules of experience and logic. Besides, if a party who disagrees with the judgment of a lower court, he or she may appeal to the appellate court.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
54	In Recommendation 72 the experts called upon the Government "to immediately take preventive steps to block any merger or acquisition of news channels or newspapers" and to enact "a comprehensive law on ensuring that the diversity of media is encouraged to protect free speech and the right to seek, receive and impart information and ideas of all kinds". Why has the draft by the National Communications Commission submitted to the Legislative Yuan on 26 April 2013 not been adopted (cf. the Government's Response, § 254, and the CW Shadow Report, § 294)? Have any other measures been taken in order to comply with the recommendation? If not, how does the Government intend to remedy the situation?	在《結論性意見與建議》第 72 點，專家呼籲政府「立即採取預防措施，阻止任何新聞頻道或報紙的合併或收購」，並且「制定一種全面的法律，確保對於媒體多元化的支持以保護言論自由和尋找、接受及傳播各種資訊及思想的權利。」為何國家通訊傳播委員會於 2013 年 4 月 26 日提交給立法院的草案未能通過？（參照《回應結論性意見與建議》254 點、人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 266 點）政府有否採取其他措施以回應上述建議？若否，政府打算如何改善現況？

中文回應

1. 國家通訊傳播委員會（以下簡稱通傳會）在 2013 年推動「媒體壟斷防制與多元維護法」之立法。法案內容主要規範廣播、電視以及跨媒體之整合，訂定一定之標準，如符合標準須向通傳會申請許可，始能進行整合。該草案於立法院審議時，因就相關爭議無法取得共識，例如：該用何種標準衡量媒體合併後的聚集效益；是否該禁止金融機構收購媒體機構；以及新的立法是否應溯及過去的媒體併購案等，立法院決議協商後再行處理。然該法案後因第 14 屆總統選後交接，基於責任政治原則，行政院於 2016 年 6 月 23 日函請立法院撤回前送請審議之草案，業經立法院同意撤回而未能繼續完成立法程序。
2. 於反壟斷法草案通過前，通傳會審查廣電媒體所有權轉讓案件，將依行政程序法，以作成行政處分並附加附款方式，要求事業不得為不公平競爭，以防止言論遭壟斷。
3. 通傳會刻正審酌當前國內政治、經濟、社會及文化情境，並參採過去第 8 屆立法院交通委員會審查通過之草案版本，以及各黨團提出之草案條文，研析相關意見與建議，秉持「抓大放小」、「明確可行」的管制原則，重新研擬適合我國之媒體壟斷防制專法。

英文回應

1. The National Communications Commission (NCC) began promoting the legislation of the “Prevention of Broadcasting and Television Monopoly and the Maintenance of Diversity Act” in 2013. The act stipulates specific standards to regulate the integration of broadcasting, television, and cross-media ownership. One primary stipulation is that prior to integration, enterprises must submit an application for approval from the NCC so it can determine whether foresaid standards have been met. The draft act had been delivered to the Legislative Yuan for its consideration. Due to some disputes, such as critics questioned the metrics that should be used to gauge the aggregate effect of a media merger; whether financial institutions should be banned from purchasing media outlets; and whether the new legislation should be applied retroactively to past media mergers etc., the Legislative Yuan had decided further consultation was needed before it could be processed. However, the draft act was been withdrawn by the Executive Yuan in Jun. 23rd 2016, due to the handover of presidency.
2. Before the passage of the Draft, NCC will review cases of ownership transfer of radio and

television media, and exercise the power of discretion in accordance with the Administrative Procedure Act while making administrative disposition. NCC may attach riders to ensure fair competition, and to prevent monopolization of speech.

3. Now, NCC is considering the politic, economic, society and culture of Taiwan, and gathering the draft which reviewed by the 8th session of the Legislative Yuan before, and the drafts which made by every parties, to redraft an anti-monopoly law of the media.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
55	In Recommendation 73, the experts advocated the repeal of Articles 104 and 246 of the Criminal Code in order to comply with Article 19 ICCPR. In the Response (§ 255), the Government maintains that neither of the articles could be considered contrary to the ICCPR. According to CW the Response does not provide "substantive discourse on each of these restrictions" and is not "genuine" (cf. the Shadow Report, § 297). What is the Government's reaction to this criticism? Would the Government be willing to reconsider its position?	《結論性意見與建議》第 73 點，專家倡議廢除刑法第 104 條和 246 條，以符合 ICCPR 第 19 條。在政府回應第 255 點，政府認為這兩條並未違反公政公約。根據人權公約施行監督聯盟，該回應並未對該等限制提供實質論述。（參照人約盟《政府回應結論性意見及建議之影子報告》中文版第 267 點）政府對該批評的反應為何？政府是否願意重新考慮其立場？

中文回應

1. 刑法 104 條似與限制言論自由之法律無密切關連，似屬誤植。
2. 司法院釋字第 509 號解釋，肯認法律規定處罰非法妨害他人名譽之言論或行為，並無違憲。公政公約第 19 條第 3 項亦規定，基於尊重他人權利或名譽及保障國家安全或

公共秩序，或公共衛生或風化，得以法律限制言論自由之權利。刑法第 246 條係為保護他人信仰權利、名譽與公共秩序及安全所定之限制規範，無違反公政公約之情形。

英文回應

1. Article 104 of the criminal code has no close connection to the law on restrictions of freedom of speech. This seems to be a typographic error.
2. Interpretation No.509 of the Judicial Yuan recognizes that the punishment of illegal speech or conduct that impairs the reputation of others prescribed in relevant laws is not unconstitutional. Article 19, Paragraph 3 of the International Covenant on Civil and Political Rights stipulates that the legal restriction of the freedom of speech is allowed for the following purposes: respect for rights or reputations of others, safeguarding of national security or public order, or public hygiene and morality. Article 246 of the Criminal Code stipulates restrictions and limits for the protection of the right of religious belief and reputation of other and public order and security. This article does not violate the International Covenant on Civil and Political Rights.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
56	Can further information be made available concerning the legislative drafts submitted in February 2016 to the Legislative Yuan with the intention of enacting new anti-discrimination laws (cf. the CW Shadow Report, § 305)? Will the drafts, if enacted, comply with recommendation 74 of the experts? If not, will the Government reconsider to propose a specific provision on national, racial and religious hatred	請對 2016 年 2 月提交給立法院關於通過新的反歧視法的草案提供更多資料。（參照人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 273 點）這些草案若通過，是否能符合專家於《結論性意見與建議》第 74 點之建議？若否，政府是否重新考慮在刑法中加入針對國

	inserted in the Criminal Code despite the fact that such crimes as alleged may be punished under various other legal provisions?	籍、種族、與宗教仇恨的條文，即使政府宣稱這類罪行可引用其他法律條文加以懲罰？

中文回應

1. 立法院第 9 屆分別有黨團及立法委員針對反族群歧視相關議題提出反族群歧視法、族群平等法、族群平等尊重法等計 7 個草案版本，其中 6 個草案版本經 2016 年 7 月 13 日立法院內政委員會併案審查，會議決議照黃昭順委員所提修正動議修正通過，草案條文內容仍待朝野黨團協商處理。
2. 為禁止各類型歧視，我國對於不同領域之歧視均有相關規定可資適用，例如，為防止或處理相關歧視問題，除已制定公民與政治權利國際公約及經濟社會文化權利國際公約施行法外，亦已推動消除一切種族歧視國際公約國內法化相關施政作為，現行相關法律包括原住民族工作權保障法、就業服務法、性別工作平等法、身心障礙者權益保障法、老人福利法、性別平等教育法、入出國及移民法、通訊傳播基本法、廣播電視法、衛星廣播電視法等，已定有所涉事務領域之反歧視原則及相關保護措施，且刑法及入出國及移民法對於人民與人民間發生之歧視亦有處理機制，立法院於審查上開法案過程中，亦有認為是否制定專法宜審慎。
3. 是否應於刑法中規範鼓吹民族、種族或宗教仇恨罪，以及何等之行為應被規範為「仇恨罪」，涉及層面甚廣，為符合罪刑明確性及相當性，需先蒐集國際公約及外國立法例，聽取審、檢、辯、學及機關代表意見，再行研議。

英文回應

1. There are 7 bills in this session of the Legislative Yuan on the topic of anti-discrimination submitted by party caucuses and legislators, including the Anti-Ethnic Discrimination Act, Ethnicity Equality Act, Equal Respect for Ethnicities Act. 6 of these bills have been reviewed by the Legislative Yuan’s Internal Administration Committee on July 13, 2016. The committee voted to pass the modified motions as raised by committee member Huang Chao-shun. Specific content of the bills still need to be consulted among political parties.
2. Generally, in Taiwan, there are corresponding covenants or regulations applicable to each kind of discrimination issues. The government has been working to domesticate several

principal international treaties on the issue of anti-discrimination, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and International Convention on the Elimination of All Forms of Racial Discrimination. Under the principle of anti-discrimination, Taiwan has enacted a series of regulations, such as, Indigenous Peoples Employment Rights Protection Act, Employment Service Act, Act of Gender Equality in Employment, People with Disabilities Rights Protection Act, Senior Citizens Welfare Act, Gender Equity Education Act, Immigration Act, Fundamental Communications Act, Radio and Television Act and Satellite Broadcasting Act to provide legal guidelines and protections, covering all grounds of discrimination. Moreover, mechanism for mitigation of discrimination between people has been written in both Criminal Code of the Republic of China and Immigration Act. Therefore, our legislators think we should consider carefully if a comprehensive anti-discrimination legislation is necessary.

3. The inclusion of stipulations regarding the crime of incitement ethnic, racial, or religious hatred in the criminal code and what type of conduct should be defined as “hatred” involves a wide range of issues. To ensure the clarity and equivalence of the crime and punishment it is necessary to collect information on international conventions and international legislation instances and solicit the opinions of court, prosecution, defense, academia, and authority representatives for further deliberation.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
57	Why can the “Child and Youth Sexual Exploitation Prevention Act” not be implemented (cf. the CW Shadow Report, § 369)? Is it correct as alleged in this Report that the National Police Agency violates the freedom	為何《兒童及少年性剝削防制條例》無法實施？（參照人權公約施行監督聯盟《公政公約影子報告》369 點）該報告認為警政署違反《公民與政治權利國際公約》

	of opinion, expression and information as protected by Article 19 of the ICCPR? If so, what does the Government intend to do in order to remedy the situation?	第 19 條意見、表達和訊息自由。果如此，政府預計如何改善現況？

中文回應

1. 「兒童及少年性剝削防制條例」自 2015 年 2 月 4 日公布，有 10 部法規需配合修正，因相關法規修正作業尚未完成，故本條例未施行。現本案業經行政院同意於 2017 年 1 月 1 日施行。
2. 員警執行職務、犯罪調查以主動誘使手段，是否合乎正當法律程序等問題，依據警察職權行使法第 3 條第 3 項規定，「警察行使職權不得以引誘、教唆人民犯罪或其他違法之手段為之」，使原無犯罪意思之行為人，因執法人員設計誘陷，唆使其起意，以不正當手段誘人入罪，屬「非法陷害教唆」，被陷害教唆者不成立犯罪，惟警方以釣魚方式查緝偵辦係刑事偵查技術上所謂之「誘捕偵查」，指對原已有犯罪或具有犯罪故意之人，利用偵查技巧，使其暴露犯罪事證，而加以逮捕偵辦，純屬偵查犯罪技巧之範疇，合先敘明。
3. 「兒童及少年性交易防制條例(舊法)」第 29 條經司法院大法官釋字第 623 號解釋認原條文尚屬合憲，另經修正「兒童及少年性剝削防制條例(新法)」第 40 條將對象限縮未滿 18 歲之人，故新法實施後，行為人證明其所傳布之訊息，並非以兒少性交易或促使其為性交易為內容，且已採取必要之隔絕措施，使其訊息之接收人僅限於 18 歲以上之人者，即不具有使兒少為性交易對象之危險，自不屬該條規定規範範圍。

英文回應

1. “Child and Youth Sexual Exploitation Prevention Act” were published on 4 Feb, 2015. There are 10 related Regulations need to modify in parallel. The regulations were not completed, so this act could not be executed. Now Executive Yuan agree to execute the “Child and Youth Sexual Exploitation Prevention Act” on 1 Jan, 2017.
2. Whether it is in conformity with due process of law and so on police officers to perform their duties, criminal investigation to take the initiative to induce the means. According to Article 3 (3) of the Law on the Police Power Exercise Act, " When the police exercise their

power, they shall not lure or abet people to commit crimes or engage in other illegal acts.", Law enforcement officers to design trap, abetting their intention to improper means to seduce into the crime, is an "illegal framed abetting," was framed instigators who do not set up a crime, the crime is not a crime, But the police to detect the investigation of the Department of fishing is the so-called "criminal investigation", refers to the original has a crime or criminal intent of the people, the use of detection techniques to expose criminal evidence, and to arrest investigation, purely The scope of criminal investigation techniques, co-stated.

3. Article 29 of the Regulation on the Prevention and Control of Child and Youth Sex Trade Prevention Act (Old Law) was interpreted by J. Y. Interpretation No.623 the original provisions of the Constitution, which was amended to amend Child and Youth Sexual Exploitation Prevention Act (New Act) Article 40 restricts the object to persons under the age of 18 years. Therefore, after the implementation of the new law, the perpetrator has proved that the information he has disseminated is not based on sexual intercourse or promotion of sexual intercourse, and has taken the necessary isolation Measures so that the recipients of their messages are confined to persons over 18 years of age, that is to say, they do not have the risk of making sex less commonplace.

第 19 條、第 20 條

Article 19 & 20

點次	問題內容(原文)	中文參考翻譯
58	Please provide information on whether the film "Shall we swim" has been excluded from being used in all schools and if so, for what reasons? Referring to the allegations in the CW Shadow Report (§§ 372-378) have the requirements of Article 19 ICCPR been respected?	請提供資訊，說明《青春水漾》影片是否被禁止在學校播映？理由為何？參照人權公約施行監督聯盟《公政公約影子報告》第 372 點至第 378 點，政府是否已遵守《公民與政治權利國際公約》第 19 條的要求？

中文回應

有關由衛福部補助、民間團體製作之《青春水漾》影片，教育部並未禁止於學校播映。而對於在課程教學中使用相關輔助教材，教育部則多次發函或於相關會議中提醒學校應注意之相關原則，包括：

1. 國民中小學學校得因應地區特性、學生特質與需求，選擇合適之教材。但全年級或全校且全學期使用之自選教材應送「課程發展委員會」審查。
2. 任何輔助教材所選用之影（像、圖）片播放前應做完整的課程輔助說明，並顧及學生收視反應與心理輔導；或將部分可能引發爭議的畫面以剪輯等方式先行處理。
3. 選用輔助教材教學時，應考慮是否有助於學生思索與傳達真正的教學意涵，及能否引導學生朝向較正確的方向思考，建立保護自己、尊重異性，進而落實性別平等與生命教育之旨意。

英文回應

Regarding the film “Shall We Swim?” which was subsidized by the Ministry of Health and Welfare and produced by a non-government organization, the Ministry of Education did not ban the film from being shown at schools. Regarding related materials used in supplementary courses, the Ministry of Education has continuously reminded schools to be aware of the related guidelines to be aware of through official notices and in meetings. These include:

1. Public elementary and junior high schools may select appropriate course materials based on factors such as local characteristics, and student profiles and needs. But course materials selected by a school to be used by an entire grade level or to be used by the whole school for an entire semester must be reviewed by the school’s Curriculum Development Committee.
2. A complete explanation shall be provided before using any film (photos or images) as supplementary course materials, and take into consideration possible student responses after watching and psychological counseling that might be required; or edit out sections of the work which may be controversial beforehand.
3. When choosing supplementary course materials, consideration should be given to whether the material in question is helpful for students learning and whether it conveys genuinely educational content. Consideration should also be given to whether the material can aid

students to develop a positive outlook, and strengthening their identity as an individual who respects himself or herself and others, thereby further fulfilling these goals of gender equality and life education.

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
59	So far no legislative amendments have been made of the Assembly and Parade Act in order to bring in into conformity with Article 21 ICCPR as urged by the experts in Recommendation 75. Can more detailed information on the draft bill submitted to the Legislative Yuan in February 2016 renamed “Assembly and Parade Protection Act” be provided? Is it correct as argued by CW in the Shadow Report (§ 298) that the overall effect of the draft on the locations for assemblies and marches will not be changed and that unclear preconditions for forcible dispersion of assemblies and marches “may actually legalize police actions to disperse assemblies and marches”? Does the draft comply with Recommendation 75?	目前為止《集會遊行法》尚未如專家在《結論性意見與建議》第 75 點之要求，進行修法。請對 2016 年二月送到立法院已更名為《集會遊行保障法》的草案提供詳細資料。是否如人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 268 點所稱，該草案對集會和遊行地點的整體限制效果不會改變，而且因為對集會與遊行強制排除的要件不明確，將使警察驅離集會遊行的行為被合法化？該草案是否符合《結論性意見與建議》第 75 點？

中文回應

1. 內政部警政署為保障人民集會遊行自由，落實國家之憲法義務，積極配合立法院於 2016 年 7 月 1 日完成「集會遊行保障法」（草案）立法之政黨協商工作。
2. 草案有關「安全距離」規範之重要性如下：

(1) 安全距離之必要性

①確保總統、副總統之安全。

②基於對憲政機關（行政院、考試院及司法院）之尊重及維持國家正常運作應設置安全距離。

③為避免重要軍事設施地區遭集會遊行干擾，安全防衛上應有縱深考量。

④為臻司法正確性，各級法院應有安全距離之規範。

⑤為防止擾亂使館安寧或有損使館尊嚴之情事，各國使領館、代表機構、國際組織機構及其館長官邸安全距離之設置實屬必要。

⑥國際機場、港口之國家主要門戶，應有安全距離規範。

(2) 新增安全距離設置地點之必要性

①總統及副總統住居所：為確保國家領導中樞安全，應具優位觀念，其住居所應有安全距離。

②地檢署：基於人犯戒護安全、贓證物保管及機關安全維護。

③醫療機構：為維護病人就醫環境安寧及安全，與確保送醫途中交通之順暢。

(3) 重要政府機關之安全距離已縮短，如行政院由 300 公尺縮減至 30 公尺，依據政府重要機關之維安等級，訂定適當之安全距離，並以縮減禁制區空間方式讓「集會遊行規範」從「維持社會秩序」定位，調整為「保障人民基本權利」。

3. 草案規範適用時機之要件明確並符合社會秩序之實際需求

(1) 違反第 5 條（安全距離）規定。

(2) 逾越安全警戒線或隔離區之協調，而嚴重妨害相鄰集會遊行之進行。

(3) 以強暴、脅迫方式，危害生命、身體、自由或對財產、設施造成重大損壞。

(4) 以強暴、脅迫方式或其他強制方法，致道路交通陷於停滯，經適當方法疏導無效。

4. 綜上，「集會遊行保障法」（草案）立法精神已參採《結論性意見與建議》第 75 點及符合《公政公約》第 21 條保障和平集會遊行權利。

英文回應

1. In an attempt to safeguard the people in their freedom in parade and assembly and implement thoroughly the obligations required under the Constitution, the National Police Agency, Ministry of the Interior has teamed up with the Legislative Yuan with utmost effort in negotiation efforts with political parties to complete the legislative process for the

"Assembly and Parade Protection Act" (Cf. Appendix) on July 1.

2. The importance in the safe distance:

(1) The indispensability in safe distance

①Definite assurance of the safety of the President and the Vice President.

②The safe distance is indispensable amidst the respect to the constitutional authorities (Executive Yuan, Examination Yuan and Judicial Yuan) and to assure sound performance of the entire country.

③To prevent the major military facilities regions from potential disturbance in parade & assembly, the sound depth shall be taken into account in the security defense.

④To ensure correct and accurate judicial performance, the courts of all levels shall take the specifications of safe distance into serious account.

⑤ To firmly safeguard embassies/consulates, representative offices of foreign countries, international organizations and the official residences of head officials from potential disturbance from tranquility or damage to such organizations, establishment of sound safe distance is indispensable indeed.

⑥Specifications of safe distance shall be duly established for international airports, ports and such major portals of the nation.

(2) Indispensability for safe distance to be newly set-up

①The residences and domiciles of the President and the Vice President: To ensure the absolute safety of the leadership of the central, the preferential location and safe distance shall be devised for the residences and domiciles of the President and the Vice President.

②District Prosecutors' Offices: Assurance of safety of the District Prosecutors' Offices as required to safeguard defendants, evidence (exhibits), stolen goods and the offices of the authorities.

③Medical care institutions: To firmly safeguard patients in terms of the tranquility and safety of the medical care environments, efforts shall be exerted to assure unhindered traffic flow all the way to the medical care institutions.

(3) The safe distances for major government authorities have been cut short. The safe distance for the Executive Yuan, for instance, has been shortened from 300 to 30

meters. The appropriate safe distances shall be established for safety maintenance for the major government authorities. By means of cutting short the prohibited zones, we try to re-position from the “maintenance of the social order” into “safeguarding the general public in their fundamental rights” instead.

3. Amidst the prerequisite constituents in real time, we try to definitely live up to substantial need of social order
   (1) In case of violation of requirements set under Article V (safe distance).
   (2) An act that goes beyond the safety cordon line or is in contravention of coordination in the isolation region, as a result, critically in contravention of proceedings of the parade & assembly in the neighborhood.
   (3) An act that endangers human life, human bodies, freedom, properties, facilities, in turn, leads to tremendous impairment by means of violence and intimidation.
   (4) An act that stagnates traffic flow by means of violence, intimidation or other forcible means where the efforts to dredge through appropriate means prove to no avail.
4. This draft complies with Recommendation 75 and the right of peaceful assembly under Article 21 of the ICCPR.

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
60	Do the administrative rules following Interpretation No 718 of the Constitutional Court grant the necessary protection of the right to hold urgent or spontaneous rallies (cf. the CW Shadow Report, § 299)? Is it correct as alleged in this report (§§ 301-303) that the accountability of the police when enforcing law “gravely threatens the freedom of speech and assembly”	在大法官第 718 號解釋之後，行政規則是否為緊急或偶發的集會提供必要的保障？（參照人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 269 點）上述報告 271 點至第 272 點關於警察執法的課責性，稱「對言論與集會自由造成

	and that “a culture of impunity for the abuse of police powers continues to be a major threat to the exercise of the freedoms of speech and assembly in Taiwan” (cf. also the allegations in the CW Shadow Report, §§ 398-402)? If so, what does the Government intend to do in order to remedy the situation?	嚴重威脅」，以及「對警察濫用權力的免責文化仍然是臺灣行使言論與集會自由的主要威脅」的說法是否正確？（亦請參考人約盟《公政公約影子報告》398─402點）若然，政府預計如何改善現況？

中文回應

1. 保障「偶發性、緊急性集會遊行」說明

(1) 依據司法院釋字第 718 號解釋，室外集會、遊行本質上即易對社會原有運作秩序產生影響，且不排除會引起相異立場者之反制舉措而激發衝突，警察機關為兼顧集會自由保障與社會秩序維持，應預為綢繆，在此範圍內，立法者有形成自由，得採行事前許可或報備程序，使主管機關能取得執法必要資訊，並妥為因應，以落實集會、遊行權利之合理行使。

(2) 緊急性集會續行事前申請並即時核定，為確認同一時間、地點有無不同團體行使集會、遊行，以公平合理分配時間、場所，為保障集會、遊行及維護其他公共利益之必要措施。

(3) 偶發性集會與緊急性集會之分野應予釐清：於「偶發性及緊急性集會遊行處理原則」規範偶發性集會、遊行無須申請，緊急性集會、遊行，仍應提出申請，此項申請為通知之性質，俾利警察機關查知係爭時間、地點有無團體衝突，路權、交通應如何處置，應屬進行集會、遊行團體之社會義務。

2. 警察執法的課責性之改善現況

(1) 民眾關心國事本屬正常，惟抗爭手段如以占據、破壞，顯非和平、理性表達訴求，為維護社會秩序及國家整體利益，警察自應依法採取必要作為；另基於保障人民言論自由、和平集會之意旨，警察尊重和平集會之權利，惟對於未申准之集會遊行活動，尊重之餘，更應堅守執法底線，若過程中有任何侵入、占據公署等違法行為，應完整蒐證，予以嚴辦，避免造成群起仿效之歪風，破壞社會秩序。

(2) 加強執法人員人權教育訓練

①警察常年訓練學科將「人權兩公約」與「警察落實人權保障」相關課程列入必

訓教材。

②內政部警政署策訂「人權教育執行計畫」，2016 年度業於 10 月 20 日辦畢人權教育訓練；另所屬各警察機關亦均據以比照辦理。

③統計各警察機關 2016 年上半年辦理人權保障教育課程執行情形，共計辦理 1,612 場次，受訓人數達 106,487 人次。

④2016 年 6 月 13 至 24 日辦理法規講習實施法律專業課程講授與研討，共計 70 人參訓。

⑤內政部警政署未來將利用各項集會場合，向各主管及各警察機關主官與警察分局長等重要主官（管）持續宣達。

⑥為加強員警人權、法治及程序正義等觀念，未來將持續納入人權、法治及程序正義等常訓教材及課程，落實施教，以策進各項執法作為，保障民眾合法權利。

英文回應

1. Guidelines to safeguard continued progress of “unexpected, instant parade & assembly”.

(1) As officially interpreted by the Judicial Yuan Interpretation No. 718: An outdoor parade & assembly would inherently incur an impact upon the existent order in the society and does not rule out a possible conflict with the counter measures from the opponents. The police authority is supposed to take into account both assurance freedom in parade & assembly and maintenance of the social order and shall, therefore, take precautions beforehand. Within such scope, the legislators may, in the very premise to safeguard freedom, adopt either “License Beforehand System” or “Open Registration System” to keep the competent authority of the government well informed of the necessary information for law enforcement, in turn, take countermeasures accordingly. Such efforts are essential to implement thoroughly rational exercise of the rights for parade & assembly.

(2) In case of an instant assembly, or an assembly in an emergency, it calls for application to be filed beforehand and the application shall be approved forthwith in real time. We shall check and verify whether another different organization would possibly hold a parade & assembly at the same timeframe and same venue so as to distribute the timeframe and venues in a fair and rational manner. Such efforts are very essential to

safeguard sound progress of parade & assembly and, meanwhile, safeguard other public interests.

(3) An instant assembly and an unexpected assembly in an emergency shall be expressly defined: Under the “Principles on the Unexpected, Instant Parade & Assembly”, an unexpected parade & assembly call for no application beforehand while the latter, i.e., the instant parade & assembly still call for application. Such an application is attributed as a notification to enable the police authority to check and verify a potential conflict with another group in the same time point and venue, the powers to use the street, and way to manage the traffic flow. The application shall be the social obligation for the group(s) before conducting any parade & assembly.

2. The status quo for the police in improvement in law enforcement:

(1) The general public has freedom to express their dissatisfaction to the government regarding national issues. But they are apparently not rational when they engage in unjustifiable occupation, sabotage through non-peaceful means. In an attempt to safeguard social order and overall interests of the entire nation, the police authority is supposed to take necessary countermeasures according to law. In the very premise to safeguard public’s freedom of speech, peaceful assembly, the police authority shall respect the rights for peaceful assembly. In the face of a parade & assembly activity without an approval in response to an application beforehand, nevertheless, the police authority shall hold fast to the very base line in law enforcement amidst the aforementioned respect. In case of an act to invade, occupy a government office and such unlawful acts, the police authority is supposed to duly complete the process of evidence collection and put the offenders into strict penalty to prevent other groups from following suit and from sabotage of the social order.

(2) Strengthening educational & training programs on human rights

①The contents of the “Two International Human Rights Covenants” and “Thorough enforcement of human rights by police” shall be included into the indispensable routine training programs for police.

②Under the “Enforcement Program for Human Rights Education” enacted by the National Police Agency, Ministry of the Interior, the Human Rights Oriented

Education was officially completed on October 20, 2016. Other police authorities of all levels shall preside over the same educational & training programs accordingly.

③Statistics indicate that in the first half of Year 2016, a total of 1,612 human rights oriented educational & training programs with 106,487 trainees were satisfactorily accomplished.

④During June 13~24, 2016, a total of 70 trainees satisfactorily completed the Professional Legal Educational & Training Programs 2016.

⑤In the days and years ahead, the National Police Agency, Ministry of the Interior will continually promote such principles and lessons toward all Commissioners, Chiefs and such key police officials at the municipality, county (city) government levels through a variety of assemblies.

⑥To help police personnel enhance sound concepts in human rights, rule of law and procedural justice, we shall, in the future, continually have human rights, rule of law and procedural justice covered into the routine educational & training programs and lessons. In turn, in their acts of law enforcement, the police will better safeguard the general public in their lawful interests.

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
61	Please provide information on the filing procedure for assemblies and parades. Is it correct as alleged in the CW Shadow Report (§ 388) that “the state actually still has the ultimate approval power toward assembly and parade”? Does the system comply with the requirements of Article 21 ICCPR?	請對集會遊行的申請程序提供資料。是否如人權公約施行監督聯盟《公政公約影子報告》388 點所稱「國家對於集會遊行實際上仍有不受限制與控制的許可權」？現行制度是否符合 ICCPR 第 21 條之要求？

中文回應

1. 憲法第 14 條規定人民有集會之自由，係本於主權在民理念，為實施民主政治以促進思辯、尊重差異，實現憲法兼容並蓄精神之重要基本人權，內政部警政署為積極保障人民集會遊行自由，落實國家之憲法義務，配合立法院第 9 屆第 1 會期內政委員會之修法進度，「集會遊行法修正草案」業經立法院第 9 屆第 1 會期內政委員會於 2016 年 3 月 17 日、4 月 25 日及 5 月 9、11、12 日之第 4、10、14 次全體委員會議審查完竣，其中現行集會遊行申請規範由「許可制」修正為「報備制」以兼顧「法益衡平」與「秩序維護」為修法主軸，中完成。
2. 依據司法院釋字第 718 號解釋，室外集會、遊行需要利用場所、道路等諸多社會資源，本質上即易對社會原有運作秩序產生影響，且不排除會引起相異立場者之反制舉措而激發衝突，警察機關為兼顧集會自由保障與社會秩序維持，應預為綢繆，在此範圍內，立法者有形成自由，得採行事前許可或報備程序，使主管機關能取得執法必要資訊，並妥為因應，以落實集會、遊行權利之合理行使。
3. 「許可制」或「報備制」屬於立法自由形成之範圍，不屬於憲法保障集會、遊行基本權利核心之內涵，內政部警政署基於保障各方團體均能公平合理獲得場所資源，表達意見自由之義務，於該處理原則中對於緊急性集會續行事前申請並「即時核定」，係事前蒐集必要資訊之措施，以確認時間、場所之使用，「核定」是對集會遊行團體確認時間、場所之使用無虞，對內係警察機關規劃勤務，配置警力之依據，符合公政公約第 21 條為民主社會維護國家安全或公共安寧、公共秩序、維持公共衛生或風化、或保障他人權利自由之要求。

英文回應

1. As expressly provided for in Article 14 of Constitution: “The people shall have freedom of assembly and association”, i.e., the concept of principles of popular sovereignty as the very momentum in democratic politics with firm respect toward diversity to fulfill diverse nature as the key basic human rights. With positive efforts to safeguard the general public in their freedom in parade & assembly to implement thoroughly the obligations imposed by the Constitution, the National Police Agency, Ministry of the Interior closely teamed up with the Legislative Yuan in the progress of law update in its Domestic Affairs Committee in the first conference of Session Nine. The Domestic Affairs Committee in the first

conference of Session Nine completed the deliberation process of the “Draft of Amendment to the Assembly and Parade Act” on March 17, April 25 and May 9, 11, 12, 2016 in the 4th, 10th and 14th plenary conferences. The updates include primarily amending the “System of Permit Beforehand (License Beforehand System)” into the “System of Report Afterward (Open Registration System)”, taking account both “balance among law and interests” and “maintenance of order” as the constitutional critical path.

2. As officially interpreted by the Judicial Yuan Interpretation No. 718: An outdoor parade & assembly calls for the use of venues, streets and such numerous social resources and would, in turn, inherently incur an impact upon the existent order in the society. It does not rule out a possible conflict with the counter measures from the opponents. The police authority is supposed to take into account both assurance freedom in parade & assembly and maintenance of the social order and shall, therefore, take precautions beforehand. Within such scope, the legislators may, in the very premise to safeguard freedom, adopt either “License Beforehand System” or “Open Registration System” to keep the competent authority of the government well informed of the necessary information for law enforcement and, in turn, take countermeasures accordingly. Such efforts are essential to implement thoroughly rational exercise of the rights for parade & assembly.
3. The principle of either “License Beforehand System” or “Open Registration System” is attributed within the scope of free formation of legislation but not the core connotation of the fundamental rights for parade & assembly as protected by the Constitution. Here at the National Police Agency, Ministry of the Interior, we are obliged to safeguard all groups concerned to obtain venue resources on a fair and rational basis to freely express their opinions. Under the aforementioned principle, an instant assembly in an emergency continually calls for an application to be filed beforehand which is entitled to “approval in real time”. That is a measure essential to collect necessary information to ascertain the time and use of the venue. The process of “approval” is intended to facilitate the group in assembly to check and verify the right to use the venue within the timeframe without a problem as the very grounds for the police authority to assign duties and deploy police force internally. That is well satisfactory to requirements set forth under Article 21 of International Covenant on Civil and Political Rights (ICCPR) to safeguard public

tranquility, public order, maintain public health or moral or safeguard others in the rights of freedom in a democratic society.

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
62	Are the allegations in the CW Shadow Report (§ 397) that the police in Taiwan "often hinder and even arrest people monitoring the assembly, including journalists, and also hinder the inquiry of accountability regarding human rights issues related to the assembly" correct? If so, what does the Government intend to do in order to remedy the situation?	人權公約施行監督聯盟《公政公約影子報告》397 點指稱「臺灣警察經常妨害甚至逮捕包括記者在內的集會監測者，連帶妨害了對集會相關人權問題的責任追究。」是否屬實？若然，政府預計如何改善現況？

中文回應

1. 以 2015 年 7 月 23 日及 11 月 7 日分別發生之公民記者進入教育部及中華航空公司大樓為例，因所有權人(或管理人)均向警方提出違反刑法「無故侵入他人建築物」、「毀棄損壞」告訴，警方始依其告訴，並請示檢察官後據以辦理移送作業，屬依法偵查，與其媒體身分無關，尚難謂有任意限制或妨害媒體採訪權益與自由之情。
2. 策進作為與改善現況
   (1) 落實「新聞媒體聯繫窗口」機制

   內政部警政署依據「警察機關新聞發布暨傳播媒體協調聯繫作業規定」，落實「新聞媒體聯繫窗口」機制，貫徹「保障新聞採訪自由」及「保護記者人身安全」之精神。

   (2) 審慎遴選「媒體聯繫人員」

   聚眾防處現場應設置「媒體聯絡人」職司警方與採訪媒體溝通、協調聯繫管道。

   (3) 疑涉刑案記者之處置應更嚴謹

集會遊行或群眾活動現場，於事證未臻明確前，不宜逕行認定「犯罪嫌疑人」，應釐清事實，避免爭端。

(4) 「刑事案件現場三層封鎖線」落實管制

依警察偵查犯罪手冊第 67 點規定，應由在場執勤員警進行辨證管制工作，確保刑案現場完整。

(5) 記者身分認定應併考量實際採訪行為

依大法官釋字第 689 號「保障一般人為提供具新聞價值之資訊於眾從事之採訪行為」之解釋內容，以確保媒體採訪權益。

(6) 辦理「公關專業人員證照考試基礎訓練專班」

內政部警政署規劃於 2016 年 10 月 19 日至 12 月 7 日辦理「公關專業人員證照考試基礎訓練專班」，分 4 梯次召訓各警察機關從事公關業務人員或主管計 223 人，以「新聞媒體協調聯繫」及「保障新聞採訪自由」為訓練主軸，強化新聞處理知能。

英文回應

1. The principle of administration by law with lawfully recognized evidence

   In the incidents taking place on July 23 and November 7, 2015 while citizen journalists invaded the Ministry of Education and China Airlines Building, the both owners (or managers) accused the intruders with the police authority in contravention of the Criminal Code “without reason enters structure of another”, “destroy and damage”. The police did not refer the intruders into jurisdiction until after they consulted with the public prosecutors in response to the accusation. That was a sort of investigation according to law which had nothing to do with the intruders’ status as mass media. The acts taken by the police could hardly be construed as arbitrary restriction or interference with mass media in their interests and freedom in news coverage.

2. Status quo on enhancement and improvement

   (1) Efforts to implement thoroughly the mechanism as “connection window with news media”

   Pursuant to the requirements set forth under the “Regulations Governing Police Authorities in News Release and Coordination with and Mass Media”, the National

Police Agency, Ministry of the Interior has faithfully implemented thoroughly the mechanism as “connection window with news media” to thoroughly put into effect the spirits of “safeguarding freedom in news coverage” and “protecting journalists in personal safety”.

(2) Prudential selection of “contact personnel with mass media”

At the site of gathering(s), the “contact personnel with mass media” shall be duly staffed to perform the duties of communications with mass media as the right channel for coordination and communications.

(3) Stricter measures shall be advised to deal with the journalist allegedly involved in a criminal case

At a venue of parade & assembly by a mass group, we shall not jump to identify “an alleged criminal”. Instead, we shall check and clarify the fact beforehand to prevent an unjustifiable dispute.

(4) Thorough control over the “three-layer blockade lines in a criminal scene”

As expressly provided for in Article 67 of the Handbook for Police in Investigation into Criminals: The police in performance of duties on-the-spot shall conduct control and identification and assure intact scene of a criminal act.

(5) In identification of a journalist, we shall take into account the behaviors in journalist coverage

We shall duly comply with the contents of Interpretation No. 689 of Interpretation by Grand Justices “Protection of the general public in providing news worthy information into the acts of news coverage” so as to firmly safeguard the legal interests in news coverage by mass media.

(6) Sponsoring “Special Fundamental Training Programs for Examinations on Public Relations Specialist Licenses”

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
63	Please provide more factual information on the case of Huaguang Community. Were the allegations of various violations of domestic law in the CW Shadow Report (§§ 392-395) brought before the Taiwanese courts? If so, what was the outcome of the judicial review? If not, for what reasons was a judicial review not initiated?	請對華光社區的案件提供更多事實資料。人權公約施行監督聯盟《公政公約影子報告》392-395點描述，該案據稱違反了多項國內法律，是否進入臺灣法院審理程序？若然，法院審理結果為何？若否，未進行法律審查的理由為何？

中文回應

華光社區案主要係民眾無權占用國有土地，違反民法對財產權之保障及國有財產管理之相關規定，由管理機關於處理過程中，與民眾依據法律規定達成調解或和解或取得法院之勝訴判決而定案；後續之占用排除等作業，亦係依據上述調解、和解或判決之內容，依據強制執行法之相關規定，對未履行義務之占用人向法院聲請強制執行。相關作業均確實依據相關法律規定之程序辦理。

英文回應

Huaguang Community case mainly refers to people occupying state-owned land without authorization, violating the Civil Law regarding the protection of property rights and the state-owned property management regulations. The competent authorities should have reached a mediation or settlement with the people lawfully or should have the case resolved by winning a favorable ruling in a court of law. The subsequent occupation removal operation is to be implemented in accordance with the aforementioned mediation, settlement, court ruling, and the relevant provisions of the Enforcement Law against the unauthorized occupiers who have failed to fulfill their obligations. The relevant operations should be implemented in accordance with the relevant provisions of the law.

第 21 條

Article 21

點次	問題內容(原文)	中文參考翻譯
64	Please provide information on the Social Order Maintenance Act. Is the allegation in the CW Shadow Report (§ 300) that this law together with the Criminal Code "is utilized to curb freedom of expression and assembly" and "actually applied by the Government, depending on the situation, in a targeted and instrumental manner to arrest, fine or indict people" correct? If so, what does the Government intend to do in order to remedy the situation?	請就《社會秩序維護法》提供資料。人權公約施行監督聯盟《政府回應結論性意見及建議之影子報告》中文版第 270 點稱，該法和刑法「被用來限制言論與集會自由」而「政府依據情況，有針對性地且工具性地對某些人進行逮捕、罰款、或起訴」，是否屬實？若然，政府預計如何改善現況？

中文回應

1. 社會秩序維護法(下稱社維法)本非處理集會遊行之特別或專門法律，其性質為補充、備位或次要性質之普通法，查與民眾集會遊行相關之社維法條文，如社維法第 64 條第 1 款規定「意圖滋事，於公園、車站、輪埠、航空站或或其他公共場所，任意聚眾，有妨害公共秩序之虞，已受該管公務員解散命令，而不解散者。」得處 3 日以下拘留或 1 萬 8 千元以下罰鍰。按本條屬於地方法院簡易庭管轄案件，依簡易庭之多數實務見解，如聚眾者有維護權益之訴求、主張或特定（公益）目的者，即非屬本款之「意圖滋事、任意聚眾」。而集會遊行之群眾均有其特定之個人或公益訴求，此即與社維法第 64 條之 1 款之規定要件不符，實務上經移送簡易庭審理後，多數為法官裁定不罰(參見 2013 年北秩字第 13 號-樂生療養院案;2015 年士秩字第 1 號-華隆自救會案)。又集會遊行群眾訴求之對象如非在場維持秩序之員警，而係其他機關或人員（如行政首長、公職人員），則司法實務亦認為不符社維法第 85 條第 1 款之行政違序妨害公務（參見 2015 年北秩字第 108 號-中興寓所抗議案）。
2. 近年適用社維護法處罰造謠、喧擾、滋擾等行為已日漸減少，例如社會秩序維護法第

63 條第 1 項第 5 款：「散佈謠言，足以影響公共之安寧者」是由法院法官依法裁定。最近我國著手修改社會秩序維護法，草案中已經刪除散布謠言之處罰，避免成為政治操作之針對性工具，保障人民言論自由，如受害人如認有影響其名譽者，可依刑法追訴處罰，或依民法侵權行為請求損害賠償，應足以確保當事人權益。

3. 刑法妨害秩序罪章有關集會遊行部分，如刑法第 149 條（公然聚眾不遵令解散罪）、第 150 條（聚眾施強暴脅迫罪）等，與上揭條文相近之集會遊行法第 28 條：「集會、遊行，經該管主管機關命令解散而不解散者，處集會、遊行負責人或其代理人或主持人新臺幣三萬元以上十五萬元以下罰鍰。」及同法第 29 條：「集會、遊行經該管主管機關命令解散而不解散，仍繼續舉行經制止而不遵從，首謀者處二年以下有期徒刑或拘役。」上揭罪名構成要件不同，各具規範作用，其適用關係應視具體個案事實及證據，依法行政，擇最適當條文予以查處。
4. 警察機關執行集會遊行安全維護勤務，均本「保障合法、取締非法、防制暴力」原則執行，並防處藉抗爭進而滋擾、破壞聚眾活動，強化蒐證作為，以維護社會秩序及公共利益。查立法院內政委員會一讀審查通過之「集會遊行法修正草案」，刑事罰及行政罰均已刪除，回歸適用普通法律，併以說明。

英文回應

1. Social Order Maintenance Act is not specifically or exclusively aimed at management over parade & assembly and is attributed as a supplementary or standby general act. The contents in Social Order Maintenance Act relevant to public parade & assembly include, e.g., Paragraph 1, Article 64 of the Social Order Maintenance Act: “A person intending to cause trouble by gathering a crowd at parks, stations, wharfs, airports, or other public places and refusing to leave that may hamper public order after having been ordered to disperse by the competent authorities.” shall be punishable by detention of not more than 3 days or a fine of not more than NT$18,000. In fact, the cases under charge of this Article are just cases subject to jurisdiction of a summary bench of a district court. The opinions held by a majority of a summary bench indicate: Where the crowds assembled in the parade hold an appeal to safeguard their legal interests with a claim of specific objectives (public interests), such crowds so assembled are not under the definition of “attempting to cause turmoil, with arbitrary assembling of the mass crowds”. It is logically known that the

crowds assembled in a mass assembly all hold their specific appeal, either individual or for public interests. That would be inconsistent with the prerequisite constituents as set forth under Article 64-1 of the Social Order Maintenance Act. Practically, where such a case is referred to a Summary Bench, a majority of the judges in the Bench would render a ruling "not punishable" (Cf. the precedent example Year 2013-Bei-Chih-Zi No. 13, the case involving Lesheng Sanatorium; Year 2015 Shih-Chi-Zi No. 1, the case of Self-Rescue of Hualon Group). Meanwhile, in an event where the target of the mass appeal is not the police officers who maintain the order on-the-spot but is other authorities or personnel (e.g., the head of government authority, civil servants), they hold judicially that case was not interference with public functions (Cf. Case Year 2015-Bei-Chih-Zi No. 108 –The case in protest toward the Chunghsing Mansion—the residence of former President Ma Ying-jeou).

2. Social Order Maintenance Act used to punish rumors, noisy, nuisance and other acts have been decreasing year by year. For example, Article 63 (1) (5) of Social Order Maintenance Act:" Spreading rumors in a way that is sufficient to undermine public order and peace." is determined by a court judge according to law. Recently we have started to revise Social Order Maintenance Act, in the draft, the punishment for spreading rumors has been deleted. In addition to avoiding being a targeted tool for political operation, the people are guaranteed freedom of speech. If the victim has any influence on his reputation, he may be punished according to criminal law or requested for damages according to civil law infringement, it should be sufficient to ensure the right of the parties.
3. In the part of the Criminal Code, the Chapter of Interference of Public Order, regarding parade & assembly, e.g., Article 149 of the Criminal Code (the crime of participation in an open assembly defying the order for dismissal); Article 150 (Assembly with mass for violence and intimidation); and Article 28 of the Assembly and Parade Act: "When an assembly or parade is not dismissed after the competent authority has given a dismissal order, the responsible person of the assembly or parade or his or her proxy or the host shall be fined between NTD 30,000 and NTD 150,000."; Article 29 of the same Act: "If an assembly or parade is not dismissed after the competent authority has given a dismissal order, but still in progress and does not obey the order after being stopped, the mastermind

shall be sentenced to imprisonment of up to two years or criminal detention." The aforementioned crimes are in varied prerequisite constituents and function as the governing force majeure. The applicable relationship depends upon the respective individual facts and evidence (exhibits). Under the principle of administration by law, the police shall select the most applicable grounding laws in enforcement.

4. In performance of duties on parade & assembly, the police authorities are supposed to implement the principle of "to safeguard the lawful and crack down upon unlawful ones to prevent violence". Meanwhile, they shall try to prevent a protest from harassment, sabotage in mass. With efforts to strengthen search of evidence, they would safeguard social order and public interests. As officially passed in the first reading process by the Internal Affairs Committee of the Legislative Yuan, the contents of criminal penalty and administrative penalty have been both deleted from the "Draft in Amendment to the Assembly and Parade Act". Offenses in such attribute are back subject to ordinary laws. This is another key point interpreted here.

第 22 條

Article 22

點次	問題內容(原文)	中文參考翻譯
65	According to the Second State Report (§ 301) the establishment of civil associations in the R.O.C. is subject to approval, as a permit is required if the group of founders consist of 30 persons or more. What are the criteria for granting a permit, which authority is competent to decide the applications and what remedies are available against a rejection? Please give more information on the initiative to change the system from permission-based to	根據《公政公約第二次國家報告》第 301 點，在中華民國成立公民團體必須經過審核同意，必須有 30 人以上發起才能獲得許可。給予許可的準據為何，哪個機關有權決定申請案的准否，否決者有何種救濟？請對於將此制度由許可制改為登記制的推動情形提供更多資料（參照《公政公約第二次國家報告》第 308 點）。此制

	registration-based (cf. § 308 of the Report). Is the system in conformity with the right to freedom of association under Article 22 of the ICCPR?	度是否符合《公政公約》第 22 條結社自由之權利？

中文回應

1. 根據《公政公約第二次國家報告》第 301 點，在中華民國成立公民團體必須經過審核同意，必須有 30 人以上發起才能獲得許可。有關許可給予的準據係依據人民團體法第 8 條之規定：「人民團體之組織，應由發起人檢具申請書、章程草案及發起人名冊，向主管機關申請許可。前項發起人須滿二十歲，並應有三十人以上……。」。
2. 依據人民團體法第 3 條規定：「本法所稱主管機關：在中央及省為內政部；在直轄市為直轄市政府；在縣 (市) 為縣 (市) 政府。」視所申請者係全國性或地方性之人民團體，全國性人民團體係由內政部主管、地方性人民團體由各該直轄市、縣 (市) 政府主管，該團體之主管機關有權決定申請案的准否。
3. 主管機關對於人民團體之申請審核，若有不符合法定申請要件的情事，主要多基於輔導立場給予補正之機制，幾乎很少有予以否決的案例。若有申請案遭主管機關否准的情況，應屬行政程序法上之「行政處分」，可依法提起訴願及行政訴訟。
4. 人民團體成立從現行的「許可制」改為「登記制」，鬆綁人民團體之許可設立限制，刪除現行條文中發起人及籌備會之規範制度。主要修正重點包括：明定申請登記之應備文件、不予登記之例外情事、應登記事項等。人民團體法修正草案自 2015 年 8 月起至 2016 年 5 月間，共召開 8 次法規聯席審查會議審議完竣；並於近期召開修法說明會討論法案修正內容，刻正研議增訂有關促進人民團體發展之條文。
5. 上開制度之修正應符合《公政公約》第 22 條結社自由之權利。

英文回應

1. According to the Second State Report (§ 301) the establishment of civil associations in the R.O.C. is subject to approval, as a permit is required if the group of founders consist of 30 persons or more. The criteria for granting a permit are according to Civil Associations Act, Article 8:”To organize a civil association, the initiators shall submit an application form, a draft of the association’s constitution, and a list of the initiators to the regulating authority

to apply for approval. There must be no less than thirty (30) initiators, and a person who is over twenty (20) years old…."

2. According to Civil Associations Act, Article 3: "Regulating authorities as called in this Act, at the central and provincial level, refer to the Ministry of the Interior; at the municipal level, refer to municipal governments; and at the county (city) level, refer to county (city) governments." It depends on whether National civil associations or Local civil associations people apply for approval. National civil association's regulating authority is Ministry of the Interior; Local civil associations' regulating authorities are municipal governments or county (city) governments. Regulating authorities of civil associations are competent to decide the applications.
3. When regulating authorities deal with auditing the applications, if they are not meeting statutory requirements, most of situations are based on counseling to correct, almost not for rejection. If there are applications rejected by regulating authorities, they are referring to "Administrative Disposition" of Administrative Procedure Act. According to law, they can file an administrative appeal and administrative litigation as remedies against a rejection.
4. The establishment of civil associations would promote to change the system from permission-based to registration-based. It will deregulate the restriction of approval for organizing civil associations, and cancel the regulation of initiators and preparatory meeting in current Civil Associations Act. The point of amending this Act includes: Expressly provide what documents should be prepared when people apply for registration, what exceptional circumstances people couldn't be allowed to register civil associations, what matters should be restarted, etc. The Ministry of the Interior had held eight times of jurisdictional joint review conferences for reviewing the draft amendment of Civil Associations Act from Augest, 2015 to May, 2016. Recently, it also had held several times of seminars for discussing the draft amendment of this Act. At present, the article of this act will be revised to add in promoting the development of civil associations.
5. This registration-based system is in conformity with the right to freedom of association under Article 22 of the ICCPR.

第 23 條

Article 23

點次	問題內容(原文)	中文參考翻譯
66	In the previous Concluding Observations the Experts recommended that the law on the minimum age of marriage be amended to raise the minimum age of marriage of women to 18. Please indicate whether this has been done. If not, please provide information on whether there are plans to do so and within what time frame.	審查專家在《結論性意見與建議》中，具體建議應修正法律，將女性最低結婚年齡提高到 18 歲。請說明是否已依專家建議完成修法。如果尚未修法，請說明是否有修法計畫？預備於何時完成？

中文回應

有關民法男女法定結婚年齡應為一致性規定，符合國際公約之要求，為法務部 2011 年提出民法修正草案後之一貫立場，其後亦有立法委員提出結婚年齡之民法修正草案，法務部亦表達相同意見。但考量修正現行女性結婚年齡之規定，涉及未滿 18 歲女性結婚權利，且尚須考量未達結婚年齡之未成年少女懷孕所衍生家庭及社會等相關問題及配套措施。因此，法務部仍將審慎綜合評估上開各種因素，並參考國際審查委員意見，儘速研議處理。

英文回應

The consistency of regulations governing the statutory marrying age of male and female citizens as prescribed in the Civil Code and in conformity to the requirements set forth in international covenants represents the consistent position of the Ministry of Justice after the proposal of a Civil Code amendment draft in 2011. The Ministry of Justice expressed the same point of view with regard to the Civil Code amendment drafts pertaining to the marrying age proposed by legislators. However, it must also be considered that the amendment of current regulations governing the female marrying age affects the marrying rights of female citizens under the age of 18. Family and social problems generated by pregnancies of female

minors who haven't reached the legal marrying age and complementary measures also have to be taken into account. The Ministry of Justice will therefore conduct integrated assessments of the aforementioned factors in a meticulous manner in addition to the deliberation and handling of relevant matters in a prompt manner with reference to the opinions of the international review committee.

第 23 條

Article 23

點次	問題內容(原文)	中文參考翻譯
67	With regard to the issue of the recognition of the diversity of families and same sex marriages, the Second Report indicates that surveys have been conducted that reveal different opinions regarding the subject (§ 329) and that the Ministry of Justice will continue to promote rational discussion so that the country will reach a consensus. Please provide information as to whether, as recommended by the Experts, gender equality and gender diversity awareness and education has been conducted to society in general and in schools in particular as well as the scale and scope of such education.	關於承認家庭多元性與同性婚姻的議題，《公政公約第二次國家報告》(第 329 點）指出已進行調查並發現對此議題有不同意見，法務部將持續加強理性溝通，凝聚共識。請提供資料回答是否按照專家建議，對性別平等和性別多元，執行對一般大眾以及針對學校內的意識提升和教育，並說明該等教育之規模與範圍為何。

中文回應

1. 針對一般大眾：

(1) 行政院於 2015 年建置「Gender 在這裡-性別視聽分享站」，提供性別平等及多元性別議題相關電影及書籍之導讀、熱門新聞、名家筆記等多元素材，引導民眾思考相關的性別議題，並啟發民眾的性別敏感度。

(2) 行政院於 2015 年 12 月、2016 年 5 月及 11 月共推出 3 次性平小學堂網路有獎徵答活動，藉由遊戲題目內容，宣導有關多元性別教育，如：多元性別歧視、性別氣質、性傾向與性別認同等。

(3) 行政院為引導所屬機關及各地方政府推動各項性別平等工作及消除性別歧視，於辦理性別平等業務輔導考核時，將推動性別平等之多元宣導方式、自製文宣品納入考核指標中，以鼓勵各級政府向民眾宣導性別平等意涵。

2. 學校教育

(1) 依性別平等教育法第 18 條後段規定「教材內容應平衡反映不同性別之歷史貢獻及生活經驗，並呈現多元之性別觀點。」，及性別平等教育法施行細則第 14 條後段規定「教材內容並應破除性別偏見及尊卑觀念，呈現性別平等及多元之價值。」，因此課程教材教學，依法需納入性別平等之多元觀點，並呈現性別多元之價值。

(2) 教育部依據「性別平等教育法」推動性別平等教育，目的是為了促進性別地位的實質平等，消除性別歧視，維護人格尊嚴，建立性別平等的教育資源與環境；同時教導學生認識自己進而尊重他人，避免歧視與霸凌，建立尊重自我與他人的友善校園。因此，在課程教學上提供多元性別教育的正確認識，希望提升學校師生性別平等意識，並能對不同性別或性傾向者予以的尊重與善待，落實「更多認識、不再歧視」的性別平等教育目標，保障每個學生的受教權，讓所有的學生都可以快樂學習、快樂成長。

(3) 針對高級中等以下學校之宣導，教育部國教署將利用相關會議如校長會議、學務會議、輔導會議以及各縣市學管科會議等宣導 LGBT。提升教育人員對 LGBT 人士的認知和接受度。在教育人員的專業教育中，於全國高級中等學校輔導工作會議中宣導。

(4) 另為鼓勵大專校院推動性別平等教育，教育部持續透過於全國大專校院校長、教務主管聯席會議宣導，鼓勵教師成立相關研究社群或研發教材教法，並請各校開設性別相關議題課程及納入課程教學活動，提升學生性別多元及平等意識。

英文回應

1. For the general public:

(1) In 2015 the Executive Yuan established the “Gender is Here-Multimedia Sharing of Gender Equality” website to provide films and reading guide of books relating to gender

equality and comprehensive gender issues, such as LGBT, popular news, notes of experts and different materials to guide citizens to think gender-related issues and inspire their sensitivity to gender.

(2) The Executive Yuan also launches three “Gender Equality Online Games” in December 2015, May 2016, and November 2016 respectively to promote comprehensive gender education through Q&A, such as different forms of gender discrimination, gender temperament, sexual orientation, and gender identity.

(3) To guide subordinate departments and local governments to implement gender equality work and eliminate gender discrimination, the Executive Yuan will include the diversity of promotion methods and production of publicity materials for gender equality as indicators of gender equality business assessment in order to encourage governments of all levels to publicize the implications of gender equality to the public.

2. School education:

(1) The latter section of Article 18 of the Gender Equity Education Act states “The compilation, composition, review, and selection of course materials shall comply with the principles of gender equity education. The content of teaching materials shall present fairly the historical contributions, life experiences of both sexes, and diverse gender perspectives”. The latter section of Article 14 of the Enforcement Rules for the Gender Equity Education Act states: “The materials shall also be free from gender prejudice and the idea of male superiority in order to make the values of gender equity and diversity explicit.” Therefore, the teaching of course material is required by law to incorporate diversified perspectives on gender equality and to present the value of gender diversity.

(2) In compliance with the Gender Equity Education Act, the Ministry of Education is promoting and implementing gender equity education. Its goals are to promote equal status regardless of gender, to eliminate gender-based discrimination, to safeguard people’s dignity, and to establish gender equity supporting educational resources and environments. At the same time, it also seeks to educate students to be more aware of themselves and as a result respect others, and avoid discriminating against or bullying others, and it seeks to build friendly campuses where people respect themselves and

others. Given this, by providing education that presents a correct understanding of gender diversity in its courses, the Ministry hopes to strengthen teachers' and students' awareness of gender equity and hopes to encourage them to respect individuals of different gender or gender orientation and treat all such individual well, and thereby fulfil the objective of gender-equity education: "more understanding, no more discrimination" and safeguard each student's rights to education, so that all students can learn happily and grow up joyously.

(3) When promoting related policies to educational institutions at senior high school level and below, the Ministry of Education K-12 Education Administration takes the opportunity provided by various meetings – such as principals' meetings, school administration meetings, counseling meetings, and meetings of county and municipal school administration sections – to provide LGBTI related information, in order to raise educator's and education personnel members' awareness of LGBTI people and increase acceptance for LGBTI individuals. The Ministry also promotes this topic at guidance training work meetings for education personnel who work in senior high schools all over the country.

(4) To encourage gender equity education in colleges and universities, the Ministry of Education also continues to promote this at meetings of presidents of colleges and universities all over the country, and meetings of managers of academic affairs at colleges and universities all over the country and encourages faculty members to form related research groups and/or research and develop related teaching methods and materials. It also requests colleges and universities to offer courses on related topics and to incorporate these topics into teaching and learning activities to help strengthen students' awareness of gender diversity and equality.

第 23 條

Article 23

點次	問題內容(原文)	中文參考翻譯
68	According to the Second Report, several surveys on domestic violence have been conducted (§ 264 of the Response). Please provide data on the results of these surveys with regard to data on the prevalence, cause and effects of domestic violence. While the Implementation of the Concluding Observations shows many initiatives to combat violence against women, please indicate whether the impact of the initiatives has been assessed and whether a comprehensive plan to address domestic violence is developed by adopting an interdisciplinary and multi-sectoral approach.	根據《公政公約第二次國家報告》，有數個針對家庭暴力的調查已經完成。（國家《回應結論性意見與建議》第 264 點）請提供這些調查結果的數據，包括家庭暴力之盛行率、原因及影響。雖然回應結論性意見的報告可以看出有些消除對婦女暴力的作法，請說明這些作法的效果是否有所評估，以及是否採取跨專業、多部門的方式以發展消除家庭暴力的完整計畫？

中文回應

1. 衛福部 2015 年針對 18 歲至 74 歲且現有或曾有親密伴侶的女性，辦理「臺灣婦女遭受親密關係暴力統計資料調查」，研究發現我國婦女親密關係暴力過去 12 個月盛行率約 10.3%，終生盛行率 26%，最常見的暴力型態是精神暴力（21%），其次是肢體暴力（9.8%）及經濟暴力（9.6%），而性暴力（7.2%）與跟蹤及騷擾（5.2%）也佔有一定比例，研究顯示，親密關係暴力是普遍存在的現象，故發現有周遭親朋好友有親密關係暴力徵兆，一定要勇於求助，避免傷害擴大。
2. 該研究評估可立即透過公私合作協力之方式，增強各縣市政府警政、教育及民間團體合作關係，強化實務工作者對精神暴力與性暴力辨識力，並透過各防治網絡跨專業合作辦理親密關係暴力防治宣導，提升民眾防暴意識。中長期進一步透過修訂法規，建立多元庇護服務方案與措施，提升被害人服務品質，最終培力受暴婦女復原達到獨立自主之目標。

英文回應

1. In 2015, the MOHW undertook the “Survey on Intimate Partner Violence Against Women” for women aged 18-74 who have partner now or have ever had partner in the past. Result showed that the prevalence rate of women subject to intimate partner violence in the past 12 months is 10.3%, and in their lifetime is 26%. The types of violence were mainly psychological violence (21%), followed by physical violence (9.8%), and economic violence (9.6%). Sexual violence (7.2%) and stalking/harassing (5.2%) also constituted sizable percentages. The result indicates that intimate partner violence is widely spread. Once individual detect there are relatives or friends subject to intimate partner violence, people have to seek for help courageously to avoid the harm expanded.
2. The evaluation of the research demonstrates that government could cooperate with non-government organization immediately to strengthen the collaboration relationship between police agency, education sector and civil organization in order to improve the practitioners’ discrimination in psychological violence and sexual violence. Also, to raise the public’s awareness in preventing violence, every sector in the prevention network could cooperate to conduct the intimate partner violence promotion. In the long run, in order to reach the goal of cultivating abused women to recovery and independence, MOHW could build multi-shelter service plans and measures to enhance service quality for victims.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
69	Please provide information on the proposal to introduce an absentee ballots system (cf. § 378 of the Second State Report).	請提供不在籍投票制度之研擬資訊(《公政公約第二次國家報告》第 378 點）。

中文回應

我國不在籍投票的規劃，是由選民事前申請跨縣市移轉投票，將選票由戶籍地移轉至居

住地、工作地或求學地，由選民本人親自在投票日前往投票所進行投票，並從總統、副總統選舉及全國性公民投票開始實施。但各界對於在中國大陸臺商及在營軍人納入適用對象仍有疑慮，有待凝聚共識。

英文回應

To facilitate voters to exercise their voting rights, the absentee ballots system in Taiwan, is that voters should apply for inter-county transferring vote in advance, their ballots will transfer from their registered residence to the place where they live, work or study, the voters should go to the polling place on Election Day and vote by themselves, starting from the elections of President and Vice President and national referendums. However,, there are still doubts about the applicability of Taiwanese businessmen and soldiers in the camps, so it has not been possible to implement the policy of absentee ballots yet.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
70	According to table 42 in § 394 of the Second State Report, the number of male candidates in local public officials elections is considerably higher than the number of female candidates – the latter not exceeding 30%. Are measures envisaged to make the participation of men and women more equal?	根據《公政公約第二次國家報告》第 394 點之表 42，地方公職人員選舉中，男性候選人人數遠高於女性候選人，後者不超過 30%。是否採取措施使男子和婦女的參與更加平等？

中文回應

我國國民凡符合公職人員選舉罷免法規定公職候選人資格者，皆可自由登記參選，不因性別而有特別限制，而為確保女性參政權，在各級地方民意代表選舉，已訂有女性候選人最低當選名額規定，依地方制度法第 33 條第 5 項規定，各選舉區選出之地方民意代表名額達 4 人者，應有婦女當選名額 1 人；超過 4 人者，每增加 4 人增一人。

英文回應

Any individual that meets the qualifications of our country's Civil Servants Election and Recall Act is eligible to register and run in elections. There are no gender restrictions. In order to protect women's right to participate in politics, there are quotas for female candidates that must be filled during representative elections on the local level. Article 33 Clause 5 of the Local Government Act stipulates that in the event there are a total of four representatives to be elected by an electoral district, there should be one female among the elected. If the total number of those to be elected exceeds four, an additional female shall be among the elected for every additional four persons elected.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
71	Please provide information on what kind of restrictions are imposed on persons of Mainland origin with R.O.C. nationality concerning the right to civil service and the Government's intentions to revise the rules (cf. the Second State Report, § 369). Are the restrictions compatible with Article 25(c) ICCPR?	請提供資訊說明對來自中國大陸、具備中華民國國籍者擔任公職權利之限制，以及政府修改相關法令之規劃(《公政公約第二次國家報告》第 369 點)。 這些限制是否符合《公民與政治權利國際公約》第 25 條(c)款之規定？

中文回應

1. 依司法院釋字第 618 號解釋之意旨，兩岸關係條例第 21 條規定，是基於公務人員經國家任用後，即與國家發生公法上職務關係及忠誠義務，其職務之行使，涉及國家之公權力，不僅應遵守法令，更應積極考量國家整體利益，採取一切有利於國家之行為與決策；並鑒於兩岸目前仍處於分治與對立之狀態，且政治、經濟與社會等體制具有重大之本質差異，為確保臺灣地區安全、民眾福祉暨維護自由民主之憲政秩序，所為

之特別規定，其目的洵屬合理正當。基於原設籍大陸地區人民設籍臺灣地區未滿十年者，對自由民主憲政體制認識與其他臺灣地區人民容有差異，故對其擔任公務人員之資格與其他臺灣地區人民予以區別對待，亦屬合理，與憲法第七條之平等原則尚無違背。換言之，合理而具正當性之差別待遇，仍符合「等者等之，不等者不等之」的平等原則內涵。

2. 兩岸條例第 21 條之規定，係為基於前開考量，依據憲法增修條文第 11 條而為之特別規定，符合平等原則及公約之精神及意旨。

英文回應

1. According to the intent of Judicial Yuan Interpretation No. 618, the provisions of Article 21 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area Article 21 decree are extraordinary provisions with reasonable and justifiable objectives in that a civil servant, once appointed and employed by the State, shall be entrusted with official duties by the State under public law and owe a duty of loyalty to the State, that the civil servant shall not only obey the laws and orders but also take every action and adopt every policy possible that he or she considers is in the best interests of the State by keeping in mind the overall interests of the State since the exercise of his or her official duties will involve the public authorities of the State; and, further, that the security of the Taiwan Area, the welfare of the people of Taiwan, as well as the constitutional structure of free democracy, must be ensured and preserved in light of the status quo of two separate and antagonistic entities which are on opposite sides of the strait and significant differences in essence between the two sides in respect of the political, economic and social systems. Given the fact that a person of Mainland origin with R.O.C. nationality but has had a household registration in the Taiwan Area for less than ten years may not be as familiar with the constitutional structure of free democracy as the Taiwanese people, it is not unreasonable to give discriminatory treatment to such a person and not to the Taiwanese people of the Taiwan Area with respect to the qualifications to serve as a governmental employee, which is not in conflict with the principle of equality as embodied in Article 7 of the Constitution. In other words, reasonable and legitimate differential treatment is consistent with the axiom that equality means "treating likes alike and unlikes unalike."

2. Based on the aforementioned considerations, Article 21 of the Act Governing Relations between the People of the Taiwan Area and the Mainland Area is a special provision under Article 11 of the Additional Articles of the R.O.C. Constitution and corresponds with the principle of equality and the spirit and intent of the ICCPR.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
72	According to the Second State Report (§ 371) it is a condition to be entitled to vote in elections and referendums that the citizen has resided in the electoral district for respectively 44 and 66 months. Unless the information is incorrect, please explain the reasons for this requirement and its compliance with Article 25(b) ICCPR.	根據第二次國家報告第 371 點，公民必須於選區分別住滿 44 與 66 個月才有權投票。除非前述資訊有誤，請解釋這項規定之理由，以及其是否符合《公民與政治權利國際公約》第 25 條(b)款之規定。

中文回應

公政公約第二次國家報告英文版第 371 點文字誤繕，應為 4 個月及 6 個月。

英文回應

The revision of the Second State Report (§ 371)：Citizens aged 20 and above have the right to vote in elections and referendums unless they are still under guardianship for any reason. However, they must reside in the electoral district continuously for 4 months or 6 months to be entitled to vote in elections or referendums.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
73	Please give more detailed information on the election system in so far as it concerns the legislator seats for indigenous peoples. Is it correct (as alleged in § 48 of the CW Shadow Report) that the system involves much higher election costs for indigenous legislator campaigns, that it benefits strong political parties and that it gives the current legislators a considerable advantage in both media coverage and control over voter lists? Are any measures envisaged to revise the system?	請就選舉制度中與原住民立法委員席次相關的部分提供更多資訊。（如同人權公約施行監督聯盟《公政公約影子報告》第 48 點所主張的）此制度使原住民候選人需支出較多選舉費用，卻有益於強大的政黨，在媒體報導及選民名單之控制方面皆給予現任立法委員相當大的優勢，以上是否正確？

中文回應

依我國憲法增修條文規定，原住民立法委員有平地原住民及山地原住民各 3 人，另依公職人員選舉罷免法規定，原住民立法委員依身分劃分為「平地原住民」及「山地原住民」兩個選舉區，因有建議改為單一選區制，內政部於 2016 年召開 5 場公聽會，部分與會者認為即使改為單一選區制，不會改變候選人及選民行為，反而造成買票標的更為集中；政黨競爭型態將更明確，加重政黨在原住民選舉角色；候選人與選舉區域更緊密結合，新參選人不一定具有優勢。故對此議題，意見仍相當分歧。另外，現任者往往因為具有知名度及一定政治資源而得到優勢，如改成單一選區制的選區現任者只有 1 位，壟斷所有資源，挑戰者恐更難有勝選機會。

英文回應

By Additional Articles of the Constitution of the Republic of China, indigenous legislators are three members be elected from the lowland aborigines and three members be elected from the

highland aborigines. By Civil Servants Election And Recall Act, the electoral districts of indigenous legislator shall be the indigenous peoples in plain areas and the indigenous peoples in mountain areas. Due to some people suggest that current system should be revised to Single-Member District, the Ministry of the Interior held five public hearings in 2016. Part of the public hearing participants believe that even if the system change to Single-Member District, it will not change the behavior of candidates and voters, but the objects that candidates can bribe are more concentrated; it will make the party competition more clear, and increase the importance of political parties in the indigenous elections; it creates a closer relationship between candidates and electoral regions, resulting in new candidates may not have an advantage. Therefore, there is still disagreement on this issue. In addition, current legislators are often prone to advantages because of their well-knowingness and certain political resources. If the current system is changed to Single-Member District, only one incumbent in the electoral district, that it enables the incumbent to monopolize all resources, and the challengers will be more difficult to win in the election.

第 25 條

Article 25

點次	問題內容(原文)	中文參考翻譯
74	Is it correct (as alleged in § 50 of the CW Shadow Report) that the election system in respect of indigenous legislator candidates may give rise to doubts as to the anonymity of voters? Does the system comply with Article 25(b) ICCPR? If not, are any measures envisaged to remedy the situation?	（如同人權公約施行監督聯盟《公政公約影子報告》第 50 點所主張的）與原住民立法委員候選人有關的選舉制度在選民之匿名性方面可能引起疑慮，是否正確？此項制度是否符合《公政公約》第 25（b）條？若不符合，是否有設想任何措施以便補救現況？

中文回應

依公職人員選舉罷免法規定，選舉人應於戶籍地投票所投票。為便利選舉人投票，我國公職人員選舉普設投票所，每村(里)至少設置 1 個以上之投票所。又為保障原住民選舉人投票秘密，選舉委員會以往辦理各項公職人員選舉，如遇有 1 投票所僅 1 名原住民選舉人之情形時，均會徵詢該原住民選舉人之意願後，據以辦理投票所異動，符合公政公約第 25（b）條之規定。

英文回應

According to the Civil Servants Election And Recall Act, voters shall vote at the polling station at the place of domicile. In order to facilitate the polling convenience, the election commissions set up at least one polling station in each village (borough) across the nation in the elections. For the purpose of secret vote of indigenous voters, in the cases that only one indigenous voter was allocated to a polling station, he/she was consulted in order to switch the polling station in the past elections. The system complies with Article 25（b）ICCPR.

第 26 條

Article 26

點次	問題內容(原文)	中文參考翻譯
75	While “Equality and Non- discrimination” under Articles 2 and 3 ICCPR are limited to rights as described in the Covenant, Article 26 has no such limitations, thus applicable to “economic, social and cultural rights” as well as to “civil and political rights”. Does the Taiwanese Constitution protect “economic, social and cultural rights” as such and, if not, how are they protected and to what extent?	《公政公約》第 2、3 條的平等與不歧視僅使用於《公政公約》所規定的權利，但第 26 條則無此限制，因此可適用於「經濟、社會與文化權利」以及「公民與政治權利」。臺灣憲法是否也以依此方式保障「經濟、社會與文化權利」，如果不是，這些權利是受到如何的保障及其程度？

中文回應

1. 依憲法第 7 條規定：「中華民國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等。」，平等權乃我國憲法保障之基本權利。
2. 依憲法第 142 條規定：「國民經濟應以民生主義為基本原則，實施平均地權，節制資本，以謀國計民生之均足。」，國民之經濟權受憲法保障，無任何區別。
3. 依憲法第 152 條規定：「人民具有工作能力者，國家應予以適當之工作機會。」不分職業、年齡與性別，保障社會安全。
4. 依憲法第 159 條規定：「國民受教育之機會，一律平等。」，第 160 條規定：「六歲至十二歲之學齡兒童，一律受基本教育，免納學費。其貧苦者，由政府供給書籍。已逾學齡未受基本教育之國民，一律受補習教育，免納學費，其書籍亦由政府供給。」確保國民之教育文化權利受到絕對、平等的保障。

英文回應

1. Under Article 7 of the Constitution, “All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.” the right to equality and non-discrimination is a fundamental right of our Constitution.
2. Under Article 142 of the Constitution, “National economy shall be based on the Principle of the People’s Livelihood and shall seek to effect equalization of land ownership and restriction of private capital in order to attain a well-balanced sufficiency in national wealth and people’s livelihood.” The economic right implies protected without any discrimination.
3. Under Article 152 of the Constitution, “The State shall provide suitable opportunity for work to people who are able to work.” The social security is guaranteed without distinction of any kind, such as profession, age or sex.
4. Under Article 159 of the Constitution, “All citizens shall have equal opportunity to receive an education.”, and Article 160 of the Constitution, “All children of school age from six to 12 years shall receive free primary education. Those from poor families shall be supplied with books by the Government. All citizens above school age who have not received primary education shall receive supplementary education free of charge and shall also be supplied with books by the Government.” The right to education is safeguarded absolutely and equally by the Constitution.

第 26 條

Article 26

點次	問題內容(原文)	中文參考翻譯
76	The Report lists several laws which have anti-discrimination clauses. (pages 3-5 of the Report) The Report also provides information on complaints received in relation to employment discrimination. But there is no information on the enforcement of anti-discrimination laws in all other fields, health, education, immigration, the elderly, disability, armed forces etc. Please indicate whether the enforcement of all laws that have anti –discrimination clauses are monitored and by which authority; whether adequate remedies are provided for in these laws; in case of infringement of the laws concerned, please indicate whether there are easily accessible procedures for making complaints and whether they are well known to the public; please name the competent authorities tasked with adjudicating such infringement.	《公政公約第二次國家報告》(中文版第 2 至 4 頁）列出數個含有反歧視條款的法律。政府報告對於就業歧視有關的申訴案件也提供資訊。但在健康、教育、移民、高齡、身心障礙、軍隊等其他所有領域政府並未提供反歧視法律的落實情形的資訊。請說明所有有反歧視條款的法律的落實情形是否受到監測及其監測機構為何；這些法律是否有提供適當的救濟；在違反相關法律時，請說明是否有容易接近使用的申訴管道以及是否為公眾所週知；請指出有權裁決是否侵權的機構名稱。

中文回應

1. 臺灣的傳染病病人、HIV 感染者均受到「傳染病防治法」、「人類免疫缺乏病毒傳染防治及感染者權益保障條例」保障，避免他們受到任何形式的歧視及不公平待遇。主管機關在中央為衛生福利部；在直轄市為直轄市政府；在縣（市）為縣（市）政府。主管機關主動依職權進行各種法規檢視亦會依照民眾投訴進行個案調查，以糾正各種不當作為。如傳染病病人、感染者遭遇不公平待遇或歧視，可以經由電子郵

件、免付費專線、信件等管道，向主管機關提出申訴。如經主管機關查明屬實，依法得限期令其改善或處以罰鍰。申訴管道及流程宣導公布於各主管機關相關網站，方便民眾查詢。

2. 查精神衛生法第 22、23 及 24 條均屬對精神病人不得有歧視之規定，且應對病人之人格與合法權益受尊重及保障，不得予以歧視。違反者亦有相關罰則。而自 2008 年本法修正施行迄今，本法第 23 條尚無相關裁處案件。
3. 依據身心障礙者權益保障法第 10 條及第 14 條之規定：衛福部部特訂定衛生福利部身心障礙者權益保障推動小組設置要點及身心障礙者權益保障事項運作及權益受損協調處理辦法（以下簡稱本辦法）。依本辦法第 3 條規定，身心障礙者對於權益受損事項，經向爭議事件所在地之直轄市、縣（市）主管機關申請權益受損協調（以下簡稱協調案件）後，不服其協調結果者，得於接獲協調結果之翌日起三十日內填具協調申請書，並檢附直轄市、縣（市）主管機關協調相關文件向衛福部申請協調，逾期不予受理。另依本辦法第 6 條之規定，為辦理協調案件，得視協調案件類型，指派衛生福利部身心障礙者權益保障推動小組（以下簡稱本小組）委員組成協調處理特別小組辦理之。又依本辦法第 9 條之規定，協調處理特別小組應將協調結果提報本小組備查。協調紀錄應於本小組備查後十五日內送達申請人及相關單位或人員。
4. 另依據老人福利法第 3 條：「…勞工主管機關：主管老人就業促進及免於歧視、支援員工照顧老人家屬與照顧服務員技能檢定之規劃、推動及監督等事項。」、第 29 條：「勞工主管機關應積極促進高齡者就業，並致力老人免於就業歧視。前項促進高齡就業之政策與措施，由中央勞工主管機關定之。」
5. 依據性別平等教育法第 28 條規定略以：校園性侵害、性騷擾或性霸凌事件之被害人或其法定代理人得以書面向行為人所屬學校申請調查。任何人知悉前二項之事件時，得依其規定程序向學校或主管機關檢舉之。同法第 31 條第 2 項規定：性別平等教育委員會調查完成後，應將調查報告及處理建議，以書面向其所屬學校或主管機關提出報告。故性別平等教育法內反歧視條款的落實情形，已受到學校及各級教育行政主管機關之監測。另依據性別平等教育法第 32 條、第 34 條規定，得提出救濟，其救濟管道依上開規定係屬容易接近使用並為公眾所週知。
6. 依據教育基本法第 6 條規定，教育應本中立原則。私立學校應尊重學校行政人員、教師及學生參加其所辦理特定宗教活動之意願，不得因不參加而為歧視待遇。其意旨在使教育之實施不受宗教之不當干預，俾落實中華民國憲法第 7 條規定「中華民

國人民，無分男女、宗教、種族、階級、黨派，在法律上一律平等」之理念。

7. 教育基本法屬確立我國教育基本方針之宣示性質法律，其涉及教育實施之相關事宜，另以法律定之，如私立學校法第 7 條及第 55 條規定，宗教研修學院外之私立學校不得強制學生參加任何宗教儀示或修習宗教課程，若有違反，經向學校主管機關反應，請其改善，惟屆期仍未改善者，將視情節輕重為之處分。
8. 移民部分，為保障移民人權，內政部移民署制定入出國及移民法為規範，並訂定「居住臺灣地區之人民受歧視申訴審議小組設置要點」，特設「居住臺灣地區之人民受歧視申訴審議小組」，遴聘社會公正人士 7 人及有關機關 6 人，其中 1 人為召集人，由內政部常務次長兼任，審議人民受歧視案件。
9. 受歧視申訴書及相關法令規定，公布於內政部移民署全球資訊網，供受歧視當事人下載使用，移民署受理當事人申訴救濟後，即召開居住臺灣地區之人民受歧視申訴審議小組會議審議。
10. 我國國防部於平時即透過各項法治教育，要求所屬官兵依法行政，且在陸海空軍懲罰法第 31 條明文規定，要求懲罰評議會委員，至少要有 1 名法律系畢業之專業人員參與，實施審查。國軍官兵均得先行向權責機關之長官、監察人員或 1985 諮詢服務專線等管道申訴，以獲致快速且即時複查之保障（詳公政公約第二次國家報告第 95 點），如對申訴結果不服時，另可依懲罰處分之性質，提起訴願、行政訴訟，或向國軍官兵權益保障會，提起權益保障案件之申請（詳公政公約第二次國家報告第 94、97 點）；前述機制均為國軍官兵所知悉。
11. 有關性別工作平等法與就業服務法反歧視條款落實情形之監測方式有二，一為受僱者或求職者於求職或工作中認受有差別待遇時，可向各地方勞工行政主管機關申訴，二是由地方勞工行政主管機關主動進行勞動檢查。
12. 依性別工作平等法第 34 條規定，雇主、受僱人或求職者對於地方勞工行政主管機關所為處分有異議，得於 10 日內向勞動部性別工作平等會申請審議或逕行提起訴願。如仍有不服，得依訴願及行政訴訟程序，提出訴願或行政訴訟。另依就業服務法第 6 條第 4 項第 1 款規定，各地方勞工行政主管機關組成就業歧視評議委員會，針對就業歧視案件進行認定，倘雇主、受僱人或求職者對結果不服，得依訴願及行政訴訟程序，提出訴願或行政訴訟，以為救濟。
13. 勞動部每年舉辦至少 25 場次、計約 2,500 人次參加之職場平權暨性騷擾防治研習會，持續宣導以落實法令。

14. 我國目前尚無針對族群平等制定專法，有關平等權保障事項係散見各法令中，其監測機制與處理並不明確。另鑑於我國於 1966 年即簽署「消除一切形式種族歧視國際公約」，具體表明我國反對歧視之立場，原民會持續支持並配合主管機關內政部推動反歧視工作，以積極落實發展多元文化及促進族群平等。

英文回應

1. Infectious disease patients and HIV patients in Taiwan are protected by the Communicable Disease Control Act and HIV Infection Control and Patient Rights Protection Act, which prevent any discrimination against those patients. The competent authorities on the discrimination refer to the Ministry of Health and Welfare at the central level; the municipality governments at the municipality level; and the county/city governments at the county/city level. The competent authorities take the initiative to view the various laws and regulations will also be conducted in accordance with the public complaints case to correct all kinds of improper action. The infected may submit appeals to the local competent authorities by email, hotline and letters when they confront with unfair treatment or discrimination. If it is found by the competent authority that it is actually a deadline to improve or punishable by a fine. The appeals submit procedures were posted on the official website in order to search easily.
2. According to the Mental Health Act, Article 22 to 24 are all associated with patient discriminating prohibition, patients' personalities respection and legitimate rights protection. For those who violating, fine shall be imposed. Relevant fine cases from article 23 haven't been found since the last amendment in 2008.
3. In accordance with Articles 10 and 14 of People with Disabilities Rights Protection Act, the Ministry of Health and Welfare made “Directions for Rights Protection for People with Disabilities Committee, Ministry of Health and Welfare” and “Rights Protection Implementation and Rights Decrease Negotiation Regulations.” In accordance with Articles 3 of above Regulations, the people with disabilities who disagree with the results of the negotiation after applying for rights decrease to the authorities in the municipality or county (city) where the dispute is located, the interested party shall fill out an application for negotiation and prepare previous related document to the Ministry of

Health and Welfare within 30 days when the interested party received the negotiation result. The application will not be accepted within the time regulation. In addition, in accordance with Articles 6 of above Regulations, the Negotiation Task Force shall be appointed by Rights Protection for People with Disabilities Committee, Ministry of Health and Welfare to deal with the negotiation. Moreover, in accordance with Articles 9 of above Regulations, the Coordination and Coordination Task Force shall report the results of the negotiation to the Rights Protection for People with Disabilities Committee, Ministry of Health and Welfare for future reference. The record of negotiation shall be sent to the interested party and related authorities within 15 days.

4. According to Article 3 of Senior Citizens Welfare Act: "…Labor authority concerned: They are to work out, to promote and to supervise the plans of creating a discrimination-free working environment, dependent care program for elders given by employees of the company, and the examination of family caregivers." and Article 29: "The employers shall have no discrimination towards elderly employees."
5. As indicated in the provisions of Article 28 of the Gender Equity Education Act, the victim of an incident of sexual assault, sexual harassment, or sexual bullying on campus or his or her guardian may apply in writing to the offender's school and request an investigation. Anyone with knowledge of such incidents may report them to the offender's school or competent authority in accordance with prescribed procedures. Paragraph 2 of Article 31 of the same Act states: when an investigation has been completed by the school's gender equity education committee, the committee shall send the investigation report and its recommendation on how the matter should be handled to the school or the competent authority in writing. This shows that the actual implementation of the anti-discrimination measures in the Gender Equity Education Act is already being monitored by educational institutions and agencies at all levels in charge of education affairs. Also, in accordance with Article 32 and Article 34 of the Gender Equity Education Act, the applicant and the offender may petition for relief, and the channel for relief, based upon the aforementioned measures, is easier to utilize and the public is familiar with it.
6. Article 6 of the Educational Fundamental Act states that education shall be based on the

principle of impartiality. Private schools may organize specific religious activities aligned with the purpose for which the school was established or with the specific nature of the school; and they shall respect the wishes of school administrative personnel, teachers and students to participate in such activities, and may not treat any person in a discriminatory way because they do not do so. The spirit of this clause is to prevent the improper intervention of religion upon the implementation of education, thereby realizing the idea set forth in Article 7 of the Constitution of the ROC: “All citizens of the Republic of China, irrespective of sex, religion, race, class, or party affiliation, shall be equal before the law.”

7. The Educational Fundamental Act is by nature a declarative law which establishes the nation’s fundamental pledges regarding education. The practical implementation of the education matters it covers are governed by other laws and regulations. For example, Article 7 and Article 55 of the Private School Law stipulate that with the exception of religious colleges, private schools are not permitted to force students to participate in any religious ritual or to take any religious course. If these provisions are violated, if the school in question fails to make improvements after it has been notified by the competent authority and been given a specific date by which to do so, the competent authority may take disciplinary action based on the gravity of the matter.
8. In order to protect the human rights of migrants, the Immigration Department has formulated the Immigration Law and Immigration Law as the norm, and has formulated the "Settlement Points for the Discrimination Appeals Panel for Taiwan Residents." Social justice person 7 people and relevant organs 6 people, including a convener, by the Ministry of the Interior concurrently, consider the people of discrimination cases.
9. Which is published by the Ministry of the Interior, for download and use by the parties to the discrimination. After receiving the appeal, the Immigration Department will convene a meeting of the People's Republic of China for Discrimination and Appeal in the Taiwan area.
10. We, the Ministry of National Defense, require all military officers and their subordinates to perform their administrative duties by law throughout the regular implementations of law education. Article 31 of the Armed Forces Punishment Act states that, the experts of

the appraisal meeting shall include more than one expert who majored in law and was graduated from an independent college or a domestic or foreign university recognized by the Ministry of Education. The military personnel are able to raise their complaints via the 1985 hotline or talk to their supervisors or the discipline inspection officers about any incident involving the mistreatment or the violation of their rights, so that they could be protected in time and their complaints would be investigated immediately（See note 95 of the second national report on the ICCPR）. If the military personnel who raised their complaints disagree with the results, they are entitled to file an administrative appeal or an administrative litigation. They can appeal to the R.O.C. Military Personnel Rights Protection Council as well.（See note 94、97 of the second national report on the ICCPR）The protection mechanisms we mentioned above are well-known by the military personnel.

11. There are two ways to monitor the implementation of the anti-discrimination provisions of the Act of Gender Equality in Employment and Employment Service Act. Firstly, when an employee or a job-seeker faces discrimination in seeking employment or at work, he or she may appeal to the local labor administration authority. Secondly, local labor administration authorities may take the initiative to carry out labor inspections.
12. In accordance with the provisions set forth in Article 34 of the Act of Gender Equality in Employment, if employers, employees or applicants are not satisfied with the decisions made by the local competent authorities, they may apply to the Committee on Gender Equality in Employment of the Central Competent Authority for review or file an administrative complaint directly within ten days. If the employers, employees or applicants are still not satisfied with the decisions made by the Committee on Gender Equality in Employment of the Central Competent Authority, they may file administrative complaints and administrative lawsuits pursuant to the procedures of the Administrative Appeals Act and the Administrative Lawsuits Act. In addition, in accordance with the provisions set forth in Subparagraph 1, Paragraph 4, Article 6 of the Employment Service Act, if employers, employees or applicants are not satisfied with the judgment rendered for the employment discrimination cases by the Employment Discrimination Committee, which is composed of local labor administration authorities, they may file administrative

complaints and administrative lawsuits pursuant to the procedures of the Administrative Appeals Act and the Administrative Lawsuits Act for their relief.

13. The Ministry of Labor organizes at least 25 sessions of the Workplace Equality and Sexual Harassment Prevention Seminar a year, with participation of about 2,500 people, to continue advocacy to implement the law.
14. Special acts governing equal rights among different ethnicities do not exist in Taiwan yet. Instead, the protection of equal rights is found in various acts and regulations, though there also is not specific monitoring and processing mechanism. On the basis of the fact that Taiwan signed International Convention on the Elimination of All Forms of Racial Discrimination in 1966 stating the government's commitment to anti-discrimination, the Council of Indigenous Peoples will continue to work with the Ministry of Internal Affairs to actively promote anti-discrimination programs and implement the development of equal rights in our multicultural and multiethnic society.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
77	According to § 3 CW, the implementation of "The Indigenous Peoples Basic Law" is still far from meeting the standards listed in the Concluding Observations and Regulations Adopted by the International Group of Independent Experts, Article 1, 3, 4 and 5 of the ICCPR and the UN Declaration of the Rights of Indigenous Peoples. § 7 CW suggests that the concrete implementation of "The Indigenous Peoples Basic Law" could be realized by putting its content directly into the text of the	依據人權公約施行監督聯盟《公政公約影子報告》第 3 點，《原住民族基本法》的落實情形仍遠低於前次《結論性意見與建議》、《公政公約》第 1、3、4、5 條及聯合國原住民族權利宣言所列舉的標準。人權公約施行監督聯盟影子報告第 7 點建議將《原住民族基本法》的內容直接增訂為憲法的一個章節就可以作為具體的落實。政府是否有意願做這樣的

	Constitution in the form of a special chapter. Does the Government intend to adopt such an amendment? And to further ensure the rights of Indigenous People, particularly the right to self-determination, does the Government intend to elevate the UN Declaration on the Rights of Indigenous Peoples to constitutional status?	增補？而為了進一步確保原住民族的權利，特別是自決權，政府是否願意將聯合國原住民族權利宣言提升為憲法位階？

中文回應

原民會將於 2017 年著手進行原住民族憲法專章之制訂，定期邀集各領域之專家學者共同商討原住民族憲法專章應具備之內容，待完成相關之草案內容後，再與權責部會協商，並俟憲法修訂時提出。

英文回應

In 2017, the Council of Indigenous Peoples plans to commence the drafting of “The Special Chapter for Taiwan Indigenous Peoples in the Constitution”. The Council of Indigenous Peoples will invite specialists and experts from all fields to regular meetings and discussions on the content of the Special Chapter. When the draft is ready, the Council of Indigenous Peoples will initiate negotiations with other ministries in order that it may submit a version when the Constitution is under revision.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
78	In § 4 of its Report, the Government submits that via amendment of “The Indigenous Peoples Basic Law” from 16 December 2015 indigenous tribes were conferred the status of “public	《公政公約第二次國家報告》第 4 點提到透過 2015 年 12 月 16 日修正的《原住民族基本法》，原住民部落被賦予「公法人」的地

	judicial persons", in order to further their autonomy. How will these "public judicial persons" fit into the existing legal framework of local self-governing bodies? What is the status of the review of the "Regulations on the Indigenous People Autonomy" and its role in this context?	位，以深化其自治。這些公法人將如何融入現存的地方自治團體法律架構？《原住民族自治推動條例》於立院審議的結果為何？該條例在原住民族自治脈絡中的角色為何?

中文回應

1. 依據《原住民族基本法》第 2 條之 1 規定，部落經中央原住民族主管機關核定者，為公法人，即賦予部落法律上權利主體之地位，使其得享受法律上權利並負擔義務，以回復其自主性並強化自治能量，奠定民族自治基礎。
2. 未來部落公法人將與各地方自治團體形成區域治理之夥伴關係，換言之，在民族相關事務上，部落公法人將執行原基法及其授權制定法規命令所賦予執行之公共任務，在區域治理上，部落公法人亦可接受地方自治團體委託，成為執行公權力之組織。
3. 依原住民族基本法第 2 條第 4 款規定，部落係原住民於原住民族地區一定區域內，依其傳統規範共同生活結合而成之團體，經中央原住民族主管機關核定者。另依行政院原住民族委員會研擬中的部落公法人組織設置辦法草案規定，部落公法人係部落依法取得公法人地位，得就特定公共任務，依法行使公權力，且為權利義務主體之原住民族團體。由於部落公法人屬身分團體性質之公法人，與地方自治團體係屬區域團體性質之公法人不同，且二者所執行之公法任務亦不相同，因此二者並行不悖。
4. 2014 年行政院送請立法院審議之《原住民族自治暫行條例》草案，經第 8 屆立法院於 2015 年 6 月內政委員會審查後，修正法案名稱為《原住民族自治推動條例》草案，嗣因法案未能獲得多數共識，便於第 8 屆立法院會期結束後退回行政院。原住民族基本法第 4 條規定有關原住民族自治之相關事項另以法律定之，本條例草案即係作為原住民族建構自治制度之法源依據。本條例草案雖未完成立法，惟新政府成立後亦依總統政見著手推動《原住民族自治法》之立法工程，相信於近期內即能有具體之進展。

英文回應

1. According to Article 2-1 of Indigenous Peoples Basic Law, an indigenous tribe may become a public legal person with the approval of the central authority governing

indigenous affairs, i. e. the Council of Indigenous Peoples. It means the tribe will be given a legal personality as the subject of rights in legal systems. It can enjoy rights recognized by the laws and shall at the same time taking up responsibilities. It is hoped that by this, sovereignty may be returned to the tribe; the people's power to self-determination may be strengthened; and the foundation to the self-government of the people may be laid.

2. In the future, tribal public legal persons will form partnership with local self-government associations in terms of local governance. That is to say, in ethnic affairs, tribal public legal persons should exercise their public responsibilities as authorized by Indigenous Peoples Basic Law. At the same time in the context of local governance, tribal public legal persons may also become an organization that exercises public power as commissioned by local self-government associations.
3. According to Article 2 Paragraph 4 of the Indigenous Peoples Basic Law, a tribe is a group of aborigines within a designated aboriginal area whom reside together based on traditional norms and has been approved by the central indigenous authority. In addition, according to draft legislation on guidelines to establishing a public juristic person's organization as formulated by the Executive Yuan's Council of Indigenous Peoples, a tribe's public juristic person is an aboriginal group that has legally acquired the status of public juristic person and is able to legally execute their public authority and is an entity of rights and obligations. As the tribal public juristic person is a juristic person that has attributes of a group, it is different in nature from a local self-governing body; the two have different public law responsibilities and these two do not contradict one another.
4. In 2014, the Executive Yuan sent "Draft Indigenous Peoples' Self-Governance Act" to the Legislative Yuan for review. After reviewing the Draft Act in June 2015, the Internal Affairs Committee of the Legislative Yuan renamed it "Draft Indigenous Peoples' Self-Governance Promotion Act". However, due to lack of the majority consensus, the Draft Act was returned to the Executive Yuan by the Legislative Yuan when concluding its eighth session. Article 4 of *Indigenous Peoples Basic Law* states that issues related to the status and development of self-governance of indigenous peoples shall be stipulated by law. In accordance, the Draft Act intends to serve as the legal basis for indigenous self-governance. Although the Draft Act has not yet been approved, as the new government

is obligated by the current president's policies to promote legislation regarding self-governance for indigenous peoples, it is believed that within short time, progress shall be seen in this matter.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
79	As stated in § 2 of its Report, the Government states that Indigenous Peoples may hunt wild animals, pick wild plants and fungi, among other non-profit activities, legally for the sake of their traditional culture, rituals, or self-use within aboriginal regions. These rights, however, are restricted by other laws and, according to statistical analysis referenced in § 12 CW, more than 330 Indigenous persons were prosecuted and sentenced for violations of the "Wildlife Conservations Act" and the "Act Governing the Control and Prohibition of Gun, Cannon, Ammunition and Knife" between 2004 and March 2016. According to § 18 CW, local Amis Peoples were penalized and prosecuted multiple times for violating the "Fishery Act" and the "Forestry Act". These measures and regulations fail to protect Indigenous cultures. Does the Government intend to amend the abovementioned regulations as well as the "Regulations Governing Indigenous Peoples	《公政公約第二次國家報告》第 2 點提到原住民族於其領域內基於傳統文化、禮俗或自用之原因，可以合法從事狩獵野生動物、撿拾野生植物與菇類等其它非營利活動。然而這些權利仍受到其他法律的限制，依人權公約施行監督聯盟《公政公約影子報告》第 12 點的統計分析，2004 年至 2016 年 3 月間有超過 330 位原住民因違反《野生動物保育法》及《槍炮彈藥刀械管制條例》而被起訴與判刑。依人權公約施行監督聯盟《公政公約影子報告》第 18 點，阿美族人多次被以違反《漁業法》及《森林法》而起訴及處罰。這些措施與規定未能保護原住民文化。政府是否有意願修正上述規定及《原住民族基於傳統文化及祭儀需要獵捕宰殺利用野生動物管理辦法》，並將日

	Hunting and Use of Wild Animals based on Traditional Culture and Ceremony Needs" and to remove daily fishing, hunting, collecting and ceremonies from restrictions and prohibitions? How does the Government intend to raise awareness for the traditional cultures of the Indigenous Peoples among law enforcement personnel?	常捕魚、狩獵、收集與祭儀排除於限制與禁止規定之外。政府想要如何提升執法人員對於原住民族傳統文化的意識？

中文回應

1. 原民會積極與各目的事業主管機關按原住民族基本法第 19 條規定，就各該管相關法規涉及原住民族自然資源利用內容進行修正條文協商及會銜發布相關規定，包含「原住民族基於傳統文化及祭儀需要獵捕宰殺利用野生動物管理辦法」、「國家公園法」及「森林法」，期望構築符合原住民族傳統文化的法制內涵，使原住民族文化傳承所為之各項非營利行為合法化，以符原基法立法精神。在各該管相關規範未完成修法前，原民會依據「原住民族基本法」第 34 條第 2 項規定作成各該管相關法規解釋令，維護及保障原住民族基本權益。
2. 茲因槍管條例等相關法令而犯罪的原住民人數相當多，原民會前於 2015 年底曾去函請法務部提供地方法院檢察署辦理原住民案件之統計數據，經統計原住民因違反「槍砲彈藥刀械管制條例」及「野生動物保育法」之偵查終結人數，2013 年計 196 人，2014 年計 145 人，2015 年 6 月止計 89 人。而本會自 2013 年度起開辦「原住民法律扶助專案」有提供法律扶助服務，保障其司法權益。
3. 為審慎研擬原住民族狩獵權保障規範，原民會自 2014 年度起陸續辦理相關原住民狩獵議題之研討會及座談會，於 2015 年亦委託專家學者進行「臺灣原住民族狩獵暨漁撈文化研究」，彙集各界寶貴意見，本會建議原住民族狩獵仍回歸部落自主管理為目標，制定原住民族狩獵漁撈法，完整規範狩獵文化內涵，以永續原住民族傳統智慧。
4. 森林法、野生動物保育法、漁業法部分：
   (1) 森林法：森林法於 2004 年 1 月 20 日修正公布，增訂第 15 條第 4 項，旨在維護原住民在傳統領域土地內依生活慣俗採取森林主副產物之權利，以維繫原住民文化，與本國 2005 年訂定原住民族基本法第 19 條第 1 項之立法意旨契合。然因各

原住民族之傳統領域土地範圍可能有重疊及界線不明情形，尚須依法定程序始能確認，又其生活慣俗及其所需採取森林產物，亦須與各族、各部落原住民族進行協商後，始能訂定法規及操作程序。在前項法規尚未完成訂定前，針對國家所轄管國有林部分，已於 2013 年修正國有林林產物處分規則，讓當地原住民族部落提出使用計畫及身分證明後，由國有林管理經營機關將漂流木、倒木等木材，無償採取後提供當地原住民族作為傳統文化祭儀等生活慣俗使用。且條文中明定國有林之藤蔓、果實及野菜等森林副產物，倘有原住民與非原住民同時提出採取申請時，原住民可優先比價、議價之機制，以保障原住民族從來之採集習俗。

(2) 野生動物保育法：

①野生動物保育法於 2004 年 2 月 4 日增訂第 21 條之 1，旨在維護原住民族基於傳統文化、祭儀而獵捕野生動物之需要。為符合原住民族基本法第 19 條原住民得於原住民族地區基於傳統文化、祭儀或自用而獵捕野生動物之規定，2016 年 4 月 14 日本國立法院立法委員已提案修正第 21 條之 1，增列「及非營利自用」等文字。上述條文未修正前，按原住民族基本法第 19 條規定，原住民得在原住民地區依法從事非管制之獵捕野生動物行為，原住民族委員會可依原住民族基本法第 34 條第 2 項規定會同行政院農業委員會，依原住民族基本法第 19 條規定之原則解釋，將「非營利自用」納入野生動物保育法第 21 條之 1 適用範圍。

②鑒於我國民眾深具動物保護觀念，行政院農業委員會已函請各地方政府於 2016 年 11 月底前，至轄內原住民族地區辦理「原住民族基於傳統文化及祭儀需要獵捕宰殺利用野生動物管理辦法」說明會，加強宣導並收集相關議題，後續 2017 年將由行政院農業委員會與原住民族委員會共同辦理座談會，廣徵各界意見，充分討論，凝聚共識，再研擬修正「原住民族基於傳統文化及祭儀需要獵捕宰殺利用野生動物管理辦法」，以兼顧野生動物保育及符合原住民族傳統文化祭儀需求

(3) 漁業法：

①為保護臺東縣沿近海域之基礎生物資源，臺東縣政府於 2005 年 9 月 14 日依漁業法第 44 條公告「臺東縣富山禁漁區位置及有關限制事宜」，並分別於 2010 年 7 月 6 日及 2014 年 6 月 3 日修正，目前將富山漁業資源保育區分為核心區(除試驗研究目的外，不得任何方式採捕各類水產動植物)與永續使用區(除試驗研

究目的及其他必要事項外，不得任何方式採捕各類水產動植物)。

②考量漁港港區使用及安全性，漁港法第 18 條第 1 項明訂漁港區域內禁止之行為；倘原住民族針對漁港內有垂釣之需求，可請漁港主管機關評估在漁業優先使用、不妨礙港區作業、安全及不造成港區污染情況，依同條第 3 項公告開放民眾垂釣。

③依「原住民族基本法」第 19 條規定，原住民族得在原住民族地區從事獵捕野生動物之非營利行為，並以傳統文化、祭儀及自用為限。又目前行政院核定之原住民族地區僅陸域範圍，海域範圍尚未劃設，倘原住民族基於傳統文化、祭儀及自用之目的，有於傳統海域採捕水產動植物之需要，如涉及依漁業法第 44 條授權所公告禁止事項及漁港法第 18 條所不得為之行為時，將協商相關管理機關確認傳統領域之範圍後，排除前開法規於傳統領域之適用，以維護原住民族之權益。

④另有關劃設原住民族海域範圍之法源(原住民族土地及海域法)，刻正由原住民族委員會依立法程序辦理中，倘「原住民族土地及海域法」公布，並據以公告原住民族傳統海域後，原住民族得依該法進行非營利傳統採集、漁撈或祭典活動。

⑤綜上，原住民族基於傳統文化、祭儀及自用之目的，有於傳統海域採捕水產動植物之需要時，均可依相關規定辦理之，爰無需修正「漁業法」第 44 條及「漁港法」第 18 條規定。

(4) 內政部警政署已強化查處案件聯繫機制，並請各警察機關偵辦原住民違反是類案件時，會同相關主管機關人員進行鑑定與鑑界，俾使查處程序更為周延，避免衍生執法爭議。

5. 「槍炮彈藥刀械管制條例」部分：

(1) 內政部警政署業已擬具「槍砲彈藥刀械管制條例」第 5 條之 2 修正草案，放寬原住民持有自製獵槍條件，未來除犯最輕本刑 3 年刑度以上之罪或特定之罪經判處有期徒刑以上之刑確定者外，仍得申請或繼續持有自製獵槍或自製魚槍。該修正草案業經報請內政部及行政院審查通過，並於 2016 年 7 月 11 日函送立法院審議。

(2) 加強提升執法人員原住民族傳統文化的意識：

①強化員警熟悉原住民族文化相關法令：要求各直轄市、縣（市）政府警察局利用學科常年訓練或其他集會時機，規劃相關法令宣導作為，加強員警教育訓

練，以提升員警對原住民族文化敏感度。將「槍砲彈藥刀械管制條例」、「槍砲彈藥刀械許可及管理辦法」、「原住民族基本法」及原住民族傳統祭儀文化等相關法令課程，請各直轄市、縣（市）政府警察局納入每年學科常年訓練課程，本署亦將於每年度業務督導評核時機，將前述法令課程列為督導評核重點，以期提升各縣（市）政府警察局所屬員警文化敏感度。

②邀請專家講授原住民文化與權益保障：內政部警政署於 2016 年 9 月 23 日至同月 30 日，已召集各直轄市、縣（市）政府警察局保安科業務主管及承辦人等，辦理 2 梯次之 2016 年保安工作講習，並邀請原住民族委員會綜合規劃處副處長雅博甦詠・博伊哲努擔任講座，講授有關「原住民文化與權益保障」課程，讓同仁對原住民祭典等文化能夠更加深入瞭解。

③深化教育訓練，將原住民相關法令列為常年訓練教材：為持續落實原住民權益保障及尊重原住民傳統文化，本署已著手將「原住民基本法」等相關法令課程，列入年度警察機關常年訓練教材。

④持續關注原住民議題，期與法律及文化兼容並蓄：針對原住民輔導作為，除召開治安座談會、家戶訪查宣導外，印製原住民自製獵槍相關規定宣傳品及利用各式傳播媒體加強宣導相關法令，以達廣為周知之效；同時利用每年度原住民自製獵魚槍總檢查時機，將宣導作為納入評核項目，督促各警察機關確實執行，以提升輔導效果。

6. 法務部為尊重原住民傳統文化，依據原住民族基本法規定，對本部所屬司法人員受訓期間，均有開設原住民權利保護、爭訟案例研討等訓練課程，另為提升在職檢察機關人員偵辦案件之專業知能，及了解原住民族傳統習俗、文化價值觀，並保障原住民族之基本權利，自 2012 年起迄今，每年均舉辦偵辦原住民族案件實務研習會，且為使學員深刻體認原住民文化，自 2014 年起，更安排參與研習人員（檢察官）前進部落，實地體驗，並由部落耆老解說分享，藉由面對面，了解原住民族文化風俗及目前所面臨的困境。目前臺灣高等法院檢察署所屬檢察機關除臺灣澎湖地方法院檢察署因無原住民案件，而無設置專責人員外，其餘檢察署對涉及原住民案件均有專責檢察官辦理，力求尊重原住民傳統文化。

7. 法務部為落實聾啞及不通曉國語人士訴訟權益之保障，於 2013 年 11 月 21 日訂頒「檢察機關辦理刑事案件使用通譯應行注意事項」，其中使用通譯聲請書包含原住民及其族別之記載，俾因應原住民族提出傳譯之需求，且於 2009 年即已統籌辦理各二審檢

察機關選聘特約通譯名冊，置於法務部內部網站/單一窗口連線作業，全國檢察官憑帳號密碼經由單一窗口均可進入使用。又臺灣高等法院檢察署及各分署均設有訴訟轄區特約通譯名冊，定期函供各檢察署使用，而各地方法院檢察署亦會依其需求，或參考上開名冊，於內網建置轄區名冊，供承辦人員使用，或建置於全球資訊網供民眾查詢使用。此外，各地方法院檢察署仍依據其地域性及資源性，如另聘特約原住民語言通譯、請通曉該族原住民語言之法警、司法警察協助提供此專長之通譯；或洽請地方政府原民處協調通曉該族語言者擔任，或視案件需要另行覓找該相關語言之通譯。

8. 如何既尊重原住民族之傳統狩獵文化，並兼顧野生動物保育及維護物種多樣，仍有待司法判決與時俱進為之解釋，有認宜在量刑上從寬考量；亦有認原住民族基本法之規定係野生動物保育法之阻卻違法事由；更有認科以刑責有適用法律不當之違法，此亦為日前最高法院檢察署檢察總長針對原住民王光祿個案提起非常上訴之法律意見，在目前國內司法實務上，多數仍採應依野生動物保育法第 41 條科以刑罰。惟因王光祿判處有期徒刑 3 年 6 月乙案，現已經由檢察總長提起非常上訴，最高法院目前仍在審理中，相關司法實務見解，尚待最高法院判決認定之，本部及所屬檢察機關定將依法執行。

英文回應

1. The Council of Indigenous Peoples is actively engaging central authorities in charge of relevant industries in revising and joint-releasing laws and regulations that involve indigenous peoples’right to natural resources according to Article 19 of The Indigenous Peoples Basic Law. These laws include “Regulations Governing Indigenous Peoples Right to Catch and Hunt Wild Animals According to Traditional Practices and Rituals”, “National Park Law” and “Forestry Law”. The Council of Indigenous Peoples considers that the intention of these laws should accord with indigenous traditional cultures so that all non-profit practices allowed by indigenous cultures can be considered legal, and also the legal intent of The Indigenous Peoples Basic Law will be respected. Before completing the revision of laws and regulations under other central authorities, the Council of Indigenous Peoples will provide legal interpretations of these laws and regulations in order to safeguard and protect the basic rights of indigenous peoples.
2. As the number of indigenous persons arrested for violating gun-related regulations is

growing, the Council of Indigenous Peoples has in 2015 sent an official request to the Ministry of Justice for the statistics of indigenous cases submitted by the offices of district prosecutors. According to these statistics, the number of indigenous persons arrested and investigated for violating “Controlling Guns, Ammunition and Knives Act” and “Wildlife Conservation Act” was 196 in 2013, 145 in 2014 and 89 until June 2015. To protect the judiciary rights of these indigenous persons, the Council of Indigenous Peoples launched “The Special Program of Legal Aid for Indigenous Peoples” in 2013 and provided them with legal counsel.

3. Also, in order to draft regulations governing the protection of indigenous peoples’ right to hunt with careful consideration, the Council of Indigenous Peoples has been sponsoring conferences and seminars on the topics of indigenous peoples and hunting since 2014. In 2015, the Council of Indigenous Peoples also commissioned specialists to conduct “Research on the Culture of Hunting and Fishing among Indigenous Peoples in Taiwan”. After collecting valuable comments from all fields, the Council of Indigenous Peoples advises that the right to govern hunting should return and remain with the tribe. The government should make “Indigenous Hunting and Fishing Act”, which shall define the cultural significance of hunting in entirety in order to guarantee the sustainable development of indigenous traditional wisdom.
4. Forestry Act, Wildlife Conservation Act and Fisheries Act:
   (1) Forestry Act: The article 15(4) of Forestry Act, amended on 20 Jan 2004, same with the article 19(1) of the Indigenous Peoples Basic Laws enacted in 2005, aimed to maintain the rights of Indigenous Peoples gathering forest product legally for the sake of their traditional culture, rituals, or self-use within traditional territories. However, the overlapping and undefined boundary of the traditional territories should be confirmed according to legal procedures. Moreover, the uncertainties of traditional culture, rituals, or self-use between each tribe, consultations are still required before legal procedures worked out. Before the legal procedures to be worked out, the “Regulations Governing Disposition of Forest Products of State-owned Forests”, amended in 2013, stated that after submitting the annual plan, state-owned management authority will not charge fee and will provide Indigenous peoples forest

products, including driftwood, fallen trees, debris, etc. for the purpose of traditions cultural, rituals, or self-use. In addition, when public bidding of by-products of state-owned forests, including vines, fruits and wild herb, etc., the management authority also provides indigenous peoples the rights for priority price competition to ensure their traditional cultural customs needs.

(2) Wildlife Conservation Act:

①Article 21-1 of the “National Wildlife Conservation Act” was amended on February 4, 2004, which aimed to safeguard the needs of indigenous peoples for hunting wild animals on the basis of traditional culture and sacrificial rites. To accord the Article 19 of "The Indigenous People Basic Laws", indigenous people have the right to trap wild animals by the indigenous peoples regions on the Basis of traditional culture, sacrificial rites or for personal use. Legislators of our national congress Legislative Yuan have proposed to amend Article 21-1 on April 4, 2016, and "Non-profit self-use" has been added. Before the amendment of “Wildlife Conservation Act” complete the legal procedure in the Legislative Yuan, the Council of Indigenous Peoples may, according to Paragraph 2, Article 34 of “Indigenous Peoples Basic Law”, interpret with the Council of Agriculture, by the principle of Article 19 of “Indigenous Peoples Basic Law”, to bring “non-profit self-use” into the scope of application of Article 21-1 of “Wildlife Conservation Act”.

②The Council of Agriculture has informed the local governments to hold public awareness briefings in indigenous peoples’ regions, by the end of November 2016, on “Regulations Governing Indigenous Peoples Hunting and Use of Wildlife based on Traditional Culture and Ritual Needs”. In order to refine the above Regulations, the issues and suggestions during the briefings will be collected and referred to the later discussion in the following hearings hosted by the Council of Agriculture and the Council of Indigenous Peoples in 2017.

(3) Fisheries Act:

①To protect the primary biological resources along the coast in Taitung, Taitung County Government promulgated “The rules of position and relevant restrictions at closed fishing areas in Fushan, Taitung” which is pursuant to Article 44 of Fisheries

Act on December 14, 2005. It was amended on July 6, 2010 and June 3, 2014 respectively. Fushan fisheries resources conservation areas were currently divided into the core area, where harvesting aquatic resources is prohibited in any ways except for research, and the an area for sustainable use, where catching creatures is prohibited in any ways except for research and special occasions.

②For the consideration of safety and utilization, it is clearly regulated in Paragraph 1, Article 18 of the Fishing Port Act, that if indigenous people have the needs for fishing in the port, they are allowed to seek from Fishing Port Authority to evaluate situations in the context of priority in fisheries, while their activities would not interfere with the operation, safety and pollution in the port. Pursuant to the Paragraph 3, Article 18 of the Fishing Port Act, the authority can announce accordingly the specification of angling for the public in the port concerned.

③In accordance with Article 19 of The Indigenous Peoples Basic Law, that indigenous people may undertake non-profit hunting activities of wild animals in indigenous peoples' regions, and such activities are restricted to the purposes of traditional culture, ritual and self-consumption only. However, the indigenous peoples' regions approved by the Executive Yuan are within land area but the marine area is yet to be designated. If indigenous people have the necessity of hunting wild animals based on traditional culture and ritual within indigenous peoples' regions for the traditional aquatic resources harvesting, while involving in prohibited activities based on Article 44 of the Fisheries Act and Article 18 of the Fishing Port Act, consultations with relevant management authorities in regions will be carried out for excluding the application of the traditional marine area as to protect the welfare of indigenous people.

④After the promulgation of The Indigenous Land and Sea Region Act and the announcement of indigenous peoples' traditional sea, indigenous people are allowed to conduct non-profit traditional harvesting, fishing or ritual activities in the said areas.

⑤In summary, when indigenous people have the purposes for traditional culture, ritual and self-consumption, they are allowed to harvest aquatic resources in the

traditional sea according to the relevant regulations. Thus both amendments to Article 44 of the law of Fishery Act, and to Article 18 of the Fishing Port Act would be unnecessary.

(4) National Police Agency, Ministry of the Interior have virtually reinforced the communications mechanism over the cases under charge. We have further officially advised police officers that in an event where an indigenous person gets involved in a case falling within the said categories, the police officers shall team up with the officials of other competent authorities of the government to launch concerted acts in appraisal and verification of land borderline to assure management of the cases with more thoughtful concern to prevent occurrence of a potential dispute.

5. Controlling Guns, Ammunition and Knives Act:

(1) Here at the National Police Agency, Ministry of the Interior, we have duly mapped out the amendment to Article 5-2 of the “Controlling Guns, Ammunition and Knives Act” with the very key spirit to ease up the terms for indigenous people to possess shotguns manufactured by indigenous people themselves. In the future after the amendment becomes effective, except a case with a crime subject to a jail term for more than three years or a specific crime subject to imprisonment or more severe punishment, an indigenous person may still apply for holding a shotgun manufactured by himself or herself for hunting or for fishing. The aforementioned amendment already successfully has been submitted to and passed the deliberation process by both the Ministry of the Interior and Executive Yuan and is scheduled to be submitted to the Legislative Yuan for final deliberation process on July 11, 2016.

(2) The efforts to enhance law enforcement officials in their better awareness of the traditional indigenous tribe cultures:

①The efforts to enhance police officials in their better awareness of the traditional indigenous tribe cultures related laws and regulations: We have requested that the police authorities in the municipality, county (city) government levels to take advantage of right timings of the routine academic training programs with efforts to map out plans to promote publicity and dissemination of the government laws and ordinances concerned. Through such efforts, we strengthen training programs

toward police staff to boost their better awareness and sentiment on the indigenous people cultures. Besides, we have requested the municipality, county (city) government level police authorities to cover the contents of the “Act for Fire Arms, Ammunition and Harmful Knives Control”, “Regulations Governing Permit and Control over Fire Arms, Ammunition and Harmful Knives”, “Basic Act for Indigenous People” and such curricular courses into the routine training programs for the police staff. In the right time point, the National Police Agency, Ministry of the Interior would take the aforementioned curricular courses as the very highlights of evaluation. Through all such efforts as a whole, we have substantially helped police officers upgrade their awareness and sensitivity of the indigenous people cultures.

②We have invited scholars and experts to lecture the highlights of indigenous people cultures and protection of the indigenous people interests：During September 23~30, 2016, we convened two “Year 2016 Public Security Symposiums” which were attended by the department heads and officers in charge in the Public Security Division of the municipality, county (city) level police departments. On that significant events, we invited Deputy Commissioners of Comprehensive Planning Division of the Council of Indigenous People, Yapasuyongu Poiconu to lecture lessons on the “Indigenous People Cultures and Protection of Rights thereof”. Through such efforts, our police colleagues earn more in-depth awareness of the indigenous rituals.

③In-depth educational & training programs, covering the indigenous people related laws and regulations into the routine educational & training programs year-round: In an attempt to continually implement thoroughly assurance and preservation of the interests and cultures of the indigenous people, we here at the National Police Agency, Ministry of the Interior have already listed the legal courses on “The Indigenous Peoples Basic Law” into the routine educational & training programs year-round.

④Continued concern about the indigenous people related key issues with equivalent concern about both indigenous people related laws and cultures：Here at the

National Police Agency, Ministry of the Interior, our guiding supports toward indigenous people notably including the efforts to convene public security preservation symposiums, door-to-door interview promotion, printing of fliers regarding the shotguns manufactured by the indigenous people themselves to assure extensive publicity and dissemination. Taking the golden timing of the annual examination of hunting and fishing shotguns made by indigenous people themselves, the efforts and outcome of the aforementioned publicity and dissemination are taken for performance evaluation. All police colleagues have put such policies into thorough enforcement to assure maximum possible effect in the guiding and training programs efforts.

6. The Ministry respects the traditional culture of indigenous peoples. Pursuant to the regulations set forth in the Indigenous Peoples Basic Law, training programs on the protection of the rights of indigenous peoples and discussion of litigation cases are offered to judicial personnel of this Ministry during training periods. In addition, as of 2012, practice workshops on the investigation of cases involving indigenous people are organized on an annual basis to enhance relevant professional knowledge of current personnel of prosecuting authorities, provide a better understanding of the traditional customs and cultural values of indigenous peoples, and safeguard their basic rights As of 2014, trips to tribal communities and on-site observations are organized for workshop participants (prosecutors) to give trainees an in-depth experience of indigenous culture. The community elders provide explanations and share information and trainees gain a better understanding of indigenous customs and culture and the difficulties indigenous people face through face-to-face communication.The Penghu District Prosecutors Office is the only prosecuting authority subordinate to the Taiwan High Prosecutors Office that has not designated dedicated personnel since there are no cases involving indigenous people. All other Prosecutors Offices have dedicated prosecutors who handle cases involving indigenous people to ensure respect for the traditional indigenous culture.
7. “The Important Reminders for the Usage of Interpreters for Criminal Cases handled by Prosecuting Authorities” were promulgated on November 21, 2013 by this Ministry to safeguard the litigation rights of deaf and mute people and persons who do not understand

Mandarin. The application form for interpreters includes records of indigenous people and the tribes to meet the needs of indigenous people for interpretation. As of 2009, lists of freelance interpreters hired by all second-instance prosecuting authorities are compiled and managed. These lists are posted on the internal website of the Ministry of Justice/ single-contact online operations. All prosecutors can access these lists and use interpreters by entering their password on a single portal. In addition, Taiwan High Prosecutors Offices and all sub offices have compiled lists of freelance interpreters for their jurisdiction region. These lists are forwarded to all Prosecutors Offices on a regular basis for usage. District Prosecutors Offices post a list for their jurisdiction region on their internal website for responsible personnel with reference to the aforementioned lists based on their needs. Lists may also be posted on the Global Information Network for queries by the general public. In addition, all District Prosecutors Offices may request assistance by bailiffs or judicial police officers who are proficient in the indigenous language of a certain tribe in the hiring of professional freelance indigenous language interpreters. They may also request the Department of Indigenous Peoples of local governments to assign individuals who are proficient in the required indigenous language or search for additional interpreters in accordance with the requirements of the case.

8. Judicial judgments and interpretations in sync with contemporary trends have yet to be provided with regard to respect of the traditional hunting culture of indigenous peoples with a simultaneous focus on wildlife conservation and maintenance of species diversity. There is a general agreement that such crimes should be handled in a lenient manner and the regulations set forth in the Indigenous Peoples Basic Law represent an affirmative defense of the Wildlife Conservation Act. There is also a general understanding that laws have been applied in an appropriate and illegal manner during the legal proceedings. This is the legal basis for the extraordinary appeal filed by the Prosecutor General of the Supreme Court Prosecutors Office on behalf of Guang-Lu Wang. Based on current judicial practice in Taiwan, a majority believes that Article 41 of the Wildlife Conservation Act should serve as the legal basis for the imposition of punishment. The Prosecutor General has filed an extraordinary appeal to the supreme court of the prison sentence of three years and six months that Guang-Lu Wang received. The Supreme Court is currently still

reviewing this case and practical insights will not be available until the court reaches its final verdict. The Ministry and all subordinate Prosecuting Authorities will execute relevant provisions in accordance with the law.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
80	Although the Government advocates for the inclusion of tribal decision-making processes in reconstruction, relocation and settlement activities, as stated in § 2 of its Report, CW criticizes in its § 32 to 34 that it has failed to implement this approach by forfeiting to comprehensively understand the mechanism of participation, decision-making and consultation as well as Indigenous Peoples' traditional knowledge on disasters referring to the site. How does the Government intend to better respect and include the knowledge and the will of the Indigenous communities in the relocation processes?	雖然政府倡議於重建、安置及聚落活動中融入部落的決策過程，如《公政公約第二次國家報告》第 2 點所示，但人權公約施行監督聯盟則於其《公政公約影子報告》第 32 至 34 點批評政府因無法瞭解參與、決策及諮商機制以及原住民族關於災難的傳統知識以致未能落實其上開方法。政府要如何更尊重並將原住民社群的知識與意願包含在重置的過程之中？

中文回應

1. 近年來因極端氣候發生頻率增加，山區部落常遭受水患與土石流肆虐，族人居住安全受到了威脅，甚至部分部落不得已辦理遷村。本會推動原住民族部落災後重建安置係以尊重、人本、人文之部落永續發展為圭臬，並依據憲法、原住民族基本法及參酌國際人權兩公約等精神，除一般硬體設施重建外，更重視文化重建之落實。
2. 在本會推動部落重建安置工作中，為了不讓部落族人剝離其文化孕育的場域，提出「離

災不離村、離村不離鄉」之重建原則、「永久屋部落家屋建築文化語彙計畫」及「舊部落活化再利用及文化地景重現計畫」等，實施以來深受部落居民肯定，這也是政府肯定在地知識系統的施政，另希望透過家屋外觀文化圖騰意象施作，以有形的建築表現證實無形文化價值的存在，找回部落傳統工法及社會凝聚力，也為部落遷史留下記憶與故事。

3. 面對全球氣候極端變化，災難更趨嚴厲的現今，我們應該從不同環境區域的原住民部落中找到人類與大自然最初的平衡，再援引至政策研析與制定，施政與立法應強化各民族的在地文化與環境正當性，相信這會是在地文化得到重現與尊敬，並讓環境得到永續與發展。

英文回應

1. In recent years, extreme climates occur more frequently than before. Indigenous villages located in the mountains are often afflicted by floods and landslides, which put the life of people in danger and even force some villages to relocate without choice. The post-disaster resettlement project of the Council of Indigenous Peoples bases itself upon the valued principles of respect, people-orientation and the sustainable development of the culture of the village. It also accords with the legal intent of the Constitution of Taiwan, Indigenous Peoples Basic Law, ICCPR and ICESCR. On top of reinstalling facilities, the project emphasizes more on the reconstruction of culture.
2. In the resettlement project of the Council of Indigenous Peoples, principles such as “Away from Disaster but Close to Village, Away from Village but Close to Township”, “The Project of Adding Cultural Vocabulary to Permanent Housing”, and “The Project of Revitalizing Old Village and Reconstructing Cultural Landscape” have all been received positively by the people because these measures represent how the government administration values local knowledge. The government hopes to prove the existence of intangible culture through the form of tangible architecture such as the tribal totems that adorn that exterior of the permanent housing. By doing so, it hopes to restore traditional workmanship, strengthen social cohesion and document tribal memory and stories for future generations.
3. In the face of worldwide extreme climate change and worsening natural disasters,

nowadays we should try to retrieve the earliest equilibrium that exists between human being and nature by observing indigenous villages in different environment or region. We should learn from their experience and turn our lesson into policy. The legitimacy of local culture and environment should be enhanced in administration and legislation. We believe this is how local culture may be represented and respected as well as how our environment may be sustainable for development.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
81	According to § 49 CW, only Indigenous citizens are permitted to vote for the 6 legislator seats, which are reserved for Indigenous Peoples. This leads to the isolation of the Indigenous part of the population by allowing non-Indigenous legislators to ignore Indigenous affairs. What is the justification for this arrangement and what could the Government do to redefine its election system to reinforce ethnically and regionally representability and reflect an inclusive system design?	人權公約施行監督聯盟《公政公約影子報告》第 49 點指出，原住民族公民僅能投票選舉原民立法委員，這會讓非原民立委忽視原住民族事務，而導致原住民人口被孤立。此一作法的正當性基礎為何，而政府可以如何重新界定選舉制度，以強化族群與地區代表性，並且反應出融入性的制度設計？

中文回應

我國憲法增修條文規定，立委總額 113 席，其中原住民立委 6 席、區域立委 73 席、不分區立委 34 席，目前我國原住民人口約占全國之 2.3%，6 席原住民立委比例約占全部立委總額 5.3%，本（第 9）屆立委另有全國不分區立委 2 人具有原住民身分，總計具有原住民身分立委占全體立委 7%，已屬超額代表。有關原住民投票權部分，原住民除投給原住民立委外，另可投票給屬意政黨，選出全國不分區立委以表達其意見。為強化地

區代表性，針對原住民立委選舉制度曾有改採單一選區制之建議；另為強化族群代表性，亦有建議採族群代表制，亦即一族群一立委，選出 16 席立委，但受到立委席次限制，採行上有困難。

英文回應

In accordance with Additional Articles of the Constitution of the Republic of China, the Legislative Yuan shall have 113 members, which aborigines have 6 seats, 73 members shall be elected from the Special Municipalities, counties, and cities in the free area, and a total of 34 members shall be elected from the nationwide constituency and among citizens residing abroad. At present, the aboriginal population accounts for about 2.3%, the six aboriginal legislators' accounts for about 5.3% of the total of all legislators, in addition, the two of the 9th national integrated election and the overseas election of central civil servants have indigenous identity. The total number of legislators with the aboriginal legislators standing 9 percent belongs to excess representative. The aboriginal part of the voting rights, aboriginal people in addition to the aboriginal legislators, the other can vote for the political parties to elect the nationwide constituency and among citizens residing abroad. To strengthen the regional representation, it was suggested that the election of indigenous members of the legislature be replaced by Single-Member District. In addition, to strengthen ethnic representation, ethnic representation is recommended. That is, each ethnic group has a legislator, 16 legislative councilors were elected, but by the Constitution expressly provides that the legislator seats, there are difficulties on the adoption.

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
82	As stated in § 24 CW, the Government should respect the language, cultures, customs and values of the Indigenous Peoples when	如人權公約施行監督聯盟《公政公約影子報告》第 24 點所述，政府在制訂法律和規則、或執行司

	formulating laws and regulations, administering justice and various procedures. Yet, § 26 CW argues that not every case concerning Indigenous Peoples should be tried in the Special Unit or Special Court of Indigenous Peoples, but only those concerning the protection or impact of Indigenous culture. How does the Government intend to delineate the jurisdiction of the Special Unit and the Special Court of Indigenous Peoples? What measures can the Government take to equip these judicial bodies with the necessary expertise to adjudicate cases relating to Indigenous culture?	法與其他程序時，應尊重原住民族的語言、文化、習俗和價值。然而該報告第 26 點主張並非所有涉及原住民的案件都應該在原住民法院或專股法庭審理，而應僅限於涉及保護或影響原住民文化的案例。政府預計如何設定原住民法院或專股法庭之審理界限？政府採取何種措施以使這些司法單位擁有必要的專長以審理與原住民文化相關的案件？

中文回應

1. 目前法院之原住民族專業法庭（股）審理事件範圍：
   (1) 刑事案件：被告為原住民之刑事案件，不論何種犯罪類型，均由原住民族專業法庭（股）審理。
   (2) 民事事件：兩造當事人均為原住民、部落、原住民族之民事事件（不區分案由），以及一造當事人為原住民、部落、原住民族之特定案由案件。如非屬前述特定案由之民事事件，經當事人聲請由原住民族專業法庭（股）審理，受訴法院認為適當者，得由原住民族專業法庭（股）審理。
   (3) 行政訴訟事件：案由為「原住民保留地」、「原住民身分法」及「原住民族基本法」等事件；當事人之一造（含參加人）由姓名即足以判斷身分為原住民、原住民族或部落（但不包括起訴分案後追加或參加者）者，或經相當釋明後已足徵明者之特定案由事件。
2. 就上開報告第 26 點建議部分，將納為司法院未來修正原住民族專業法庭(股)審理事件範圍之參考。
3. 藉由原住民族專業法庭法官相關培訓課程，使司法單位擁有必要專長審理原住民案件：

(1) 為提升法官辦理各類專業案件之專業能力及加強法官在職進修，依相關規定，辦理專業案件之法官，每年應參加與該專業案件有關之研習，合計須達 12 小時以上；各法院原則上至少應給與辦理專業案件法官每年 7 日停止分案以參加研習，供法官定期汲取新知，以提升其專業知能。

(2) 就此，法官學院自 2009 年起迄今，每年均辦理為期 4 至 5 日之原住民族人權保障研習會，課程內容除針對民、刑事案件審理之需求，安排與原住民族傳統習俗、文化等有關之課程外，並深入原住民族部落，以體驗、瞭解部落生活與習慣；並於 2012 年、2014 年間，加開原住民族專業法庭法官研習會，提升原住民族專業法庭（股）法官之專業知能。

英文回應

1. The jurisdiction of Indigenous Tribunal (Section) of courts is as follows:
   (1) Criminal cases: Indigenous Tribunal (Section) tries criminal cases, in which the indigenous people are defendants regardless of the type of crime.
   (2) Civil cases: Indigenous Tribunal (Section) tries civil cases, in which both parties are indigenous people, tribes, or groups (regardless of the subject of the case) and specific civil cases, in which one party is indigenous people, tribe or group. For civil cases that are not in the range of the aforementioned case subjects, the parties may apply to the court that the case to be tried by Indigenous Tribunal (Section). If the court deems it appropriate, the case may be tried by the Indigenous Tribunal (Section).
   (3) Administrative litigation cases: Indigenous Tribunal (Section) tries cases within the subjects of the following: “lands reserved for indigenous people,” “Status Act for Indigenous Peoples,” “The Indigenous Peoples Basic Law” and “one of the parties (including intervener) who can be identified as indigenous people, group or tribe (excluding persons joined or interveners after the case is prosecuted and assigned) from his/her name, or the cases with specific subjects that have been revealed after certain explanation.”
2. As for the § 26 CW, Judicial Yuan will take it as a reference for the amendment of the jurisdiction of Indigenous Tribunal (Section) in the future.
3. The training courses for judges of Indigenous Tribunal allow the judicial branch to

possess necessary profession in trying indigenous cases:

(1) In order to improve the capacity in all professional cases and enhancing the on-the-job training for judges, judges trying professional cases shall attend the training courses concerning the professional case for more than 12 hours per year in accordance with the regulations. All courts, in principle, shall stop assigning cases to judges trying professional cases for 7 days per year, which allows judges to attend the training courses and acquire new knowledge to improve their capacity.

(2) Therefore, Judges Academy has been holding seminars concerning the human rights protection for indigenous people that lasted 4 to 5 days every year since 2009. Apart from arranging courses related to indigenous traditions, customs and cultures for the demand of civil and criminal trials, judges attending the seminar also visited indigenous tribes to experience and understand the life and customs of tribes. Judges Academy also held seminars for judges of Indigenous Tribunal in 2012 and 2014 to improve the capacity of judges of Indigenous Tribunal (Section).

第 27 條

Article 27

點次	問題內容(原文)	中文參考翻譯
83	According to § 52 CW, the "Taiwan Indigenous Television", which was introduced in 2014, is the only broadcasting channel that still cannot be viewed on a digital TV channel. What are the reasons for this? Is the Government taking steps to resolve this issue?	根據人權公約施行監督聯盟《公政公約影子報告》第 52 點，在 2014 年開播的「原民台」是目前唯一無法在數位電視觀賞的電視頻道。其原因為何？政府是否已經採取步驟解決此問題？

中文回應

1. 財團法人原住民族文化事業基金會設置條例第 4 條條文修正，經 2016 年 5 月 24 日立法院第 9 屆第 1 會期第 14 次會議三讀通過，該基金會得委託經營無線電視之機構播

送原住民族電視台（下稱原民台）之節目及廣告，不受廣播電視法第 4 條第 2 項及公共電視法第 7 條第 2 項規定之限制。

2. 財團法人公共電視文化事業基金會為有效利用頻譜資源，重新配置頻道並受託於 CH30 播送原民台，爰依廣播電視法第 10 條之 1 第 2 項規定向國家通訊傳播委員會（下稱通傳會）提出 CH30 營運計畫變更，案經通傳會 2016 年 6 月 8 日第 700 次委員會議審議，以附附款核准 CH30 營運計畫變更，並於 2016 年 7 月 6 日起原民台納入無線電視頻道播出。另依有線廣播電視法第 33 條第 3 項規定，原民台亦於有線電視系統上架播出。

英文回應

1. After three readings of the 14th sitting of the first session on May 24, 2016, the Legislative Yuan passed the amendment of Article 4 of Act for the Establishment of the Indigenous Peoples Cultural Foundation (IPCF). IPCF may entrust wireless television agencies to broadcast the programs and advertisements of Taiwan Indigenous Television (TITV), unrestricted by Paragraph 2 of Article 4 of the Radio and Television Act, and Paragraph 2 of Article 7 of the Public Television Act.
2. To use spectrum resources effectively, reconfigure channels, and broadcast programs in channel 30 for TITV's entrustment, the Public Television Service Foundation, in accordance with Paragraph 2 of Article 10-1 of the Radio and Television Act, submitted an application for the change of CH30 operation plan to National Communication Commission (NCC), which approved the application with additional conditions in the 700th Commission Meeting on June 8, 2016 to include TITV in wireless television channel broadcasting. TITV has been broadcast on digital terrestrial TV platform since July 6th 2016. Also, TITV shall be broadcast in Cable TV Systems in accordance with Paragraph 3 of Article 33 of Cable Radio and Television Act.

2017 Review Meeting of the ROC's Second Report under the ICCPR and ICESCR

公民與政治權利國際公約
經濟社會文化權利國際公約

中華民國第二次國家報告國際審查會議